

# City of Albany Capital Resource Corporation

21 Lodge Street  
Albany, New York 12207  
Telephone: (518) 434-2532  
Fax: (518) 434-9846

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**To:** Anthony J. Ferrara  
Willard A. Bruce  
Kathy Sheehan  
Susan Pedo  
Martin Daley  
C. Anthony Owens  
John R. Vero

Mike Yevoli  
Erik Smith  
Joe Scott  
John Reilly  
Megan Daly  
Brad Chevalier

**Date:** January 13, 2012

## AGENDA

The regular meeting of the City of Albany Capital Resource Corporation will be held on **Thursday, January 19, 2012 at 1:00 p.m. or immediately following the Regular Monthly Meeting of the AIDA** at the offices of the Capitalize Albany Corporation, 21 Lodge Street, Albany, NY 12207.

### Roll Call

### Reading of Minutes of the Regular Meeting of November 17, 2011

### Approval of Minutes of the Regular Meeting of November 17, 2011

### Reports of Committees

#### Report of Chief Executive Officer

#### Report of Chief Financial Office

- Financial Report

### Communications

### Unfinished Business

### New Business

- City of Albany Capital Resource Corporation Annual Housekeeping Resolution 2012
- Resolution Regarding Approval of Proposed Amendment to the Certificate of Incorporation of the City of Albany Capital Resource Corporation

### Other Business

- CRC Renewal Presentation

### Adjournment

\*The next regularly scheduled meeting is Thursday, February 16, 2012 at the offices of the Capitalize Albany Corporation, 21 Lodge Street, Albany, NY 12207

# City of Albany Capital Resource Corporation

21 Lodge Street  
Albany, New York 12207  
Telephone: (518) 434-2532  
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Anthony J. Ferrara, *Chairman*  
Willard A. Bruce, *Vice-Chairman*  
Susan Pedo, *Secretary*  
Kathy Sheehan, *Treasurer*  
Martin Daley

Michael Yevoli, *Chief Executive Officer*  
Erik J. Smith, *Chief Financial Officer*  
John Reilly, *Agency Counsel*

## CRC MINUTES OF REGULAR MEETING Thursday, November 17, 2011

Attending: Anthony Ferrara, Bill Bruce, Kathy Sheehan, Susan Pedo & Martin Daley

Absent:

Also Present: Joe Scott, Erik Smith, John Reilly, Mike Yevoli, Megan Daly, Brad Chevalier & Amy Gardner

Chairman Ferrara called the regular meeting of the CRC to order at 1:00 PM.

### Roll Call

Chairman Ferrara reported that all Board Members were present with the exception of Martin Daley.

### Reading of Minutes of the Regular Meeting of October 20th, 2011

Since the minutes of the previous meeting had been distributed to Board members in advance for review, Chairman Ferrara made a proposal to dispense with the reading of the minutes.

### Approval of Minutes of the Regular Meeting of October 20th, 2011

Chairman Ferrara made a proposal to approve the minutes of the Regular Board Meeting of October 20th, 2011 as presented. A motion to accept the minutes, as presented, was made by Martin Daley and seconded by Kathy Sheehan. A vote being taken, the minutes were accepted unanimously.

### New Business

#### IDA Audit Engagement Resolution

Erik Smith reviewed the engagement letter from Teal, Becker and Chiarmonte with the Board. The Audit Committee will meet with representatives of Teal, Becker and Chiarmonte to further discuss the scope of the audit. Work on the audit would begin in mid to late January and the financials would be produced by March 31<sup>st</sup> to remain in compliance with PAAA.

Chairman Ferrara presented the CRC Audit Engagement Resolution to the Board. A motion to adopt the Resolution was made by Bill Bruce and seconded by Martin Daley. A vote being taken, the Resolution passed unanimously.

**Unfinished Business**

None

**Reports of Committees**

None

**Report of Chief Executive Officer**

Mike Yevoli reported that work would begin on a report to be presented to the Common Council in March promoting the renewal of the Capital Resource Corporation.

**Report of Chief Financial Officer**

Erik Smith reviewed the CRC financial statement with the Board. Mr. Smith reported that the cash performance of the CRC has not changed since the previous month. There have been no additional closings since July and staff does not anticipate receiving any applications before the end of the year.

**Communications**

None

**New Business**

None

**Other Business**

None

There being no further business, Chairman Ferrara adjourned the meeting at 1:20PM

Respectfully submitted,

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Mike Yevoli, Assistant Secretary

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**City of Albany CRC**  
2011 Monthly Cash Position  
December 2011

	<b>ACTUAL</b>													
	January	February	March	April	May	June	July	August	September	October	November	December		YTD Total
<b>Beginning Balance</b>	\$ 3,101	\$ 4,601	\$ 260,820	\$ 260,842	\$ 153,792	\$ 135,679	\$ 85,524	\$ 244,796	\$ 229,398	\$ 217,541	\$ 187,808	\$ 177,198		\$ 3,101
<b>Revenue</b>														
<b>Fee Revenue</b>														
Application Fee	\$ 1,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 1,500
Agency Fee	-	256,200	-	-	-	-	159,263	-	-	-	-	-		415,463
Administrative Fee	-	-	-	-	-	-	-	-	-	-	-	-		-
Modification Fee	-	-	-	-	-	-	-	-	-	-	-	-		-
<b>Subtotal - Fee Revenue</b>	\$ 1,500	\$ 256,200	\$ -	\$ -	\$ -	\$ -	\$ 159,263	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 416,963
<b>Other Revenue</b>														
Interest Income	\$ 0	\$ 19	\$ 22	\$ 16	\$ 13	\$ 11	\$ 9	\$ 20	\$ 18	\$ 16	\$ 15	\$ 14		173
NYS BIC	-	-	-	-	-	-	-	-	-	-	-	-		-
Misc	-	-	-	157	-	-	-	-	-	-	-	-		157
<b>Subtotal - Other Revenue</b>	\$ 0	\$ 19	\$ 22	\$ 173	\$ 13	\$ 11	\$ 9	\$ 20	\$ 18	\$ 16	\$ 15	\$ 14		\$ 330
<b>Total - Revenue</b>	\$ 1,500	\$ 256,219	\$ 22	\$ 173	\$ 13	\$ 11	\$ 159,272	\$ 20	\$ 18	\$ 16	\$ 15	\$ 14		\$ 417,293
<b>Expenditures</b>														
Management Contract	\$ -	\$ -	\$ -	\$ 73,947	\$ 18,125	\$ 17,917	\$ -	\$ 15,417	\$ 11,875	\$ 10,625	\$ 10,625	\$ 17,500		\$ 176,031
Audits	-	-	-	-	-	-	-	-	-	-	-	-		-
Agency Counsel	-	-	-	-	-	-	-	-	-	-	-	-		-
ED Support	-	-	-	33,276	-	32,250	-	-	-	19,125	-	15,750		100,401
D & O Insurance	-	-	-	-	-	-	-	-	-	-	-	1,364		1,364
Misc.	-	-	-	-	-	-	-	-	-	-	-	-		-
<b>Total - Expenditures</b>	\$ -	\$ -	\$ -	\$ 107,224	\$ 18,125	\$ 50,167	\$ -	\$ 15,417	\$ 11,875	\$ 29,750	\$ 10,625	\$ 34,614		\$ 277,796
<b>Ending Balance</b>	\$ 4,601	\$ 260,820	\$ 260,842	\$ 153,792	\$ 135,679	\$ 85,524	\$ 244,796	\$ 229,398	\$ 217,541	\$ 187,808	\$ 177,198	\$ 142,598		\$ 142,598

**City of Albany CRC**

Fee Detail by Month

December 2011

	<b>Name</b>	<b>Application Fee</b>	<b>Agency Fee</b>	<b>Administration Fee</b>	<b>Modification Fee</b>	<b>TOTAL FEE</b>
<i>January</i>	The College of St. Rose	\$ 1,500	\$ -	\$ -	\$ -	\$ 1,500
		-	-	-	-	-
	<b>TOTAL</b>	<b>\$ 1,500</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,500</b>
<i>February</i>	St. Peter's Hospital of the City of Albany	\$ -	\$ 256,200	\$ -	\$ -	\$ 256,200
		-	-	-	-	-
	<b>TOTAL</b>	<b>\$ -</b>	<b>\$ 256,200</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 256,200</b>
<i>March</i>		\$ -	\$ -	\$ -	\$ -	\$ -
		-	-	-	-	-
	<b>TOTAL</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<i>April</i>		\$ -	\$ -	\$ -	\$ -	\$ -
		-	-	-	-	-
	<b>TOTAL</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<i>May</i>		\$ -	\$ -	\$ -	\$ -	\$ -
		-	-	-	-	-
	<b>TOTAL</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<i>June</i>		\$ -	\$ -	\$ -	\$ -	\$ -
		-	-	-	-	-
	<b>TOTAL</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

