

**SPECIAL SESSION
Herkimer County Legislature
Fourth Quarter – Third Day
Friday, November 1, 2019
9:00 a.m.**

The Special Session of the Herkimer County Legislature was called to order by Chairman Bernard Peplinski, Sr. at 9:00 a.m.

Chairman Peplinski called on Legislator Frederick Shaw, Jr., to lead the Legislature in the Pledge of Allegiance.

Chairman Peplinski requested everyone to remain standing for a moment of silence in recognition and honor of all the current and past veterans of Herkimer County.

The Clerk called the roll, the following answered:

Present: Malta, Hollum, Johnson, Stephens, Keeler, Manno, Bono, Peplinski, Campione, Shaw, Weakley (11).

Absent: Gaworecki, Schrader, Brezinski, Smith, Ackerman, Russell (6).

Quorum present.

The Clerk read the Notice of the Special Session.

Chairman Peplinski stated that the communications received by the Legislature and the committees to which they were referred are as listed on the agenda and asked if any member of the Legislature requested the communication be read. There were no requests.

No. 435 – A communication was received from the Chairman of the Legislature requesting Special Session. Placed on file.

On motion of Mr. Bono, seconded by Mr. Stephens, Resolution No. 299 sponsored by the Committee on County Planning & Development approving the Proposed Certificate of Incorporation and Consenting to the Formation of the Herkimer County Capital Resource Corporation was handed up, was voted on and adopted by voice vote:

For: Ayes (11).

Against: None.

Absent: Gaworecki, Schrader, Brezinski, Smith, Ackerman, Russell (6).

On motion of Mr. Manno, seconded by Mr. Stephens, this Special Session of the Herkimer County Legislature was adjourned at 9:03 a.m.



HERKIMER COUNTY LEGISLATURE

No. 299

RESOLUTION APPROVING THE PROPOSED CERTIFICATE OF INCORPORATION AND CONSENTING TO THE FORMATION OF THE HERKIMER COUNTY CAPITAL RESOURCE CORPORATION

Sponsored by: Committee on County Planning & Development

WHEREAS, on January 31, 2008, subdivision 13 of Section 854 of the General Municipal Law, commonly referred to as the Civic Facilities Legislation (the “Law”) expired and, since the expiration of the Law, industrial development agencies have not been able to provide financial assistance to projects owned or operated by not-for-profit corporations (hereinafter referred to as “Civic Facility Projects”); and

WHEREAS, the ability to finance Civic Facility Projects with tax-exempt bonds has been a very important tool for the Herkimer County Industrial Development Agency (the “Agency”), as the Civic Facility Projects undertaken by the Agency have increased employment opportunities for residents of Herkimer County, New York (the “County”) and allowed local not-for-profit corporations to upgrade their facilities at the lowest possible cost; and

WHEREAS, local development corporations formed under the New York State Not-For-Profit Corporation Law (the “NFPCL”) are created to assist, among others, not for profit corporations that are undertaking projects that further any of the following purposes for which local development corporations are created: (1) relieving and reducing unemployment, (2) promoting and providing for additional and maximum employment, (3) bettering and maintaining job opportunities, (4) instructing or training individuals to improve or develop their capabilities for such jobs, (5) carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and (6) lessening the burdens of government and acting in the public interest; and

WHEREAS, in furtherance of the public purposes set forth above, a local development corporation formed under the NFPCL is empowered to take the following actions: (1) to construct, acquire, rehabilitate and improve for use by others industrial or manufacturing plants in the territory in which its operations are principally to be conducted, (2) to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain such plants for others in such territory, (3) to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto, (4) to acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein, (5) to borrow money and to issue negotiable bonds, notes and other obligations therefor, and (6) to sell, lease, mortgage or otherwise dispose of or encumber any such plants or any of its real or personal property or any interest therein upon such terms as it may determine to be suitable; and

WHEREAS, a local development corporation formed under the provisions of the NFPCL and in compliance with the provisions of Revenue Ruling 57-187 and Private Letter Ruling 200936012 issued by the Internal Revenue Service (a “capital resource corporation”) is permitted to issue tax-exempt revenue bonds for the benefit of Civic Facility Projects and certain other qualifying projects; and

