

WAKE COUNTY
BUSINESS DEVELOPMENT GRANT AGREEMENT

Tier Two Business Development Grant with
Upward Mobility Bonus

This Business Development Grant Agreement (the “Agreement”) is made and entered into as of the ____day of _____, 2021 by and between FUJIFILM Diosynth Biotechnologies U.S.A., Inc., a business corporation incorporated in the state of Delaware and authorized to transact business in the State of North Carolina (the “Company”) and WAKE COUNTY, North Carolina, a body politic and corporate and political subdivision of the State of North Carolina (the “County”). The County and Company may from time to time be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, the Local Development Act of 1925, as amended, (Article 1 of Chapter 158 of the North Carolina General Statutes) grants counties the authority to make appropriations for the purposes of aiding and encouraging the location or expansion of certain business enterprises in the county or for other purposes which the county’s governing body finds, in its discretion, will increase the population, taxable property base and business prospects of the county; and

WHEREAS, N.C. Gen. Stat. § 158-7.1(b) lists specific economic development activities which a county may undertake, which list is not exclusive; and

WHEREAS, in Fall 2020, the Company began discussions with the State of North Carolina (the “State”), and thereafter with the County, to explore the possibility of expanding the Company’s business operations in the County to include a large scale biopharmaceutical manufacturing facility located in Wake County (the “Project”); and

WHEREAS, on December 7, 2020, the Board of Commissioners of the County met in closed session regarding the Company and its location possibilities and determined that (i) the Project would tend to increase the population, taxable property base and business prospects of the County, (ii) an incentive grant would encourage the Company to locate and provide jobs in the County, and (iii) it would be in the public interest to provide assistance as authorized by N.C. Gen. Stat. § 158-7.1 and approved the negotiation of a business development grant agreement for the Project; and

WHEREAS, the Company has decided to locate the Project within the County; and

WHEREAS, the Company has decided to hire no fewer than 700 new employees at average wages above 120% of the County average by December 31, 2028, and invest or cause to be invested no less than \$1,500,000,000 for acquisitions of tangible personal property and improvements to real estate related to the Project no later than December 31, 2027.

WHEREAS, the State of North Carolina (the “State”) has awarded the Company a Job Development and Investment Grant (“JDIG”); and

WHEREAS, N.C. Gen. Stat. § 153A-449 authorizes the County to contract with and appropriate money to any person, association, or company in order to carry out the public purpose in which the County is authorized by law to engage; and

WHEREAS, the Board of Commissioners of the County found that the consideration that the County will receive, based on prospective tax revenues to be generated over a ten-year period due to investment in the Project, will exceed the amount of the grant offered in this Agreement; and

WHEREAS, the Board of Commissioners of the County, following a public hearing on April 5, 2021, approved the execution of a business development grant to the Company for the Project on the terms of this Agreement.

NOW, THEREFORE, in consideration of the reasons recited above, and the mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Real Estate Improvements and Machinery, Equipment, Furniture and Fixture Acquisition. The Company shall purchase and/or make or cause to be made improvements at the site chosen for the Project in Wake County, North Carolina, (the “Property”) and shall produce documentation for improvements which have been made to the Property and receipts showing proof of acquisitions of machinery, equipment, furniture and fixtures by the Company for use at the site of the Project. The Property shall be improved in accordance with the following:

(a) All construction undertaken, or caused to be undertaken, shall be or has been designed, constructed, and completed in accordance with applicable standards established by federal, State, local, and County regulations and laws; and

(b) The County shall not be responsible for any aspect of the design or construction of the premises.

2. Performance by the Company. This Agreement and the expenditure of County funds under this Agreement is expressly contingent upon the Company achieving the performance requirements during each “Grant Year” and over the “Grant Period” as defined herein. For purposes of this Agreement, the “Grant Year” is defined as each calendar year (January-December) the Company meets performance requirements within the time periods set forth below, which shall be measured consecutively beginning in the first calendar year of qualification through the tenth (10th) calendar year. The “Grant Period” shall be defined as ten consecutive calendar years to be measured from the first Grant Year as defined above. The specified performance requirements and payment terms for the Grant are set forth in further detail as follows:

(a) Investment in Real Estate Improvements and Tangible Personal Property. The Company shall make, or cause to be made, investments for improvements to real estate and for acquisitions of tangible personal property (collectively, the “Investments”) in the County in connection with the Project which shall result in an increased assessed value of the Investments totaling at least \$1,500,000,000 on or before December 31, 2027. The existing value of real estate prior to constructing Improvements shall not be counted towards the calculation of Investment.

