

# SCHOHARIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

349 Mineral Springs Road, Cobleskill, NY 12043

(518) 234-3751/Fax (518) 234-3951

Ronald S. Filmer, Jr.  
Executive Director

Dr. Thomas Greenlees  
Chairman

## SCCRC ANNUAL REPORT

June 30, 2020

The Schoharie County Capital Resource Corporation is a 501(c)(3) with its mission being to promote community and economic development and creation of jobs in the non-profit and for-profit sectors for the citizens of Schoharie County by developing and providing programs for non-profit institutions, manufacturing and industrial businesses and other entities to access low interest tax-exempt and non-tax-exempt financing for eligible projects. In addition, the SCCRC will have as a purpose to undertake 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.

### LAW FORMING THE CORPORATION

The Schoharie County Capital Resource Corporation is a not-for-profit local development corporation formed under the Section 402 and 1411 of the Not-for-Profit corporation law of the State of New York.

AGENCY MEMBERS AND STAFF:

Board Members

Dr. Thomas Greenlees  
*Chair*

Joseph Trapani  
*Member*

Chester Burton  
*Vice-Chairman*

Peter Johnson  
*Member*

Wanda King  
*Treasurer*

Agency Staff

Agency Counsel

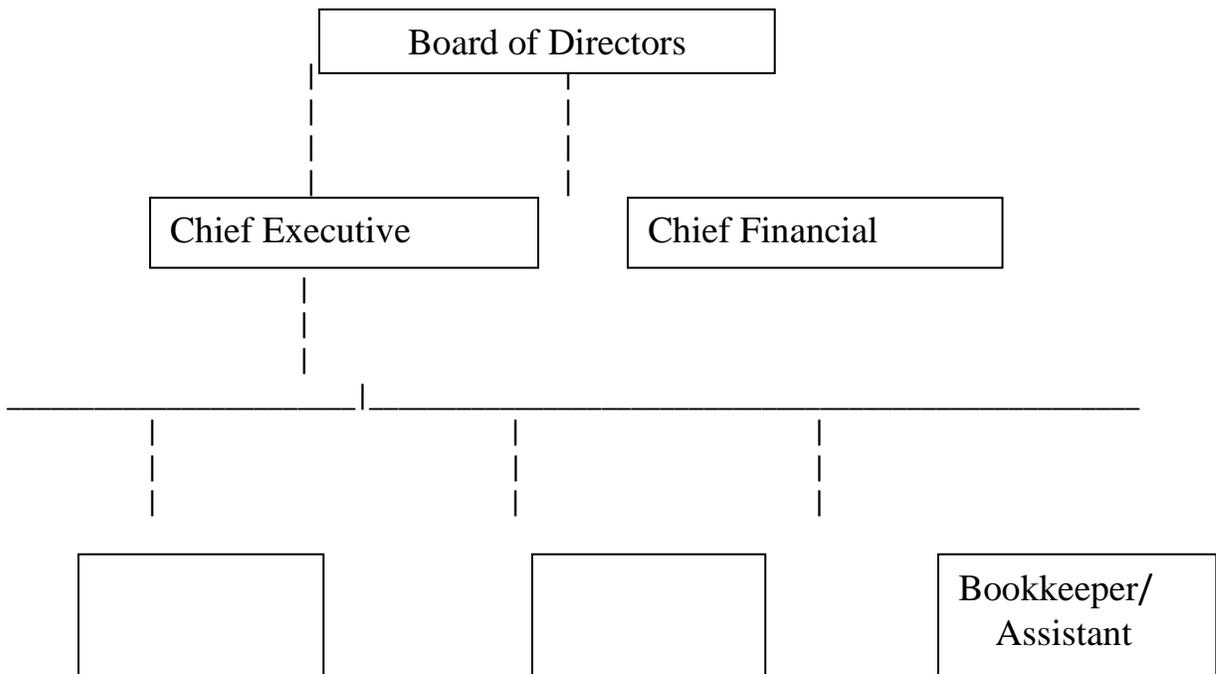
Ronald S. Filmer, Jr.  
*Chief Executive Officer*

