

“How to” Consolidate Fire Protection in Fire Districts, Fire Protection Districts and Villages

Introduction.....	3
Definitions.....	3
Consolidation.....	3
Fire Entities.....	4
Weighing the Option to Consolidate.....	6
Benefits to Consolidation.....	6
Negative Aspects of Consolidation.....	6
Communication.....	7
Determining Feasibility of Consolidation.....	7
Review and Evaluate.....	7
Fire District Consolidation Case Study.....	8
Legal Aspects of Consolidation.....	9
Consolidation of Fire Districts.....	9
Consolidation of Fire Protection Districts.....	11
Joint Fire Districts in Towns and Villages.....	12
Dissolving a Fire Protection District into a Fire District.....	13
Not-for-Profit Fire Corporations.....	13
Intermunicipal Agreements.....	15
Sample Forms	
Appendix A- Petition by Resident Taxpayers for Consolidation of Adjoining Fire Districts.....	16
Appendix B- Resolution for Public Hearing on Consolidation of Adjoining Fire Districts.....	18
Appendix C- Notice of Public Hearing on Consolidation of Adjoining Fire Districts...19	
Appendix D- Resolution for Consolidation of Adjoining Fire Districts After Public Hearing.....	20
Appendix E- Petition by Resident Taxpayers for Consolidation of Adjoining Fire Protection Districts.....	21
Appendix F- Resolution for Public Hearing on Consolidation of Adjoining Fire Protection Districts.....	23
Appendix G- Notice of Public Hearing on Consolidation of Adjoining Fire Protection Districts.....	24
Appendix H- Resolution for Consolidation of Adjoining Fire Protection Districts After Public Hearing.....	25
Appendix I- Plan of merger—Domestic or foreign corporation as surviving corporation.....	26
Appendix J- Resolution of directors adopting plan of merger.....	30
Appendix K- Plan of consolidation—Domestic or foreign consolidated corporation...31	
Appendix L- Resolution of directors adopting plan of consolidation.....	36
Appendix M- Notice of special meeting of members to vote on plan of merger.....	37
Appendix N- Resolution of members approving plan of merger.....	38
Appendix O- Notice of special meeting of members to vote on plan of consolidation...39	
Appendix P- Resolution of members approving plan of consolidation.....	40

Appendix Q- Certificate of merger	41
Appendix R- Certificate of consolidation.....	45
Appendix S- Certificate of consolidation; Type B corporation.....	50
Appendix T- Affidavit in support of application for approval of merger.....	54
Appendix U- Order approving merger.....	57
Bibliography.....	59

INTRODUCTION:

Fire departments in towns, villages and cities are exploring new ways to improve the delivery of fire protection services. Consolidation, through shared services or combining jurisdictions, can increase the efficiency and effectiveness of departments by allowing for the better use of resources and providing greater flexibility and capability. Consolidation may also result in cost savings due to the efficient use of resources and the reduction of duplicative efforts through reorganization.

While the concept of consolidation is not new, few fire departments have taken advantage of its benefits. Faced with increased costs and budgetary constraints, fire departments should consider consolidation or cooperating/joining services as a way to stabilize or reduce fire protection costs.

The driving force behind all decisions during the consolidation process should be the question: “What is in the public’s best interest?”

Fire departments should consider consolidation when any of the following factors are present:

- Fire protection services exist immediately adjacent to one another, each with a complete, and many times, duplicated set of resources, including apparatus, equipment, facilities, and staffing;
- Increasing demands at all levels of government for funding of essential services;
- Insufficient career staff or difficulty recruiting and retaining volunteer staff; and
- Increasing service requirements, including hazardous materials, technical rescue, emergency medical services, and terrorism and natural disaster preparedness.

Consolidation can be a complex process; therefore, interested entities need to have a plan. This “How to” guide contains information to assist local officials in the process of consolidation of fire services.

DEFINITIONS:

Consolidation

Operational Consolidation

Operational consolidation is the pooling of services, equipment, apparatus, and staff through intermunicipal agreements. Here, one or more duties normally performed by individual departments are joined together and carried out as one entity while each fire department remains legally and administratively separate.

Intermunicipal agreements must be entered into by the governing bodies and should outline the terms of the agreement. Such agreements would enable the parties to legally commingle their resources in order to achieve efficiency and economy.

Examples include:

- Joint staffing at fire stations;
- Combining training programs;
- Dispatching the closest resource to an emergency incident;
- Creating a central dispatch function;
- Allowing one organization to perform apparatus maintenance for another; or
- Pooling specialized resources, such as heavy rescue, hazardous materials, rope rescue and emergency medical services.

Jurisdictional Consolidation

Jurisdictional consolidation involves the dissolution of existing jurisdictions (i.e. fire districts and fire protection districts) to create a new jurisdiction (i.e. combined fire district, fire protection district, or a joint fire district). This process requires a complete merger or reorganization, in which the governing bodies of each jurisdiction must agree to dissolve the current jurisdictions and form a new single jurisdiction.

The parties involved must plan and develop new administrative and operating structures, including, but not limited to:

- Training standards and programs;
- Standard operating procedures;
- Response standards, including location of facilities, number of fire companies, response time, and staffing;
- Current indebtedness of each jurisdiction;
- Rank structure;
- Employee/member benefits, such as retirement systems and service award programs;
- Union contracts, if applicable; and
- Personnel policies.

Fire Entities

Fire Districts

A fire district is a political subdivision located within a town. Fire districts are established for the purpose of providing fire protection and response to emergencies. A fire district is political entity with an elected governing body, administrative officers, and expenditure limitations. A fire district is dependent on the town or towns as a means to its initial creation, extension and dissolution. A fire district has the power both to incur indebtedness and to require the levy of taxes. Fire district taxes are assessed, levied, and collected at the same time and in the same manner as town taxes.

Fire Protection Districts

A fire protection district is a geographical area of a town which is provided fire protection pursuant to contract with any city, village, fire district or incorporated fire company. It is an assessment area within which a town can provide limited services and assess the cost back against the taxable properties within the district. A town board can create a fire protection district, consolidate adjoining fire protection districts, alter the boundaries of a fire protection district, or dissolve a fire protection district on its own motion or by petition.