(b) Employment. The Company shall, by December 31, 2028, employ in Wake County a minimum of 700 new full-time employees with an average annual wage of no less than \$99,000, which the Parties agree is at least 120% of the 2021 average annual wage for the County as determined by the North Carolina Department of Commerce’s Finance Center. Notwithstanding the foregoing, employment of the new employees shall align with JDIG’s annual incremental employment requirements for each individual Grant Year for which the Company requests a payment, as described in Paragraph 4(b), such that Company shall be deemed to have met Wake County’s employment requirement for the Grant Year if JDIG’s employment requirement is met in the Grant Year. The Company shall maintain employment of the new employees for all years of the Grant Period beyond 2028. Telecommuting positions for employees residing outside of Wake County shall not be counted towards the employment requirement set forth in this section.

The Parties agree that for purposes of calculating the “annual wage” of an employee of the Company “wage” shall have the meaning it has for purposes of the North Carolina Department of Commerce’s Finance Center’s calculation of “average annual wage” and that such meaning is the gross wage subject to reporting to the Division of Employment Security of the North Carolina Department of Commerce.

The Parties agree that the term “new employee” as used in this Agreement means a full-time employee who represents a net increase in the aggregate number of employees employed by the Company in connection with the Project. A full-time employee is a person who is employed by the Company for at least thirty-five (35) hours per week and whose wages are subject to withholding. The Company agrees to include residents of the County in recruiting for such job positions.

(b1) Upward Mobility Bonus. After qualifying for this Grant, the Company is eligible for a Business Development Grant Bonus of five percent (5%) of additional tax growth in any Grant Year in addition to the qualifying grant if the Company meets all of the following conditions in the qualifying Grant Year:

- i. Pays employees a minimum salary equal to or greater than the Wake County Living Wage
- ii. Offers health insurance offered to employees and their dependents
- iii. Prohibits discrimination against applicants and employees in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment on the basis of race, color, religion, sex (including pregnancy and wages), national origin, age, disability, genetics, veteran status, sexual orientation, gender identity or expression, family status, or political affiliation

- iv. Demonstrates second chance hiring practices, which may include removal of prior conviction checkoffs if appropriate for position
- v. Provides a minimum of forty hours of bereavement leave for employees
- vi. Provides a minimum of eight weeks of parental leave for employees
- vii. Provides a minimum of sixteen hours of volunteer leave annually for employees
- viii. Provides opportunities for improvement of health and wellness of employees

(c) Use. The Investments shall be made to accommodate a large-scale biopharmaceutical manufacturing facility and related facilities, buildings and improvements.

(d) Payment of Taxes by Company. The County must receive confirmation from the County tax assessor's office that the Company has paid, in full, the annual ad valorem taxes based on the increased value resulting from Investments in the Project.

3. Documentation from the Company. In connection with each request for reimbursement, the Company shall deliver to the County Manager a performance letter in substantially the form of the attached Exhibit A (the "Performance Letter"), certifying that (1) the Company has taken the actions and met the requirements described in Section 2(a) and (b) of this Agreement as of the date of the Performance Letter, and (2) the Company qualifies for Jobs Development Incentive Grant program monies for such Grant Year. If the Company does not meet all of the conditions required to be certified in the Performance Letter, the Company shall not qualify for a grant payment from Wake County for that calendar year. Upon the request of the County Manager, the Company shall present to the County such evidence as may be reasonably requested to confirm the facts in the Performance Letter. To the full extent allowed by law, such requested evidence shall be kept confidential by the County and shall remain the property of the Company to be returned after the County's review.

The Company shall attest to meeting the requirements of Section 2(b1) for the prior calendar year in order to receive the Upward Mobility Bonus. If the Company does not fulfill the requirements of Section 2(b1), the Company remains eligible for the underlying Business Development Grant. The Company is ineligible for the Upward Mobility Bonus in any year that the Company is ineligible for the underlying Business Development Grant.

It is agreed that the County, through its auditors, shall have the right upon reasonable notice and during normal business hours, to inspect and audit the Company's records pertaining to the value of the Investments made with respect to the Project. All records revealed by the Company to the County's auditors shall remain confidential and may be used by the County only for audit purposes to the full extent allowed by law.