Mr. A. Joseph Scott III  
*HodgsonRuss Attorneys LLP*

Jeffrey Haslun  
*Chief Financial Officer*

Sarah Nickle  
*Secretary/Bookkeeper*

2019/2020 SCCRC ORGANIZATIONAL CHART



2019/2020 BOARD COMMITTEES AND MEMBERSHIPS

Governance Committee

Audit Committee

Finance Committee

Thomas Greenlees, Chair  
Joseph Trapani  
Wanda King  
Chester Burton  
Peter Johnson

Thomas Greenlees, Chair  
Chester Burton  
Wanda King

Thomas Greenlees, Chair  
Joseph Trapani  
Wanda King

2019/2020 (July 1, 2019 – June 30, 2020) BOARD MEETINGS AND ATTENDANCE

<u>Sept 17, 2019</u>	<u>March 10, 2020</u>	<u>April 28, 2020</u>
Joseph Trapani	Dr. Greenlees	Dr. Greenlees
Wanda King	Chester Burton	Joseph Trapani
Chester Burton	Joseph Trapani	Chester Burton
	Peter Johnson	Wanda King
		Peter Johnson

AUTHORITIES AND SUBSIDIARIES

The Agency had no subunits or subsidiaries.

OPERATIONS AND ACCOMPLISHMENTS

The Schoharie County CRC (SCCRC) was formed in 2012 – 2013 and some of its activities consisted of organizational issues; such as continuing to follow ABO procedures. The SCCRC has completed one project. This project consisted of working with SUNY Cobleskill to provide bond financing for the construction of a dormitory; that will assist the College in advancing its housing and attracting students who desire the ‘modern’ type of student housing.

The SCCRC’s operational area consists of Schoharie County and its 16 townships and 6 villages. The SCCRC has five members on its Board of Directors and two part-time people making up its staff. The operating budget consisted of interest earnings, project fee for income and advertising, auditing and insurance expenses.

Daily operations include handling and or processing checks, deposits, inquiries from businesses, and other administrative duties.

Accomplishments include handling the administrative requirements of the Agency and working with the College and its’ dormitory project.

PROJECTS UNDERTAKEN BY THE AUTHORITY

The SCCRC had no new requests for assistance.

PROJECTS IN PROGRESS AND OR COMPLETED

Number of Jobs

Project	Company	Project Description	Location	Amount	Retained	New
	SUNY Cobleskill	Construction of college dormitories	Town of Cobleskill	Ten million	7.875	TBD

BONDS AND NOTES OUTSTANDING

The SCCRC has the one Dormitory bond (conduit debt) outstanding; the balance of which is \$7,983,044.83 as of June 30, 2020.

## FINANCIAL REPORTS

A statement of revenues and expenses, assets and liabilities, and schedule of its bonds and notes outstanding are included in the Paris submission.

- i. Audited financials, are included in the Paris submission
- ii. Grant & Subsidy Programs:

One of the Agency's objectives is to provide assistance to existing businesses and expansions and business startups with professional assistance, educational programs and loans.

### Operation & Financial Risk:

The Agency's operating risk involves revenues and the reliance on interest rates and economic activity; both of which are influenced by the economic climate of Schoharie County and the region.

- iii. Bonds: The Agency has no outstanding bonds. It is a conduit for one bonds.
- iv. Long Term Liabilities: The Agency has no long term liabilities.

## FINANCIAL PLAN

A four-year financial plan, including current and projected capital budget is attached. See Schedule C

The operating budget, including an actual versus estimated budget is attached. See Schedule D

An analysis of the financial operating performance was undertaken and it illustrated the current economic environment. Operations were maintained even as revenue was not earned due to lack of project activity. Interest earnings decreased. The Agency expects interest earnings to remain low during the next year.

## PROCUREMENT OF SERVICES

The Agency retained the services of an auditor and legal counsel. The auditor is Mostert, Manzanero & Scott, LLP and was awarded the contract that was bid out in May 2016. The legal counsel the Agency retains is the firm of HodgsonRuss LLP and payment is negotiated when services are needed.

## REAL PROPERTY

The SCCRC does not own any property.

## COMPENSATION SCHEDULE

The SCCRC had no individual being compensated over \$100,000. The Board of Directors receives no compensation.