## City of Albany CRC

Fee Detail by Month

December 2011

	Name	Application Fee	Agency Fee	Administration Fee	Modification Fee	TOTAL FEE
<i>July</i>	The College of St. Rose	\$ -	\$ 159,263	-	-	159,263
	<b>TOTAL</b>	\$ -	\$ 159,263	\$ -	\$ -	\$ 159,263
<i>August</i>		\$ -	-	-	-	-
	<b>TOTAL</b>	\$ -	-	-	-	-
<i>September</i>		\$ -	-	-	-	-
	<b>TOTAL</b>	\$ -	-	-	-	-
<i>October</i>		\$ -	-	-	-	-
	<b>TOTAL</b>	\$ -	-	-	-	-
<i>November</i>		\$ -	-	-	-	-
	<b>TOTAL</b>	\$ -	-	-	-	-
<i>December</i>		\$ -	-	-	-	-
	<b>TOTAL</b>	\$ -	-	-	-	-
	<b>2011 TOTAL</b>	\$ 1,500	\$ 415,463	\$ -	\$ -	\$ 416,963
		<i>Application Fee</i>	<i>Agency Fee</i>	<i>Administration Fee</i>	<i>Modification Fee</i>	<i>TOTAL FEE</i>

**CITY OF ALBANY CAPITAL RESOURCE CORPORATION  
ANNUAL HOUSEKEEPING RESOLUTION 2012**

A regular meeting of City of Albany Capital Resource Corporation (the "Corporation") was convened in public session at the office of the Department of Development and Planning at 21 Lodge Street in the City of Albany, Albany County, New York on January 19, 2012 at 1:00 o'clock p.m., local time (or immediately following the regular monthly meeting of the City of Albany Industrial Development Agency).

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

**PRESENT:**

Anthony J. Ferrara	Chairman
Willard A. Bruce	Vice Chairman
Susan Pedo	Secretary
Hon. Kathy Sheehan	Treasurer
Martin Daley	Member
C. Anthony Owens	Member
John R. Vero	Member

**ABSENT:**

**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

Michael J. Yevoli	CEO - Capitalize Albany Corporation
Megan Daly	Department of Development and Planning
Erik Smith	CFO - Capitalize Albany Corporation
Bradley Chevalier	Economic Development Specialist, Capitalize Albany Corporation
Amy Gardner	Administrative Assistant, Capitalize Albany Corporation
John J. Reilly, Esq.	Agency Counsel
A. Joseph Scott, III, Esq.	Bond Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

**RESOLUTION APPROVING CERTAIN APPOINTMENTS AND ADMINISTRATIVE MATTERS OF THE CORPORATION.**

WHEREAS, the Corporation is authorized and empowered by the provisions of Section 1411 of the New York State Not-For-Profit Corporation Law (the "NFPCL") to take steps to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities, instruct or train individuals to improve or develop their capabilities for such jobs, carry on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, lessening the burdens of government and acting in the public interest; and

WHEREAS, the NFPCL and the Corporation's certificate of incorporation allow the Corporation to make certain appointments and approve certain administrative matters; and

WHEREAS, the members of the Corporation desire to make certain appointments and approve certain administrative matters;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CITY OF ALBANY CAPITAL RESOURCE CORPORATION, AS FOLLOWS:

Section 1. The Corporation hereby takes the following actions:

(A) Approves the appointments and the administrative matters described in Schedule A attached hereto.

(B) Approves, ratifies and confirms the policies described in Schedule A and contained in the Corporation's Policy Manual.

Section 2. The Corporation hereby authorizes the (Vice) Chairman and the Executive Director to take all steps necessary to implement the matters described in Schedule A attached.

Section 3. This Resolution shall take effect immediately.

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

Anthony J. Ferrara	VOTING	_____
Willard A. Bruce	VOTING	_____
Susan Pedo	VOTING	_____
Hon. Kathy Sheehan	VOTING	_____
Martin Daley	VOTING	_____
C. Anthony Owens	VOTING	_____
John R. Vero	VOTING	_____

The resolution was thereupon declared duly adopted.

STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF ALBANY                    )

I, the undersigned (Assistant) Secretary of City of Albany Capital Resource Corporation (the "Corporation"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Corporation held on January 19, 2012 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Corporation 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 due notice of the time and place of said meeting was given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Corporation 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 the Corporation this 19<sup>th</sup> day of January, 2012.

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(Assistant) Secretary

(SEAL)

SCHEDULE A

Confirmation of Regular Corporation Meeting Schedule

Third Thursday of each month at 1:00 o'clock p.m., local time (or immediately following the Agency meeting)

Appointment of Chief Executive Officer and Staff to the Corporation

Michael Yevoli, Chief Executive Officer  
Erik Smith, Chief Financial Officer

Appointment of Accounting Firm of the Corporation

Teal, Becker & Chiamonte, CPAs, P.C.

Appointment of Corporation Counsel

John J. Reilly

Appointment of Bond Counsel to the Corporation

Hodgson Russ LLP - A. Joseph Scott, III

Appointment of Bank of the Corporation and Accounts

Key Bank      Fee: 100904067  
Fee Money Market: 329687000896  
PMM: 325110017093  
PMM Money Market: 329687000904

Appointments to Governance Committee

John Vero – Chairman  
Martin Daley – Member  
Susan Pedo – Member

Appointments to Audit Committee

Susan Pedo – Chairperson  
Martin Daley – Member  
C. Anthony Owens – Member

Appointments to Finance Committee

Bill Bruce – Chairman  
Martin Daley – Member  
Susan Pedo – Member  
Kathy Sheehan – Member

Approval and Confirmation of Corporation Policies

Uniform Tax Exemption Policy  
Investment Policy  
Procurement Policy  
Enforcement Policy  
PAAA Policies

Appointment of Contract Officer

Michael Yevoli

Appointment of Investment Officer

Erik Smith

## Appendix A

## Uniform Tax Exemption Policy

CITY OF ALBANY CAPITAL RESOURCE CORPORATION

UNIFORM TAX EXEMPTION POLICY

SECTION 1. PURPOSE AND AUTHORITY. The City of Albany Capital Resource Corporation desires to establish a uniform tax exemption policy applicable to the provision of any financial assistance of more than one hundred thousand dollars to any project.

SECTION 2. DEFINITIONS. All words and terms used herein and defined in Title One of Article 18-A of the General Municipal Law (the "Act") shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

(A) "Administrative fee" shall mean a charge imposed by the Corporation to an applicant or project occupant for the administration of project.

(B) "Agency" shall mean the City of Albany Industrial Development Agency.

(C) "Applicant" shall mean an applicant for financial assistance.

(D) "City" shall mean the City of Albany.

(E) "Corporation fee" shall mean the normal charges imposed by the Corporation on an applicant or a project occupant to compensate the Corporation for the Corporation's participation in a project. The term "Corporation Fee" shall include not only the Corporation's normal administrative fee, but also may include (1) reimbursement of the Corporation's expenses, (2) rent imposed by the Corporation for use of the property of the Corporation, and (3) other similar charges imposed by the Corporation.

(F) "County" shall mean the County of Albany.

(G) "PILOT" or "Payment in Lieu of Tax" shall mean any payment made to the Corporation or an affected tax jurisdiction equal to all or a portion of taxes which would have been levied by or on behalf of an affected tax jurisdiction with respect to a project but for tax exemption obtained by reason of the involvement of the Corporation in such project, but such term shall not include Corporation fees. It is expressly understood that any PILOT or Payment in Lieu of Tax will refer to exemptions from New York sales and use taxes, mortgage recording taxes and real estate transfer taxes. The Corporation is not generally authorized under New York law to grant exemptions from New York real property taxes.

(H) "School District" shall mean the school district of the City of Albany.

(I) "Tax Exemption" shall mean any financial assistance granted to a project which is based upon all or a portion of the taxes which would otherwise be levied and assessed against a project but for the involvement of the Corporation.

SECTION 3. GENERAL PROVISIONS. (A) General Policy. The general policy of the Corporation is to grant tax exemption as hereinafter set forth to any project which has been or will be financed by the issuance by the Corporation of bonds, notes or other evidences of indebtedness with respect thereto.

(B) Exceptions. The Corporation intends to follow the general policy enunciated under subsection (A) of this Section absent special circumstances. The Corporation reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Corporation may consider factors which make the project unusual, which factors might include but not be limited to the following: (1) the magnitude and/or importance of any permanent private sector job creation and/or retention related to project; (2) whether the affected tax jurisdictions will be reimbursed by the project occupant if the project does not fulfill the purposes for which tax exemption was granted; (3) the impact of the project on existing and proposed businesses and/or economic development projects; (4) the amount of private sector investment generated or likely to be generated by the project; (5) demonstrated public support for the project; (6) the estimated value of the tax exemptions requested; and (7) the extent to which the proposed project will provide needed services and/or revenues to the affected tax jurisdictions. In addition, the Corporation may consider the other factors outlined in Section 874(4)(a) of the Act.