The Company acknowledges that it has been informed by the County that the County is required by law, upon request, to disclose "Public Records" as that term is defined by N.C. Gen. Stat. §132-1. Notwithstanding the immediately preceding sentence, the County acknowledges that some or all of the information made available by the Company to the County pursuant to this Agreement may be exempt from disclosure as a "Public Record" pursuant to N.C. Gen. Stat. §§ 132-1.2 and/or 132-6(d), and that all such information may be proprietary. Some or all of the information made available to the County pursuant to this Agreement may

be designated by the Company as confidential and as a trade secret at the time of disclosure to the County. The County, to the fullest extent allowed by state law, will hold such designated information as confidential. The County shall, if it receives a request for disclosure of any such information, notify the Company of such request so that the Company may defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as a Public Record, and the County shall refrain from making any such disclosures unless or until it (i) receives the Company's written permission to do so; or (ii) is compelled to do so by the final order of a court of competent jurisdiction. The Company shall have the right to direct any litigation of such dispute and shall indemnify the County for any legal fees and expenses incurred by the County in opposing such request for disclosure. The Company acknowledges that the County has met the disclosure requirements set forth in N.C. Gen. Stat. § 132-1.11(b).

4. Payment of Grant.

(a) Upon the terms and conditions herein, the County agrees to partially reimburse the Company for the Investments that the Company makes or causes to be made in the Project in order to provide an incentive to the Company to make or cause such Investments and create such jobs within the County. A cash grant will be paid to the Company in an amount equal to a percentage of the additional County property tax revenue attributable to the assessed value of the Investments, as determined by the County tax assessor as more specifically set forth in Section 4(c). County property tax-exempt investments shall not count towards Investments for the purpose of this Section.

(b) Once the Company has met the performance requirements set forth in Section 2 of this Agreement for the Grant Year in question and the Company has submitted the required documentation under Section 3, the Company shall be eligible to receive the grant payments described in this Agreement. The grant payments shall begin in the year after the taxable property base of the Investments attributable to the Project as determined by the County Tax Administrator first exceeds \$1,500,000,000 provided that JDIG requirements for that year are also met. For clarity, the first payment is expected to be based on the Company's performance for calendar year 2024, assuming the requirements are met, but could be earlier depending on the timing of the applicable Investments. The exact date of payments during each Grant Year shall be at the discretion of the County but in any event shall be made during the period from January 1st through March 31st that immediately follow the County's receipt of the Company's Performance Letter.

For example, if the Company's Investment prior to December 31, 2024 is assessed by the County in 2025 at a value in excess of \$1,500,000,000, the Company has paid or caused to be paid the *ad valorem* tax on Investment by January 6, 2026, and the Company has met the 2024 JDIG employment requirements, as set forth in Paragraph 2(b), the Company's first Grant Year will be 2024. The Company's Performance Letter for that year will be due by March 1, 2026 (as described below), and the County will issue payment to the Company no later than March 31, 2026.

(c) Taking into consideration the amount and duration of the Company's Investment, the County has approved an extended Grant Period subject to the recapture provisions herein. For

the purposes of this extraordinary grant, the amount of the grant payments to be paid by the County to the Company shall be as follows:

- i. For the first five (5) consecutive years of the Grant Period (80% Years), the Grant shall be eighty percent (80%) of the additional County property tax revenue attributable to the assessed value of the Investments as defined in 2(a) of this Agreement as of January 1 of the preceding calendar year, as verified by the County Manager.
- ii. For the last five (5) consecutive years of the Grant Period (20% Years), the Grant to be paid by the County to the Company shall be 20 percent (20%) of the additional County property tax revenue attributable to the assessed value of the Investments as defined in 2(a) of this Agreement as of January 1 of the preceding calendar year, as verified by the County Manager.
- iii. In the event that Company fails to qualify for the Grant in any of the 20% Years of the Grant Period, the County shall be entitled to recapture from the Company 30% of the actual amount of the reimbursement made by the County to Company in one of the 80% Years for each 20% Year in which the Company fails to qualify for the Grant. The Company shall tender the sum demanded by the County within sixty (60) days of demand by the County.
- iv. In no event shall the grant amount paid by the County for any year exceed the amount of ad valorem taxes actually paid in the preceding year for Investments in connection with the Project. The Parties agree that any payment of ad valorem tax made before January 6 following the due date of the tax shall be deemed to have been paid in the year the tax was due.

(d) Grant payments are to be made directly to the Company and mailed directly to the address below, or at such other address as shall be provided by the Company to the County in writing:

FUJIFILM Diosynth Biotechnologies U.S.A., Inc.
101 J. Morris Commons Lane
Morrisville, NC 27560
Attn: Chief Operating Officer

(e) As a material condition of receiving the Grant, the Company must submit the Performance Letter required by Section 3 by March 1 of the year following the calendar year for which the Grant is requested. **Failure to submit the Performance Letter by March 1 shall disqualify the Company from receiving the Grant for the previous calendar year, and the County shall have no obligation to the Company for any reimbursement based on performance or payment in the previous calendar year.** The March 1 deadline may be extended for cause only with the advance consent of the Board of Commissioners.