## BIOGRAPHICAL INFORMATION

Not applicable

## BOARD PERFORMANCE EVALUATIONS

The Board objectives are to renew and monitor the agencies program objectives and financial matters; and establish appropriate policies regarding the agency. The Board members have received training in the PAAA guidelines and meet regularly with the meetings open to the public. The Board successfully oversees the Agencies activities and promotes its mission whenever possible.

## AUTHORITY'S CODE OF ETHICS

See Schedule E

## INTERNAL CONTROL STRUCTURE AND PROCEDURES

The SCCRC's Control Structure: An assessment of the corporation's control structure resulted in the determination that the established controls and procedures are adequate to prevent fraud or theft and allow for full disclosure of the company's assets and liabilities. The internal control systems of the SCCRC includes adoption of an annual budget, an inventory system, an adopted accounting and disbursement system, required educational commitments, adopted ABO policies and program manuals/guidelines.

The established internal controls consist of one person handling the checks and deposits while any payments require two different signatures. In addition, an audit committee to review books and a governance committee has been established to review overall policies and procedures of the SCCRC.

## 2020 ASSESSMENT OF THE EFFECTIVENESS OF INTERNAL CONTROLS

The internal controls of the Schoharie County CRC deal with the accounting, grant management and cash management of the agency. The controls are as follows:

- An overall Agency budget is adopted as well as a budget for any grant program
- An accounting manual has been prepared and is followed
- Invoices have to be signed by the CEO and two signatures are required on any disbursements
- Deposits are recorded on the ledger sheets and reviewed by the CEO or CFO
- The CFO, in addition to the CEO, periodically review the books that have been prepared by the bookkeeper.

In conclusion, the current internal controls appear to be prudent and effective with the intent to prevent any errors or fraud.

BY-LAWS

See Schedule F

This concludes the annual report. Upon review, if there are any questions, individuals should feel free to contact the agency at 518-234-3751.

## **SCHEDULE E**

### AUTHORITY'S CODE OF ETHICS

The authority's Code of Ethics applies to both the members and the employees of the Schoharie County Industrial Development Agency (the "Agency").

The purpose of this Code of Ethics is to promote honest and ethical conduct and compliance with the law. The **Code of Ethics** is as follows:

1. **Definition.** As used in this section: The term "Agency shall mean the Schoharie County Industrial Development Agency.

The term "employee" shall mean any employee of the Schoharie County Industrial Development Agency.

2. **Rule with respect to conflicts of interest.** No member or employee of the Agency should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. **Standards.**

a) No member or employee of the Agency should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b) No member or employee of the Agency should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c) No member or employee of the Agency should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d) No member or employee of the Agency should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

e) No member or employee of the Agency should engage in any transaction as representative or agent of the Agency with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f) A member or employee of the Agency should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g) A member or employee of the agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h) A member or employee of the Agency should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i) No member or employee of the Agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the Agency.

j) If any officer or employee of the Agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in activity which is subject to receiving benefits from the Agency, he should file with the members of the Agency a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

4. Violations. In addition to any penalty contained in any other provision of law any such member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.

## **SCHEDULE F**

### **BY-LAWS OF SCHOHARIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

#### **ARTICLE I**

##### **THE AGENCY**

SECTION 1. NAME. The name of the Agency shall be “Schoharie County Industrial Development Agency”.

SECTION 2. SEAL OF THE AGENCY. The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization.

SECTION 3. OFFICE OF AGENCY. The office of the Agency shall be at 349 Mineral Springs Road, Cobleskill, New York; provided, however, that the Agency may have such other offices at such other places as the members of the Agency may from time to time designate by resolution.

SECTION 4. EXECUTION OF INSTRUMENTS. Except as otherwise provided in these bylaws, instruments and documents of the Agency may be signed or countersigned, executed, verified or acknowledged by such officer or officers or other person or persons as the Agency may designate by resolution.

#### **ARTICLE II**

##### **MEMBERS; OFFICERS OF THE BOARD; BOARD COMMITTEES**

SECTION 1. APPOINTMENT OF MEMEBERS; QUALIFICATIONS THEREOF. (A) Pursuant to Article 18-a of the General Municipal Law of the State of New York (the “Act”), the members of the Agency (each, a “Member”) are appointed by, and serve at the pleasure of, the Schoharie County Board of Supervisors. Each Member must be a resident of Schoharie County. A public officer or employee may be appointed as a Member of the Agency without forfeiture of any other public office or employment.