(C) Application. No request for a tax exemption shall be considered by the Corporation unless an application and environmental assessment form are filed with the Corporation on the forms prescribed by the Corporation pursuant to the rules and regulations of the Corporation, including a description of the proposed project and of each tax exemption sought with respect to the project, the estimated value of each tax exemption sought with respect to the project, the proposed financial assistance being sought with respect to the project, the estimated date of completion of the project, an analysis of the costs and benefits of the project, and whether such financial assistance is consistent with this part.

SECTION 4. SALES AND USE TAX EXEMPTION. (A) General. State law provides that purchases of tangible personal property by the Corporation or by an agent of the Corporation, and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Corporation, are exempt from sales and use taxes imposed pursuant to Article 28 of the Tax Law. The Corporation has a general policy of abating sales taxes applicable only to the initial acquisition, construction and/or equipping of each project with respect to which the Corporation grants financial assistance. The Corporation has no requirement for imposing a payment in lieu of tax arising from the exemption of a project from sales and/or use taxes applicable to the initial acquisition, construction and/or equipping of such project, except (1) as described in subsection (E) below or (2) in the circumstance where (a) a project is offered sales tax exemption on the condition that a certain event (such as the issuance of bonds by the Corporation with respect to the project) occur by a certain date and (b) such event does not occur, in which case the Corporation may require that the applicant make payments in lieu of sales tax to the New York State Department of Taxation and Finance.

(B) Period of Exemption. Except as set forth in subsection (A) above, the period of time for which a sales tax exemption shall be effective (the "tax exemption period") shall be determined as follows:

(1) General. Unless otherwise determined by the Corporation, the tax exemption for sales and use taxes shall be for the tax exemption period commencing with the issuance by the Corporation of bonds, notes or other evidences of indebtedness with respect to the project and ending on the date of completion of the project.

(2) Early Commencement. The tax exemption period may, at the discretion of the Corporation, commence earlier than the date of issuance by the Corporation of the Corporation's debt relating to the project, provided that (a) the Corporation has complied with the requirements of Section 859-a of the Act, (b) the Corporation thereafter adopts a resolution determining to

commence such period earlier, said resolution to be substantially in the form of resolutions used by the Agency, (c) the applicant agrees to the conditions of such resolution and supplies to the Corporation the materials required to be supplied to the Corporation thereunder, and (d) the Executive Director of the Corporation acknowledges satisfaction of all conditions to the granting of such tax exemption set forth in such resolution.

(3) Normal Termination. The tax exemption period will normally end upon the completion of the project. On construction projects, the parties shall agree on the estimated date of completion of the project, and the tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date which is six (6) months after the estimated date of such project. On non-construction project, the parties shall agree on the estimated date of completion of the project, and the tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date which is three (3) months after the estimated date of completion of the project. If the Corporation and the applicant shall fail to agree on a date for completion of the project, the Corporation shall on notice to the applicant make the determination on the basis of available evidence.

(4) Later Termination. The Corporation, for good cause shown, may adopt a resolution extending the period for completion of the project and/or extending the tax exemption period.

(C) Items Exempted. The sales and use tax exemption granted by the Corporation shall normally extend only to the following items acquired during the tax exemption period described in subsection (B) above:

(1) Items incorporated into the real property;

(2) Tangible personal property, including furniture, furnishings and equipment used to initially equip the project or otherwise forming part of the project, if purchased as agent of the Corporation;

(3) The rental of tools and other items necessary for the construction and/or equipping of the project, if rented as agent of the Corporation; and

(4) Office supplies, fuel and similar items consumed in the process of acquiring, constructing and/or equipping the project, if purchased as agent of the Corporation.

(D) Items Not Exempted. A sales and use tax exemption shall not be granted for the following:

(1) purchases occurring beyond the tax exemption period described in subsection (B) above;

(2) repairs, replacements or renovations of the project, unless such repairs, replacements or renovations constitute major capital-type expenses approved by the Corporation as a separate project in the manner contemplated by the Act; or

(3) operating expenses, unless such operating expenses constitute major capital-type expenses approved by the Corporation as a separate project in the manner contemplated by the Act.

(E) Percentage of Exemption. Unless otherwise determined by resolution of the Corporation, the sales and use tax exemption shall be equal to one hundred percent (100%) of the sales and/or use taxes that would have been levied if the project were not exempt by reason of the Corporation's involvement in the project. If an exemption of less than one hundred percent (100%) is determined by the Corporation, then the applicant shall be required to pay a PILOT to the Corporation equal to the applicable percentage of sales and/or use tax liability not being abated. The Corporation shall remit such PILOT within thirty (30) days of receipt by the Corporation to the affected tax jurisdictions in accordance with Section 874(3) of the Act.

(F) Confirmation Letter. The final act of granting a sales and/or use tax exemption by the Corporation shall be confirmed by the execution by an authorized officer of the Corporation of a confirmation letter by the Corporation. Such confirmation letter shall be in the form of a final sales tax letter issued by the Agency (where the exemption is permanent, because the Corporation is satisfied that any conditions precedent to such tax exemption, such as the issuance of bonds by the Corporation, have been satisfied) or an interim sales tax letter issued by the Agency (where such exemption is tentative, because there remain conditions precedent to such tax exemption which have not been satisfied). Each such confirmation letter shall describe the scope and term of the sales and use tax exemption being granted.

(G) Required Filings. The New York State Department of Taxation and Finance requires that proper forms and supporting material be filed with a vendor to establish a purchaser's entitlement to a sales tax exemption. For example, TSB-M-87(7) outlines the material that must be filed to establish entitlement to sales tax exemption as "agent" of the Corporation. It is the responsibility of the applicant and/or project occupant to ensure that the proper documentation is filed with each vendor to obtain any sales tax exemptions authorized by the Corporation.

(H) Required Reports and Records. Pursuant to Section 874(B), the applicant and/or project occupant is required to annually file with the New York State Department of Taxation and Finance a statement of the value of all sales and use tax exemptions claimed under the Act by the applicant and/or the project occupant and/or all agents, subcontractors and consultants thereof. The project documents shall require that (1) a copy of such statement will also be filed with the Corporation and (2) that the project occupant shall maintain, for a period ending seven (7) years after the last purchase made under the sales and use tax exemption, and make available to the Corporation at the request of the Corporation, detailed records which shall show the method of calculating the sales and use tax exemption benefit granted by the Corporation.

SECTION 5. MORTGAGE RECORDING TAX EXEMPTION. (A) General. State law provides that mortgages recorded by the Corporation are exempt from mortgage recording taxes imposed pursuant to Article 11 of the Tax Law. The Corporation has a general policy of abating mortgage recording taxes for the initial financing obtained from the Corporation with respect to each project with respect to which the Corporation issues debt which will be secured by a mortgage upon real property. In instances where the initial financing commitment provides for a construction financing of the Corporation to be replaced by a permanent financing of the Corporation immediately upon the completion of the project, the Corporation's general policy is to abate the mortgage recording tax on both the construction financing and the permanent financing.

(B) Refinancing. In the event that the Corporation retains title to a project, it is the general policy of the Corporation to abate mortgage recording taxes on any debt issued by the Corporation for the

purpose of refinancing prior debt issued by the Corporation, and on any modifications, extensions and renewals thereof, so long as the Corporation fees relating to the same have been paid.

(C) Non-Corporation Projects. In the event that the Corporation does not hold title to a project, it is the policy of the Corporation not to join in a mortgage relating to that project and not to abate any mortgage recording taxes relating to that project.

(D) Non-Corporation Financings. Occasionally, a situation will arise where the Corporation holds title to a project, the project occupant needs to borrow money for its own purposes (working capital, for example), and the lender will not make the loan to the project occupant without obtaining a fee mortgage or leasehold mortgage, if applicable, as security. In such instances, the policy of the Corporation is to consent to the granting of such mortgage and to join in such mortgage, so long as the following conditions are met:

(1) the documents relating to such proposed mortgage make it clear that the Corporation is not liable on the debt, and that any liability of the Corporation on the mortgage is limited to the Corporation's interest in the project;

(2) the granting of the mortgage is permitted under any existing documents relating to the project, and any necessary consents relating thereto have been obtained by the project occupant; and

(3) the payment of the Corporation fee relating to the same.

(E) Exemption Affidavit. The act of granting mortgage recording tax exemption by the Corporation is confirmed by the execution by an authorized officer of the Corporation of an exemption affidavit relating thereto. The form of the mortgage recording tax exemption affidavit shall be similar to the form used by the Agency.

(F) PILOT Payments. If the Corporation is a party to a mortgage that is not to be granted a mortgage recording tax exemption by the Corporation (a "non-exempt mortgage"), then the applicant and/or project occupant or other person recording same shall pay the same mortgage recording taxes with respect to same as would have been payable had the Corporation not been a party to said mortgage (the "normal mortgage tax"). Such mortgage recording taxes are payable to the County Clerk of the County, who shall in turn distribute same in accordance with law. If for any reason a non-exempt mortgage is to be recorded and the Corporation is aware that such non-exempt mortgage may for any reason be recorded without the payment of the normal mortgage tax, then the Corporation shall prior to executing such non-exempt mortgage collect a PILOT equal to the normal mortgage tax and remit same within thirty (30) days of receipt by the Corporation to the affected tax jurisdiction in accordance with Section 874(3) of the Act.