(f) In the event that all Grant requirements outlined in Section 2 of this Agreement are not met by Company for any year of the Grant Period, or the required documentation outlined in Section 3 is not submitted by Company for the year in time to allow payment by March 31 of the following year, then the County shall have no responsibility for all or any part of Grant for the non-qualifying Grant Year, and Company or its Affiliates shall have no interest in or entitlement

to Grant for that Grant Year. No cure periods shall be allowed for the purpose of qualification in any Grant Year.

5. State and Local Incentives. This Agreement is expressly contingent on the Company's ability to qualify for funds from the State of North Carolina's part of the JDIG program. Company shall not qualify for County Grant payments in any years of the Grant Period in the event that in such year the Company does not qualify for the JDIG program monies. This contingency only applies in those years when funds are available to the Company from the JDIG program.

6. Amendments to Agreement. This Agreement may be modified or amended only with the mutual written consent of the Parties.

7. Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their heirs and successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

8. Entire Agreement. This Agreement contains the entire agreement of the Parties and there are no other representations, inducements, or other provisions other than those expressed in this writing. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. All changes, additions, or deletions to this Agreement must be in writing and signed by all Parties.

It is specifically understood and agreed that the Company will be subject to applicable County ordinances, policies, procedures, and other regulations.

9. Laws of North Carolina to Control This Agreement. The Parties agree that this Agreement is to be controlled by the laws of the State of North Carolina.

10. Jurisdiction and Venue. Any controversy or claim arising out of this Agreement shall be settled by an action initiated in the appropriate division of the General Court of Justice in Wake County, North Carolina.

11. Termination. Except as otherwise provided herein, this Agreement shall terminate on December 31st of the last year in which the County makes grant payments to the Company under this Agreement.

12. Assignment.

a. With Consent of County. With the consent of the County which shall not be unreasonably withheld, the Company may assign all or part of its rights, benefits, and/or obligations under this Agreement to one or more Affiliates designated by the Company; provided that no such assignments shall relieve the Company of its obligations or Company specified performance requirements under this Agreement which are a condition of County Grant unless the assignee agrees to assume all obligations, duties, liabilities and commitments of the Company under this Agreement, of whatever kind or nature. For the purpose of this section, an Affiliate means the

Company or any other entity that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company.

b. Without Consent of County. No consent of the County will be required for assignment to an Affiliate provided that 1) the JDIG agreement entered by the Company by which performance under this Agreement is measured is contemporaneously assigned to the same entity 2) the assignee is a domestic legal entity (i.e., an entity organized under the law of one of the 50 states) such that administration of the Grant terms would not be impeded 3) the assignment does not relieve the Company of its obligations or Company specified performance requirements under this Agreement which are a condition of County Grant unless the assignee agrees to assume all obligations, duties, liabilities and commitments of the Company under this Agreement, of whatever kind or nature, 4) the Company's parent (FUJIFILM Holdings America Corporation) becomes responsible under the terms of the Assignment and Guarantee to guarantee any recapture obligations incurred under section 4(c) for the duration of the Agreement 4) the Company provides County with an Assignment and Guarantee agreement executed by Company, Guarantor, and Assignee incorporating at a minimum the terms set forth in the "Assignment and Guarantee" attached hereto as Exhibit B 5) If requested by County, Guarantor shall provide County with proof of financial ability to meet guaranty obligations subject to any required confidentiality provisions permitted by North Carolina law.

c. In the case of an assignment pursuant to subsection (a) or (b), the County shall have no obligation to pay the Company's assignee upon meeting all conditions of the Agreement until and unless Company provides County with notice and proof of the assignment and meets all conditions of the applicable subsection of this Section.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

ATTEST:

WAKE COUNTY

David Ellis
County Clerk

By: _____
Matthew M. Calabria
Chair, Board of Commissions

Approved as to Form:

Scott Warren
Wake County Attorney

FUJIFILM Diosynth Biotechnologies U.S.A.,
Inc.

By: _____

Exhibit A

[FujiFilm Letterhead]

[date]

County Manager
Wake County
P. O. Box 550
Raleigh, NC 27602

Business Development Grant Agreement dated [],: Performance Letter

Dear Sir/Madam:

Section 3 of the Business Development Grant Agreement between Wake County and FujiFilm Diosynth Biotechnologies U.S.A., Inc. dated [_____] , 2021 (the “Agreement”) requires the Company to deliver a Performance Letter to the County Manager in connection with each request for reimbursement for the Investments that the Company makes or causes to be made in the Project described in the Agreement.

