

RESOLUTION

A regular meeting of County of Sullivan Industrial Development Agency (“Agency”) was convened in public session at the Sullivan County Government Center, 100 North Street, Village of Monticello, Sullivan County, New York on August 12, 2019, at 11:00 a.m. local time.

The meeting was called to order by Chairman Ira Steingart, and, upon roll being called, the following members of the Agency were:

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[]	[]
Suzanne Loughlin	[]	[]
Sean Rieber	[]	[]
Edward T. Sykes	[]	[]
Howard Siegel	[]	[]
Scott Smith	[]	[]
Paul Guenther	[]	[]
Joseph Perrello	[]	[]
Carol Roig	[]	[]

The following persons were also present:

Jennifer M. Flad, Executive Director
Edward T. Sykes, Chief Executive Officer
Julio Garaicoechea, Project Manager
Walter F. Garigliano, Agency General Counsel
Cassandra Egan, Administrative Assistant

The following resolution was duly offered by _____, and seconded by _____, to wit:

Resolution No. ____ - 19

***RESOLUTION AUTHORIZING AND APPROVING AN AMENDMENT AND
RESTATEMENT OF THE BYLAWS OF THE AGENCY PURSUANT TO
PARAGRAPH 701 OF THE BYLAWS***

WHEREAS, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York, as amended, pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”) as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, pursuant to paragraph 701 of the Agency’s Bylaws (the “Bylaws”), the same can be amended upon seven (7) days written notice to the members; and

WHEREAS, the Agency desires to amend and restate its Bylaws as set forth on the blackline attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED, BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Bylaws as set forth in Exhibit B attached hereto are hereby approved and adopted, and supercedes and replaces all previous Bylaws of the Agency.

Section 2. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Ira Steingart	[] Yes	[] No	[] Absent	[] Abstain
Suzanne Loughlin	[] Yes	[] No	[] Absent	[] Abstain
Sean Rieber	[] Yes	[] No	[] Absent	[] Abstain
Edward T. Sykes	[] Yes	[] No	[] Absent	[] Abstain
Howard Siegel	[] Yes	[] No	[] Absent	[] Abstain
Scott Smith	[] Yes	[] No	[] Absent	[] Abstain
Paul Guenther	[] Yes	[] No	[] Absent	[] Abstain
Joseph Perrello	[] Yes	[] No	[] Absent	[] Abstain
Carol Roig	[] Yes	[] No	[] Absent	[] Abstain

The resolution was thereupon duly adopted.

STATE OF NEW YORK :
:SS
COUNTY OF SULLIVAN :

I, the undersigned (Assistant) Secretary of the Agency DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of the Agency with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.
2. Such resolution was passed at a meeting of the Agency duly convened in public session on the 12th day of August, 2019 at 11:00 a.m. at the Sullivan County Government Center, 100 North Street, Village of Monticello, Sullivan County, New York, at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[]	[]
Suzanne Loughlin	[]	[]
Sean Rieber	[]	[]
Edward T. Sykes	[]	[]
Howard Siegel	[]	[]
Scott Smith	[]	[]
Paul Guenther	[]	[]
Joseph Perrello	[]	[]
Carol Roig	[]	[]

3. The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

Ira Steingart	[] Yes	[] No	[] Absent	[] Abstain
Suzanne Loughlin	[] Yes	[] No	[] Absent	[] Abstain
Sean Rieber	[] Yes	[] No	[] Absent	[] Abstain
Edward T. Sykes	[] Yes	[] No	[] Absent	[] Abstain
Howard Siegel	[] Yes	[] No	[] Absent	[] Abstain
Scott Smith	[] Yes	[] No	[] Absent	[] Abstain
Paul Guenther	[] Yes	[] No	[] Absent	[] Abstain
Joseph Perrello	[] Yes	[] No	[] Absent	[] Abstain
Carol Roig	[] Yes	[] No	[] Absent	[] Abstain

and therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (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 in accordance with such Sections 103a and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the 12th day of August, 2019.

Secretary

Article 100 – THE AGENCY

101. NAME. The name of the Agency shall be “County of Sullivan Industrial Development Agency” hereinafter referred to as the Agency.

102. SEAL OF 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. The use of the Agency seal shall not be required for the validity of any action of the Agency. A facsimile seal or use of the word “seal” may also be used if deemed appropriate.