SECTION 6. REAL ESTATE TRANSFER TAXES. (A) Real Estate Transfer Tax. Article 31 of the Tax Law provides for the imposition of a tax upon certain real estate transfers. Section 1405(b)(2) of the Tax Law provides that transfers into the Corporation are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Corporation back to the same entity which transferred such property to the Corporation are exempt from such tax. The general policy of the Corporation is to impose no payment in lieu of tax upon any real estate transfers to or from the Corporation.

(B) Required Filings. It shall be the responsibility of the applicant and/or project occupant to ensure that all documentation necessary relative to the real estate transfer tax are timely filed with the appropriate officials.

SECTION 7. PROCEDURES FOR DEVIATION. (A) General. In the case where the Corporation shall determine that any policy of the Corporation as herein established is inappropriate or unfair, the Corporation may determine:

(1) the amount of the tax exemption, the amount and nature of the PILOT, the duration of the exemption and of the PILOT and whether or not an exemption of any kind shall be granted and shall impose such terms and conditions as shall be just and proper; and

(2) the Corporation shall give written notice of the proposed deviation from the policy set forth herein to each affected taxing jurisdiction setting forth the terms and conditions of the deviation and the reasons therefor.

(B) Troubled Projects. Where a project is owned and operated by the Corporation or has been acquired by the Corporation for its own account after a failure of a project occupant, the project shall at the option of the Corporation be exempt from all taxes in accordance with law.

(C) Unusual Projects. Where a project is unusual in nature and requires special considerations related to its successful operations as demonstrated by appropriate evidence presented to the Corporation, the Corporation shall consider the granting of a deviation from the established exemption policy in accordance with the procedures provided in the title. The Corporation may authorize a minimum payment in lieu of tax or such other arrangement as may be appropriate.

SECTION 8. ANNUAL REVIEW OF POLICIES. (A) General. At least annually, the Corporation shall review its tax exemption policies to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate. Unless otherwise provided by resolution, such annual review shall take place at the regular annual meeting of the Corporation, notice for comments on such policies shall be circulated as provided by law for input from the City of Albany and affected tax jurisdictions, and adoption of any changes shall take not less than 10 days thereafter. The Executive Director shall be responsible for conducting an annual review of the tax exemption policy and for an evaluation of the internal control structure established to ensure compliance with the tax exemption policy which shall be submitted to the Corporation for approval. The thirty day comment period shall not apply to the adoption of the original policies of the Corporation which said policies shall become effective as herein provided.

## Investment Policy

## CITY OF ALBANY CAPITAL RESOURCE CORPORATION

### INVESTMENT POLICY

**SECTION 101. PURPOSE AND AUTHORITY.** (A) Corporation Funds. The purpose of this Part is to implement Section 858-a(3) of Title One of Article 18-A of the General Municipal Law (the “Act”), and to make the Act applicable to deposits and investments made by City of Albany Capital Resource Corporation (the “Corporation”) of funds for the use and account of the Corporation (“Corporation Funds”).

(B) Non-Corporation Funds. The provisions of this Policy shall not apply to funds derived from the sale of bonds, notes or other obligations issued to fund a particular project for the benefit of a particular applicant, or any other funds of the Corporation which are not Corporation Funds.

**SECTION 102. DEPOSITS OF CORPORATION FUNDS.** (A) Designation of Depositories. The Corporation shall by resolution or resolutions of the directors of the Corporation designate one or more banks or trust companies (each, a “Depository”) for the deposit of Corporation Funds received by the treasurer or any other officer of the Corporation authorized by law or the by-laws of the Corporation to make deposits. Such resolution or resolutions shall specify the maximum amount that may be kept on deposit at any time in each Depository. Such designations and amounts may be changed at any time by a further resolution of the directors of the Corporation.

(B) Security. All Corporation Funds in excess of the amount insured under the provisions of the Federal Deposit Insurance Act as now or hereinafter amended shall be secured in accordance with the provisions of Section 10(3) of the General Municipal Law. Generally, Section 10(3) of the General Municipal Law provides that Corporation Funds may be secured by (1) a pledge of “eligible securities” (as defined in Section 10(1) of the General Municipal Law), together with a security agreement and custodial agreement meeting the requirements of Section 10(3)(a) of the General Municipal Law, or (2) an “eligible surety bond” or an “eligible letter of credit” (as such quoted terms are defined in Section 10(1) of the General Municipal Law) securing 100% of such Corporation Funds.

**SECTION 103. INVESTMENTS OF CORPORATION FUNDS.** (A) Investment Policy. It is the general policy of the Corporation that Corporation Funds not required for immediate expenditure shall be invested in the types of investments as described in subsection (C) below. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived. The Corporation has considered issues of yield, convenience and safety and its general policy regarding the investment of Corporation Funds will be to purchase from local banks the investments described in Section 103(C)(1) hereof. The Corporation has considered issues of yield, convenience and safety and its general policy regarding the investment of Corporation Funds will be to purchase from local banks the investments described in Section 103(C)(1) hereof.

(B) Designation of Investment Officers. The Treasurer, the Chairman and any other officer or employee of the Corporation so authorized by the by-laws of the Corporation or by resolution of the directors of the Corporation (each, an “Investment Officer”) are authorized to temporarily invest Corporation Funds not required for immediate expenditure. Any designation of an Investment Officer

made by resolutions of the directors of the Corporation may be changed at any time by a further resolution of the directors of the Corporation.

(C) Types of Investments. Except as otherwise provided by resolution of the directors of the Corporation, an Investment Officer may invest Corporation Funds in any obligation described in Section 11(2) and Section 11(3) of the General Municipal Law. Generally, Sections 11(2) and 11 of the General Municipal Law permit the following types of investments:

(1) special time deposits in, or certificates of deposit issued by, any bank or trust company located and authorized to do business in the State of New York, provided that such deposit account or certificate of deposit is secured in the same manner as is provided for securing deposits of Corporation Funds by Section 10(3) of the General Municipal Law;

(2) obligations of, or obligations where the payment of principal and interest are guaranteed by, the United States of America;

(3) obligations of the State of New York; and

(4) with the approval of the State Comptroller, tax anticipation notes and revenue anticipation notes issued by any municipality or school district or district corporation organized under the laws of the State of New York.

(D) Custodians. The Corporation may, by resolution of the directors of the Corporation, authorize the Investment Officers to turn over the physical safekeeping and evidences of the investments made pursuant to subsection (C) of this Section (“Corporation Investments”) to any entity authorized pursuant to Section 11(4) of the General Municipal Law to act as a custodian of Corporation Investments, but only upon compliance with the requirements of Section 11(4) of the General Municipal Law. Generally, Section 11(4) of the General Municipal Law allows the following types of entities to act as custodians of Corporation Investments:

(1) any bank or trust company incorporated in the State of New York;

(2) any national bank located in the State of New York; and

(3) any private banker duly authorized by the New York State Superintendent of Banks to engage in business in New York State which maintains a permanent capital of not less than one million dollars in New York State.

(E) Commingling. Any Corporation Funds invested pursuant to this Section may be commingled for investment purposes upon compliance with the requirements of Section 11(6) of the General Municipal Law. Generally, Section 11(6) of the General Municipal Law allows commingling of Agency Investments so long as (1) such investment is payable or redeemable at the option of the Corporation within such time as the proceeds are needed by the Corporation, (2) the separate identity of such funds are maintained at all times, and (3) income received on such commingled monies is credited on a pro rata basis to the fund or account from which the monies were invested.

(F) Proper Records. The treasurer of the Corporation shall maintain (or cause the Investment Officers to maintain) a proper record of all books, notes, securities or other evidences of indebtedness held by or for the Corporation for purposes of investment. Such record shall at least (where applicable) (1)

identify the security, (2) the fund for which held, (3) the place where kept, (4) the date of sale or other disposition, and (5) the amount received from such sale or other disposition.

(G) Sample Resolution. Attached hereto as **Schedule A** is a sample form of resolution naming Depositories and Investment Officers pursuant to this Part and restricting the types of investments in which an Investment Officer may invest Corporation Funds.

**SECTION 104. INTERNAL CONTROLS.** (A) Periodic Reviews. To the maximum extent possible, the Executive Director of the Corporation shall prepare and submit to the directors of the Corporation at each regular meeting of the Corporation (but not more often than monthly), a summary showing the amount of Corporation Funds on deposit in each Depository and the general nature of the investment of such Corporation Funds. Such reports shall be prepared within thirty (30) days of the end of each fiscal quarter. The treasurer shall in turn present such reports at the next regularly scheduled meeting of the Corporation following the completion of such report.