WHEREAS, in accordance with the provisions of Revenue Ruling 57-187 and Private Letter Ruling 200936012, prior to forming a capital resource corporation for the benefit of the County, the County must approve the certificate of incorporation that will be used to form such capital resource corporation; and

WHEREAS, the County Legislature desires to form a capital resource corporation (the “Corporation”) in accordance with the provisions of Section 1411 of the NFPCL, Revenue Ruling 57-187 and Private Letter Ruling 200936012 as a public instrumentality of, but separate and apart from, the County;

WHEREAS, a copy of the proposed Certificate of Incorporation is attached hereto as **Schedule A**; and

WHEREAS, a copy of the proposed Bylaws is attached hereto as **Schedule B**;

NOW, THEREFORE, BE IT RESOLVED by the County Legislature as follows:

Section 1. Pursuant to the provisions of Revenue Ruling 57-187 and Private Letter Ruling 200936012, the County Legislature authorizes the formation of the Corporation as a capital resource corporation in accordance with Section 1411 of the NFPCL, said Corporation to be a public instrumentality of, but separate and apart from, the County; provided, however, that any obligations issued by such Corporation, and the premium (if any) and interest thereon, shall be special obligations of such Corporation and shall never be a debt of the State of New York, the County, or any political subdivision thereof (other than such Corporation), and neither the State of New York, the County, nor any political subdivision thereof (other than such Corporation) shall be liable thereon.

Section 2. Bonds, notes and other obligations (the “Obligations”) issued by the Corporation will not be backed by the full faith and credit of the County and will be non-recourse to the County. Obligations issued by the Corporation will be secured solely by the creditworthiness of a particular project.

Section 3. The County Legislature approves the form and substance of the proposed Certificate of Incorporation presented at this meeting and attached hereto as **Schedule A**, with such minor technical changes, variations, omissions and insertions as the Chairman of the County Legislature shall approve to allow for filing requirements.

Section 4. The County Legislature approves the form and substance of the proposed Bylaws presented at this meeting and attached hereto as **Schedule B**, all in substantially the form thereof presented to this meeting, with such minor technical changes, variations, omissions and insertions as the Chairman of the County Legislature shall approve to allow for filing requirements.

Section 5. This resolution shall take effect immediately.

Dated: November 1, 2019.

SCHEDULE A

PROPOSED CERTIFICATE OF INCORPORATION

CERTIFICATE OF INCORPORATION

HERKIMER COUNTY CAPITAL RESOURCE CORPORATION

A Not-For-Profit Local Development Corporation
Under Section 402 and 1411 of the Not-For-Profit
Corporation Law of the State of New York

THE UNDERSIGNED, being over the age of eighteen years, for the purpose of forming a not-for-profit local development corporation pursuant to Section 1411 of the Not For Profit Corporation Law of the State of New York (the "N-PCL"), hereby certifies as follows:

FIRST: The name of the corporation is Herkimer County Capital Resource Corporation (hereinafter referred to as the "Corporation").

SECOND: The Corporation will be a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL and, as provided in Section 1411(b) of the N-PCL, will be a charitable corporation as defined in Section 201 of the N-PCL. The Corporation shall be a public instrumentality of, but separate and apart from, Herkimer County, New York (the "County").

THIRD: The purposes for which the Corporation is to be formed and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, is to lessen the burdens of government by:

(a) promoting community and economic development and the creation of jobs in the non-profit and for-profit sectors for the citizens of the County by developing and providing programs for not-for-profit institutions, manufacturing and industrial businesses and other entities to access low interest tax-exempt and non-tax-exempt financing for their eligible projects; and

(b) undertaking projects and activities within the County for the purpose of relieving and reducing unemployment, bettering and maintaining job opportunities, carrying on scientific research for the purpose of aiding the County by attracting new industry to the County or by encouraging the development of, or retention of, an industry in the County, and lessening the burdens of government and acting in the public interest.

In furtherance of said purposes, the Corporation's powers shall include:

(1) issuing and selling one or more series or classes of bonds, notes and other obligations (the "Obligations") through public letting, private placement, or negotiated underwriting to finance activities related to the foregoing purposes of the Corporation;

(2) engaging the services of one or more underwriters, placement agents, consultants, attorneys, financial advisors and other persons whose services may be appropriate or desirable;

(3) entering into contracts with any other economic development organizations sponsored by the County to help achieve the foregoing purposes of the Corporation;

(4) performing any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers or any private person; and

(5) in general, performing any and all acts and things, and exercise and any and all powers which may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State of New York for the purpose of accomplishing any of the foregoing purposes of the Corporation.