103. OFFICE OF THE AGENCY. The office of the Agency shall be at ~~One Cablevision Center, Ferndale~~548 Broadway, Monticello, New York ~~12734~~12701 or such other location within the County of Sullivan as the Agency may from time to time designate by resolution.

Article 200 – MEMBERS

201. COMPOSITION. In accordance with Section 906 of the General Municipal Law, the Agency shall have nine (9) members appointed by the governing body of the County of Sullivan.

202. AUTHORITY AND RESPONSIBILITIES. The Members of the Board of the Agency shall:

- (a) execute direct oversight over the Agency’s Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and Executive Director (“Management”) in the effective and ethical management of the Agency;
- (b) understand, review and monitor the implementation of fundamental financial and management controls and operation decisions of the Agency;
- (c) establish policies regarding the payment of salary, compensation and reimbursements to, and establish rules for the time and attendance of, the Management;
- (d) adopt a code of ethics applicable to each officer, board member and employee that, at a minimum, includes the standards established in Section 74 of the Public Officers Law;
- (e) establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the Agency, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services; and
- (f) adopt a defense and indemnification policy and disclose such policy to any and all prospective board members.

~~202.~~203. TRAINING. Board members appointed to the Agency on or after January 13, 2006 must participate in New York State approved training regarding their legal, fiduciary, financial and ethical responsibilities as board members of the Agency within one (1) year of appointment to the board of the Agency and shall participate in such

continuing training as may be required to remain informed of best practices, and regulatory and statutory changes relating to effective oversight of management and financial activities of the Agency.

~~203-204.~~ SEPARATION OF BOARD AND MANAGEMENT. No ~~Board member shall serve as the Agency's Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, comptroller or hold any other equivalent position while also serving as a member of the Board.~~ Chairman who is also the Chief Executive Officer shall participate in determining the level of compensation or reimbursement, or time and attendance rules for the position of Chief Executive Officer.

~~204-205.~~ EXTENSION OF CREDIT. The Board is prohibited from extending or maintaining credit, arranging for the extension of credit, or renewing an extension of credit, in the form of a personal loan to or for any member, officer or employee of the Agency.

~~205-206.~~ INDEPENDENCE. Except for board members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members who are appointed to the board on or after January 13, 2006 must be independent. An independent member is one who:

- (a) is not, and in the past two years has not been, employed by the Agency or an affiliate in an executive capacity;
- (b) 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 public authority or received any other form of financial assistance valued at more than \$15,000 from the Agency;
- (c) is not a relative of an employee of the Agency; and
- (d) 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 ~~public authority~~ Agency or an affiliate.

Article 300 – OFFICERS

301. OFFICERS. The officers of the Agency shall be a Chairman, one or more Vice Chairmen, a Secretary, and a Treasurer. There may be an Assistant Secretary and an Assistant Treasurer. Each of the foregoing offices shall be held by a member of the board of the Agency and except for the offices of Chairman and Vice Chairman, and Chairman and Secretary; one person may hold more than one office. Officers authorized to sign orders and checks shall give such bond for the faithful performance of the duties of such office as the Agency may determine.

302. CHAIRMAN. The Chairman shall preside at all meetings of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall sign all agreements, contracts, deeds, bonds, mortgages, and other instruments of indebtedness, and any other instrument of indebtedness. At each meeting the Chairman shall submit

such recommendations and information as the Chairman may consider proper concerning the business, affairs and policies of the Agency.

303. VICE CHAIRMAN. A Vice Chairman shall perform the duties of the Chairman in the absence or incapacity of the Chairman; in case of the resignation or death of the Chairman, a Vice Chairman shall perform such duties as are imposed on the Chairman until such time as the Agency shall appoint a successor Chairman.

304. SECRETARY. The Secretary shall keep the records of the Agency, shall act as Secretary of the meetings of the Agency and record all votes and shall keep a record of the proceedings of the Agency in a journal of proceedings to be kept for such purpose and shall perform all duties incident to the office. The Secretary shall keep in safe custody the seal of the Agency and shall have power to affix such seal to all contracts and other instruments authorized to be executed by the Agency.

305. ASSISTANT SECRETARY. The Assistant Secretary shall perform the duties of the Secretary in the absence or incapacity of the Secretary; 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 Agency shall appoint a successor Secretary.

306. TREASURER. The Treasurer 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 Agency may select. Unless otherwise provided by resolution, the Treasurer shall sign all orders and all checks for the payment of money; and shall pay out and disburse such moneys under the direction of Agency. If authorized, by resolution, the Chairman and, in the event of the absence or incapacity of the Chairman, a Vice Chairman, shall sign all orders and checks prepared by the Treasurer. The Treasurer shall keep regular books of account showing receipts and expenditures, and shall render to the Agency at regular intervals an account of all transactions and also of the financial condition of the Agency.

307. ASSISTANT TREASURER. The Assistant Treasurer shall perform the duties of the Treasurer in the absence or incapacity of the Treasurer; in case of the resignation or death of the Treasurer, the Assistant Treasurer shall perform such duties as are imposed on the Treasurer until such time as the Agency shall appoint a successor Treasurer.

308. ADDITIONAL DUTIES. The officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency by the By-Laws of the Agency, or by the rules and regulations of the Agency.

309. APPOINTMENT OF OFFICERS. ~~All officers~~The Chairman, Vice Chairmen, Secretary, Treasurer and any Assistant Secretary and/or Assistant Treasurer of the Agency except the first Chairman shall be appointed at the annual meeting of the Agency from among the members of the Agency, and shall hold office for one year or until their successors are appointed.

310. VACANCIES. In the event that ~~any office~~the office of Chairman, Vice Chairman, Secretary, Treasurer and any Assistant Secretary and/or Assistant Treasurer shall become vacant, the Agency shall appoint a successor from among its membership at the next regular meeting, and such appointment shall be for the unexpired term of said office.

311. CHIEF EXECUTIVE OFFICER. The Agency shall appoint a Chief Executive Officer who shall be an officer of the Agency charged with the management of all projects of the Agency. The Chief Executive Officer ~~shall~~may or may not be a member of the Board of the Agency.

312. CHIEF FINANCIAL OFFICER. The Agency may appoint a Chief Financial Officer who shall be ~~appointed by an officer of~~ the Agency, ~~and shall be~~ charged with the management of the Agency's financial business and activities, subject to the direction of the Chief Executive Officer and the Board. The Chief Financial Officer ~~shall~~may or may not be a member of the Board of the Agency.

313. CHIEF OPERATING OFFICER. The Agency may appoint a Chief Operating Officer who shall be ~~appointed by an officer of~~ the Agency, ~~and shall be~~ charged with the management of the Agency's day to day business activities, subject to the direction of the Chief Executive Officer and the Board. The Chief Operating Officer ~~shall~~may or may not be a member of the Board of the Agency.

314. EXECUTIVE DIRECTOR. The Agency may appoint an Executive Director who shall be ~~appointed by an officer of~~ the Agency, and shall have general supervision over the administration of the business and affairs of the Agency, subject to the direction of the Chief Executive Officer and the Board.

315. ADDITIONAL PERSONNEL. The Agency may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by the New York State Industrial Development Act, as amended, and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel shall be determined by the Agency subject to the laws of the State of New York.

Article 400 – INDEMNIFICATION

401. INDEMNIFICATION. The New York State Legislature has enacted legislation permitting public entities, including industrial development agencies, to provide for the defense and indemnification of officers and employees of those agencies. This Article 400 implements that concept and the statutory intent set forth in Article 2, Section 18 of the Public Officers Law of the State of New York.

402. DEFINITION OF EMPLOYEE. The term "employee" for purposes of this Article 400 shall mean any commissioner, member of a public board or commission, trustee, director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election,

appointment or employment in the service of the Agency whether or not compensated. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

403. DEFENSE.

(a) Upon compliance by the employee with the provisions of Section 405 hereof, the Agency shall provide for the defense and indemnification of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting during the course of his employment and within the scope of his public employment or duties. This duty to provide for a defense and indemnification shall not arise where such civil action or proceeding is brought by, or at the behest of the Agency;

(b) Subject to the conditions set forth in this Article 400, the employee shall be represented by Counsel to the Agency or an attorney employed or retained by the Agency for the defense of the employee. The Agency shall employ or retain an attorney for the defense of the employee whenever (1) the Agency does not have Agency Counsel, (2) the Agency determines, based upon its investigation and review of the facts and circumstances of the case, that representation by the Agency Counsel would be inappropriate, or (3) a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by Agency Counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such attorney employed or retained, from time to time, during pendency of the civil action or proceeding, subject to certification by the Chairman that the employee is entitled to representation under the terms and conditions hereof. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the Agency. Any dispute with respect to representation of multiple employees by Agency Counsel or by an attorney employed or retained for such purposes, or with respect to the amount of the fees or expenses shall be resolved by the court upon motion or by way of a special proceeding; and

(c) Where the employee delivers process and a written request for a defense to the Agency, under Section 405 hereof, the Agency, shall take the necessary steps on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

404. DEFENSE AND INDEMNIFICATION.

(a) The Agency, shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting during the course of his employment and within the scope of his public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the members of the Board of the Agency, or its insurance company. This obligation by the Agency to indemnify shall not apply to any claims against officers and employees of the Agency, currently outstanding, or reduced to judgment, or settlement;

(b) Except as otherwise provided by law, this duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee;

(c) Nothing in this section shall authorize the Agency to defend, indemnify or save harmless an employee with respect to any claims filed, or money recovered from an employee pursuant to Section 51 of the General Municipal Law or for any claims alleging intentional wrongdoing or a reckless act; and

(d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail within five (5) days of the date of entry or settlement, upon the Chairman of the Agency and Agency Counsel, and if not inconsistent with the provisions of this resolution, the amount of such judgment or settlement shall be paid by the Agency.

405. DUTY TO NOTIFY. The duty to defend or indemnify and save harmless prescribed herein shall be conditioned upon:

(a) Delivery by the employee to Agency Counsel and to the Chairman of the Agency a written request to provide for his defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after he is served with such document, and

(b) The full cooperation of this employee in the defense of such action or proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

406. OTHER RIGHTS. The benefits conferred in this Article 400 shall inure only to employees as deemed herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this Article 400 be construed to affect, alter or repeal any provision of the Worker's Compensation Law.

407. NOTICE. This Article 400 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section Ten of the Court of Claims Act, Section 50 (e) of the General Municipal Law, or any other provisions of law.

408. INSURANCE. The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by, or under, the laws of the State of New York, or authorized by law to transact business in this state, against any liability imposed by the provisions of this Article 400 or to act as a self-insurer with respect thereto.

409. PAYMENTS. All payments made under the terms of this Article 400, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

410. INSURER RIGHTS. The provisions of this Article 400 shall not, be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

411. IMMUNITY. Except as otherwise specifically provided in this Article 400, the provisions of this Article 400 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to, or conferred upon, any unit, entity officer or employee of the Agency, by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

412. OTHER ENACTMENTS. Except as otherwise provided in this Article 400, benefits accorded to employees under this Article 400 shall supplement, and be available in addition to, defense or indemnification protection conferred by any other enactment of the Agency, or common law. Notwithstanding anything contained herein to the contrary, the Agency shall be entitled to contribution and/or indemnification by the employee and/or other agency in the event that such other agency is also obligated to provide a defense for the employee and/or pay any sums of monies by way of indemnification and/or judgment or award.

413. APPLICABILITY. The provisions of this Article 400 shall apply to all actions or proceedings specified herein which have been commenced, instituted or brought on or after the adoption of these By-laws.

414. NO DUTY TO DEFEND AND/OR INDEMNIFY.

(a) Notwithstanding anything to the contrary contained herein there shall be no duty of the Agency to defend or indemnify any employee unless the members of the Board finds (1) that the claim arose during the course of his normal employment and within the scope of his employment in a matter in which the Agency had an interest; (2) the employee was acting in discharge of a duty imposed or authorized by law, and (3) the employee acted in good faith and without malice.

(b) In the event the Agency assumes the duty of defense and in the event a court determines that the employee acted in bad faith or with malice or in a wanton or willful manner so as to cause the claim, or was not acting in a bona fide discharge of his or her municipal duties, the employee shall reimburse the Agency for all expenses incurred for defense of claims arising out of the alleged civil action or civil proceeding. Upon such finding by a court, the Agency shall have no duty to satisfy any judgment or claim against the employee, and in the event the Agency has satisfied or is ordered to satisfy said judgment or claim, the employee must reimburse the Agency for any sum paid for the said satisfaction.

415. SEVERABILITY. If any provisions of this Article 400 or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this Article 400, or the application of any such provision to any other person or circumstance.

Article 500 – MEETINGS

501. ANNUAL MEETINGS. The annual meeting of the Agency shall be held on the regular meeting day in the month of February of each year at the Sullivan County

Government Center, 100 North Street, Monticello, New York 12701 or at a meeting place designated by the Agency. If the Agency shall fail to hold an annual meeting in any year the officers shall continue in office until their successors shall be chosen and all proceedings of the Agency shall be regular and valid.

502. REGULAR MEETINGS. Regular meetings of the Agency may be held with such notice as required by law at such times and places as from time to time may be determined by resolution of the Agency.

503. SPECIAL MEETINGS. The Chairman of the Agency may, when the Chairman 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 on such notice as required by law. 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.

504. 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.

505. ORDER OF BUSINESS. At the regular meetings of the Agency the following shall be the order of business.

- (a) Roll call.
- (b) Reading and approval of the minutes of the previous meeting.
- (c) Bills and communications.
- (d) Reports of the Treasurer.
- (e) Report of the Committees or Administrative Director and staff.
- (f) Old business.
- (g) New business.
- (h) Adjournment.

All resolutions shall be reduced to written form and incorporated in the minutes of the meetings of the Agency.

The voting on all questions coming before the Agency may be by show of hands or calling for the ayes and nays unless a member shall request a roll call vote. In any event, the ayes and nays shall be recorded in the minutes of such meeting. Appointments may be voted upon by ballot. The affirmative vote of a majority of the members shall be the act of the Agency.

Article 600 – COMMITTEES

601. STANDING COMMITTEES. The Agency shall have the following standing committees:

(a) Audit and Finance Committee. There shall be an Audit and Finance Committee consisting of at least three Independent Members, as defined in Section 206 above, who shall be elected by a majority of the Board of the Agency at each annual meeting of the Agency and shall serve until the next annual meeting. To the extent practicable, members of the Audit and Finance Committee should be familiar with corporate financial and accounting practices. The Audit and Finance Committee shall oversee the accounting and financial reporting processes of the Agency and the audit of the Agency's financial statements. The Audit and Finance Committee shall also have the responsibility to review proposals for the issuance of debt by the Agency and make recommendations. The Audit and Finance Committee shall provide regular oversight of the financial operation and budgets of the Agency, and shall report to the Board of the Agency.

(b) Governance Committee. There shall be a Governance Committee consisting of at least three Independent Members, as defined in Section 206 above, who shall be elected by a majority of the Board of the Agency at each annual meeting of the Agency and shall serve until the next annual meeting. The Governance Committee shall keep the Board informed of current best governance practices, review corporate governance trends, update the Agency's corporate governance principles, and advise the appointing authority on the skills and experience required of potential Members.

602. SPECIAL COMMITTEES. The Board of the Agency, by resolution adopted by a majority of the Board, may create Special Committees, which shall have only the powers specifically delegated to them.

Article 700 – AMENDMENTS AND REPEAL

~~601.~~ 701. AMENDMENTS TO BY-LAWS. The By-Laws of the Agency shall be amended only with the approval of at least a majority of all 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 thereof has been previously given to all members of the Agency. The notice by this section cannot be waived.

~~602.~~ 702. EFFECT OF AMENDMENTS. The By-Laws heretofore in effect are hereby repealed and these By-Laws are intended to replace in their entirety such By-Laws as were heretofore in effect. Nothing contained herein is intended to affect the validity of any action taken by the Agency pursuant to By-Laws heretofore in effect.

Approved and adopted this ~~18th day of May, 2006~~ _____

Document comparison by Workshare Compare on Monday, August 05, 2019
11:18:06 AM

Input:	
Document 1 ID	netdocuments://4826-3177-1037/1
Description	IDA By-Laws
Document 2 ID	netdocuments://4826-3177-1037/2
Description	IDA By-Laws
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	42
Deletions	22
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	64

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- (c) is not a relative of an employee of the Agency; and
- (d) 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.

Article 300 — OFFICERS

301. OFFICERS. The officers of the Agency shall be a Chairman, one or more Vice Chairmen, a Secretary, and a Treasurer. There may be an Assistant Secretary and an Assistant Treasurer. Each of the foregoing offices shall be held by a member of the board of the Agency and except for the offices of Chairman and Vice Chairman, and Chairman and Secretary; one person may hold more than one office. Officers authorized to sign orders and checks shall give such bond for the faithful performance of the duties of such office as the Agency may determine.

302. CHAIRMAN. The Chairman shall preside at all meetings of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall sign all agreements, contracts, deeds, bonds, mortgages, and other instruments of indebtedness, and any other instrument of indebtedness. At each meeting the Chairman shall submit such recommendations and information as the Chairman may consider proper concerning the business, affairs and policies of the Agency.

303. VICE CHAIRMAN. A Vice Chairman shall perform the duties of the Chairman in the absence or incapacity of the Chairman; in case of the resignation or death of the

Chairman, a Vice Chairman shall perform such duties as are imposed on the Chairman until such time as the Agency shall appoint a successor Chairman.

304. SECRETARY. The Secretary shall keep the records of the Agency, shall act as Secretary of the meetings of the Agency and record all votes and shall keep a record of the proceedings of the Agency in a journal of proceedings to be kept for such purpose and shall perform all duties incident to the office. The Secretary shall keep in safe custody the seal of the Agency and shall have power to affix such seal to all contracts and other instruments authorized to be executed by the Agency.

305. ASSISTANT SECRETARY. The Assistant Secretary shall perform the duties of the Secretary in the absence or incapacity of the Secretary; 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 Agency shall appoint a successor Secretary.

306. TREASURER. The Treasurer 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 Agency may select. Unless otherwise provided by resolution, the Treasurer shall sign all orders and all checks for the payment of money; and shall pay out and disburse such moneys under the direction of Agency. If authorized, by resolution, the Chairman and, in the event of the absence or incapacity of the Chairman, a Vice Chairman, shall sign all orders and checks prepared by the Treasurer. The Treasurer shall keep regular books of account showing receipts and expenditures, and shall render to the Agency at regular intervals an account of all transactions and also of the financial condition of the Agency.

307. ASSISTANT TREASURER. The Assistant Treasurer shall perform the duties of the Treasurer in the absence or incapacity of the Treasurer; in case of the resignation or death of the Treasurer, the Assistant Treasurer shall perform such duties as are imposed on the Treasurer until such time as the Agency shall appoint a successor Treasurer.

308. ADDITIONAL DUTIES. The officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency by the By-Laws of the Agency, or by the rules and regulations of the Agency.

309. APPOINTMENT OF OFFICERS. The Chairman, Vice Chairmen, Secretary, Treasurer and any Assistant Secretary and/or Assistant Treasurer of the Agency except the first Chairman shall be appointed at the annual meeting of the Agency from among the members of the Agency, and shall hold office for one year or until their successors are appointed.

310. VACANCIES. In the event that the office of Chairman, Vice Chairman, Secretary, Treasurer and any Assistant Secretary and/or Assistant Treasurer shall become vacant, the Agency shall appoint a successor from among its membership at the next regular meeting, and such appointment shall be for the unexpired term of said office.

311. CHIEF EXECUTIVE OFFICER. The Agency shall appoint a Chief Executive Officer who shall be an officer of the Agency charged with the management of all projects of the Agency. The Chief Executive Officer may or may not be a member of the Board of the Agency.

312. CHIEF FINANCIAL OFFICER. The Agency may appoint a Chief Financial Officer who shall be an officer of the Agency charged with the management of the Agency's financial business and activities, subject to the direction of the Chief Executive Officer and the Board. The Chief Financial Officer may or may not be a member of the Board of the Agency.

313. CHIEF OPERATING OFFICER. The Agency may appoint a Chief Operating Officer who shall be an officer of the Agency charged with the management of the Agency's day to day business activities, subject to the direction of the Chief Executive Officer and the Board. The Chief Operating Officer may or may not be a member of the Board of the Agency.

314. EXECUTIVE DIRECTOR. The Agency may appoint an Executive Director who shall be an officer of the Agency and shall have general supervision over the administration of the business and affairs of the Agency, subject to the direction of the Chief Executive Officer and the Board.

315. ADDITIONAL PERSONNEL. The Agency may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by the New York State Industrial Development Act, as amended, and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel shall be determined by the Agency subject to the laws of the State of New York.

Article 400 – INDEMNIFICATION

401. INDEMNIFICATION. The New York State Legislature has enacted legislation permitting public entities, including industrial development agencies, to provide for the defense and indemnification of officers and employees of those agencies. This Article 400 implements that concept and the statutory intent set forth in Article 2, Section 18 of the Public Officers Law of the State of New York.

