

## **PROJECT AUTHORIZING RESOLUTION**

*(Johnston Paper Company, Inc. Project)*

A regular meeting of Cayuga County Industrial Development Agency was convened on Tuesday, November 18, 2014, at 4:00 p.m.

The following resolution was duly offered and seconded, to wit:

### **Resolution No. 11/2014 - 1**

RESOLUTION OF THE CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) APPOINTING REHC 5, INC. (THE "COMPANY") AND JOHNSTON PAPER COMPANY, INC. (THE "OPERATOR") AS AGENTS TO UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AGENT AGREEMENTS, ALONG WITH AMENDED AND RESTATED LEASE, LEASEBACK AND PAYMENT-IN-LIEU-OF-TAX AGREEMENTS AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING THE PROVISION OF CERTAIN FINANCIAL ASSISTANCE TO THE COMPANY AND OPERATOR (AS FURTHER DEFINED HEREIN); (iv) ADOPTING FINDINGS WITH RESPECT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA"); AND (v) AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 688 of the Laws of 1970 of the State of New York, (hereinafter collectively called the "Act"), the **CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called the "Agency") was created with the authority and power to promote, develop, encourage and assist in acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, civic, research, and recreational facilities as authorized by the Act, and in connection therewith to issue its revenue bonds, enter into straight lease transactions and provide other forms of financial assistance; and

WHEREAS, the Agency previously undertook a certain project (herein, the "2003 Project") for the benefit of **REHC 5, INC.** (as successor to May & May Associates, LLC) and **JOHNSTON PAPER COMPANY, INC.** (collectively, the "Company"), consisting of: (1) the acquisition of a leasehold interest in a parcel of land formerly known as "Parcel F" of the Aurelius Industrial Park and located at 2 Eagle Drive, Aurelius, Cayuga County, New York (said parcel being identified as tax map number 114-2-27.1, and herein, the "Land"); (2) the construction and equipping on the Land of an approximately 100,000 square-foot building to be used as an office, training and warehouse facility (the "2003 Improvements"); (3) the acquisition of and installation in and around the 2003 Improvements of certain machinery and related equipment and items of personal property (the "2003 Equipment" and, collectively with the Land

and the 2003 Improvements, the “2003 Facility”); and (4) the sublease of the 2003 Facility to and operation by the Operator; and

WHEREAS, the Agency and Company (through assignor May & May Associates, LLC) undertook the 2003 Project pursuant to a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act, and collectively the “2003 Straight Lease Transaction”), pursuant to which (i) the Agency acquired a leasehold interest in the 2003 Facility pursuant to a Lease Agreement, dated as of November 1, 2003 (the “2007 Lease Agreement”); (ii) the Agency leased the 2003 Facility back to the Company pursuant to a certain Leaseback Agreement, dated as of November 1, 2003 (the “2003 Leaseback Agreement”); and (iii) the Agency and Company entered into a certain Payment in Lieu of Taxes Agreement, also dated as of November 1, 2003 (the “2003 PILOT Agreement”, and collectively with the 2003 Lease Agreement, 2003 Leaseback Agreement and related documents, the “2003 Project Documents”, as assigned and assumed); and

WHEREAS, the Company has requested the Agency’s assistance with a certain project (the “2014 Project”) consisting of: (i) the retention by the Agency of a leasehold interest in the Land pursuant to amendments to the 2003 Project Documents, as amended, (ii) the planning, design and construction on the Land of approximately 58,200 square-feet of additions to the 2007 Improvements (the “2014 Improvements”) comprised of approximately 36,200 square feet of new warehouse space and 22,000 square feet of office space, improvements and modifications to the 2003 Improvements, certain exterior driveway, parking, landscaping and curbage improvements to be incorporated for lease by the Company to the Operator as additional office space, warehouse space, and distribution space of paper supply and distribution business; (iii) the acquisition of and installation in and around the 2003 Improvements and 2014 Improvements by the Company of machinery, equipment, furniture, fixtures and other items of tangible personal property (the “2014 Equipment” and, collectively with, the Land, the 2003 Improvements and the 2014 Improvements, the “2014 Facility”); and