(B) Except for Members who serve as Members by virtue of holding a civil office of the State, the majority of the remaining Members appointed after January 13, 2006 shall be “Independent Members”.

(C) For purposes of these bylaws, the term “Independent Member” means a Member one who: (1) is not, and in the past two years has not been, employed by the Agency (or an “Affiliate” of the Agency) 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 Agency or received any other form of financial assistance valued at more than \$15,000 from the Agency; (3) is not a relative of an executive officer or employee in an executive position of the Agency (or an “Affiliate” of the Agency); 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 Agency (or an “Affiliate” of the Agency).

(D) For purposes of these bylaws, the term “Affiliate” means a corporate body having substantially the same ownership or control as the Agency.

## SECTION 2. RESPONSIBILITIES OF MEMBERS; TRAINING REQUIREMENT.

(A) The Members of the Agency constitute the governing body of the Agency (the “Board”), and shall have and shall responsibly exercise all of the powers prescribed by the Act and other applicable law, including but not limited to Chapter 766 of the 2005 Laws of the State of New York (the “PAAA”).

(B) The Board shall appoint a Chief Executive Officer and a Chief Financial Officer of the Agency, neither of whom shall be a Member of the Agency.

(C) Every annual financial report of the Agency must be approved by the Board.

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

(E) The Board shall 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, Member or employee (or equivalent thereof) of the Agency.

(F) Individuals newly appointed to the Board of the Agency must participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities within one year of appointment to such Board. Existing Members shall 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 3. OFFICERS OF THE BOARD. (A) Each officer of the Board, except for the Secretary, must be a Member of the Agency. All officers of the Board (except the first Chairman) shall be appointed at the annual meeting of the Board from among the Members. All officers of the Board shall remain in office for one year. Any two or more offices of the Board, except the offices of Chairman and Secretary, may be held by the same person.

(B) The officers of the Board shall be a Chairman, a Vice Chairman, A Secretary, an Assistant Secretary, a Treasurer, and an Assistant Treasurer.

(C) The officers of the Board shall perform the duties and functions specified in these bylaws and such other duties and functions as may from time to time be authorized by resolution of the Board of the Agency or required to effect the statutory purposes of the Agency.

(D) Should any office of the Board become vacant, the Agency shall point a successor from among its Members at the next regular meeting, and such appointment shall be for the unexpired term of said office.

SECTION 4. CHAIRMAN. (A) The Chairman of the Agency shall preside at all meeting of the Members of the Agency.

(B) Except as otherwise authorized by resolution of Board of the Agency, the Chairman shall execute all instruments and documents of the Agency, including all instruments of indebtedness. The Chairman shall have the authority, at all times, to execute, on behalf of the Agency, instruments and documents of a ministerial or procedural nature which the Chairman deems expedient in order to further the statutory purposes of the Agency, provided the execution of such instruments and documents does not contravene any provision of these bylaws or any resolution of the Board.

(C) Except as otherwise authorized by resolution of the Board, all checks for the payment of money of the Agency shall be signed by the Treasurer of the Agency and countersigned by the chairman of the Agency.

SECTION 5. VICE CHAIRMAN. The Vice Chairman of the Agency shall perform the duties of the Chairman in the absence or incapacity of the Chairman; and in case of the resignation or death of the Chairman, the Vice Chairman shall perform such duties as are imposed on the Chairman until such time as the Board shall appoint a new Chairman.

SECTION 6. SECRETARY. (A) The Secretary of the Agency shall keep the records of the Board, shall act as secretary at the meetings of the Board and record all votes of the Board, shall keep a record of the proceedings of the Board in a journal of proceedings to be kept for such purposes, and shall perform all duties incident to the office of Secretary of the Agency.

(B) The Secretary of the Agency shall keep in safe custody the corporate seal of the Agency and shall have the power to affix such corporate seal to all instruments and documents authorized to be executed by the Agency. When a facsimile corporate seal is authorized to be used, the Secretary of the Agency shall have the power to approve the manner and fashion of such facsimile and authorize such minor variations as are expedient to implement the process by which such facsimile is created.