(Terms used in this letter have the meanings that such terms have in the Agreement.) The Company hereby certifies that:

1. The Company made or caused to be made investments for improvements to real estate and for acquisitions of tangible personal property in the County in connection with the Project totaling at least \$1,500,000,000 on or before December 31, 2026 in accordance with Section 2(a) of the Agreement;
2. The Company has paid in full its ad valorem taxes to the County for tax year _____;
3. As of December 31, [20____], the Company employed [__] new employees, in accordance with Section 2(b) of the Agreement;
4. The Company has maintained employment of [__] new employees since December 31, [20__];
5. The Investments for which this request is made have been completed; and
6. The Company qualifies for a JDIG payment for the Grant Year.
7. For the Grant Year, the Company meets all requirements of the Upward Mobility Bonus hiring practices:
 - a. Pays Employees a minimum salary equal to or greater than the of Wake County Living Wage
 - b. Offers health insurance offered to employees and their dependents
 - c. Prohibits discrimination against applicants and employees in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment on the basis of race, color, religion, sex (including pregnancy and wages), national origin, age, disability, genetics, veteran status, sexual orientation, gender identity or expression, family status, or political affiliation

- d. Demonstrates second chance hiring practices, which includes removal of prior conviction checkoffs if appropriate for position
- e. Provides a minimum of forty hours of bereavement leave for employees
- f. Provides a minimum of eight weeks of parental leave for employees
- g. Provides a minimum of sixteen hours of volunteer leave annually for employees
- h. Provides opportunities for improvement of health and wellness of employees.

[*In the alternative:* For the Grant Year, the Company is ineligible for the Upward Mobility Bonus.]

The Company respectfully requests reimbursement in the amount of \$_____, the amount determined by the County Revenue Director in accordance with Section 4 of the Agreement.

Sincerely yours,

[name] [title]

Exhibit "B"
ASSIGNMENT AND GUARANTEE AGREEMENT

This Assignment and Guarantee Agreement is entered into by and between FUJIFILM Diosynth Biotechnologies U.S.A., Inc., a Delaware corporation ("Assignor"), FUJIFILM Holdings America Corporation, a Delaware corporation ("Guarantor"), and [insert Assignee name], a [insert US jurisdiction of new entity and entity type] ("Assignee").

WHEREAS, Assignor entered into that certain Business Development Grant Agreement, dated as of [insert date and month], 2021, by and among Assignor and Wake County, North Carolina (the "Grant Agreement");

WHEREAS, Assignor wishes to transfer and assign to Assignee all of Assignor's rights and interests in and to, and obligations under the Grant Agreement, and Assignee wishes to be the assignee and transferee of such rights, interests and obligations;

WHEREAS, pursuant to Section 12 of the Grant Agreement, Assignor may assign its rights, interests or obligations under the Grant Agreement, directly or indirectly without the prior written approval of Wake County in the event Guarantor guarantees Assignee's recapture obligations under Section 4(c)(iii) of the Grant Agreement.

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Assignment and Assumption. Assignor hereby transfers and assigns to Assignee, and Assignee hereby acquires from Assignor all of Assignor's rights and interests in and to the Grant Agreement, of whatever kind or nature, and Assignee hereby assumes and agrees to perform all obligations, duties, liabilities and commitments of Assignor under the Grant Agreement, of whatever kind or nature.

2. Guarantee of Obligations. Guarantor hereby guarantees all recapture obligations owed by Assignee under Section 4(c)(iii) of the Grant Agreement.

3. Effectiveness. This Assignment and Guarantee Agreement shall be effective upon its execution by Assignee, Assignor, and Guarantor, and upon the assignment from Assignor to Assignee of that Community Economic Development Agreement between Assignor and the Economic Investment Committee of the State of North Carolina dated [insert JDIG date].

4. Counterparts. This Assignment and Guarantee Agreement may be executed in one or more counterparts, including facsimile counterparts, each of which shall be deemed to be an original copy, and all of which, when taken together, shall be deemed to constitute one and the same agreement. Delivery of such counterparts by facsimile or electronic mail (in PDF or .tiff format) shall be deemed effective as manual delivery.

IN WITNESS WHEREOF, Assignee, Assignor, and Guarantor have executed this Assignment and Guarantee Agreement:

ASSIGNOR:

FUJIFILM Diosynth Biotechnologies U.S.A., Inc.

By:

Date:

GUARANTOR:

FUJIFILM Holdings America Corporation

By:

Date:

ASSIGNEE:

[insert Assignee name]

By:

Date: