

# STATE OF NEW YORK

## YATES COUNTY LEGISLATURE CLERK'S OFFICE

Penn Yan, N.Y. August 10, 2009

*I Hereby Certify,* That I have compared the preceding with the original thereof, on file in the office of the Clerk of the County Legislature at Penn Yan, New York, and that the same is a correct transcript therefrom and of the whole of said original; and that said original was duly adopted at a meeting of the County Legislature of Yates County held at Penn Yan, New York on the 10th day of August, 2009.

### RESOLUTION NO. 297-09

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

BE IT ENACTED by the County Legislature of the County of Yates, New York (the "County Legislature"), as follows:

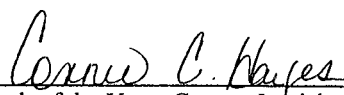
WHEREAS, on January 31, 2008, Section 854 of the General Municipal Law, commonly referred to as the Civic Facilities Legislation (the "Law") expired and, since the expiration of the Law, industrial development agencies have not been able to provide financial assistance to projects owned or operated by 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 Yates County Industrial Development Agency (the "Agency"), as the Civic Facility Projects undertaken by the Agency have increased employment opportunities for residents of Yates 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 July 15, 2009 (the "Approving Resolution"), the members of the Agency agreed to request the consent and authorization of the County Legislature 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

ATTEST

  
Clerk of the Yates County Legislature

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 County Legislature' 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 County Legislature and a copy of such proposed certificate of incorporation is attached hereto as **Schedule A**;

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

Section 1. The County Legislature 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 Yates, New York or any political subdivision thereof (other than the local development corporation), and neither the State of New York, the County of Yates, New York nor any political subdivision thereof (other than the local development corporation) shall be liable thereon.

Section 2. The County Legislature 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.

The resolution was duly seconded by Legislator Willson and the resolution was duly adopted by a vote on roll call. There being 13 for and 1 Legislator absent.

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 19, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

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CERTIFICATE OF INCORPORATION  
of  
YATES 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 N-PCL of the State of New York (the "N-PCL"), hereby certifies as follows:

**FIRST:** The name of the corporation shall be Yates 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, Yates 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, and for the specific purpose of:

(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.

By means of engaging in the following activities:

(i) 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;

(ii) 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;

(iii) entering into contracts with any other economic development organizations sponsored by the County to help achieve the purposes described in paragraphs (a) and (b) above; and

(iv) 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 Paragraph **THIRD** above will achieve the lawful public objective 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 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 consent of the County 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.

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 Yates County, New York. The Corporation at all times shall:

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

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

The County Legislature, 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.

TWELFTH: The Corporation shall consist of not less than three nor more than seven Directors. The Directors will be appointed by the governing body of the County and shall include (a) the Chairman of Yates County Industrial Development Agency, (b) the Vice-Chairman of Yates County Industrial Development Agency, (c) the Treasurer of Yates County Industrial Development Agency, (d) the

Secretary of Yates County Industrial Development Agency, and (e) any additional members of the Yates County Industrial Development Agency so appointed.

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

(i) Kevin Bailey, c/o Yates County Capital Resource Corporation, at One Keuka Business Park in Penn Yan, Yates County, New York, 14527.

(ii) H. Taylor Fitch, c/o Yates County Capital Resource Corporation, at One Keuka Business Park in Penn Yan, Yates County, New York, 14527.

(iii) Jerry C. Hiller, c/o Yates County Capital Resource Corporation, at One Keuka Business Park in Penn Yan, Yates County, New York, 14527.

(iv) Craig E. Densmore, c/o Yates County Capital Resource Corporation, at One Keuka Business Park in Penn Yan, Yates County, New York, 14527.

(v) Bob Corcoran, c/o Yates County Capital Resource Corporation, at One Keuka Business Park in Penn Yan, Yates County, New York, 14527.

(vi) Jim Long, c/o Yates County Capital Resource Corporation, at One Keuka Business Park in Penn Yan, Yates County, New York, 14527.

(vii) Rodman Williams, c/o Yates County Capital Resource Corporation, at One Keuka Business Park in Penn Yan, Yates County, New York, 14527.

It is acknowledged that the Directors hold comparable positions with Yates County Industrial Development Agency, a New York State public benefit corporation established by Chapter 113 of the 1975 Laws of the State of New York, as amended. By reason of the shared public purposes of the Corporation and the Yates County 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 Yates County 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 Yates County Industrial Development Agency first requesting that the Corporation undertake a project or provide financial assistance to any entity.

(B) 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 Yates 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 Yates County 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 an annual independent audit and submit the results of such audit to the County and the New York State Authority

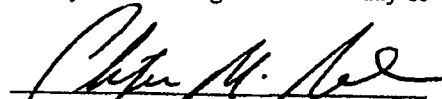
Budget Office, (2) prepare and submit its annual budget to the County and the New York State Authority Budget Office, (3) adopt the various ethical, reporting, property disposition and disclosure policies required by the Act, and (4) form governance and audit committees to ensure the Corporation is in 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 Yates County Capital Resource Corporation, One Keuka Business Park in Penn Yan, Yates County, New York, 14527. Attn: Steve Griffin, 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 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) 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 Chairman of the County Legislature, and (2) the Corporation will not amend or change any provision of this Certificate of Incorporation without first providing the County 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 12<sup>th</sup> day of February, 2010.

  
Christopher M. Martell, Incorporator  
Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207



Drawdown #66

100212000 666

**CERTIFICATE OF INCORPORATION**

**OF**

**YATES COUNTY CAPITAL RESOURCE CORPORATION**

Under Sections 402 and 1411 of the Not-For-Profit  
Corporation Law of the State of New York

Filed by: Christopher M. Martell, Esq.  
Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207

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