FOURTH: The activities referred to in subparagraphs (a) and (b) of paragraph THIRD above will achieve the lawful public purposes of lessening the burdens of government, the carrying out of such purposes and the exercise of the powers conferred on the Corporation being the performance of an essential governmental function, it being understood that the performance of such activities will assist the County in reducing unemployment and promoting additional job growth and economic development.

FIFTH: The operations of the Corporation will be conducted principally within the territory of the County and surrounding communities. Notwithstanding any other provision of this Certificate of Incorporation, the by-laws and any provision of law, so long as any Obligations remain outstanding, the Corporation will not do any of the following:

(a) engage in any business or activity other than as set forth in paragraph THIRD;

(b) without the consent of the Herkimer County Legislature and the affirmative vote of two thirds of the members of the Board of Directors of the Corporation, (i) dissolve or liquidate, in whole or in part, or institute proceedings to be adjudicated bankrupt or insolvent, (ii) consent to the institution of bankruptcy or insolvency proceedings against it, (iii) file a petition seeking or consent to reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or a substantial part of its property, (v) make a general assignment for the benefit or creditors, (vi) admit in writing its inability to pay its debts generally as they become due or (vii) take any corporate action in furtherance of the actions set forth in clauses (i) through (vi) of this paragraph; or

(c) without the consent of the Herkimer County Legislature and the affirmative vote of two thirds of the members of the Board of Directors of the Corporation, merge or consolidate with any other corporation, company or entity or, except to the extent contemplated by paragraph THIRD hereof, sell all or substantially all of its assets or acquire all or substantially all of the assets or capital stock or other ownership interest of any other corporation, company or entity.

SIXTH: Pursuant to the requirements of Section 1411(e) of the Not-For-Profit Corporation Law:

(a) All income and earnings of the Corporation will be used exclusively for its corporate purposes or accrue and, subject to the Corporation's responsibilities under the Obligations, be paid to the New York Job Development Authority.

(b) The property of the Corporation is irrevocably dedicated to charitable purposes. No part of the income or earnings of the Corporation will inure to the benefit or profit of, nor will any distribution of its property or assets be made to, any member, director or officer of the Corporation, or private person, corporate or individual, or to any other private interest, except that the Corporation may repay loans made to it and may repay contributions (other than dues) made to it to the extent that any such contribution may

not be allowable as a deduction in computing taxable income under the Internal Revenue Code of 1986, as amended.

(c) If the Corporation accepts a mortgage loan or loans from the New York Job Development Authority, the Corporation will dissolve in accordance with the provisions of paragraph (g) of Section 1411 of the N-PCL upon the repayment or other discharge in full by the Corporation or all such loans.

SEVENTH: (a) The Corporation will not attempt to influence legislation by propaganda or otherwise, or participate in or intervene, directly or indirectly, any political campaign on behalf of or in opposition to any candidate for public office.

(b) The Corporation will not engage in any activities not permitted to be carried on by an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(c) The Corporation will not accept a mortgage loan or loans from the New York Job Development Authority.

EIGHTH: In the event of the dissolution of the Corporation or the winding up of its affairs, the Board of Directors will, after paying or making provision for the payment of all of the liabilities of the Corporation, distribute all of the remaining assets and property of the Corporation to the County, so that the County can use such assets and property to accomplish the purposes set forth in Section 1411(a) of the N-PCL. Any of such assets not so disposed of will be disposed of by order of the Supreme Court of the State of New York pursuant to Section 1008 of the N-PCL.

NINTH: The office of the Corporation will be located in Herkimer County, New York. The Corporation at all times will:

(a) upon request by the County, the Corporation will make available any and all books and records of the Corporation for inspection by the Herkimer County Legislature and his or her staff; and

(b) submit to the Herkimer County Legislature an annual financial report together with a report of the operations and accomplishments of the Corporation for such annual period.

The Herkimer County Legislature, the New York State Authorities Budget Office and the New York State Comptroller will have the right to conduct an annual audit of the books and records of the Corporation.