(B) Annual Report. Within thirty (30) days of the end of each fiscal year, the Chief Executive Officer of the Corporation shall prepare and submit to the directors of the Corporation an annual investment report (the "Annual Investment Report") showing the deposits and investments of Corporation Funds as of the beginning of such fiscal year, a summary of the changes in such amounts during such fiscal year, a summary of the earnings thereon during such fiscal year, and the balance thereof as of the end of such fiscal year. The Treasurer of the Corporation shall then present said report to the directors of the Corporation at the last regular meeting of the Corporation for the fiscal year.

(C) Annual Audit. The Annual Investment Report shall be audited by the Corporation's independent certified public accountant as part of the Corporation's annual general audit.

(D) Annual Review. The directors of the Corporation shall review the Annual Investment Report and the annual audit and this Part, and shall make any amendments to this Part necessary to achieve the purposes of this Part.

**SCHEDULE "A"**

**RESOLUTION NAMING DEPOSITORIES  
AND INVESTMENT OFFICERS  
AND RESTRICTING TYPES OF INVESTMENTS**

**WHEREAS**, City of Albany Capital Resource Corporation (the "Corporation") is a not-for-profit corporation of the State of New York duly established pursuant to Section 1411 of the New York State Not-For-Profit Corporation Law (the "NFPCL"); and

**WHEREAS**, pursuant to the Corporation's Investment Policy, the Corporation has decided to have Section 10 and Section 11 of the General Municipal Law apply to the deposit and investment of funds for the Corporation's own use and account ("Corporation Funds"); and

**WHEREAS**, the Corporation Investment Policy was adopted by the directors of the Corporation on \_\_\_\_\_; and

**WHEREAS**, the directors of the Corporation now desire to determine certain matters required to be determined pursuant to the Deposit and Investment Policy;

**NOW, THEREFORE, BE IT RESOLVED BY THE DIRECTORS OF CITY OF ALBANY CAPITAL RESOURCE CORPORATION AS FOLLOWS:**

**SECTION 1.** Pursuant to the Investment Policy, the Corporation hereby (A) designates the following banks and/or trust companies as depositories (each, a "Depository") for the deposit of Corporation Funds received by the Corporation, and (B) determines that the maximum amount that may be kept on deposit in each such depository is the amount set forth opposite the name of such depository in the following table:

<u>INSTITUTION</u>	<u>MAXIMUM AMOUNT TO BE ON DEPOSIT</u>
_____	\$ _____
_____	\$ _____

**SECTION 2.** Pursuant to the Investment Policy, the following officers of the Corporation (each, an "Investment Officer") are authorized to temporarily invest Corporation Funds not required for immediate expenditure:

<u>NAME</u>	<u>OFFICE</u>
_____	_____
_____	_____
_____	_____

**SECTION 3.** Unless otherwise determined by resolution of the directors of the Corporation, Corporation Funds shall be kept in insured certificates of deposit, insured money market accounts or other accounts of a Depository which are insured by the Federal Deposit Insurance Corporation, and no Corporation Funds shall be deposited in an account if such deposit would cause such account to exceed the maximum insured limit.

**SECTION 4.** This resolution shall take effect immediately, and shall remain in effect, as modified, amended, supplemented by subsequent resolutions of the directors of the Corporation, until the same may be rescinded by subsequent resolutions of the directors of the Corporation.

## Procurement Policy

## CITY OF ALBANY CAPITAL RESOURCE CORPORATION

### PROCUREMENT POLICY

SECTION 1. PURPOSE AND AUTHORITY. The purpose of this procurement policy (the "Policy") is to outline the procurement policy of City of Albany Capital Resource Corporation (the "Corporation") applicable to procurements of goods and services paid for by the Corporation for its own use and benefit.

SECTION 2. SECURING GOODS AND SERVICES. All goods and services will be secured by use of written requests for proposals, written quotations, verbal quotations, or any other method that assures that goods will be purchased at the lowest price and that favoritism will be avoided except for in the following circumstances: Purchases costing less than \$500; goods purchased from agencies for the blind or severely handicapped pursuant to Section 175-b of the State Finance Law; goods purchased from correctional institutions pursuant to Section 186 of the Correction Law; Purchases under state contracts pursuant to Section 104 of the General Municipal Law; Purchases under county contracts pursuant to Section 103(3) of the General Municipal Law; or Purchases pursuant to Section 4 of this Policy.

SECTION 3. METHOD OF PURCHASE. The following method of Purchase will be used when required by this Policy in order to achieve the highest savings:

<u>Estimated Amount of Purchase Contract</u>	<u>Method</u>
\$500-\$2,999	2 verbal quotations
\$3,000 and above	3 written/fax quotations or written request for proposals
<u>Estimated Amount of Public Works Contract</u>	<u>Method</u>
\$500-\$2,999	2 verbal quotations
\$3,000-\$4,999	2 written/fax quotations
\$5,000 and above	3 written/fax quotations or written request for proposals

(B) Number of Proposals or Quotations. A good faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or quotations, the purchaser will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement.

(C) Documentation. Documentation is required of each action that is taken in connection with any procurement. Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offeror. This documentation will include an explanation of how the reward will achieve savings or how the offeror was not responsible. A determination that the offeror is not responsible shall be made by the purchaser and may not be challenged under any circumstances.

SECTION 4. CIRCUMSTANCES WHERE SOLICITATION OF ALTERNATIVE PROPOSALS AND QUOTATIONS NOT IN BEST INTEREST. This Policy may contain circumstances when, or types of procurements for which, in the sole discretion of the directors of the Corporation, the solicitation of

alternative proposals or quotations will not be in the best interest of the Corporation. In the following circumstances, it may not be in the best interests of the Corporation to solicit quotations or document the basis for not accepting the lowest bid:

(A) Professional Services. Professional services or services requiring special or technical skill, training or expertise. The individual, company or firm must be chosen based on accountability, reliability, responsibility, skill, conflict of interests, reputation, education and training, judgement, integrity, continuity of service and moral worth. Furthermore, certain professional services to be provided to the Corporation, e.g., legal and accounting services, impact liability issues of the Corporation and its directors, including securities liability in circumstances where the Corporation is issuing bonds. These qualifications and the concerns of the Corporation regarding its liability and the liability of its directors are not necessarily found or addressed in the individual, company or firm that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

In determining whether a service fits into this category, the Corporation shall take into consideration the following guidelines: (a) whether the services are subject to state licensing or testing requirements; (b) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and (c) whether the services require a personal relationship between the individual and the directors of the Corporation. Professional or technical services shall include but not be limited to the following: services of an attorney (including bond counsel); services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing, editing or art work; management of Corporation-owned property; real estate brokerage services; appraisers; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

(B) Emergency Purchases. Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety or welfare of the public. This section does not preclude alternate proposals if time permits.

(C) Purchases of Secondhand Goods. If alternate proposals are required, the Corporation is precluded from purchasing surplus and second-hand goods at auctions or through specific advertised sources where the best prices are usually obtained. It is also difficult to try to compare prices of used goods and a lower price may indicate an older product.

(D) Goods or Services Under \$500. The time and documentation required to Purchase through this Policy may be more costly than the item itself and would therefore not be in the best interests of the taxpayer. In addition, it is not likely that such de minimis contracts would be awarded based on favoritism.

(E) Special Findings. In the event the Corporation determines that the solicitation of alternative proposals or quotations is not in the best interests of the Corporation, the Corporation must make such determination by resolution duly adopted and entered into the minutes of the Corporation. Such resolution should include any findings described in this Section 4 supporting such determination.

**SECTION 5. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN.** (A) All Corporation documents soliciting bids or proposals for Corporation contracts shall contain or make reference to the following provisions:

1. The Corporation will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority

group members and women are afforded equal employment opportunities without discrimination. For purposes of this Section, affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; and

2. The Corporation shall state, in all solicitations or advertisements for employees, that, in the performance of the Corporation contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(B) Any contract awarded by the Corporation will include the provisions of Section 5(A) hereof in any subcontract, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the Corporation contract.

(C) The provisions of this Section 5 shall not be binding upon contractors or subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate or distinct from the Corporation contract as expressed by its terms.

(D) In the implementation of this Section 5, the Corporation shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this Section. The Corporation shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such law and if such duplication or conflict exists, the Corporation shall waive the applicability of this Section 5 to the extent of such duplication or conflict.

(E) The Corporation shall ensure that “certified businesses” (as defined in Section 310 of the Executive Law of the State of New York) shall be given the opportunity for meaningful participation in the performance of Corporation contracts and to identify those Corporation contracts for which certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of Corporation contracts so as to facilitate the award of a fair share of Corporation contracts to such businesses.

SECTION 6. POLICY REVIEW. This policy will be reviewed annually.

## Enforcement Policy

## **CITY OF ALBANY CAPITAL RESOURCE CORPORATION**

### **ENFORCEMENT OF PROJECTS**

1. **PURPOSE AND AUTHORITY.** The purpose of this Part is to outline the procedures utilized by the City of Albany Capital Resource Corporation (the “Corporation”) to review compliance with Corporation requirements relating to job creation, retention and reporting.