Fire Departments

In cities and villages, fire protection is commonly provided by a municipal fire department, composed of career and/or volunteer firefighters.

In towns, fire protection is not a municipal function but is provided by a fire district or pursuant to contract in a fire protection district. The fire department of a fire district encompasses all fire companies organized within the district, with the members appointed by the board of fire commissioners.

Fire Companies

Fire companies are subunits of a fire department. They may be a membership group of a fire department or incorporated as a membership corporation under the Not-for-Profit Corporation Law. The board of fire commissioners of a fire district may organize, operate, maintain and equip fire companies, and provide for the removal of the members thereof for cause.

Not-For-Profit Fire Corporations

A fire corporation is a special not-for-profit corporation formed to provide fire protection to a fire district, fire protection district or village under contract with the governing body (board of fire commissioners, town board, or village board of trustees). Fire corporations are under the control of the city, village, fire district or town authorities having control over fire protection in such areas.

Joint Fire Districts

Joint fire districts are created by the town board(s) and the board(s) of trustees of a village. Contemporaneously with the establishment of the joint district, the town board(s) and the village board(s) of trustees of each participating municipality shall, by local law, dissolve any existing fire, fire alarm or fire protection districts contained within the joint fire district.

WEIGHING THE OPTION TO CONSOLIDATE:

Benefits to Consolidation:

Consolidation should involve open and straightforward communication with all stakeholders. Interested fire entities and municipalities must review the needs, options, challenges, problems, advantages, negative aspects and expenses involved with consolidation. Successful cooperative efforts may lead to increased efficiency, improved effectiveness, enhanced or expanded services, reduced costs, cost avoidance, coordination of regional planning, elimination of artificial boundaries, and standardization of services and programs.

Some advantages of fire service consolidation may include:

- Improving response time;
- Maximizing purchasing power;
- Availability of career and volunteer members;
- Centralizing fire department management and reducing administrative costs;
- Centralizing the dispatching and communication network and other fire department support systems;
- Standardizing procedures for operation and training;
- Reducing the community's insurance premiums based on improvements in the insurance rating;
- Improving fleet management, such as having one central repair and maintenance facility for vehicles and apparatus; and
- Savings to taxpayers.

Negative Aspects of Consolidation:

When considering the option to consolidate, the advantages must be balanced against the possible disadvantages of engaging in a cooperative process. Possible negative aspects of consolidation revolve around the process itself, specifically:

- Perceived loss of local control
- Opposition by local politicians
- Differences in union contracts - wages, retirement systems, benefits
- Turf wars
- Reduced number of fire commissioners
- Loss of volunteer membership
- Perception that consolidation is being used as a way to eliminate positions

Further, one of the main concerns with consolidation is whether cooperating fire entities will be able to cope with underlying cultural issues, such as the color of the fire apparatus, the name on the fire stations, and the name of the organization on the side of the fire engine. Additional issues such as training standards and familiar operational procedures can also impede support for

consolidation. These cultural issues must be confronted honestly in order to ensure a successful consolidation.

Communication:

Communication is critical throughout the consolidation process. There are many issues which need to be addressed and resolved to ensure a successful consolidation. It is important to involve all the stakeholders (firefighters, residents, and elected officials) early on in the process.

The following strategies should be employed to ensure operational involvement:

- Keep all stakeholders informed of what is being done, who is doing it, and why
- Explain the advantages and disadvantages to consolidation and allow for open and honest communication
- Make sure that all meetings are open to all stakeholders
- Create task forces to develop administrative, legal, and operational plans for consolidation action

DETERMINING FEASIBILITY OF CONSOLIDATION:

Review and Evaluate:

The first step to determining the feasibility of consolidation is to conduct a complete review and evaluation of all the components in each organization. The programs, services and functions provided by each organization should be identified.

Some examples of what the evaluation should include are listed below:

- Organization Overview - Identify each organization's responsibilities, functions and lines of authority.
- Management - Compare management practices including staffing, mission statement, vision, strategic planning, goals and objectives and decision making process.
- Fire Suppression and Emergency Medical Services - Review areas specifically involved in, or affecting, service levels and performance. Areas to be reviewed shall include, but not necessarily be limited to, station locations, projected community development and growth and risk analysis. Review and make recommendations regarding the overall delivery and effectiveness of current and future code enforcement/fire prevention activities. Conduct risk analysis, including relationships between personnel, fire flows, equipment, training levels, capabilities, code enforcement and response time.
- Personnel Management and Staffing - The personnel management program shall be reviewed, focusing on policies, rules, regulations, and operational guidelines. Review the staffing levels of the agencies. Areas to be considered include utilization of career and volunteer staff, responsibilities and activity levels of personnel, training program goals and objectives, training competency, facilities, record keeping and certification.
- Capital Improvement Plans - Identify current and future needs relative to the purchase of necessary capital improvement items.

- Facilities - Review location of current station locations and future station considerations. Items to be contained in the report include future service demands, changing demographics, availability of volunteers and projected growth and trends.
- Apparatus and Equipment - Review and make recommendations in areas critical to apparatus and equipment. Items to be considered include, age, condition, serviceability, replacement schedule, distribution, deployment and maintenance practices.
- Fiscal Analysis - Review and analyze each department's budget and revenues to project future financial needs, current debt service and identify possible areas of short and long-term savings and costs.

Once the evaluation is completed then you can proceed with determining whether it is feasible to pursue some type of consolidation effort. While fiscal considerations are important, the main emphasis during the formulation of a feasibility report should be on improving efficiency and effectiveness and trying to deliver better services to the community. The feasibility report will ultimately answer the question of whether or not it is practical to proceed with some type of cooperative effort.

Thereafter, a plan of implementation should be developed. The implementation plan should include responsible parties, a schedule for completion and an analysis of the results. As part of this analysis, fire departments must take into consideration any existing local service award programs and labor agreements. Also, the fire departments will need to evaluate whether to merge or keep the existing fire companies.

