

RESOLUTION NO. 300-20081001

RESOLUTION - APPROVING THE PROPOSED CERTIFICATE OF  
INCORPORATION AND CONSENTING TO THE FORMATION OF A LOCAL  
DEVELOPMENT CORPORATION

JOHNSON, SCHWERD, MCCARTY, ROTHENBERGER

BE IT ENACTED by the Board of Representatives of the County of Otsego, New York (the "Board of Representatives"), as follows:

WHEREAS, on January 31, 2008, 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 County of Otsego Industrial Development Agency (the "Agency"), as the Civic Facility Projects undertaken by the Agency have increased employment opportunities for residents of Otsego County and allowed local not-for-profit corporations to upgrade their facilities at the lowest possible cost; and

WHEREAS, by resolution adopted by the members of the Agency on September 4, 2008 (the "Approving Resolution"), the members of the Agency agreed to request the consent and authorization of the Board of Representatives to form a local development corporation under Section 1411 of the New York State Not For Profit Corporation Law (the "NFPCL"); and

WHEREAS, local development corporations formed under 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, under the laws of the State of New York, local development corporations are permitted to issue tax-exempt bonds for the benefit of qualifying Civic Facility Projects; and

WHEREAS, in accordance with Section 1411(a) of the NFPCL, prior to forming a local development corporation, the Agency must obtain the Board of Representatives' approval of the certificate of incorporation that will be used to form the local development corporation; and

WHEREAS, the Agency has prepared a proposed certificate of incorporation for review by the Board of Representatives and a copy of such proposed certificate of incorporation is attached hereto as **Schedule A**; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Representatives as follows:

Section 1. The Board of Representatives authorizes the Agency to form a local development corporation in accordance with Section 1411 of the NFPCL; provided, however, that any obligations issued by the local development corporation, and the premium (if any) and interest thereon, shall be special obligations of the local development corporation and shall never be a debt of the State of New York, the County of Otsego, New York or any political subdivision thereof (other than the local development corporation), and neither the State of New York, the County of Otsego, New York nor any political subdivision thereof (other than the local development corporation) shall be liable thereon.

Section 2. The Board of Representatives approves the form and substance of the certificate of incorporation presented at this meeting and attached hereto as **Schedule A**, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) and the County Attorney shall approve.

Section 3. This resolution shall take effect immediately.



## **SCHEDULE A**

**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 N-PCL of the State of New York (the "N-PCL"), hereby certifies as follows:

FIRST: The name of the corporation shall be Otsego 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 of the N-PCL, will be a Type C Corporation as defined in Section 201 of the N-PCL. The Corporation shall be a public instrumentality of, but separate and apart from, Otsego County (the "County").

THIRD: The purpose 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 fulfilling the purposes now or hereafter referred to in Section 1411(a) of the N-PCL including, without limitation, by means of engaging in the following activities:

(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;

(b) 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 referred to in subparagraph (a) above, on a secured or unsecured basis;

(c) engaging the services of one or more underwriters, placement agents, consultants, attorneys, financial advisors and other persons whose services may be appropriate or desirable in connection with the acquisition and financing referred to above;

(d) undertaking projects within the County that are appropriate functions for a non-profit local development corporation for the purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, 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; and

(e) 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 subparagraph (a) 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 within the territory of the County. 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 shall 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 County 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 of 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 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.

When voting on whether the Corporation will take any action described in paragraph (b) above, each Director shall owe his or her primary fiduciary duty or other obligation to the Corporation (including, without limitation, the Corporation's creditors) and not to the members of the Corporation (except as may specifically be required by the Not-For-Profit Corporation Law). Every Director of the Corporation shall be deemed



to have consented to the foregoing by virtue of such Director's appointment as a Director of the Corporation.

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

(a) All income and earnings of the Corporation shall 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 shall inure to the benefit or profit of, nor shall 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 shall 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 shall 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 shall 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 shall 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 shall, 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. Any of such assets not so disposed of shall 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 shall be located in Otsego County, New York. The Corporation at all times shall:

(a) upon request by the County, the Corporation shall make available any and all books and records of the Corporation for inspection by the Chairman of the Board of Representatives and his or her staff; and

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

(c) The Board of Representatives, the New York State Authority Budget Office and the New York State Comptroller shall have the right to conduct an annual audit of the books and records of the Corporation.