TENTH: The County is the sole member of the Corporation.

ELEVENTH: The Corporation will be managed by a Board of Directors, who are to be comprised of those persons named in paragraph TWELFTH hereof (the "Directors"). Each of the Directors will serve at the pleasure of the Herkimer County Legislature and continue to hold office until his or her successor is appointed by the Herkimer County Legislature.

The Corporation is deemed to be a public body (as such term is defined in the Open Meetings Law) and, as such, each meeting of the Board of Directors of the Corporation will be conducted in the manner prescribed by the Open Meetings Law. The Directors will not receive compensation for services provided to or on behalf of the Corporation.

TWELFTH: The Corporation will consist of seven Directors. The Directors will be appointed by the Herkimer County Legislature. It is acknowledged that the members of the Herkimer County Industrial Development Agency are appointed by and serve at the pleasure of the Herkimer County Legislature.

- (a) The names and addresses of the initial Directors of the Corporation are as follows:
 - (i) Vincent J. Bono, 141 Millers Grove Road, Frankfort, New York 13340.
 - (ii) David M. Chlus, 388 Myers Road, Little Falls, New York 13365.
 - (iii) John Scarano, 63 Woodside Avenue, Little Falls, New York 13365.
 - (iv) Raymond Smith, 9 Beaver Street, Dolgeville, New York 13329
 - (v) John P. Stephens, 211 Second Street, Ilion, New York 13357
 - (vi) Bob D. Hollum, 200 Otsego Street, Ilion, New York 13357.
 - (vii) Peter J. Campione, 3412 State Route 167, Little Falls, New York 13365

It is acknowledged that several of the Directors hold comparable positions with Herkimer County Industrial Development Agency established by Chapter 410 of the 1970 and Chapter 158 of the 1981 Laws of the State of New York, as amended. By reason of the shared public purposes of the Corporation and the Herkimer County Industrial Development Agency, none of the Directors of the Corporation will be deemed to have a conflict of interest solely due to such person's position with the Herkimer County Industrial Development Agency.

The powers of the corporation set forth in paragraph THIRD hereof will be subject to the following limitations:

(A) The Corporation will not undertake a project that is authorized by Article 18-a of the New York State General Municipal Law (the "New York State Industrial Development Agency Act") to be undertaken by the Herkimer County Industrial Development Agency unless the Corporation receives a written request from the Herkimer County Industrial Development Agency asking the Corporation to consider undertaking such project.

(B) The bonds or notes and other obligations of the Corporation will not be a debt of the State of New York or Herkimer County, and neither the State of New York nor Herkimer County will be liable thereon, nor will they be payable out of any funds other than those of the Corporation.

(C) The Corporation will hold a public hearing on any financial assistance in excess of \$100,000 proposed to be provided by the Corporation to a project at which interested parties will be provided with reasonable opportunity, both orally and in writing, to present their views with respect to the project. The Corporation will give the same notice of such hearing as the Herkimer County Industrial Development Agency would be required to give pursuant to the provisions of Section 859-a and b of the General Municipal Law of the State of New York as if such hearing was a public hearing of the Herkimer County Industrial Development Agency with respect to a project.

THIRTEENTH: The Corporation will be subject to the Public Authorities Accountability Act of 2005, as amended from time to time (the "Act"). As such, the Corporation will be required to, among other things: (1) undergo annual independent audits and submit the results of such audits to the County and the New York State Authority Budget Office, (2) prepare and submit its annual budget to the County and the New York State Authority Budget Office, (3) adopt the various ethical, reporting, property disposition and disclosure policies required by the Act, and (4) form governance and audit committees to ensure the Corporation is in compliance with the Act and any other applicable laws.

FOURTEENTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State will mail a copy of any process against the Corporation served upon him or her is Herkimer County Capital Resource Corporation, c/o Herkimer County Industrial Development Agency, 420 East German Street, Suite 101A, Herkimer, New York 13350. Attn: John J. Piseck, Jr., Chief Executive Officer.

FIFTEENTH: The By-laws of the Corporation may be adopted, amended or repealed by a majority of the Directors of the Corporation upon 10 days' notice to all of the Directors, provided, however, that the Corporation will not amend, alter, change or repeal any provision of the adopted By-laws without the consent of the Herkimer County Legislature.

SIXTEENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in any manner now or hereafter provided herein or by statute; provided, however, that (1) the Corporation will not amend, alter, change or repeal any provision of this Certificate of Incorporation without the affirmative vote of two-thirds of the members of the Board of Directors of the Corporation and the consent of the Herkimer County Legislature, and (2) the Corporation will not amend or change any provision of this Certificate of Incorporation without first providing the Herkimer County Legislature and the Directors with 10 days advance notice of any proposed amendment, alteration, change or repeal.

IN WITNESS WHEREOF, this certificate has been subscribed by the undersigned this ____ day of _____, 2019.

_____, Incorporator

SCHEDULE B
PROPOSED BYLAWS

B-1

BYLAWS
OF
HERKIMER COUNTY CAPITAL RESOURCE CORPORATION

**ARTICLE I
THE CORPORATION**

Section 1. Name. The name of the Corporation is "Herkimer County Capital Resource Corporation."

Section 2. Seal of Corporation. The seal of the Corporation will be in the form of a circle and will bear the name of the Corporation and the year of its organization.

Section 3. Office of Corporation. The office of the Corporation will be in Herkimer County, New York.

Section 4. Execution of Instruments. Except as otherwise provided in these by-laws, instruments and documents of the Corporation may be signed or countersigned, executed, verified or acknowledged by such officer or officers or other person or persons as the Corporation may designate by resolution.

**ARTICLE II
MEMBERS, DIRECTORS, OFFICERS AND COMMITTEES**

Section 1. Sole Member. Herkimer County (the "County") is the sole member of the Corporation.

Section 2. Board of Directors. (A) The Corporation will consist of seven Directors (each, a "Director"). The Directors will be appointed by and serve at the pleasure of the County Legislature of Herkimer County, New York (the "County Legislature"). It is acknowledged that members of the Herkimer County Industrial Development Agency are appointed by and serve at the pleasure of the County Legislature.

(B) Except for Directors who serve as Directors by virtue of holding a civil office of the State, the majority of the remaining Directors will be "Independent Directors."

(C) For purposes of these by-laws, the term "Independent Director" means a Director one who: (1) is not, and in the past two years has not been, employed by the Corporation (or an "Affiliate" of the Corporation) in an executive capacity; (2) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than \$15,000 for

goods and services provided to the Corporation or received any other form of financial assistance valued at more than \$15,000 from the Corporation; (3) is not a relative of an executive officer or employee in an executive position of the Corporation (or an "Affiliate" of the Corporation); and (4) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Corporation (or an "Affiliate" of the Corporation).

(D) For purposes of these by-laws, the term "Affiliate" means a corporate body having substantially the same ownership or control as the Corporation.

(E) For purposes of these by-laws, the term "Relative" means an individual's spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the individual or of the individual's spouse.

Section 3. Term of Service. Directors are not subject to term limits. Each Director is appointed by and serves at the pleasure of the County Legislature. Accordingly, a Director may be removed without cause at any time for any reason.

Section 4. Filling of Vacancies. Should any Director position become vacant, the Corporation will take steps to recommend to the County Legislature one or more nominees to fill the vacancy. The decision to appoint a particular member of the Herkimer County Industrial Development Agency as a Director of the Corporation rests solely with the County Legislature.

Section 5. Responsibilities of Directors; Training Requirement. (A) The Directors of the Corporation constitute the governing body of the Corporation (the "Board"), and will have and will responsibly exercise all of the powers prescribed by Section 1411 of the New York State Not-for-Profit Corporation Law and other applicable law, including but not limited to Chapter 766 of the 2005 Laws of the State of New York, as amended from time to time (the "PAAA").

(B) The Board will appoint a Chief Executive Officer and a Chief Financial Officer of the Corporation, neither of whom will be a Director of the Corporation.

(C) Every annual financial report of the Corporation must be approved by the Board and provided to the County.

(D) The Directors of the Corporation will: (1) execute direct oversight of the Chief Executive Officer of the Corporation and other senior management of the Corporation in the effective and ethical management of the Corporation; and (2) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the Corporation.

(E) The Board will not, directly or indirectly, including through a subsidiary, extend or maintain credit or arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any officer, Director or employee (or equivalent thereof) of the Corporation.