2. **JOB CREATION AND RETENTION.** When considering applications for financial assistance, the Corporation will consider and review the job creation and retention information contained in the application completed by the applicant.

#### **3. REQUIREMENTS OF THE APPLICANT.**

(A) Background. In order to satisfy its internal reporting and policy requirements and other requirements under applicable law, the Corporation will require applicants for financial assistance to satisfy the requirements described in paragraph 3(B) below.

(B) Applicant Requirements. Each applicant for financial assistance from the Corporation will agree to satisfy the following requirements as a condition to the receipt of such financial assistance:

(1) Except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the project will be listed with the New York State Department of Labor Community Services Division (the “DOC”) and with the City of Albany Department of Administrative Services and Workforce Development, such programs collectively with the DOC, hereinafter referred to as the “Workforce Investment Program”.

(2) Except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in the Workforce Investment Program who shall be referred by DOC and the City of Albany Department of Administrative Services and Workforce Development for new employment opportunities created as a result of the Project.

(3) The applicant agrees, whenever requested by the Corporation, to provide and certify or cause to be provided and certified such information concerning the Applicant, its finances and other topics as the Corporation from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Corporation to make any reports required by law or governmental regulation.

(4) Within sixty (60) days after the end of each calendar year, the applicant shall furnish to the Corporation a certificate of an Authorized Representative of the applicant stating that no Event of Default under the Installment Sale Agreement [or Lease Agreement or Loan Agreement] has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of the Bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.

(5) The applicant shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

(6) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the applicant agrees to file with the Corporation, no later than sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the Project Facility and certain other matters, the initial said report to be in substantially the form annexed as Schedule A attached hereto, and subsequent reports to be in the form annexed as Schedule B attached hereto.

#### 4. COMPLIANCE.

(A) Compliance. The City of Albany Department of Administrative Services and Workforce Development (“DASWD”) will act as agent to the Corporation to review and report on compliance by applicants with the requirements described in paragraph 3(B) above. The obligations of DASWD regarding compliance will be described in a service contract between the Corporation and DASWD.

(B) Annual Reports. Within seventy-five (75) days after the end of each calendar year, DASWD will provide the Corporation with an annual report describing the compliance by applicants with the requirements described in paragraph 3(B) above, including the filing of annual reports and the number of jobs created and retained by the applicant.

(C) Corporation Review. The Corporation will review the report prepared by DASWD at a regular meeting of the Corporation. After the review of the report prepared by DASWD, the Corporation will take such action as it deems necessary, including but not limited to, (1) scheduling meetings with applicants to review non-compliance and to discuss remedial actions, (2) considering enforcement action against applicants that fail to comply with the requirements described in paragraph 3(B) above, as described in paragraph 5 below, and (3) preparation of letters of commendation or other forms of congratulation to those applicants that have created and/or retained jobs consistent with (or in excess of) the estimates contained in the applicant’s original application to the Corporation.

## 5 ENFORCEMENT.

(A) General. Upon completion of the report prepared by DASWD regarding compliance by applicants with the requirements described in paragraph 3(B) above, the Corporation will initiate enforcement action against those applicants that have failed to comply with such requirements.

(B) Enforcement Action. Enforcement action by the Corporation shall include, but not be limited to, the following:

- (1) Requesting the information and/or compliance by a final notice letter.
- (2) Forwarding an event of default notice to the involved parties, including the lender.
- (3) Notifying appropriate New York State agencies of the applicant's failure to comply with such requirements.
- (4) Terminating the financial assistance provided by the Corporation.

SCHEDULE A

INITIAL EMPLOYMENT REPORT

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

Please complete the following chart describing your projected employment plan following receipt of financial assistance (the "Financial Assistance") from City of Albany Capital Resource Corporation (the "Corporation"):

Current and Planning Full Time Occupations in Company	Current Number Full Time Jobs Per Occupation	Estimated Number of Full Time Jobs After Completion of the <u>Project</u>		
		1 year	2 year	3 year

PROFESSIONAL

SKILLED/UNSKILLED

SEMI-SKILLED

Please indicate the estimated hiring dates for the new jobs shown above and any special recruitment or training that will be required.

Are the employees of your firm currently covered by a collective bargaining agreement?  
Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, Name and Local

Prepared by:

Title:

Signature:

Date:

SCHEDULE B

SUBSEQUENT EMPLOYMENT REPORT

EMPLOYMENT PLAN STATUS REPORT

To be Filed By \_\_\_\_\_

COMPANY NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TYPE OF BUSINESS \_\_\_\_\_

CONTACT PERSON \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_

OCCUPATION	NUMBER OF NEW JOBS	NUMBER LISTED	NUMBER FILLED	
			JOB SERVICE DIVISION APPLICANTS	JOB TRAINING PARTNERSHIP ACT ELIGIBLE PERSONS

With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

## PAAA Policies

## CITY OF ALBANY CAPITAL RESOURCE CORPORATION

### PAAA OF 2005 POLICIES

#### A. CODE OF ETHICS

1. Generally. This Code of Ethics applies to both the Directors and the employees of City of Albany Capital Resource Corporation (the "Corporation"). The purpose of this Code of Ethics is to promote honest and ethical conduct and compliance with the law.

2. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) "Corporation" shall mean the City of Albany Capital Resource Corporation.

(b) "employee" shall mean any employee of the City of Albany Capital Resource Corporation.

3. Rule With Respect to Conflicts of Interest. No Director or employee of the Corporation 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.

4. Standards.

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

(b) No Director or employee of the Corporation 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 Director or employee of the Corporation 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 Director or employee of the Corporation should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

(e) No Director or employee of the Corporation should engage in any transaction as representative or agent of the Corporation 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 Director or employee of the Corporation 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 Director or employee of the Corporation 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 Director or employee of the Corporation 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 Director or employee of the Corporation, 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 Corporation.

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

5. Violations. In addition to any penalty contained in any other provision of law any such Director 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.

## **B. COMPENSATION POLICY**

1. Generally. Directors of the City of Albany Capital Resource Corporation shall serve without compensation.

2. Reimbursement. Directors may be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties. Directors may not be compensated for rendering services to the Corporation in any capacity other than Director unless such other compensation is reasonable and otherwise permitted by the Corporation's By-Laws.

## C. RETALIATORY ACTION POLICY

1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) “Employee” means an individual who performs services for and under the control and direction of an employer for wages or other remuneration.

(b) “Employer” means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

(c) “Law, rule or regulation” includes any duly enacted statute or ordinance or any rule or regulation promulgated pursuant to any federal, state or local statute or ordinance.

(d) “Public body” includes the following:

(i) the United States Congress, any state legislature, or any popularly-elected local governmental body, or any member or employee thereof;

(ii) any federal, state, or local judiciary, or any member or employee thereof; or any grand or petit jury;

(iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof;

or

(iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer.

(e) “Retaliatory personnel action” means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

(f) “Supervisor” means any individual with an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

2. Prohibitions. An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

3. Application. The protection against retaliatory personnel action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has brought the activity, policy or practice in violation of law, rule or regulation to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice.

4. Violation; Remedy.

(a) An employee who has been the subject of a retaliatory personnel action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within one year after the alleged retaliatory personnel action was taken.

(b) Any action authorized by this section may be brought in the city in which the alleged retaliatory personnel action occurred, in the city in which the complainant resides, or in the city in which the employer has its principal place of business.

(c) It shall be a defense to any action brought pursuant to this section that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section. It shall also be a defense that the individual was an independent contractor.

(d) Notwithstanding the provisions of paragraphs (a) and (c) of this subdivision, a health care employee who has been the subject of a retaliatory action by a health care employer in violation of section seven hundred forty-one of this article may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory personnel action was taken. In addition to the relief set forth in that subdivision, the court, in its discretion, based upon a finding that the employer acted in bad faith in the retaliatory action, may assess the employer a civil penalty of an amount not to exceed ten thousand dollars, to be paid to the improving quality of patient care fund established pursuant to section ninety-seven-aaaa of the state finance law.

5. Relief in any action brought pursuant to subdivision four of this section, the court may order relief as follows:

- (a) an injunction to restrain continued violation of this section;
- (b) the reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;
- (c) the reinstatement of full fringe benefits and seniority rights;
- (d) the compensation for lost wages, benefits and other remuneration; and
- (e) the payment by the employer of reasonable costs, disbursements, and attorney's fees.

6. Employer Relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Existing Rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this section shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule or regulation or under the common law.

#### **D. POLICY FOR TRAVEL OF AGENCY DIRECTORS**

1. Generally. It is the policy of the Corporation that uniform procedures will be followed for the authorization and expenditure of funds for travel associated with Corporation's business.

(a) Expenses incurred by the Corporation's Directors, to be reimbursed from the Corporation's funds, must be approved in advance by the Board Chairman. The Chairman will advise the Chief Executive Officer of all requests received.

(b) All requests for reimbursement of expenses incurred by the Chairman must be approved by the Directors of the Corporation.

(c) The Chairman will inform the Chief Executive Officer or his/her designee of all pre-approved expenses of the Directors.