402. DEFINITION OF EMPLOYEE. The term "employee" for purposes of this Article 400 shall mean any commissioner, member of a public board or commission, trustee, director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment or employment in the service of the Agency whether or not compensated. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

403. DEFENSE.

- (a) Upon compliance by the employee with the provisions of Section 405 hereof, the Agency shall provide for the defense and indemnification of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting during the course of his employment and within the scope of his public employment or duties. This duty to provide for a defense and indemnification shall not arise where such civil action or proceeding is brought by, or at the behest of the Agency;
- (b) Subject to the conditions set forth in this Article 400, the employee shall be represented by Counsel to the Agency or an attorney employed or retained by the Agency for the defense of the employee. The Agency shall employ or retain an attorney for the defense of the employee whenever (1) the Agency does not have Agency Counsel, (2) the Agency determines, based upon its investigation and review of the facts and circumstances of the case, that representation by the Agency Counsel would be inappropriate, or (3) a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by Agency Counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such attorney employed or retained, from time to time, during pendency of the civil action or proceeding, subject to certification by the Chairman that the employee is entitled to representation under the terms and conditions hereof. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the Agency. Any dispute with respect to representation of multiple employees by Agency Counsel or by an attorney employed or retained for such purposes, or with respect to the amount of the fees or expenses shall be resolved by the court upon motion or by way of a special proceeding; and
- (c) Where the employee delivers process and a written request for a defense to the Agency, under Section 405 hereof, the Agency, shall take the necessary steps on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

404. DEFENSE AND INDEMNIFICATION.

- (a) The Agency, shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting during the course of his employment and within the scope of his public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the members of the Board of the Agency, or its insurance company. This obligation by the Agency to indemnity shall not apply to any claims against officers and employees of the Agency, currently outstanding, or reduced to judgment, or settlement;
- (b) Except as otherwise provided by law, this duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee;
- (c) Nothing in this section shall authorize the Agency to defend, indemnify or save harmless an employee with respect to any claims filed, or money recovered from an employee pursuant to Section 51 of the General Municipal Law or for any claims alleging

intentional wrongdoing or a reckless act; and

(d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail within five (5) days of the date of entry or settlement, upon the Chairman of the Agency and Agency Counsel, and if not inconsistent with the provisions of this resolution, the amount of such judgment or settlement shall be paid by the Agency.

405. DUTY TO NOTIFY. The duty to defend or indemnify and save harmless prescribed herein shall be conditioned upon:

(a) Delivery by the employee to Agency Counsel and to the Chairman of the Agency a written request to provide for his defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after he is served with such document, and

(b) The full cooperation of this employee in the defense of such action or proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

406. OTHER RIGHTS. The benefits conferred in this Article 400 shall inure only to employees as deemed herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this Article 400 be construed to affect, alter or repeal any provision of the Worker's Compensation Law.

407. NOTICE. This Article 400 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section Ten of the Court of Claims Act, Section 50 (e) of the General Municipal Law, or any other provisions of law.

408. INSURANCE. The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by, or under, the laws of the State of New York, or authorized by law to transact business in this state, against any liability imposed by the provisions of this Article 400 or to act as a self-insurer with respect thereto.

409. PAYMENTS. All payments made under the terms of this Article 400, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

410. INSURER RIGHTS. The provisions of this Article 400 shall not, be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

411. IMMUNITY. Except as otherwise specifically provided in this Article 400, the provisions of this Article 400 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to, or conferred upon, any unit, entity officer or employee of the Agency, by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

412. OTHER ENACTMENTS. Except as otherwise provided in this Article 400, benefits accorded to employees under this Article 400 shall supplement, and be available in addition to, defense or indemnification protection conferred by any other enactment of the Agency, or common law. Notwithstanding anything contained herein to the contrary, the Agency shall be entitled to contribution and/or indemnification by the employee and/or other agency in the event that such other agency is also obligated to provide a defense for the employee and/or pay any sums of monies by way of indemnification and/or judgment or award.

413. APPLICABILITY. The provisions of this Article 400 shall apply to all actions or proceedings specified herein which have been commenced, instituted or brought on or after the adoption of these By-laws.

414. NO DUTY TO DEFEND AND/OR INDEMNIFY.

(a) Notwithstanding anything to the contrary contained herein there shall be no duty of the Agency to defend or indemnify any employee unless the members of the Board finds (1) that the claim arose during the course of his normal employment and within the scope of his employment in a matter in which the Agency had an interest; (2) the employee was acting in discharge of a duty imposed or authorized by law, and (3) the employee acted in good faith and without malice.