(F) Directors of the Corporation will file annual financial disclosure statements with the Herkimer County Board of Ethics.

(G) Individuals newly appointed to the Board of the Corporation must participate in state approved training regarding their legal, fiduciary, financial, and ethical responsibilities

within one year of appointment to such Board. Directors who have already completed state approved training will participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

Section 6. Officers of the Board. (A) The officers of the Board will be a Chairman, a Vice Chairman, a Secretary, and a Treasurer.

(B) The officers of the Board will perform the duties and functions specified in these by-laws and such other duties and functions as may from time to time be authorized by resolution of the Board of the Corporation or required to effect the statutory purposes of the Corporation.

(C) Should any office of the Board become vacant, the Corporation will appoint a successor from among its Directors at the next regular meeting, and such appointment will be for the unexpired term of said office.

Section 7. Chairman. The Chairman will be a Director of the Corporation and preside at all meetings of the Corporation. The Chairman will sign all agreements, contracts, deeds and any other instruments on behalf of the Corporation, except as otherwise authorized or directed by resolution of the Corporation. The Chairman will submit recommendations and such information as the Chairman has deemed pertinent concerning the business, affairs, and policies of the Corporation, at each meeting.

Section 8. Vice Chairman. The Vice Chairman will be a Director of the Corporation and perform the duties of the Chairman in the absence or incapacity of the Chairman. In the event of the resignation or death of the Chairman, the Vice Chairman will become acting Chairman and perform the duties of the Chairman until such time as the Corporation appoints a new Chairman.

Section 9. Secretary. The Secretary will be a Director of the Corporation. The Secretary will keep all records of the Corporation, will act as secretary at the meetings of the Corporation, will keep a record of all votes thereat. The Secretary will record the proceedings of the Corporation in a journal of proceedings to be kept for such purpose. The Secretary will perform all duties incident to this office. The Secretary will have custody of the seal of the Corporation, and will have the power to affix such seal to all contracts and other instruments authorized by the Corporation to be executed.

Section 10. Treasurer. The Treasurer will be a Director of the Corporation. Except as otherwise authorized by resolution of the Board, the Treasurer of the Corporation will sign all checks for the payment of money of the Corporation; and will pay out and disburse such moneys under the direction of the Board. Except as otherwise authorized by resolution of the Board, all such checks will be countersigned by the Chairman of the Corporation. The Treasurer, in coordination with the Corporation's chief financial officer, will render to the Corporation at each regular meeting an account of the financial transactions and the current financial condition of the Corporation.

Section 11. Governance Committee. (A) The Chairman will appoint a Governance Committee, to be comprised of Independent Directors.

(B) The Governance Committee will: (1) keep the Board informed of current best governance practices; (2) review corporate governance trends; (3) update the Corporation's corporate governance principles; and (4) advise the Board on the skills and experiences required of potential Directors of the Board.

Section 12. Audit Committee. (A) The Chairman will appoint an Audit Committee, to be comprised of Independent Directors.

(B) To the extent practicable, Directors of the Audit Committee should be familiar with corporate financial and accounting practices.

(C) The Audit Committee will ensure that the Corporation arranges for the timely preparation and appropriate filing of the annual budget, the annual financial statements, the annual financial reports and the annual financial audit required under the laws of New York State.

(D) The Audit Committee will recommend to the Board the hiring of a certified independent public accounting firm for the Corporation, establish the compensation to be paid to the accounting firm, and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purpose. The Audit Committee will not recommend the hiring of a certified independent public accounting firm to provide audit services to the Corporation if the Chief Executive Officer, comptroller, Chief Financial Officer, chief accounting officer, or any other person serving in an equivalent position for the Corporation was employed by that certified independent public accounting firm and participated in any capacity in the audit of the Corporation during the one year period preceding the date of the initiation of the audit.

(E) If the lead (or coordinating) audit partner (having primary responsibility for the audit) of the certified independent public accounting firm proposing to provide an annual independent audit for the Corporation, or the audit partner responsible for reviewing the audit, has performed audit services for the Corporation in each of the five previous fiscal years of the Corporation, the Audit Committee will prohibit such certified independent public accounting firm from providing an annual independent audit for the Corporation.