(d) The Chief Executive Officer or his/her designee will assist a Director, if desired, with arrangements for travel and the accompanying reimbursement procedures.

## E. REAL PROPERTY ACQUISITION POLICY

### SECTION 1. DEFINITIONS.

(A) “Acquire” or “acquisition” shall mean acquisition of title or any other beneficial interest in personal or real property in accordance with the applicable provisions of Article 18-A of the New York State General Municipal Law.

(B) “Contracting officer” shall mean the officer or employee of the City of Albany Capital Resource Corporation (hereinafter, the “Corporation”) who shall be appointed by resolution to be responsible for the acquisition of property.

(C) “Property” shall mean personal property in excess of five thousand dollars (\$5,000.00) in value, and real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

### SECTION 2. DUTIES.

(A) The Corporation shall maintain adequate inventory controls and accountability systems for all property owned by the Corporation and under its control

(B) The Corporation shall prepare, not less frequently than annually, a report listing all real property owned in fee by the Corporation. Such report shall consist of a list and full description of all real and personal property acquired of during such period. The report shall contain the price paid by the Corporation and the name of the seller for all such property acquired by the Corporation during such period

### SECTION 3. ACQUISITION OF PROPERTY.

(A) Supervision and Direction. Except as otherwise provided herein, the duly appointed contracting officer (the “Contracting Officer”) shall have supervision and direction over the acquisition of property of the Corporation. The Corporation shall have the right to acquire its property for any valid corporate purpose.

(B) Appraisal Report. An independent appraiser shall be hired to provide an opinion of fair market value before the Corporation shall make an offer with respect to the acquisition of the property. The appraiser should have a professional affiliation with a national appraisal organization and must not have an interest in the property (or be retained as an agent to sell the property). The appraisal report shall be in form and substance satisfactory to the Corporation and shall be included in the record of the transaction.

Notwithstanding the foregoing, the preparation of an appraisal report shall not be required where the Corporation is acquiring the property pursuant to a donation, or if the valuation of the property is uncomplicated and the fair market value is determined to be less than \$10,000.

(C) Method of Acquisition. Unless otherwise permitted by applicable law, the Corporation shall acquire property for not more than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Corporation and/or contracting officer deems proper. The Corporation may execute such documents for

the acquisition of title or other interest in property and take such other action as it deems necessary or proper to acquire such property under the provisions of this section. Provided, however, the Corporation may acquire property for more than its fair market value, as described in an appraisal report reviewed by the Corporation, upon a finding by the Corporation pursuant to resolution of the Corporation that the acquisition of such property at such price is necessary for the Corporation to further its corporate purpose.

(D) Validity of Deed, Bill of Sale, Lease, or Other Instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the seller of the property and accepted by the Corporation, purporting to transfer title or any other interest in property of the seller to the Corporation in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law insofar as concerns title or other interest of any bona fide grantor or transferor who has received valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to closing.

(E) Insurance. The must ensure that all insurable real and personal property under its control is insured against physical loss or damage.

The designated Contracting Officer for the Agency is the Chief Executive Officer of the Agency.

## F. PROPERTY DISPOSITION POLICY

### SECTION 1. DEFINITIONS.

(A) “Contracting officer” shall mean the officer or employee of the City of Albany Capital Resource Corporation (hereinafter, the “Corporation”) who shall be appointed by resolution to be responsible for the disposition of property.

(B) “Dispose” or “disposal” shall mean transfer of title or any other beneficial interest in personal or real property in accordance with section 2897 of the New York State Public Authorities Law.

(C) “Property” shall mean personal property in excess of five thousand dollars (\$5,000.00) in value, and real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

### SECTION 2. DUTIES.

(A) The Corporation shall:

(i) maintain adequate inventory controls and accountability systems for all property owned by the Corporation and under its control;

(ii) periodically inventory such property to determine which property shall be disposed of;

(iii) produce a written report of such property in accordance with subsection B herewith; and

(iv) transfer or dispose of such property as promptly and practicably as possible in accordance with Section 3 below.

(B) The Corporation shall:

(i) publish, not less frequently than annually, a report listing all real property owned in fee by the Corporation. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Corporation and the name of the purchaser for all such property sold by the Corporation during such period; and

(ii) shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, and the New York State Legislature (via distribution to the Majority Leader of the Senate and the Speaker of the Assembly).

### SECTION 3. TRANSFER OR DISPOSITION OF PROPERTY.

(A) Supervision and Direction. Except as otherwise provided herein, the duly appointed contracting officer (the “Contracting Officer”) shall have supervision and direction over the disposition and sale of property of the Corporation. The Corporation shall have the right to dispose of its property for any valid corporate purpose.

(B) Custody and Control. The custody and control of Corporation property, pending its disposition, and the disposal of such property, shall be performed by the Corporation or by the Commissioner of General Services when so authorized under this section.

(C) Method of Disposition. Unless otherwise permitted, the Corporation shall dispose of property for not less than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Corporation and/or contracting officer deems proper. The Corporation may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, except in compliance with all applicable law, no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction.

(D) Sales by the Commissioner of General Services (the “Commissioner”). When the Corporation shall have deemed that transfer of property by the Commissioner will be advantageous to the State of New York, the Corporation may enter into an agreement with the Commissioner pursuant to which the Commissioner may dispose of property of the Corporation under terms and conditions agreed to by the Corporation and the Commissioner. In disposing of any such property, the Commissioner shall be bound by the terms hereof and references to the contracting officer shall be deemed to refer to such Commissioner.

(E) Validity of Deed, Bill of Sale, Lease, or Other Instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Corporation, purporting to transfer title or any other interest in property of the Corporation in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to closing.

(F) Bids for Disposal; Advertising; Procedure; Disposal by Negotiation; Explanatory Statement.

(i) Except as permitted by all applicable law, all disposals or contracts for disposal of property made or authorized by the Corporation shall be made after publicly advertising for bids except as provided in subsection (iii) of this Section F.

(ii) Whenever public advertising for bids is required under subsection (i) of this Section F:

(A) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall

permit full and free competition consistent with the value and nature of the property proposed for disposition;

(B) all bids shall be publicly disclosed at the time and place stated in the advertisement; and

(C) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Corporation, price and other factors considered; provided, that all bids may be rejected at the Corporation's discretion.

(iii) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsections (i) and (ii) of this Section F but subject to obtaining such competition as is feasible under the circumstances, if:

(D) the personal property involved is of a nature and quantity which, if disposed of under subsections (i) and (ii) of this Section F, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

(E) the fair market value of the property does not exceed fifteen thousand dollars (\$15,000.00);

(F) bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

(G) the disposal will be to the state or any political subdivision or public benefit corporation, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(H) the disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, the disposal of the property is intended to further the public health, safety or welfare or an economic development interest of the Corporation, the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits or other economic development initiatives), the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the Corporation; or

(I) such action is otherwise authorized by law.

(iv)(A) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

(1) any personal property which has an estimated fair market value in excess of fifteen thousand dollars (\$15,000.00);

(2) any real property that has an estimated fair market value in excess of one hundred thousand dollars (\$100,000.00), except that any real property disposed of by lease or exchange shall only be subject to clauses (3) through (5) of this subparagraph;

(3) any real property disposed of by lease for a term of five (5) years or less, if the estimated fair annual rent is in excess of one hundred thousand dollars (\$100,000.00) for any of such years.

(4) any real property disposed of by lease for a term of more than five (5) years, if the total estimated rent over the term of the lease is in excess of one hundred thousand dollars (\$100,000.00); or

(5) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

(J) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under all applicable law not less than ninety (90) days in advance of such disposal and a copy thereof shall be preserved in the files of the Corporation making such disposal.

This Policy is subject to modification and amendment at the discretion of the Corporation and shall be filed annually with all local and state agencies as required under all applicable law.

## **G. DEFENSE AND INDEMNIFICATION POLICY**

### **SECTION 1. DEFINITIONS.**

1. As used in this section, unless the context otherwise requires:

(a) The term “public entity” shall mean (i) a county, city, town, village or any other political subdivision or civil division of the state, (ii) a school district, board of cooperative educational services, or any other governmental entity or combination or association of governmental entities operating a public school, college, community college or university, (iii) a public improvement or special district, (iv) a public authority, commission, agency or public benefit corporation, or (v) any other separate corporate instrumentality or unit of government; but shall not include the state of New York or any other public entity the officers and employees of which are covered by section seventeen of this chapter or by defense and indemnification provisions of any other state statute taking effect after January first, nineteen hundred seventy-nine.

(b) The term “employee” 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 a public entity, whether or not compensated, but shall not include the sheriff of any county or an independent contractor. The term “employee” shall include a former employee, his estate or judicially appointed personal representative.

(c) The term “governing body” shall mean the board or body in which the general legislative, governmental or public powers of the public entity are vested and by authority of which the business of the public entity is conducted.