Fire District Consolidation Case Study:

The Town of Moriah in Essex County is served by three volunteer fire companies: Moriah, Mineville-Witherbee and Port Henry. In 2006, Moriah's town supervisor invited the mayor and trustees of the Village of Port Henry and the officials of the three fire companies to participate in a study of consolidating fire services within the town.

Some objections that were initially raised at the public meeting regarding the consolidation of the fire departments included:

- The potential loss of volunteer members;
- Fiscal impacts, specifically, outstanding and future debt; and
- Fears that the district would be less eligible for grants and other types of funding if served by one, not three, departments.

The case study revealed several issues hindered the Town of Moriah and Village of Port Henry consolidation effort, including:

- The lack of formality of agreements in the past;
- The narrow focus on the immediate property tax impacts, not the long range impacts or options for operational consolidation; and
- The study was conducted by the locals; it was suggested that a third party should have undertaken the study to remove the emotional ties.

For future consolidation studies, it was suggested that the study be conducted, or at least facilitated, by an outside agency or consultant. Furthermore, it would be beneficial to develop a more formal platform for dialogue between the departments to assist in overall communication.

LEGAL PROCESS OF CONSOLIDATION:

Article 11 and Article 11-A of the Town Law describe the procedures and requirements for the consolidation of fire services in towns. These sections provide an outline of the major legal aspects of consolidation and address the individual process as it applies to fire districts, fire protection districts, joint-fire districts, and fire departments.

Consolidation of Fire Districts: (Town Law §§ 170, 171, 172, 172-a, 173 and 174)

Pursuant to Town Law § 172, where two or more fire districts adjoin, consolidation is possible. The town board of every town in which the fire districts are located must, acting jointly and by majority vote of each town, vote to adopt a resolution consolidating the fire districts. If the adjoining fire districts are located within the same town, only a majority vote of that town's board is required. Before any voting can take place, the town board(s) must receive either a written petition from land-owning resident taxpayers or a written petition of a majority of the members of the board of commissioners of each district. The town board(s) must then provide notice and hold a public hearing before the town board(s) take a vote.

Petitions (Election Law §§ 6-130, 6-132 and 6-134).

Where a citizen petition is used, the petition must be signed by the resident taxpayers owning, in the aggregate, at least one-half of the assessed value of all the taxable real property of each district. In addition, the signatures must be notarized (acknowledged or proved in the same manner as a deed to be recorded) or authenticated in the manner provided by Election Law. (See, e.g., West's McKinney's Forms, Town Law §172 Form 1).

The Election Law requires that a petition set forth the name of the signer, his or her residence address, town and the date when the signature is affixed. In addition, there must be a "Statement of Witness" attached to the petition, where one person attests to the witnessing of all of the signatures on the page, not including his or her own. In lieu of the signed statement of a witness, a statement signed by a notary public or commissioner of deeds would be acceptable. The signatures on the petition must be made with ink and will be voided if signed with lead pencil. The signer only needs to sign the petition; the other required information does not need to be filled out by the signer himself or herself. The petitions must comply with the requirements of Election Law § 6-134 and 9 NYCRR § 6215 with respect to form requirements, including the rule that all sheets must be numbered consecutively at the foot of each page.

Public Hearing

The hearing notice shall be published, at least once, ten to twenty days before the hearing in a newspaper having general circulation in the area to be affected by the consolidation. Further, the town clerk(s) shall post copies of the notice on the town(s)'s sign-board. In addition, if the

town(s) maintains a website, a copy of the notice may be provided on the website. The notice shall state the purpose of the hearing, specify each of the districts proposed to be included in the consolidated district and specify the time and place of the town board(s)'s meeting to consider the petition. (See e.g., West's McKinney's Forms, Town Law § 172 Forms 2 and 3).

Resolution

The consolidation will be effective when the town board(s) adopt a resolution providing for consolidation, unless the resolution specifies another date. The town clerk(s) shall have a certified copy of the resolution recorded in the office of the clerk of the county or counties where the consolidated fire district is located and shall, within ten days, file a certified copy of the resolution in the State Comptroller's Office in Albany, New York. (See, e.g., West's McKinney's Forms, Town Law §172 Form 4).

Fire District Officers

The commissioners of the fire districts that were consolidated shall constitute the board of fire commissioners of the consolidated district, and the treasurers of the districts shall serve jointly as the treasurers of the consolidated district until the December 31st following the consolidated fire district's first election. This election shall be held on the second Tuesday in December following the consolidation of the fire district unless the consolidation occurred after October 1, in which case, the first election of fire district officers shall be held on the second Tuesday in December of the following calendar year.

Alteration of Boundaries

When two or more fire districts adjoin, the board of fire commissioners of each fire district affected must agree by a written memorandum to the proposed change to alter the boundaries of their fire districts. The proposed change must be approved by the town board(s) in which the fire districts are located. The memorandum must be signed by a majority of the members of the board of fire commissioners of each fire district, and a public hearing must be held on the memorandum. The notice requirements of the hearing are similar to those for consolidation, except the secretary of the fire districts shall post notice of the hearing in five public places at least ten days prior to the hearing.

After the hearing, the boards of fire commissioners of the districts affected shall determine by joint resolution:

- Whether all the property and property owners within the districts are benefited by such change.
- Whether all the property and property owners within such area of such boundary change are benefited thereby.
- Whether it is in the public interest to grant the boundary line changes as set forth in the memorandum of proposed change.

If the above questions are all answered in the affirmative, the boards may adopt a resolution jointly approving the boundary line changes. The joint resolution and memorandum of proposed change shall be filed with the town clerk(s) of the town(s) in which the districts are wholly located and with the assessor(s) of the town(s).

Consolidation of Fire Protection Districts: (Town Law §§ 172-b, 172-c, 173)

Consolidation of fire protection districts is possible whenever two or more districts are adjoining. In such cases, the town board(s) of the town(s) involved may, acting jointly, consolidate the districts by majority vote. This vote may be brought either upon the town board(s)'s own motion without a petition or upon a written petition of resident taxpayers. Prior to consolidation, notice must be given and a public hearing must be held by the town board(s).

Petition

The petition must be signed by the resident taxpayers owning, in the aggregate, at least one-half of the assessed valuation of all the taxable real property in each district. In addition, the signatures must be notarized (acknowledged or proved in the same manner as a deed to be recorded) or authenticated in the manner provided by Election Law. (See consolidation of fire district section on petitions). (See, e.g., West's McKinney's Forms, Town Law §172-b Form 1).

Public Hearing

Notice of the hearing must be published at least once in a newspaper having general circulation in the territory affected, with the first publication ten to twenty days before the hearing. The town clerk(s) shall post copies of the notice on the sign-board of the town. In the event that the town maintains a website, a copy of the notice may also be provided on the website. The notice shall state in general terms the purposes of the hearing, specify each of the existing districts proposed to be included in the consolidated district, and specify the time and place where the town board(s) will meet to consider the petition and to hear all interested persons. Any resolution of consolidation made upon motion of the town board(s) without a petition shall be subject to a permissive referendum as provided in Article 7 of Town Law. (See, e.g., West's McKinney's Forms, Town Law §172-b Forms 2 and 3).

Resolution

A consolidation initiated by a petition of resident taxpayers shall be effective when the town board(s) adopt the resolution providing for consolidation, unless the resolution specifies another date. A consolidation initiated by a motion of the town board(s) without a petition shall become effective either with a petition and passage of a permissive referendum or if no permissive referendum petition is received, 30 days after the resolution was adopted. The town clerk(s) shall have a certified copy of the resolution recorded in the office of the clerk of the county or counties in which the consolidated fire protection district is located, and shall within ten days file a certified copy of the resolution in the State Comptroller's Office in Albany, New York. (See, e.g., West's McKinney's Forms, Town Law §172-b Form 4).

Alteration of Boundaries

The town board or town board of every town in which a fire protection district has been established, either upon petition or upon the motion of the town board(s), and after a public hearing, may alter the boundaries of the fire protection district by a majority vote of the members of each town board. The petition shall be signed by resident taxpayers owning, in the aggregate, at least one-half of the assessed valuation of all the taxable real property in the affected (excluded and remaining) territory. The petition and notice requirements of the hearing are the same as those for consolidation.

If the alteration of boundaries was initiated by the town board(s), the resolution will be subject to a permissive referendum as provided in Article 7 of the Town Law. The alteration shall become effective upon passage of a permissive referendum, however, if no permissive referendum is received, the alteration will be effective 30 days after the resolution was adopted. An alteration initiated by a petition of resident taxpayers shall be effective when the town board(s) adopts the resolution providing for alteration, unless the resolution specifies another date.

Joint Fire Districts in Towns and Villages: (Town Law §§ 185, 189-a, 189-b, 189-c)

The town board(s) and the village board(s) of trustees may establish a joint fire district when it appears to be in the public's best interest, provided that all the territory in the joint fire district is contiguous. The boards shall hold a joint meeting within the territory of the proposed joint fire district for the purpose of proposing the establishment of the joint fire district. If, at the joint meeting, it is decided by majority vote of each board to propose a joint fire district, the town and village board(s) must, within thirty days after the meeting, hold a joint public hearing. Notice of the hearing must be published at least once in a newspaper having general circulation within the town(s) and village(s), posted in five public conspicuous places within the area of the town(s) outside the village(s) (posting on the district's website would qualify for one of the posting), in five public conspicuous places in the village(s) and mailed to members of the town and village boards. The notice and posting must be accomplished at least ten days before the hearing. The notice must contain a brief description of the boundaries of the proposed district and of the objects and purposes for which the district is proposed to be established and must specify the time and place of the hearing.

After the public hearing, if the town and village board(s) determine that the establishment of a joint fire district is in the public interest, subject to permissive referendum, then, by resolution adopted by a majority of each board, the joint fire district will be established. Upon establishing a joint fire district, the respective boards shall, by local law, dissolve the existing fire districts or fire protection districts.

Once the joint fire district has been established, the property and affairs of the district are under the management and control of a board of fire commissioners which may have from three to seven members. The board of commissioners may be appointed by the town and village boards in joint session or may be elected in the manner provided in Article 11 of the Town Law. The determination of whether the board of commissioners is appointed or elected is made by the town and village boards by resolution adopted at the meeting for the establishment of the district.

Dissolving a Fire Protection District into a Fire District: (Town Law § 172-d)

Whenever a fire protection district adjoins a fire district, the town board(s) of the town(s) in which the fire protection district is located may, by majority vote and after a public hearing, dissolve the fire protection district into the adjoining fire district or alter the boundaries of the fire protection district to add a portion of the fire protection district into the fire district; provided that the board of fire commissioners of the fire district have consented to the alteration. The consent must be in writing and notarized.

Notice of the hearing must state the purpose of the hearing and specify the fire protection district to be dissolved or the proposed alteration. The additional notice requirements are the same as required for consolidation of fire districts or fire protection districts (see discussion above). The fire protection district will be deemed dissolved, or its boundaries altered, upon the adoption of a resolution by the town board(s). Thereafter, the resolution must be recorded in the same manner as a resolution for consolidation of fire districts (see discussion above).

Upon dissolution or alteration of boundaries of the fire protection district, the fire district shall be liable for all the obligations under the existing fire protection contracts, unless amended or terminated in the manner provided by Town Law § 184.

Consolidation of Not-for-Profit Corporations: (Not-for-Profit Corporations Law Article 9)

Article 9 of the Not-For-Profit Corporation Law governs the process of consolidation or merger for not-for-profit corporations, including fire corporations. Merger occurs when two or more fire corporations merge into a single pre-existing corporation (one of the participating corporations). In contrast, consolidation occurs when two or more fire corporations consolidate into a new single corporation.

Plan of Merger or Consolidation (N-PCL § 902)

A plan of merger or consolidation must be adopted by the board of each fire corporation proposing to participate in a merger or consolidation. The plan should include the name of each fire corporation and the name of the surviving or consolidated corporation and a description of the membership and holders of any certificates evidencing capital contributions or financial support of each corporation. The terms and conditions of the proposed merger or consolidation should also be included in the plan.

A plan of merger shall set forth a statement of any amendments or changes in the certificate of incorporation of the surviving fire corporation; while, a plan of consolidation requires all statements to be set forth in a certificate of incorporation for a fire corporation formed under Chapter 35 of the Not-For-Profit Corporation Law. (See, e.g., West's McKinney's Forms, Not-For-Profit Corp. Law §§ 9:2, 9:4).

Approval of the Plan (N-PCL § 903)

The board of each fire corporation, after approving the plan of merger or consolidation, must submit the plan to a vote of the members for additional approval. Notice of the meeting accompanied by a copy of the plan or an outline of the plan must be given to all members. A two-thirds vote is required for approval of the plan. If a corporation has no members that are entitled to vote, then the plan is deemed approved by the members of the corporation upon adoption by the board. (See, e.g., West's McKinney's Forms, Not-For-Profit Corp. Law §§ 9:7, 9:8, 9:9, 9:10).

Approval by the Supreme Court (N-PCL § 907)

Before a certificate is filed, the supreme court must issue an order approving the plan of merger or consolidation and authorizing the filing of the certificate. The application for the order may be made in the judicial district in which the principal office of the surviving or consolidated fire corporation is located, or in which the office of one of the participating fire corporations is located. The application must be jointly made by all the participating fire corporations setting forth the plan, the approval of the plan, the objects and purposes of the consolidation, a statement of all liabilities and income of each fire corporation, whether there were any votes against adoption of the plan, and facts showing that the consolidation is authorized by the laws of the jurisdictions under which each of the corporations is incorporated. After the application is filed, the court shall set a hearing date and direct that notice be given to all interested parties including the New York State Attorney General, any governmental body or officer and any other person or body whose consent or approval is required. (See, e.g., West's McKinney's Forms, Not-For-Profit Corp. Law §§ 9:21, 9:22, 9:23)

Certificate of Merger or Consolidation (N-PCL § 904)

After approval of the plan, a certificate of merger or consolidation must be signed by each fire corporation and delivered to the Department of State. The certificate shall state:

- The name of each participating fire corporation and the name of the surviving fire corporation or consolidated corporation;
- A description of the membership and holders of any certificates evidencing capital contributions or subventions of each participating corporation;
- In the case of merger, a statement of any amendments or changes in the certificate of incorporation of the surviving fire corporation;
- In case of consolidation, all statements required to be included in a certificate of incorporation for a corporation formed under Chapter 35 of the Not-For-Profit Corporation Law;
- The effective date of the merger or consolidation, if different than the date of filing the certificate;
- The date when the certificate of incorporation of each participating corporation was filed with by the Department of State; and
- The manner in which the merger or consolidation was authorized with respect to each participating corporation.

The surviving or consolidated fire corporation must file a copy of the certificate with the county clerk or the register of the county(ies) in which a participating fire corporation is located, other than the surviving corporation, and in the county(ies) where the real property of a participating fire corporation is situated. (See, e.g., West's McKinney's Forms, Not-For-Profit Corp. Law §§ 9:14, 9:15, 9:16). Before such filing may properly take place, consent to filing (as described below) must be obtained.

Consent to Filing (N-PCL § 909, § 404(f))

A certificate of merger or consolidation shall not be filed unless all required approvals or consents are received. Fire corporations require the approval, signed and acknowledged, of the authorities of each city, village, town or fire district (in a city: the mayor; in a village: a majority of the board of trustees; in a town: a majority of the members of the town board; in a fire district: a majority of the fire commissioners) in which the corporation proposes to act. The members of the town or village board may not give consent until a public hearing is held on the merger or consolidation.

Intermunicipal Agreements: (General Municipal Law Article 5-G)

NYS Constitution Article VIII, section 1 provides that two or more counties, cities, towns, villages or school districts “may join together pursuant to law in providing any municipal facility, service, activity or undertaking which each of the units has the power to provide separately.” This authority is further implemented in General Municipal Law Article 5-G which authorizes municipalities and fire districts to enter into, amend, cancel and terminate agreements for the performance and cost allocation respective to their functions, powers and duties on a cooperative or contract basis.

An intermunicipal agreement is possible when two or more parties, which are either municipal corporations or districts, each have the underlying function, power or duty to provide for a specific service or function. This agreement provides local governments the ability to reduce expenditures while maintaining the same quality of service. For more information on intermunicipal agreements and intergovernmental cooperation, see the Department of State's James A. Coon Local Government Technical Series publication “Intergovernmental Cooperation”, which can be found at: <http://www.dos.state.ny.us/lgss/pdfs/intergvt.pdf>.

APPENDIX A

Reprinted from *Local Government Forms (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Town Law
Article 11. Fire, Fire Alarm and Fire Protection Districts

§ 172 Form 1. Petition by Resident Taxpayers for Consolidation of Adjoining Fire Districts

TO THE TOWN BOARD OF THE TOWN OF _____, COUNTY OF _____:

The undersigned, being resident taxpayers of the Town of _____, New York (the "Town"), and of _____ Fire District No. _____ or _____ Fire District No. _____ of said town, aggregating at least one-half of the assessed valuation of all the taxable real property of each of said districts owned by resident taxpayers thereof, as such valuations appear upon the latest completed assessment roll of said town, do hereby petition the board as follows:

1. Petitioners propose, pursuant to Town Law Article 11, that the Town Board consolidate _____ Fire District No. _____ and _____ Fire District No. _____ of said Town into one fire district (the "consolidated fire district").

2. The aforementioned Fire Districts are adjoining fire districts.

3. *[Here and in as many succeeding paragraphs as necessary, set forth facts demonstrating why consolidation is desirable, e. g., greater efficiency, elimination of duplication, etc.]*

4. The assessed valuation of all the taxable real property of the consolidated fire district, owned by resident taxpayers, as such valuations appear upon the latest completed assessment roll of the Town is \$ _____ total. All of the petitioners are residents of the consolidated fire district and own real property therein, which property according to the latest completed assessment roll of the Town shows the assessed valuations respectively set out next to the names of the petitioners as follows:

Names and Addresses of Petitioners Owning Property in _____ Fire District No. _____ Assessed Valuation of Property Owned

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Names and Addresses of Petitioners Owning Property in _____ Fire District No. _____ Assessed Valuation of Property Owned

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

WHEREFORE, the petitioners respectfully request that the Town Board consolidate _____
Fire District No. _____ and _____ Fire District No. _____ of said
Town into the consolidated fire district and that a public hearing on such consolidation be held
according to law.

Dated: _____, N.Y.
_____, 20____.

[Typed Names and Signatures of Petitioners]

STATE OF NEW YORK

COUNTY OF _____ ss.:

On the _____ day of _____, 20____, before me personally came _____
to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in
_____, _____, New York; that he/she/they is (are) the
_____ of the _____, the corporation described in and which executed
the above instrument; that he/she/they know(s) the seal of said corporation; that the seal
affixed to said instrument is such corporate seal; that it was so affixed by authority of the board
of directors of said corporation, and that he/she/they signed his/her/their name(s) thereto by
like authority.

(Signature and office of person taking acknowledgment.)

APPENDIX B

Reprinted from *Local Government Forms (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Town Law
Article 11. Fire, Fire Alarm and Fire Protection Districts

§ 172 Form 2. Resolution for Public Hearing on Consolidation of Adjoining Fire Districts

WHEREAS, a petition dated _____, 20____, has been duly presented to the Town Board of the Town of _____, New York (the "Town"), according to law, requesting that _____ Fire District No. _____ and _____ Fire District No. _____ of said Town, adjoining districts, be consolidated into one fire district (the "consolidated fire district").

NOW, THEREFORE, BE IT RESOLVED, that the said Town Board shall meet at the Town Hall, _____, _____, New York, on the _____ day of _____, 20____, at _____ P.M., to consider said petition and hear all persons interested in such consolidation, and be it

FURTHER RESOLVED, that the Town Clerk is hereby authorized and directed to publish notice of said hearing in the _____, the official Town newspaper, and to post copies of such notice in the manner required by law.

APPENDIX C

Reprinted from *Local Government Forms (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Town Law
Article 11. Fire, Fire Alarm and Fire Protection Districts

§ 172 Form 3. Notice of Public Hearing on Consolidation of Adjoining Fire Districts

NOTICE IS HEREBY GIVEN that the Town Board of the Town of _____, New York (the "Town"), will meet at the Town Hall, _____, _____, New York, on the _____ day of _____, 20____, at _____ P.M., for the purpose of conducting a hearing upon a petition dated _____, 20____, duly presented to said Town Board, according to law, requesting that _____ Fire District No. _____ and _____ Fire District No. _____ of the Town, adjoining districts, be consolidated into one fire district (the "consolidated fire district"), at which time and place said Town Board will consider such petition and hear all persons interested in the matter.

Dated: _____, New York
_____, 20____.

By Order of the Town Board
of the Town of _____.

Town Clerk

Town of _____

APPENDIX D

Reprinted from *Local Government Forms (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Town Law
Article 11. Fire, Fire Alarm and Fire Protection Districts

§ 172 Form 4. Resolution for Consolidation of Adjoining Fire Districts After Public Hearing

WHEREAS, a petition dated _____, 20____, has been duly presented to the Town Board of the Town of _____, New York (the "Town"), according to law, requesting that _____ Fire District No. _____ and _____ Fire District No. _____ of said Town, be consolidated into one fire district (the "consolidated fire

district"), and
WHEREAS, said Town Board duly adopted on the _____ day of _____, 20____, a resolution providing that said Town Board shall meet at the Town Hall, _____, _____, New York, on the _____ day of _____, 20____, at _____ P.M., to consider said petition and hear all persons interested in the matter of the consolidation of such Fire Districts, and notice of such hearing was duly published and posted as prescribed by law, and said Town Board has, at the time and place specified in said notice, duly met and considered the matter of such consolidation, and heard all persons interested in the subject thereof who appeared at such time and place, concerning the same, and

WHEREAS the said Town Board has considered said petition and the evidence submitted at such hearing,

NOW, THEREFORE, BE IT RESOLVED, that the Town Board determines as follows:

(1) That the aforesaid petition was signed and acknowledged or proved as required by law and is otherwise sufficient.

(2) That it is in the public interest to grant the consolidation requested, and be it FURTHER RESOLVED, that effective _____, 20____, _____ Fire District No. _____ and _____ Fire District No. _____ of the Town are hereby consolidated into one fire district to be known as the consolidated fire district, and be it

FURTHER RESOLVED, that the Town Clerk be and he hereby is authorized and directed to cause a certified copy of this resolution to be duly recorded in the office of the clerk of _____ County in which said consolidated Fire Districts are located, and be it

FURTHER RESOLVED, that the Town Clerk be and he hereby is authorized and directed to file a certified copy of this resolution in the office of the State Department of Audit and Control, at Albany, New York, within ten (10) days after the adoption of this resolution.

APPENDIX E

Reprinted from *Local Government Forms (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Town Law
Article 11. Fire, Fire Alarm and Fire Protection Districts

§ 172-b Form 1. Petition by Resident Taxpayers for Consolidation of Adjoining Fire Protection Districts

TO THE TOWN BOARD OF THE TOWN OF _____, COUNTY OF _____:

The undersigned, being resident taxpayers of the Town of _____, New York (the "Town"), and of _____ Fire Protection District No. _____ or _____ Fire Protection District No. _____ of said town, aggregating at least one-half of the assessed valuation of all the taxable real property of each of said districts owned by resident taxpayers thereof, as such valuations appear upon the latest completed assessment roll of said town, do hereby petition the board as follows:

1. Petitioners propose, pursuant to Town Law Article 11, that the Town Board consolidate said Fire Protection Districts into one fire protection district.
2. The said Fire Protection Districts are adjoining fire districts.
3. *[Here and in as many succeeding paragraphs as necessary, set forth facts demonstrating why consolidation is desirable, e. g., greater efficiency, elimination of duplication, etc.]*
4. The assessed valuation of all the taxable real property of said Fire Protection Districts, owned by resident taxpayers, as such valuations appear upon the latest completed assessment roll of the Town is \$ _____ total. All of the petitioners are residents of the Fire Protection Districts and own real property therein, which property according to the latest completed assessment roll of the Town shows the assessed valuations respectively set out next to the names of the petitioners as follows:

Names and Addresses of Petitioners Owning Property in _____ Fire Protection District No. _____	Assessed Valuation of Property Owned
---	--------------------------------------

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Names and Addresses of Petitioners Owning Property in _____ Fire Protection District No. _____	Assessed Valuation of Property Owned
---	--------------------------------------

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

WHEREFORE, the petitioners respectfully request that the Town Board consolidate said Fire Protection Districts into one fire protection district and that a public hearing on such consolidation be held according to law.

Dated: _____, N.Y.
_____, 20__.

[Typed Names and Signatures of Petitioners]

STATE OF NEW YORK

COUNTY OF _____ ss.:

On the _____ day of _____, 20__, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____, _____, New York; that he/she/they is (are) the _____ of the _____, the corporation described in and which executed the above instrument; that he/she/they know(s) the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he/she/they signed his/her/their name(s) thereto by like authority.
(Signature and office of person taking acknowledgment.)

Appendix F

Reprinted from *Local Government Forms (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Town Law

Article 11. Fire, Fire Alarm and Fire Protection Districts

§ 172-b Form 2. Resolution for Public Hearing on Consolidation of Adjoining Fire Protection Districts

WHEREAS, a petition dated _____, 20____, has been duly presented to the Town Board of the Town of _____, New York (the "Town"), according to law, requesting that _____ Fire Protection District No. _____ and _____ Fire Protection District No. _____ of said Town, adjoining districts, be consolidated into one fire protection district,
NOW, THEREFORE, BE IT RESOLVED, that the said Town Board shall meet at the Town Hall, _____, _____, New York, on the _____ day of _____, 20____, at _____ P.M., to consider said petition and hear all persons interested in such consolidation, and be it
FURTHER RESOLVED, that the Town Clerk is hereby authorized and directed to publish notice of said hearing in the _____, the official Town newspaper, and to post copies of such notice in the manner required by law.

Appendix G

Reprinted from *Local Government Forms (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Town Law
Article 11. Fire, Fire Alarm and Fire Protection Districts

§ 172-b Form 3. Notice of Public Hearing on Consolidation of Adjoining Fire Protection Districts

NOTICE IS HEREBY GIVEN that the Town Board of the Town of _____, New York (the "Town"), will meet at the Town Hall, _____, _____, New York, on the _____ day of _____, 20____, at _____ P.M., for the purpose of conducting a hearing upon a petition dated _____, 20____, duly presented to said Town Board, according to law, requesting that _____ Fire Protection District No. _____ and _____ Fire Protection District No. _____ of the Town, adjoining districts, be consolidated into one fire protection district, at which time and place said Town Board will consider such petition and hear all persons interested in the matter.

Dated: _____, New York
_____, 20____.

By Order of the Town Board
of the Town of _____.

Town Clerk

Town of _____

Appendix H

Reprinted from *Local Government Forms (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Town Law Article 11. Fire, Fire Alarm and Fire Protection Districts

§ 172-b Form 4. Resolution for Consolidation of Adjoining Fire Protection Districts After Public Hearing

WHEREAS, a petition dated _____, 20____, has been duly presented to the Town Board of the Town of _____, New York (the "Town"), according to law, requesting that _____ Fire Protection District No. _____ and _____ Fire Protection District No. _____ of said Town, be consolidated into one fire protection district, and WHEREAS, said Town Board duly adopted on the _____ day of _____, 20____, a resolution providing that said Town Board shall meet at the Town Hall, _____, _____, New York, on the _____ day of _____, 20____, at _____ P.M., to consider said petition and hear all persons interested in the matter of the consolidation of such Fire Protection Districts, and notice of such hearing was duly published and posted as prescribed by law, and said Town Board has, at the time and place specified in said notice, duly met and considered the matter of such consolidation, and heard all persons interested in the subject thereof who appeared at such time and place, concerning the same, and WHEREAS the said Town Board has considered said petition and the evidence submitted at such hearing,
NOW, THEREFORE, BE IT RESOLVED, that the Town Board determines as follows:

1. That the aforesaid petition was signed and acknowledged or proved as required by law and is otherwise sufficient.

2. That it is in the public interest to grant the consolidation requested, and be it FURTHER RESOLVED, that effective _____, 20____, _____ Fire Protection District No. _____ and _____ Fire Protection District No. _____ of the Town are hereby consolidated into one fire district to be known as the consolidated fire district, and be it

FURTHER RESOLVED, that the Town Clerk be and he hereby is authorized and directed to cause a certified copy of this resolution to be duly recorded in the office of the clerk of _____ County in which said consolidated Fire Protection Districts are located, and be it

FURTHER RESOLVED, that the Town Clerk be and he hereby is authorized and directed to file a certified copy of this resolution in the office of the State Department of Audit and Control, at Albany, New York, within ten (10) days after the adoption of this resolution.

Appendix I

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:2. Plan of merger—Domestic or foreign corporation as surviving corporation [Form: N.Y. Not-for-Profit Corp. Law § 902]

Plan of Merger of *[name of constituent corporation 1]* and *[name of constituent corporation 2]* into *[name of surviving corporation]*

ARTICLE I NAMES OF CONSTITUENT CORPORATIONS AND OF SURVIVING CORPORATION

The names of the constituent corporations are *[name of constituent corporation 1]* and *[name of constituent corporation 2]*. [OPTIONAL: *[name of constituent corporation]* was formed under the name *[former name of constituent corporation]*.] The name of the surviving corporation is *[name of surviving corporation]*.