SECTION 7. ASSISTANT SECRETARY. The Assistant Secretary of the Agency shall perform the duties of the Secretary in the absence or incapacity of the Secretary; and in case of the resignation or death of the Secretary, the Assistant Secretary shall perform such duties as are imposed on the Secretary until such time as the Board shall appoint a new Secretary.

SECTION 8. TREASURER. Except as otherwise authorized by resolution of the Board, the Treasurer of the Agency shall sign all checks for the payment of money of the Agency; and shall pay out and disburse such moneys under the direction of the Board. Except as otherwise authorized by resolution of the board, all such checks shall be countersigned by the Chairman of the Agency.

SECTION 9. ASSISTANT TREASURER. The Assistant Treasurer of the Agency shall perform the duties of the treasurer in the absence or incapacity of the Treasurer; and in the case of the resignation or death of the Treasurer, the Assistant Treasurer shall perform such duties as are impose on the Treasurer until such time as the Board shall appoint a new Treasurer.

SECTION 10 GOVERNANCE COMMITTEE. (A) The Chairman shall appoint a Governance Committee, to be comprised of Independent Members.

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

SECTION 11. AUDIT COMMITTEE. (A) The Chairman shall appoint an Audit Committee, to be comprised of Independent Members.

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

(C) The Audit Committee shall ensure that the Agency 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 by Article 18-A of the general Municipal Law.

(D) The Audit Committee shall recommend to the Board the hiring of a certified independent public accounting firm for the Agency, 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 shall not recommend the hiring of a certified independent public accounting firm to provide audit services to the Agency if the Chief Executive Officer, comptroller, chief Financial Officer, chief accounting officer, or any other person serving in an equivalent position for the Agency was employed by that certified independent public accounting firm and participated in any capacity in the audit of the Agency 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 Agency, or the audit partner responsible for reviewing the audit, has performed audit services for the Agency in each of the five previous fiscal years of the Agency, the Audit Committee shall prohibit such certified independent public accounting firm from providing an annual independent audit for the Agency.

(F) The Audit Committee shall require that each certified independent public accounting firm that performs for the Agency an audit required by law shall 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 Agency, 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 Agency, 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 shall prohibit the certified independent public accounting firm providing an annual independent audit for the Agency from performing any non-audit services to the Agency 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 Agency; (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.

### ARTICLE III

#### MEETINGS

SECTION 1. ANNUAL MEETING. The annual meeting of the Agency shall be held within sixty (60) days of calendar year end at the regular meeting place of the Agency, or at such other time and place as from time to time may be determined by resolution of the Agency.

SECTION 2. REGULAR MEETINGS. Regular meetings of the Agency may be held at such times and places as from time to time may be determined by resolution of the Agency.

SECTION 3. SPECIAL MEETINGS. The Chairman of the Agency may, when he deems it desirable, and shall, upon the written request of two Members of the Agency call a special meeting of the Agency for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each Member of the Agency or may be mailed to the business or home address of each Member of the Agency at least two days prior to the date of such special meeting. Waivers of notice may be signed by any Members failing to receive a proper notice. At such special meeting no business shall be considered other than as designated in the call, but if all the Members of the Agency are present at a special meeting, with or without notice thereof, any and all business may be transacted at such special meeting.

SECTION 4. QUORUM. At all meetings of the Agency, a majority of the Members of the Agency shall constitute a quorum for the purpose of transacting business; provided

that a smaller number may meet and adjourn to some other time or until the quorum is obtained.

SECTION 5. ORDER OF BUSINESS. At the regular meetings of the Agency the following shall be the order of business:

1. Roll call.
2. Reading and approval of the minutes of previous meeting.
3. Bills and communications.
4. Report of the treasurer.
5. Reports of Committees.
6. Unfinished business.
7. New business.
8. Adjournment.

All resolutions shall be in writing and shall be copied in a journal of proceedings of the Agency.

SECTION 6. RESOLUTIONS. Whenever possible, all resolutions shall be in writing. A written copy of all resolutions adopted by the Board shall be copied in or attached to a journal of the proceedings of the Board.

SECTION 7. MANNER OF VOTING. (A) The voting on all questions coming before the Agency shall be by roll call, and the yeas and nays shall be entered on the minutes of such meeting, except in the case of appointments when the vote may be by ballot.

