

BOND RESOLUTION

At a meeting of the County of Oswego Industrial Development Agency (the "Issuer"), held at 44 West Bridge Street, Oswego, New York, on the 12th day of July, 2010, at 2:30 p.m., local time, the following members of the Issuer were:

PRESENT: Jonathan Daniels, Donald H. Kunzwiler, Carolyn A. Rush,
H. Leonard Schick, Morris Sorbello, and Gary T. Toth

ABSENT: Arthur W. Ospelt

ALSO PRESENT: L. Michael Treadwell, David S. Dano, Kevin C. Caraccioli,
and Steve Yablonski

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the issuance and sale of the Issuer's proposed Industrial Development Revenue Bonds, Series 2010 (Fulton Thermal Corp. Project) (the "Bonds") in the aggregate principal amount not to exceed \$9,825,000.00.

Upon motion duly made and recorded, the following resolution was duly adopted by the Issuer with its members voting as follows:

Voting	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Jonathan Daniels	X			
Donald H. Kunzwiler	X			
Arthur W. Ospelt				X
Carolyn A. Rush	X			
H. Leonard Schick	X			
Morris Sorbello	X			
Gary T. Toth	X			

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF
THE ISSUER'S INDUSTRIAL DEVELOPMENT REVENUE
BONDS, SERIES 2010 (FULTON THERMAL CORP. PROJECT),
IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED
\$9,825,000 AND THE EXECUTION OF RELATED DOCUMENTS**

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; and

WHEREAS, the Issuer was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 234 of the Laws of 1973 of the State (collectively with the Enabling Act, the "Act"), and is empowered under the Act to undertake the Project (as hereinafter defined); and

WHEREAS, in connection with a project undertaken by the Issuer at the Company's request for the construction, improving and equipping of an approximately 58,000 square foot manufacturing and industrial building on approximately 15 acres of land located at 972 Centerville Road in the Town of Richland, County of Oswego, New York (the "Existing Facility"), the Issuer acquired fee simple title to the Existing Facility and entered into a Lease Agreement dated as of December 1, 2000 (the "Initial Lease Agreement") with the Company and its affiliate, Fulton Boiler Works, Inc.; and

WHEREAS, on March 23, 2009, Fulton Thermal Corp., a corporation organized and existing under the laws of the State of New York ("Company"), presented an application (the "Application") to the Issuer, a copy of which is on file at the office of the Issuer, requesting that the Issuer undertake a project (the "Project") consisting of: (A) the acquisition of a leasehold interest in approximately 18 acres of land located at 972 Centerville Road in the Town of Richland, County of Oswego, New York (the "Land") improved with the Existing Facility and

the construction of and acquisition and installation of machinery, equipment and other personal property (the "Equipment") in an approximately 115,000 square foot addition (the "Facility") to the Existing Facility on the Land (the Land, the Equipment and the Facility are collectively referred to as the "Project Facility") for use in the manufacture of packaged boilers and accessories and other uses directly related and ancillary thereto and (b) the financing of all or a portion of the costs of the foregoing and the costs of issuance by the issuance of the Issuer's tax-exempt or incidental taxable "Industrial Development Revenue Bonds" (the "Bonds"), in an amount not to exceed \$9,825,000; and

WHEREAS, the Company also requested certain other "financial assistance" (as such term is defined in Section 874(14) of the Act) in the form of exemptions from real property taxation, mortgage recording tax, and sales and use taxation as a result of (A) (i) the Issuer taking title, possession or control of the Project Facility and (ii) the Company acting as an agent of the Issuer in connection with the acquisition, construction, and equipping of the Project Facility; and

WHEREAS, the Issuer, by resolution adopted on March 27, 2009 (the "Reimbursement Resolution"), described the Project and Financial Assistance and declared its intention to reimburse the Company for expenditures made for the Project Facility from the proceeds of the tax-exempt Bonds; and

WHEREAS, the Issuer, pursuant to Section 859-a of the Enabling Act and Section 147 of the Internal Revenue Code, as amended (the "Code"), held a public hearing regarding the issuance of the Bonds and the financing of the Project Facility on May 5, 2009, notice of which was duly published in the *Post-Standard*, a newspaper of general circulation in the County of Oswego, on April 18, 2009, and mailed to the chief executive officers of each affected tax jurisdiction on April 17, 2009; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations", and collectively with the SEQR Act, "SEQRA"), by the resolution adopted May 8, 2009, the Issuer (A) reviewed the Application, and (B) determined the Project constituted an "unlisted action" and that it will not have a "significant effect on the environment" (as such quoted terms are defined in SEQRA); and

WHEREAS, the Issuer, by resolution adopted on May 8, 2009 (the "Inducement Resolution"), preliminarily agreed, subject to the certain conditions, to grant the Financial Assistance, to appoint the Company as its agent with respect to condition of the Project, and to proceed under the provisions of the Act to issue its Bonds for the purpose of financing the cost of the acquisition, construction and equipping of the Equipment and the Facility and paying all or a portion of the costs of issuance thereof; and

WHEREAS, by resolution No. 097 dated June 11, 2009 (the "Public Approval"), the County of Oswego Legislature approved the issuance of the Bonds for purposes of Section 147(f) of the Code; and

WHEREAS, the Issuer has determined to reconvey title to the Existing Facility to the Company and without any interruption in the Issuer's supervision, jurisdiction or control of the Existing Facility, accept a leasehold interest in the Project Facility pursuant to a proposed Company Lease Agreement dated as of August 1, 2010 between the Issuer and the Company; and

WHEREAS, the Issuer and the Company propose to enter into an amended and restated lease agreement dated as of August 1, 2010 (the "Lease Agreement"), pursuant to which the Issuer will sublease the Project Facility to the Company and the Company will agree among other things to make rental payments in an amount sufficient to pay debt service on the Bonds; and

WHEREAS, the Issuer and the Company intend to enter into a Payment in Lieu of Taxes Agreement dated as of August 1, 2010 (the "PILOT Agreement"), with respect to the exemption of the Project Facility from real property taxation; and

WHEREAS, the Company has proposed that the Issuer issue its Bonds in the aggregate principal amount not to exceed \$9,825,000, and

WHEREAS, the Issuer, by the terms of a proposed Indenture of Trust dated as of August 1, 2010 (the "Indenture"), between the Issuer and Manufacturers and Traders Trust Company, as trustee (the "Trustee"), will grant the Trustee a first lien on and a security interest in certain of the Trust Revenues (as defined in the Indenture) as security for the Bonds, and as further security for the Bonds, will assign to the Trustee all of its right, title and interest in and to the Lease Agreement, except for Unassigned Rights (as defined in the Indenture); and

WHEREAS, the Issuer and the Company, to secure the Company's obligations under the Lease Agreement, will grant the Trustee a mortgage lien on and security interest in the Project Facility pursuant to a mortgage and security agreement dated as of August 1, 2010 from the Issuer and the Company to the Trustee; and

WHEREAS, Manufacturers and Traders Trust Company (the "Purchaser") proposes to purchase the Bonds pursuant to a Bond Purchase Agreement (the "Bond Purchase Agreement") to be entered into among the Issuer, the Company and the Purchaser; and

WHEREAS, the Finance Committee of the Issuer consists of all of the Members of the Issuer acting at this meeting; and

WHEREAS, the execution and delivery of the Indenture and the issuance of the Bonds in an aggregate principal amount not to exceed \$9,825,000 under the Act as herein provided have been in all respects approved and duly and validly authorized by this Resolution; and

WHEREAS, the undertaking of the Project, the providing of the Project Facility, and the issuance of the Bonds are for a proper purpose, to wit, to promote the job opportunities, the health and the general prosperity and economic welfare of the inhabitants of the State pursuant to the provisions of the Act; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY OF OSWEGO INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Issuer hereby finds and determines that:

- (a) by virtue of the Act, the Issuer has been vested with all the powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;
- (b) the Project constitutes a "project," as such term is defined in the Act;
- (c) the acquisition, construction, and equipping of the Project Facility and the lease of the Project Facility to the Company (i) will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the County of Oswego and the State of New York and improve their standard of living and (ii) will not result in the removal of an industrial or fabricating/manufacturing plant of the Company from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company except as permitted by the Act;
- (d) the location of the site of the Project Facility is acceptable to the Issuer;
- (e) the Project Facility is not known by the Issuer to be in material violation of the local zoning laws and planning regulations of the Town of Richland, or of the County of Oswego, New York, and, to the knowledge of the Issuer, is in compliance with all regional and local land use plans for the area in which the Project Facility is located;
- (f) the Project Facility and the operations of the Company are not known by the Issuer to cause or result in the violation of the health, labor, environmental or other laws of the United States of America, the State of New York, the Town of Richland, or County of Oswego; and
- (g) it is desirable and in the public interest for the Issuer to issue its Bonds in an aggregate principal amount not to exceed \$9,825,000.

Section 2. In consequence of the foregoing, the Issuer hereby determines to:

(a) convey fee simple title to the Existing Facility to the Company pursuant to a quit claim deed;

(b) acquire a leasehold interest in the Land, Existing Facility and Facility pursuant to the Company Lease and title to the Equipment pursuant to the Bill of Sale in substantially the forms thereof approved by the Issuer for prior financings, with such amendments or modifications as the Chair or Chief Executive Officer of the Issuer (referred to hereinafter individually and collectively as an “***Authorized Officer***”) deems necessary or desirable under the circumstances, provided no such amendment or modification materially alters the risk to the Issuer;

(c) sublease the Project Facility to the Issuer pursuant to the Lease Agreement in substantially the form thereof approved by the Issuer for prior financings, with such

amendments or modifications as an Authorized Officer deems necessary or desirable under the circumstances, provided no such amendment or modification materially alters the risk to the Issuer;

(d) appoint Manufacturers and Traders Trust Company as Trustee and execute the Indenture in substantially the form thereof approved by the Issuer for prior financings, with such amendments or modifications as the Authorized Officer of the Issuer deems necessary or desirable under the circumstances, provided no such amendment or modification materially alters the risk to the Issuer;

(d) execute the Bond Purchase Agreement in substantially the form thereof approved by the Issuer for prior financings, with such amendments or modifications as the Authorized Officer of the Issuer deems necessary or desirable under the circumstances, provided no such amendment or modification materially alters the risk to the Issuer;

(e) issue and deliver the Bonds to or upon the order of the Purchaser on or before December 31, 2010, subject however to the approval of the principal amount and final terms for the Bonds and the terms and conditions of the Bond Purchase Agreement consistent with this Resolution, and the prior written approval of all terms contained therein and of the terms of the Bonds, by the Authorized Officer of the Issuer and by the Company;

(f) assign to the Trustee certain of the Issuer's rights and remedies under the Lease Agreement and certain monies due and to become due under the Lease Agreement, all pursuant to the Indenture and a Pledge and Assignment (the "**Assignment**") by the Issuer to the Trustee and accepted and acknowledged by the Company, in substantially the form thereof approved by the Issuer for prior financings, with such amendments or modifications as the Authorized Officer of the Issuer deems necessary or desirable under the circumstances, provided no such amendment or modification materially alters the risk to the Issuer;

(g) execute a Mortgage in favor of the Trustee secured by the Project Facility in substantially the form thereof approved by the Issuer for prior financings, with such amendments or modifications as the Authorized Officer of the Issuer deems necessary or desirable under the circumstances, provided no such amendment or modification materially alters the risk to the Issuer;

(h) use the proceeds of the Bonds to accomplish the Project, including payment of a portion of the costs of the acquisition, equipping and construction of the Facility and Equipment and to pay capitalized interest, if any, and necessary incidental expenses in accordance with the Indenture and the Lease Agreement;

(i) execute a Tax Compliance Agreement from the Company and the Issuer to the Trustee (the "**Tax Compliance Agreement**") and a completed Internal Revenue Service Form 8038 (Information Return for Private Activity Bonds) relating to the tax-exempt Bonds (individually the "**Information Return**") and file the Information Return with the Internal Revenue Service in connection with the issuance of the tax-exempt Bonds; and

(j) execute and deliver all other certificates and documents required in connection with issuance and sale of the Bonds including the documents identified on the draft Closing Memorandum and any other documents as may be required by the Purchaser or otherwise required to accomplish the Project, qualify the interest on the tax-exempt Bonds for tax-exempt status under Section 103 of the Code and grant the Financial Assistance (collectively, and with the Company Lease, the Bill of Sale, the Lease Agreement, the Indenture, the Bond Purchase Agreement, the Bonds, the Assignment, the Mortgage and the Tax Compliance Agreement, the “*Financing Documents*”).