(b) In the event the Agency assumes the duty of defense and in the event a court determines that the employee acted in bad faith or with malice or in a wanton or willful manner so as to cause the claim, or was not acting in a bona fide discharge of his or her municipal duties, the employee shall reimburse the Agency for all expenses incurred for defense of claims arising out of the alleged civil action or civil proceeding. Upon such finding by a court, the Agency shall have no duty to satisfy any judgment or claim against the employee, and in the event the Agency has satisfied or is ordered to satisfy said judgment or claim, the employee must reimburse the Agency for any sum paid for the said satisfaction.

415. SEVERABILITY. If any provisions of this Article 400 or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this Article 400, or the application of any such provision to any other person or circumstance.

Article 500 – MEETINGS

501. ANNUAL MEETINGS. The annual meeting of the Agency shall be held on the regular meeting day in the month of February of each year at the Sullivan County Government Center, 100 North Street, Monticello, New York 12701 or at a meeting place designated by the Agency. If the Agency shall fail to hold an annual meeting in any year the officers shall continue in office until their successors shall be chosen and all proceedings of the Agency shall be regular and valid.

502. **REGULAR MEETINGS.** Regular meetings of the Agency may be held with such notice as required by law at such times and places as from time to time may be determined by resolution of the Agency.

503. **SPECIAL MEETINGS.** The Chairman of the Agency may, when the Chairman 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 on such notice as required by law. 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.

504. **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.

505. **ORDER OF BUSINESS.** At the regular meetings of the Agency the following shall be the order of business.

- (a) Roll call.
- (b) Reading and approval of the minutes of the previous meeting.
- (c) Bills and communications.
- (d) Reports of the Treasurer.
- (e) Report of the Committees or Administrative Director and staff.
- (f) Old business.
- (g) New business.
- (h) Adjournment.

All resolutions shall be reduced to written form and incorporated in the minutes of the meetings of the Agency.

The voting on all questions coming before the Agency may be by show of hands or calling for the ayes and nays unless a member shall request a roll call vote. In any event, the ayes and nays shall be recorded in the minutes of such meeting. Appointments may be voted upon by ballot. The affirmative vote of a majority of the members shall be the act of the Agency.

Article 600 – COMMITTEES

601. **STANDING COMMITTEES.** The Agency shall have the following standing committees:

(a) Audit and Finance Committee. There shall be an Audit and Finance Committee consisting of at least three Independent Members, as defined in Section 206 above, who shall be elected by a majority of the Board of the Agency at each annual meeting of the Agency and shall serve until the next annual meeting. To the extent practicable, members of the Audit and Finance Committee should be familiar with corporate financial and accounting practices. The Audit and Finance Committee shall oversee the accounting and financial reporting processes of the Agency and the audit of the Agency's financial statements. The Audit and Finance Committee shall also have the responsibility to review proposals for the issuance of debt by the Agency and make recommendations. The Audit and Finance Committee shall provide regular oversight of the financial operation and budgets of the Agency, and shall report to the Board of the Agency.

(b) Governance Committee. There shall be a Governance Committee consisting of at least three Independent Members, as defined in Section 206 above, who shall be elected by a majority of the Board of the Agency at each annual meeting of the Agency and shall serve until the next annual meeting. The Governance Committee shall keep the Board informed of current best governance practices, review corporate governance trends, update the Agency's corporate governance principles, and advise the appointing authority on the skills and experience required of potential Members.

602. SPECIAL COMMITTEES. The Board of the Agency, by resolution adopted by a majority of the Board, may create Special Committees, which shall have only the powers specifically delegated to them.

Article 700 – AMENDMENTS AND REPEAL

701. AMENDMENTS TO BY-LAWS. The By-Laws of the Agency shall be amended only with the approval of at least a majority of all 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 thereof has been previously given to all members of the Agency. The notice by this section cannot be waived.

702. EFFECT OF AMENDMENTS. The By-Laws heretofore in effect are hereby repealed and these By-Laws are intended to replace in their entirety such By-Laws as were heretofore in effect. Nothing contained herein is intended to affect the validity of any action taken by the Agency pursuant to By-Laws heretofore in effect.

Approved and adopted this _____