(B) All resolutions of the Agency shall be passed by a majority of the Members of the Agency. In order to vote on a resolution, a Member of the Agency must be present at a meeting of the Board either in person or via videoconference.

## ARTICLE IV

### EXECUTIVE OFFICERS AND EMPLOYEES

SECTION 1. EXECUTIVE DIRECTOR. (A) The Executive Director shall be appointed by the Board, and shall be the chief executive officer of the agency.

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

(C) The Executive Director shall be charged with the management of all projects of the Agency.

(D) The Executive Director shall also serve as the Contracting Officer of the Agency, and, as such, be responsible for (1) the disposition of property of the Agency,

and (2) the Agency's compliance with the Agency's property use and disposition guidelines.

(E) Every annual financial report of the Agency must be certified in writing by the executive Director that based on the Executive Director'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 Agency as of, and for, the periods presented in the financial statements.

SECTION 2. CHIEF FINANCIAL OFFICER. (A) The chief financial Officer or designated staff shall have the care and custody of all funds of the Agency and shall deposit the same in the name of the Agency in such bank or banks as the Board may select or, if the Board have not so selected a bank or banks, which the chief Financial Officer selects.

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

(C) The Chief Financial Officer shall give such bond for the faithful performance of his duties as the agency may determine.

(D) Every annual financial report of the Agency 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 Agency as of, and for, the periods presented in the financial statements.

SECTION 3. ADDITIONAL PERSONNEL. The Agency 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 shall be determined by the agency.

## ARTICLE V

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 1. RIGHT OF INDEMNIFICATION. Each Member and officer of the Agency, whether or not then in office, and any person whose testator or intestate was such a Member or officer, shall be indemnified by the Agency for the defense of, or in connection with, any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, administrative or investigative, in accordance with and to the fullest extent permitted by the Section 18 of the Public Officers Law of

the State of New York or other applicable law, as such law now exists or may hereafter be adopted or amended; provided, however, that the agency shall provide indemnification in connection with an action or proceeding (or part thereof) initiated by such a Member or officer only if such action or proceeding (or part thereof) was authorized by the Board.

**SECTION 2. ADVANCEMENT OF EXPENSES.** (A) Expenses incurred by a Member or officer in connection with any action or proceeding as to which indemnification may be given under Section 1 of this Article V may be paid by the corporation in advance of the final disposition of such action or proceeding upon (1) the receipt of an undertaking by or on behalf of such Member or officer to repay such advancement in case such Member or officer is ultimately found not to be entitled to indemnification as authorized by this Article V and (2) approval by the Board.

(B) To the extent permitted by law, the Board shall not be required to find that the Member or officer has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding before the Agency makes any advance payment of expenses hereunder.

**SECTION 3. AVAILABILITY AND INTERPRETATION.** To the extent permitted under applicable law, the right of indemnification and to the advancement of expenses provided in this Article V (A) shall be available with respect to events occurring prior to the adoption of this Article V, (B) shall continue to exist after any rescission or restrictive amendment of this Article V with respect to events occurring prior to such rescission or amendment, (C) shall be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the Member or officer (or, if applicable, at the sole discretion of the testator or intestate of such Member or officer seeking such rights), on the basis of applicable law in effect at the time such rights are claimed and (D) shall be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Agency and the Member or officer for whom such rights are sought were parties to a separate written agreement.

**SECTION 4. OTHER RIGHTS.** The rights of indemnification and to the advancement of expenses provided in this Article V shall not be deemed exclusive of any other rights to which any Member or officer of the Agency or other person may now or hereafter be otherwise entitled, whether contained in these by-laws, a resolution of the Board or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in this Article V shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any Member or officer of the Agency or other person in any action or proceeding to have assessed or allowed in his or her favor, against the Agency or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

**SECTION 5. SEVERABILITY.** If this Article V or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article V shall remain fully enforceable. Any payments made pursuant to this Article V shall be made only out of funds legally available therefore.

## ARTICLE VI

### AMENDMENTS

SECTION 1. AMENDMENTS TO BY-LAWS. The by-laws of the Agency shall be amended only with the approval of at least a majority of all of the Members of the Agency at a regular or special meeting, but no such amendment shall be adopted unless at least seven (7) days' written notice hereof has been previously given to all Members of the Agency.