TENTH: The sole member of the Corporation shall be the County.

ELEVENTH: The Corporation shall be managed by a Board of Directors, who shall be comprised of those persons named in paragraph TWELFTH hereof (the "Directors"). Each of the Directors shall serve at the pleasure of the governing body of the County and continue to hold office until his successor is appointed and has qualified in accordance with the Corporation's By-laws.

The Corporation is 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 shall 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 shall consist of not less than three nor more than nine Directors. The Directors will be appointed by the governing body of the County and shall include (a) the Chairman of County of Otsego Industrial Development Agency, (b) the Vice-Chairman of County of Otsego Industrial Development Agency, (c) the Treasurer of County of Otsego Industrial Development Agency, (d) the Secretary of County of Otsego Industrial Development Agency, and (e) any additional members of the County of Otsego Industrial Development Agency.

(a) The names of the Directors are as follows:

- (i) Joseph A. Bernier, Chairman
- (ii) Len Marsh, Vice Chairman
- (iii) Jeffrey C. Lord, Treasurer
- (iv) Sharon A. Oberiter, Secretary
- (v) Gregory Relic, Member
- (vi) Hugh I. Henderson, Member
- (vii) Walter Buist, Member
- (viii) James Salisbury, Member
- (ix) James M. Jordan, Member



It is acknowledged that the Directors hold comparable positions with County of Otsego Industrial Development Agency established by Chapter 252 of the 1973 Laws of the State of New York, as amended. By reason of the shared public purposes of the Corporation and the County of Otsego Industrial Development Agency, none of the Directors of the Corporation shall be deemed to have a conflict of interest solely due to such person's position with the County of Otsego Industrial Development Agency.

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

(A) The Corporation shall not undertake a project, issue Obligations or otherwise provide any type of financial assistance to any entity without the County of Otsego Industrial Development Agency first requesting that the Corporation undertake a project or provide financial assistance to any entity.

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

(C) The Corporation shall 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 shall be provided with reasonable opportunity, both orally and in writing, to present their views with respect to the project. The Corporation shall give the same notice of such hearing as the County of Otsego 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 County of Otsego Industrial Development Agency with respect to a project.

THIRTEENTH: The Corporation will be subject to the Public Authorities Accountability Act of 2005 (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 shall mail a copy of any process against the Corporation served upon him or her is c/o County of Otsego Industrial Development Agency, 242 Main Street, Oneonta, New York 13820, Attn: Carolyn Lewis, 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 30 days notice to all of the Directors, provided, however, that the Corporation shall not amend, alter, change or repeal any provision of the adopted By-laws without the consent of the County.

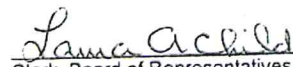
SIXTEENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in any manner now or hereafter provided herein or by statute; provided, however, that (1) so long as any Obligations remain outstanding, the Corporation shall not amend, alter, change or repeal any provision of Paragraphs THIRD, FIFTH, NINTH, FOURTEENTH and FIFTEENTH of this Certificate of Incorporation (the "Restricted Articles") without the affirmative vote of two-thirds of the members of the Board of Directors of the Corporation and the consent of the County, (2) the Corporation shall not amend or change any provision of any Article other than the Restricted Articles so as to be inconsistent with the Restricted Articles and (3) so long as the Corporation continues to exist, the provisions of paragraph THIRD, TENTH, ELEVENTH or TWELFTH of this Certificate of Incorporation shall not be amended, altered, changed or repealed without the unanimous vote of the Directors; provided further, that all the Directors shall have received 30 days advance notice of any proposed amendment, alteration, change or repeal.

STATE OF NEW YORK :  
: SS  
COUNTY OF OTSEGO :

I, Laura A. Child, Clerk of the Board of Representatives of Otsego County, New York, DO HEREBY CERTIFY that I have compared the foregoing copy of resolution with the original resolution on file in my office and that the same is a true and complete copy thereof as duly adopted by said Board of Representatives while in session on the 1<sup>st</sup> day of October, 2008.

WITNESS my hand and the official seal of the Board of Representatives of Otsego County, New York, this 2<sup>nd</sup> day of October, 2008.

(SEAL)

  
Clerk, Board of Representatives  
Otsego County, New York