(F) The Audit Committee will require that each certified independent public accounting firm that performs for the Corporation an audit required by law will timely report to the Audit Committee: (1) all critical accounting policies and practices to be used; (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the Corporation, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and (3) other material written communications between the certified independent public accounting firm and the management of the Corporation, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

(G) The Audit Committee will prohibit the certified independent public accounting firm providing an annual independent audit for the Corporation from performing any non-audit services to the Corporation contemporaneously with the audit, unless receiving previous written approval by the Audit Committee, including: (1) bookkeeping or other services related to the accounting records or financial statements of the Corporation; (2) financial information systems design and implementation; (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions, (7) broker or dealer, investment advisor, or investment banking services; and (8) legal services and expert services unrelated to the audit.

Section 13. Finance Committee. The Chairman shall appoint a Finance Committee, to be comprised of Independent Directors. The Finance Committee shall review proposals for the issuance of debt by the Corporation and any subsidiaries and make recommendations on the issuance of such debt.

Section 14. Additional Duties. The officers of the Corporation will perform such other duties and functions as may from time to time be required by the Corporation, by its by-laws, or by its rules and regulations.

Section 15. Appointment of Officers. All officers of the Corporation except the first Chairman will be appointed at the annual meeting of the Corporation. Officers will hold office for one year or until their successors are appointed. If the term of office of a Director should terminate, the term of office of such Director as an officer of the Corporation will also terminate.

ARTICLE III

MEETINGS

Section 1. Annual Meeting. The annual meeting of the Corporation will be held on the first Thursday of February at the time and place determined by the Corporation.

Section 2. Regular Meetings. Regular meetings of the Corporation may be held at such times and places as from time to time may be determined by the Corporation.

Section 3. Special Meetings. The Chairman of the Corporation may, when the Chairman deems it desirable, and will upon the written request of two Directors of the Corporation, call a special meeting of the Corporation for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each Director of the Corporation or may be mailed to the business or home address of each Director of the Corporation at least two days prior to the date of such special meeting. Waivers of notice may be signed by any Director failing to receive a proper notice. At such special meeting, no business will be considered other than as designated in the call, but if all Directors of the Corporation are present at a special meeting, with or without notice thereof, and are all agreeable thereto, any and all business may be transacted at such special meeting.

Section 4. Executive Sessions. When determined by the Corporation that any matter pending before it is confidential in nature, it may, upon its own motion, establish an executive session in accordance with the New York State Open Meetings Law and exclude non-Directors from such sessions.

Section 5. Quorum. At all meetings of the Corporation, a majority of the Corporation will constitute a quorum for the purpose of transacting business; provided that a smaller number may meet and adjourn to some other time or until a quorum is obtained.

Section 6. Order of Business. At the regular meetings of the Corporation, the following will be the order of business:

1. Roll Call.
2. Reading and approval of the minutes of the previous meeting.
3. Report of the Treasurer.
4. Bills and communications.
5. Reports of Committees.
6. Resolutions and motions.

7. Unfinished business.
8. New business.
9. Adjournment.

Section 7. Manner of Voting. The voting on all questions coming before the Corporation concerning financial commitments, expenditures, personnel matters, appointments, litigation, legal indebtedness, contracts, and agreements will be by roll call, all other questions may be by voice vote, and yeas and nays will be entered on the minutes of such meeting, except in the case of appointments when the vote may also be by ballot. The Corporation Attorney will decide which questions coming before the Corporation require a roll call vote. Any action of the Corporation will be binding upon determination by a majority vote of the Directors of the Corporation.

ARTICLE IV

EXECUTIVE OFFICERS AND EMPLOYEES

Section 1. Chief Executive Officer. (A) The Chief Executive Officer will be appointed by the Board, and will be the chief executive officer of the Corporation.

(B) The Chief Executive Officer will have general supervision over the administration of the business and affairs of the Corporation, subject to the direction of the Board. Whenever possible, the Chief Executive Officer will attend each meeting of the Board, and will submit such recommendations and information to the Board as the Chief Executive Officer may consider proper concerning the business, affairs, and policies of the Corporation.

(C) The Chief Executive Officer will be charged with the management of all projects of the Corporation.

(D) The Chief Executive Officer will also serve as the Contracting Officer (as such term is defined in the PAAA) of the Corporation, and, as such, be responsible for (1) the disposition of property of the Corporation, and (2) the Corporation's compliance with the Corporation's property use and disposition guidelines.