WHEREAS, on October 21, 2014, the Agency adopted an initial resolution (the “Initial Project Resolution”) which (i) accepted the Company’s application, (ii) authorized the scheduling and conduct of a public hearing in compliance with the Act, (iii) described the contemplated forms of financial assistance to be provided by the Agency (the “Financial Assistance”, as described herein); and (iv) authorized the negotiation of amendments to the 2003 Project Documents, and related documents to undertake the 2014 Project; and

WHEREAS, in accordance with the Initial Project Resolution, the Agency published and forwarded a Notice of Public Hearing to the Town of Aurelius (the “Town”), the County of Cayuga (the “County”), and the Union Springs Central School District (the “School”, and together with the Town and County, the “Affected Tax Jurisdictions) prior to said Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, pursuant to Section 859-a of the Act, the Agency held a public hearing on the 18<sup>th</sup> day of November, 2014 at 2:00 p.m. in the conference room at the Aurelius Town Hall, 1241 West Genesee Street Road, Auburn, New York 13021 with respect to the 2014 Project (the “Public Hearing”) and the proposed Financial Assistance (as further defined herein) being

contemplated by the Agency whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views, a copy of the minutes of the Public Hearing; and

WHEREAS, the Town Board of the Town reviewed the proposed 2014 Project pursuant to the State Environmental Quality Review Act, as codified under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "SEQRA") and related Environmental Assessment Form ("EAF") and issued a negative declaration, dated July 10, 2014 (the "Negative Declaration"), a copy of which, along with the EAF, are attached hereto as **Exhibit B**; and

WHEREAS, in furtherance of the foregoing, the Agency desires to authorize (i) the appointment of the Company and the Operator, as agents of the Agency, to undertake the 2014 Project; (ii) the execution and delivery of Agent Agreements along with Amended and Restated Lease Agreement, Leaseback Agreement and PILOT Agreement, and related documents; and (iii) the provision of the Financial Assistance to the Company and the Operator, which shall include (a) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the Facility or used in the construction and equipping of the Facility, (b) mortgage recording tax exemptions in connection with financings undertaken by the Company for the Project, and (c) a partial real property tax abatement through the execution of an agreement with the Agency regarding payments in lieu of real property taxes to be made for the benefit of the Affected Tax Jurisdictions by the Company.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon the representations made by the Company and Operator to the Agency in the Application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) It is desirable and in the public interest for the Agency to (i) retain a leasehold interest in the 2003 Facility and 2014 Facility, (ii) extend the Agency's leasehold interest in the 2003 Facility to the Company pursuant to an Amended and Restated Lease Agreement, Amended and Restated Leaseback Agreement, and (iii) execute and deliver other documents to effectuate modifications to the 2003 Project Documents for an extended Straight Lease Transaction with the Company for purposes of the 2014 Project and 2014 Facility (pursuant to which Company will continue to sublease the Facility to the Operator); and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company to undertake the Project, thereby increasing employment opportunities in the Town of Aurelius, which is located

within Cayuga County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a facility or plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other facility or plant to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(F) Based upon a review of the Application, the EAF and the Negative Declaration issued by the Town and submitted to the Agency, the Agency hereby:

(i) consents to and affirms the status of the Town Board of the Town as Lead Agency for review of the 2014 Project and 2014 Facility, within the meaning of, and for all purposes of complying with SEQRA;

(ii) ratifies the proceedings undertaken by the Town Board of the Town as Lead Agency under SEQRA with respect to the construction and equipping of the 2014 Facility pursuant to SEQRA; and

(iii) finds that the 2014 Project involves an "unlisted action" (as such quoted term is defined under SEQRA). The review is "uncoordinated" (as such quoted term is defined under SEQRA). Based upon the review by the Agency of the EAF and related documents delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the 2014 Project, the Agency hereby finds that (i) the 2014 Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the 2014 Project will not have a "significant effect on the environment" (as such quoted term is defined under SEQRA); and (iii) no "environmental impact statement" (as such quoted term is defined under SEQRA) need be prepared for this action. This determination constitutes a "negative declaration" (as such quoted terms are defined under SEQRA) for purposes of SEQRA.