### **SECTION 2. APPLICATION OF POLICY**

2. The provisions of this section shall apply to any public entity:

(a) whose governing body has agreed by the adoption of local law, by-law, resolution, rule or regulation (i) to confer the benefits of this section upon its employees, and (ii) to be held liable for the costs incurred under these provisions; or

(b) where the governing body of a municipality, for whose benefit the public entity has been established, has agreed by the adoption of local law or resolution (i) to confer the benefits of this section upon the employees of such public entity, and (ii) to be held liable for the costs incurred under these provisions.

### **SECTION 3. COVERAGE**

3. (a) Upon compliance by the employee with the provisions of subdivision five of this section, the public entity shall provide for the defense 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 within the scope of his public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the public entity employing such employee.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the employee shall be entitled to be represented by private counsel of his choice in any civil action or proceeding whenever the chief legal officer of the public entity or other counsel designated by the public entity determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by counsel of his choice, provided, however, that the chief legal officer or other counsel designated by the public entity may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the public entity to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the governing body of the public entity.

(c) Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the employee delivers process and a written request for a defense to the public entity under subdivision five of this section, the public entity 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.

#### SECTION 4. INDEMNIFICATION

4. (a) The public entity 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 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 governing body of the public entity.

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

(c) Nothing in this subdivision shall authorize a public entity to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties, or money recovered from an employee pursuant to section fifty-one of the general municipal law; provided, however, that the public entity shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States.

(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 thirty days of the date of entry or settlement, upon the chief administrative officer of the public entity; and if not inconsistent with the provisions of this section, the amount of such judgment or settlement shall be paid by the public entity.

5. The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon: (i) delivery by the employee to the chief legal officer of the public entity or to its chief administrative officer of 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 ten days after he is served with such document, and (ii) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the public entity based upon the same act or omission, and in the prosecution of any appeal.

6. The benefits of this section shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal any provision of the workers' compensation law.

7. This section shall not in any way affect the obligation of any claimant to give notice to the public entity under section ten of the court of claims act, section fifty-e of the general municipal law, or any other provision of law.

8. Any public entity is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of this state, or authorized by law to transact business in this state, against any liability imposed by the provisions of this section, or to act as a self-insurer with respect thereto.

9. All payments made under the terms of this section, 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.

10. The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

11. Except as otherwise specifically provided in this section, the provisions of this section 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 any public entity by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

12. Except as otherwise provided in this section, benefits accorded to employees under this section shall be in lieu of and take the place of defense or indemnification protections accorded the same employees by another enactment; unless the governing body of the public entity shall have provided that these benefits shall supplement, and be available in addition to, defense or indemnification protection conferred by another enactment.

13. The provisions of this section shall also be applicable to any public library supported in whole or in part by a public entity whose governing body has determined by adoption of a local law, ordinance, bylaw, resolution, rule or regulation to confer the benefits of this section upon the employees of such public library and to be held liable for the costs incurred under these provisions.

14. If any provision of this section 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 section or the application of any such provision to any other person or circumstance.

**RESOLUTION REGARDING APPROVAL OF PROPOSED  
AMENDMENT TO THE CERTIFICATE OF INCORPORATION OF  
CITY OF ALBANY CAPITAL RESOURCE CORPORATION**

A regular meeting of City of Albany Capital Resource Corporation (the "Corporation") was convened in public session at the office of the Department of Development and Planning at 21 Lodge Street in the City of Albany, Albany County, New York on January 19, 2012 at 1:00 o'clock p.m., local time (or immediately following the regular monthly meeting of the City of Albany Industrial Development Agency).

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

**PRESENT:**

Anthony J. Ferrara	Chairman
Willard A. Bruce	Vice Chairman
Susan Pedo	Secretary
Hon. Kathy Sheehan	Treasurer
Martin Daley	Member
C. Anthony Owens	Member
John R. Vero	Member

**ABSENT:**

None

**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

Michael J. Yevoli	CEO - Capitalize Albany Corporation
Megan Daly	Department of Development and Planning
Erik Smith	CFO - Capitalize Albany Corporation
Bradley Chevalier	Economic Development Specialist, Capitalize Albany Corporation
Amy Gardner	Administrative Assistant, Capitalize Albany Corporation
John J. Reilly, Esq.	Corporation Counsel
A. Joseph Scott, III, Esq.	Bond Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

**RESOLUTION REQUESTING THE COMMON COUNCIL OF THE CITY OF  
ALBANY TO APPROVE A PROPOSED AMENDMENT TO THE CERTIFICATE OF  
INCORPORATION OF THE CORPORATION.**

WHEREAS, the Corporation is authorized and empowered by the provisions of Section 1411 of the New York State Not-For-Profit Corporation Law (the "NFPCL") to take steps to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities, instruct or train individuals to improve or develop their capabilities for such jobs, carry on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, lessening the burdens of government and acting in the public interest; and

WHEREAS, on March 15, 2010, the Common Council of the City of Albany (the “Common Council”) approved the formation of the Corporation pursuant to Resolution No. 4.12.10R; and

WHEREAS, paragraph 17 of the certificate of incorporation of the Corporation (the Certificate of Incorporation”) contains the following language:

“SEVENTEENTH: Notwithstanding anything herein to the contrary, the authority of the Corporation to issue Obligations to finance projects to be undertaken by the Corporation shall expire on April 15, 2012, subject to the determination by the Common Council to extend such authority by resolution duly adopted by the Common Council.”

WHEREAS, the Corporation desires to continue to assist not-for-profit corporations in the City of Albany in the undertaking and financing of their capital projects; and

WHEREAS, in order to continue to offer such assistance, the Corporation must consider amending its Certificate of Incorporation to modify the provisions of paragraph 17 of the Certificate of Incorporation; and

WHEREAS, paragraph 16 of the Certificate of Incorporation provides the following relating to the process regarding any amendments of the Certificate of Incorporation;

“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 City of Albany Common Council, and (2) the Corporation will not amend or change any provision of this Certificate of Incorporation without first providing the Common Council with 10 days advance notice of any proposed amendment, alteration, change or repeal.”

WHEREAS, the proposed amendment to the Certificate of Incorporation is described as follows (the “Proposed Amendment”):

“SEVENTEENTH: Notwithstanding anything herein to the contrary, the authority of the Corporation to issue Obligations to finance projects to be undertaken by the Corporation shall expire on April 15, 2014, subject to the determination by the Common Council to extend such authority by resolution duly adopted by the Common Council.”

and;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CITY OF ALBANY CAPITAL RESOURCE CORPORATION, AS FOLLOWS:

Section 1. The Corporation hereby finds and determines that:

(A) The creation of the Corporation for the purposes set forth in Section 1411 of the New York State Not-for-Profit Corporation Law has promoted and maintained and will continue to promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the City of Albany, New York and the State of New York and improve their standard of living; and

(D) It is desirable and in the public interest for the Corporation to request the Common Council to approve the Proposed Amendment.

Section 2. In consequence of the foregoing, the Corporation hereby determines to: (A) take preliminary action to approve the Proposed Amendment, (B) authorize the CEO of the Corporation to notify the Common Council of the Proposed Amendment, and (C) authorize the CEO of the Corporation to present the Proposed Amendment to the Common Council for approval.

Section 3. The Corporation is hereby authorized to take all necessary steps to amend its Certificate of Incorporation as described in Section 2 of this Resolution in accordance with the requirements of any applicable New York State and Federal laws and the Certificate of Incorporation.

Section 4. The Proposed Amendment is hereby preliminarily approved, subject to the provisions of the Certificate of Incorporation.

Section 5. (A) The Chairman (or Vice Chairman) of the Corporation is hereby authorized, on behalf of the Corporation, to execute and deliver any and all documents necessary to approve the Proposed Amendment under Section 1411 of the New York State Not-for-Profit Corporation Law and, where appropriate, the Secretary (or Assistant Secretary) of the Corporation is hereby authorized to affix the seal of the Corporation thereto and to attest the same, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) of the Corporation is hereby further authorized, on behalf of the Corporation, to designate any additional authorized representatives of the Corporation.

Section 6. The officers, employees and agents of the Corporation are hereby authorized and directed for and in the name and on behalf of the Corporation to do all acts and things required to provide for the approval of the Proposed Amendment, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of this Resolution.

Section 7. This Resolution shall take effect immediately.

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

Anthony J. Ferrara	VOTING	_____
Willard A. Bruce	VOTING	_____
Susan Pedo	VOTING	_____
Hon. Kathy Sheehan	VOTING	_____
Martin Daley	VOTING	_____
C. Anthony Owens	VOTING	_____
John R. Vero	VOTING	_____

The resolution was thereupon declared duly adopted.

STATE OF NEW YORK        )  
  ) SS.:  
COUNTY OF ALBANY        )

I, the undersigned (Assistant) Secretary of City of Albany Capital Resource Corporation (the "Corporation"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Corporation held on January 19, 2012 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Corporation 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 due notice of the time and place of said meeting was given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Corporation 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 the Corporation this 19th day of January, 2012.

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(Assistant) Secretary

(SEAL)