(E) Every annual financial report of the Corporation must be certified in writing by the Chief Executive Officer that based on the Chief Executive Officer's knowledge (1) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (2) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Corporation as of, and for, the periods presented in the financial statements.

Section 2. Chief Financial Officer. (A) The Chief Financial Officer will have the care and custody of all funds of the Corporation and will deposit the same in the name of the Corporation in such bank or banks as the Board may select or, if the Board has not so selected a bank or banks, which the Chief Financial Officer selects.

(B) The Chief Financial Officer will keep regular books of accounts showing receipts and expenditures, and will render to the Audit Committee at each regular meeting thereof an account of such transactions and also of the financial condition of the Corporation.

(C) The Chief Financial Officer will give such bond for the faithful performance of his or her duties as the Corporation may determine.

(D) Every annual financial report of the Corporation must be certified in writing by the Chief Financial Officer that based on the Chief Financial Officer's knowledge (1) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (2) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Corporation as of, and for, the periods presented in the financial statements.

Section 3. Additional Personnel. The Corporation may from time to time employ such personnel as it deems necessary to exercise its power, duties, and functions as prescribed by the New York State Not-for-Profit Corporation Law and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel including the Chief Executive Officer will be determined by the Corporation subject to the laws of the State of New York. The Corporation may from time to time employ such personnel as it deems necessary to exercise its statutory powers, duties, and functions. The selection and compensation of all personnel will be determined by the Corporation.

Section 4. Financial Disclosure. Officers and employees of the Corporation will file annual financial disclosure statements with the Herkimer County Board of Ethics.

ARTICLE V

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right of Indemnification. Each Director and officer of the Corporation, whether or not then in office, and any person whose testator or intestate was such a Director or officer, will be indemnified by the Corporation for the defense of, or in connection with, any threatened, pending or completed civil actions or proceedings and appeals therein, in accordance with and to the fullest extent permitted by the Section 18 of the Public Officers Law of the State of New York; provided, however, that the Corporation will provide indemnification in connection with an action or proceeding (or part thereof) initiated by such a Director or officer only if such action or proceeding (or part thereof) was authorized by the Board.

ARTICLE VI

POLICIES AND PROCEDURES

Section 1. Projects. It is the policy of this Corporation that the Corporation will only undertake projects that are not authorized by Article 18-a of the New York State General Municipal Law (the "New York State Industrial Development Agency Act") unless the Corporation receives a written request from Herkimer County Industrial Development Agency asking the Corporation to consider undertaking such project.

Section 2. Miscellaneous.

(A) The Corporation will not approve any project to be located on a site or within an area which does not conform to or has not been granted a variance from the zoning laws of the State, county, town, or village.

(B) The Corporation will not approve any project which would be in violation of New York State Environmental Quality Review Act.

(C) The Corporation will not approve any project which would be or is in violation of the health, labor or other laws of the State of New York or the United States or of the local laws of Herkimer County and any city, village or township in Herkimer County.

Section 3. Audit of Records and Accounts.

(A) The Corporation will annually secure a certified audit of its financial records and accounts and will file a copy of such certified audit with the County Legislature within ninety days after the close of the Corporation's fiscal year.

(B) The Corporation may require any other operating statements that it determines are required for daily operation.

Section 4. Conveyance of Property. The Corporation may insert in a contract for a project that upon the payment in full of all notes, bonds and indebtedness incurred in connection with a project that the Corporation will convey the lands, buildings and equipment involved in said project and so paid for to the tenant or operator of the same upon terms set forth in such contract and that the additional consideration for such conveyance may be nominal.

Section 5. Additional Policies. The Corporation by resolution may adopt such rules, regulations, policies, and procedures as it may deem necessary and appropriate to the operation so long as the same is not contrary to these by-laws as they may be amended from time to time.

ARTICLE VII

AMENDMENTS

Section 1. Amendments to By-laws. The by-laws of the Corporation may be amended with the consent of the Herkimer County Legislature and the approval of a majority of all the Directors of the Corporation at a regular meeting or at a special meeting called for that purpose; but no such amendment will be adopted unless at least fourteen days written notice thereof has been previously given to all Directors of the Corporation and to the Herkimer County Legislature.

In effect as of _____, 2019.