

RESOLUTION #823 - 11/10/10

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

BY: Mr. Langley

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

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

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the New York State (the "NFPCL") permits a county to authorize the creation of a governmentally-controlled local development corporation (hereinafter referred to as a "capital resource corporation") to assist, among others, not-for-profit corporations that are undertaking projects that further any of the following purposes for which local development corporation 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 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 capital resource 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 therefore, and (6) to sell, lease, mortgage or otherwise dispose of or encumber and 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 and Private Letter Ruling No. 200936012, capital resource corporations are permitted to issue tax-exempt bonds for the benefit of qualifying Civic Facilities Projects; and

WHEREAS, in accordance with Section 1411(a) of the NFPCL, prior to forming a capital resource corporation for the benefit of the County, the Agency must obtain from the County Legislature, as the governing body of the County, the 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; and

NOW, THEREFORE, BE IT RESOLVED by the County Legislature of Clinton County, New York as follows

Section 1. The County Legislature authorizes the Agency to form a capital resource 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 capital resource corporation and shall never be a debt of the State of New York, Clinton County, New York or any political subdivision thereof (other than the capital resource corporation), and neither the State of New York, Clinton County, New York nor any political subdivision thereof (other than the capital resource 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 Chair of the County Legislature shall approve.

Section 3. This resolution shall take effect immediately

The resolution was duly seconded by Mr. Butler and the resolution was duly adopted by a vote on roll call.

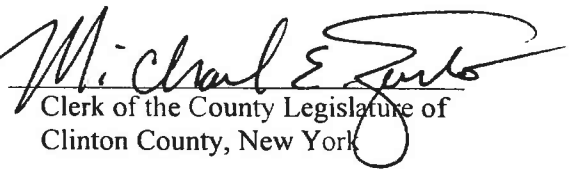
STATE OF NEW YORK     )  
  )SS:  
COUNTY OF CLINTON     )

I, the undersigned (Deputy) Clerk of the County legislature of Clinton County, New York (the "County Legislature"), DO HEREBY CERTIFY that the preceding Resolution was duly adopted by the County Legislature at a regular meeting of the said County Legislature duly called and held on November 10, 2010, that said Resolution was entered in the minutes of said meeting; and that I have compared the foregoing copy with the original thereof now on file in my office and that the same is a true and correct transcript of said Resolution and of the whole thereof.

I FURTHER CERTIFY THAT (A) all members of said County Legislature had due notice of said meeting, (B) said meeting was in all respects duly held, (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and public notice of the time and place of said meeting was duly given to the public and the news media as required by the Open Meetings Law; and (D) there was a quorum of the members of the County Legislature present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of Clinton County, New York, this 11<sup>th</sup> day of November, 2010.

BY:   
Clerk of the County Legislature of  
Clinton County, New York

(SEAL)

SCHEDULE A

PROPOSED CERTIFICATE OF INCORPORATION

Of

CLINTON 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 "NFPCL"), hereby certifies as follows:

FIRST: The name of the corporation is Clinton 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 NFPCL and, as provided in Section 1411(b) of the NFPCL, will be a Type C Corporation as defined in Section 201 of the NFPCL. The Corporation is a public instrumentality of, but separate and apart from, Clinton 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:

- a) 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;
- b) 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;
- c) entering into contracts with any other economic development organizations sponsored by the County to help achieve the purposes described in paragraph (d) above; and
- d) 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 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 territory of the County. Notwithstanding any other provision of this Certificate of Incorporation, the by-laws and any provision of the 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 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.

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) 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 NFPCL upon the repayment or other discharge in full by the Corporation of 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 NFPCL. 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 NFPCL.

NINTH: The office of the Corporation will be located in Clinton 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 Chair of the County Legislature of Clinton County, New York (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.
- (c) The governing body of the County, 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 governing body of the County and continue to hold office until his successor is appointed by the governing body of the County.

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 not less than three nor more than seven Directors. The Directors will be appointed by the governing body of the County from among the members of the County of Clinton Industrial Development Agency and will include (a) the Chairman of the County of Clinton Industrial Development Agency, (b) the Vice-Chairman of the County of Clinton Industrial Development Agency, (c) the Treasurer of the County of Clinton Industrial Development Agency, and (d) any additional members of the County of Clinton Industrial Development Agency so appointed as Directors.

- (a) The names and addresses of the initial Directors of the Corporation are as follows:
  - (i) Trent Trahan, c/o County Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, New York 12901.
  - (ii) Dennis R. Doyle, c/o County of Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, New York 12901.
  - (iii) Michael E. Zurlo, c/o County of Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, New York 12901.
  - (iv) William Bingel, c/o County of Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, New York 12901.
  - (v) David Hoover, c/o County of Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, New York 12901.

- (vi) Mark Leta, c/o County of Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, New York 12901.
- (vii) John VanNatten, c/o County of Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, New York 12901.

It is acknowledged that the Directors hold comparable positions with County of Clinton Industrial Development Agency established by Chapter 25 of the 1971 Laws of the State of New York, as amended. By reason of the shared public purposes of the Corporation and the County of Clinton 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 County of Clinton 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 only undertake projects that are **not** authorized by Article 18A of the New York State General Municipal Law (the "New York State Industrial Development Agency Act") unless the Corporation receives a written request from County of Clinton 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 Clinton County, New York, and neither the State of New York nor Clinton County, New York 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 County of Clinton Industrial Development Agency would be required to give pursuant to the applicable provisions of Section 859-a and Section 859-b of the General Municipal Law of the State of New York as if such hearing was a public hearing held by the County of Clinton Industrial Development Agency with respect to a comparable project.

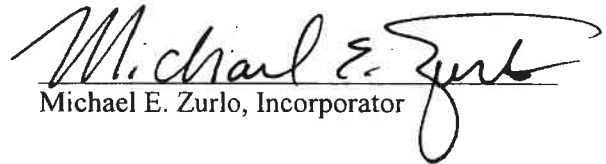
THIRTEENTH: The Corporation will be subject to the Public Authorities Accountability Act of 2005, as amended (the "PAAA"). As such, the Corporation will be required to, among other things: (1) undergo annual independent audits and submit the results of such audits to the County and the New York State Authorities Budget Office, (2) prepare and submit its annual budget to the County and the New York State Authorities Budget Office, (3) adopt the various ethical, reporting, property disposition and disclosure policies required by the PAAA, and (4) form governance, audit and finance committees to ensure the Corporation is in compliance with the PAAA 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 Clinton County Capital Resource Corporation, c/o County of Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, New York 12901. Attn: Adoré Kurtz, Executive Director and 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 Chair of the 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 Chair of the County Legislature, and (2) the Corporation will not amend or change any provision of this Certificate of Incorporation without first providing the Chair of the 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 12<sup>th</sup> day of November, 2010.

  
Michael E. Zurlo, Incorporator

STATE OF NEW YORK)  
COUNTY OF CLINTON) SS:  
LEGISLATIVE CHAMBERS)

I HEREBY CERTIFY, that the foregoing is a true copy of a resolution acted upon by the County Legislature on November 10, 2010.

A quorum being present, and a majority voting therefor.

  
Michael E. Zurlo  
Clerk of the Legislature

(SEAL)