Section 3. The Issuer is hereby authorized to acquire an interest in and equip and construct the Facility and the Equipment and to finance such acquisition, equipping and construction and the other elements of the Project by the issuance of the Bonds, and all acts previously taken by the Issuer with respect to the acquisition, equipping and construction of the Facility and Equipment, the undertaking of the Project, the grant of Financial Assistance with respect to the Project Facility and the issuance of the Bonds are hereby approved, ratified and confirmed.

Section 4. The Issuer is hereby authorized to issue, execute, sell and deliver the Bonds to the Purchaser in accordance with the provisions of the Indenture and the terms authorized in this Resolution. Each of the Authorized Officers of the Issuer is hereby authorized, on behalf of the Issuer, to execute (by manual or facsimile signature) and deliver the Financing Documents and the PILOT Agreement, on such terms and conditions as shall be consistent with this Resolution and approved by an Authorized Officer, the execution thereof by such Authorized Officer constituting conclusive evidence of such approval.

Section 5. There is hereby expressly delegated to each Authorized Officer, subject to the limitations contained herein, the power with respect to the Bonds and the Financing Documents to determine and carry out the following:

(a) The issuance and sale of the Bonds in accordance with the provisions of the Indenture and the Bond Purchase Agreement, provided that the purchase price paid by the purchasers thereof shall not be less than ninety percent (90%) of the principal amount of the Bonds so sold;

(b) The principal amount and series of Bonds to be issued, not to exceed an initial aggregate principal amount of \$9,825,000;

(c) The title, date or dates, maturity date or dates and principal amount of each series and maturity of the Bonds, the amount and date of each sinking fund installment, if any, and which Bonds are serial bonds or term bonds, if any, provided that no Bond shall mature later than December 31, 2040;

(d) The interest rate or rates of the Bonds, the date from which interest on the Bonds shall accrue and the first interest payment date therefor, provided that the initial interest rate on the Bonds shall not exceed ten percent (10%) per annum;

(e) The form of the Bonds, the place or places of payment of the Bonds, denomination or denominations of and the manner of numbering and lettering the Bonds;

(f) The redemption price or redemption prices, if any, and the redemption terms, if any, for the Bonds; provided, however, that the redemption price of any Bond subject to redemption at the election of the Issuer or the Company or in accordance with the Indenture shall not be greater than one hundred four percent (104%) of the principal amount of the Bonds or portion thereof to be redeemed, plus accrued interest thereon to the date of redemption;

(g) Directions for the application of the proceeds of the Bonds; and

(h) Any other provisions deemed desirable by the Authorized Officer not in conflict with the provisions hereof or of the Indenture.

Section 6. The Chief Executive Officer is further hereby authorized, on behalf of the Issuer, to designate any additional Authorized Official of the Issuer as defined in and pursuant to the Indenture.

Section 7. In addition to the authority hereinabove granted, the officers of the Issuer are hereby authorized and directed, for and in the name and on behalf of the Issuer, to do and cause to be done any such other acts and things, to execute and deliver any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, and to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Sections 1 through 6 of this Resolution, as they determine may be necessary or desirable to consummate the transactions contemplated by this Resolution, the Financing Documents and the other documents referred to above.

Section 8. No covenant, stipulation, obligation or agreement contained in this Resolution or the Financing Documents or any other document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Issuer in his or her individual capacity and neither the members of the Issuer nor any officer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. Neither the members nor officers of the Issuer, nor any person executing the Bonds or any of the Financing Documents or other documents referred to above on behalf of the Issuer, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof.

Section 9. A copy of this Resolution, together with its attachments, shall be placed on file in the office of the Issuer where the same shall be available for public inspection during business hours.

Section 10. This Resolution shall take effect immediately and the Bonds are hereby ordered to be issued in accordance with this Resolution.

STATE OF NEW YORK)
COUNTY OF OSWEGO)

I, the undersigned, Chief Executive Officer of the Oswego County Industrial Development Agency, **DO HEREBY CERTIFY** that:

I have compared the minutes of the meeting of the Oswego County Industrial Development Agency (the "Issuer") including the resolution contained therein, held on the 12th day of July, 2010, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Issuer and of such Resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I further certify that (i) all members of the Issuer had due notice of the meeting, (ii) pursuant to Article 7 of the Public Officers Law (Open Meetings Law), such meeting was opened to the general public, and notice of the time and place of such meeting was duly given in accordance with Article 7 of the Public Officers Law, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer as of July 12, 2010.

L. Michael Treadwell, Chief Executive Officer

[SEAL]