Section 2. Subject to the Company and Operator executing the Agent Agreements and/or Amended and Restated Leaseback Agreement, and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the 2014 Project satisfactory to the Agency, the Agency hereby authorizes the Company and Operator to proceed with the acquisition, renovation, construction, reconstruction, rehabilitation and equipping of the 2014 Project and hereby appoints the Company and Operator as true and lawful agents of the Agency: (i) to acquire, construct and equip the 2014 Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the



Company and/or Operator chooses; and (iii) in general, to do all things which may be requisite or proper for completing the 2014 Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreements shall expire on December 31, 2015 (*unless extended for good cause by the Executive Director of the Agency*). The agency hereby authorizes the provision of the Financial Assistance to the Company and the Operator in accordance with the provisions hereof as set forth within the 2014 Project Documents, as defined herein.

Section 3. Based upon the representation and warranties made by the Applicant in the Application, the Agency hereby authorizes and approves the Company and the Operator, as its agents, to make purchases of goods and services relating to the 2014 Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately \$4,000,000.00, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$320,000.00. The Agency agrees to consider any requests by the Company or the Operator for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 4. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company and/or the Operator, their agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the 2014 Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the 2014 Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the 2014 Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the 2014 Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the 2014 Project; (iv) the Applicant has made a material false statement on its application for financial assistance; (v) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the 2014 Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the 2014 Project; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the 2014 Project (collectively, items (i) through (vi) hereby defined as a "Recapture Event").

As a condition precedent of receiving sales and use tax exemption benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the 2014 Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, mortgage recording tax benefits and/or real property tax abatements abatement benefits, and (ii) promptly pay over any such

amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 5. The Chairman, Vice Chairman, and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreements, along with an amended and restated Lease Agreement, Leaseback Agreement and PILOT Agreement and related documents (collectively, the "2014 Project Documents") with such changes as shall be approved by the Chairman, Vice Chairman, the Executive Director and counsel to the Agency upon execution.

Section 6. The Chairman, Vice Chairman, and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the 2014 Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter with the 2014 Project Documents, the "Agency Documents"); and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman), or Executive Director of the Agency shall approve, the execution thereof by the Chairman (or Vice Chairman), or Executive Director of the Agency to constitute conclusive evidence of such approval; provided, that, in all events, recourse against the Agency is limited to the Agency's interest in the 2014 Project.

Section 7. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 8. These Resolutions shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Paul Lattimore	[ X ]	[ ]	[ ]	[ ]
Carol Contiguglia	[ X ]	[ ]	[ ]	[ ]
John Latanyshyn	[ X ]	[ ]	[ ]	[ ]
Raymond Lockwood	[ X ]	[ ]	[ ]	[ ]
Herb Marshall	[ X ]	[ ]	[ ]	[ ]
Gina Speno	[ ]	[ ]	[ X ]	[ ]
Joseph Runkle	[ ]	[ ]	[ X ]	[ ]

The Resolution was thereupon declared duly adopted.

**EXHIBIT B**  
**SEQRA MATERIALS**





**EXHIBIT A**  
**PUBLIC HEARING NOTICE MATERIALS**

### SECRETARY'S CERTIFICATION

STATE OF NEW YORK     )  
COUNTY OF CAYUGA    ) SS:

I, the undersigned Acting Secretary of the Cayuga County Industrial Development Agency, DO HEREBY CERTIFY:

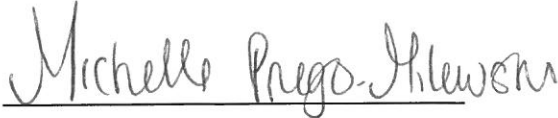
That I have compared the annexed extract of minutes of the meeting of the Cayuga County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on November 18, 2014, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 19 day of November, 2014.



Acting Secretary

[SEAL]