ARTICLE II MEMBERSHIP AND HOLDERS OF CERTIFICATES EVIDENCING CAPITAL CONTRIBUTIONS AND SUBVENTIONS

The membership and holders of certificates evidencing capital contributions or subventions, including their number, classification, and voting rights, as to each constituent corporation, are described as follows: *[description of membership and holders of certificates of each constituent corporation.]*

ARTICLE III TERMS AND CONDITIONS OF PROPOSED MERGER

[Select one of the following][EITHER:]

1. The manner and basis of converting membership and/or other interest in each constituent corporation into membership and/or other interest in the surviving corporation shall be as follows: *[Specification of manner and basis of conversion]*

[OR:]

1. The *[cash/[specification of other consideration]]* to be *[paid/delivered]* in exchange for membership and/or other interest in each constituent corporation shall be as follows: *[Specification of manner of payment or delivery]*

[OR:]

1. The manner and basis of converting membership and/or other interest in each constituent corporation into membership and/or other interest in the surviving corporation shall be combined with a formula for *[cash/[specification of other consideration]]* to be *[paid/delivered]* in exchange for such membership and/or other interest. The combined manner and basis of such conversion and exchange shall be as follows: *[Specification of combined manner and basis of such conversion and exchange]*

2. *[Specification of any other terms or conditions.]*

ARTICLE IV
AMENDMENTS OR CHANGES IN CERTIFICATE OF INCORPORATION OF SURVIVING
CORPORATION

The amendments or changes in the certificate of incorporation of the surviving corporation to be effected by the merger are:

[To amend an existing provision:] Paragraph *[designation of paragraph]*, which relates to *[specification of subject matter of paragraph]*, is amended to read as follows: *[designation and recitation of paragraph to be substituted]*.

[To eliminate a provision:] Paragraph *[designation of paragraph]*, which relates to *[specification of subject matter of paragraph]*, is eliminated.

[To add a new provision:] A paragraph numbered *[designation of paragraph]* is added to read as follows: *[designation and recitation of paragraph to be added]*.

ARTICLE V
AGREEMENTS BY SURVIVING FOREIGN CORPORATION REGARDING SERVICE OF PROCESS AND
SUIT

[OPTIONAL: Because the surviving corporation is to be a foreign corporation, organized and existing under and by virtue of the laws of the State of [name of state], the following statement of agreements on the part of said surviving corporation will, under Not-for-Profit Corporation Law § 906(d)(2)(D), be required to be set forth in the certificate of merger which is to be delivered to the Department of State for filing:

"The surviving corporation, [name of surviving corporation], hereby agrees that it may be served with process in the State of New York in any action or special proceeding for the enforcement of any liability or obligation of any domestic corporation or of any foreign corporation previously amenable to suit in the State of New York which is a constituent corporation in this merger, and [name of surviving corporation] further agrees that it may be sued in the State of New York in respect of any property transferred or conveyed to it as provided in N.Y. Not-for-Profit Corp. Law § 907(c), or the use made of such property, or any transaction in connection therewith."

ARTICLE *[V/VI]*
MISCELLANEOUS PROVISIONS

[This article may be included for the purpose of setting forth provisions considered necessary or desirable but which are not required by the N.Y. Not-for-Profit Corp. Law. The provisions set forth here are illustrative only.]

[Select one of the following][EITHER:]

1. Effective Date of Merger.

The certificate of merger shall contain a provision that the effective date of the merger shall be *[date of merger not to exceed 30 days subsequent to filing of certificate of merger by Department of State.]*

[OR:]

1. Effective Date of Merger.

The proposed merger shall become effective upon the filing of the certificate of merger by the Department of State, and the certificate of merger shall not contain any provision to the contrary.

[OR:]

1. Effective Date of Merger.

The proposed merger shall become effective upon the filing of the certificate of merger by the Department of State, unless, prior to delivery of such certificate to the Department of State for filing, it is agreed between the boards of directors of the constituent corporations that a later effective date is advisable, in which event the certificate of merger shall contain a provision specifying such later effective date as is agreed upon between such boards, but which date under N.Y. Not-for-Profit Corp. Law § 905(a) may not exceed 30 days subsequent to the filing of the certificate of merger by the Department of State.

2.

Abandonment of Plan.

Notwithstanding authorization of this plan by the members of either of the constituent corporations, if at any time prior to the filing of the certificate of merger by the Department of State it becomes the opinion of the board of directors of either of the constituent corporations that events or circumstances have occurred which render it inadvisable to consummate the merger, this plan of merger may be abandoned. The filing of the certificate of merger by the Department of State shall conclusively establish that this plan has not been abandoned.

3.

Expenses of Merger.

The surviving corporation shall pay all the expenses of carrying this plan into effect and of accomplishing the merger, provided that if at any time this plan should become abandoned, *[name of constituent corporation 2]* shall reimburse the *[name of surviving corporation]* for 50 percent of all expenses incurred and paid under this paragraph.

4.

Counterparts.

For the convenience of the parties and to facilitate approval of this plan, any number of counterparts of this plan may be executed and each such executed counterpart shall be deemed to be an original instrument.

IN WITNESS WHEREOF, this plan of merger has been subscribed on behalf of *[name of constituent corporation 1]* on *[date of subscription]*, and on behalf of *[name of constituent corporation 2]* on *[date of subscription]*, by the undersigned duly authorized officers of those corporations, the plan having been duly adopted by the board of directors of *[name of constituent corporation 1]* on *[date of adopting plan]*, and by the board of directors of *[name of constituent corporation 2]* on *[date of adopting plan]*.

[Name of Corporation 1] *[Name of Corporation 2]*

by: _____
 [Title of Officer]

by: _____
 [Title of Officer]

Attest: _____
 Secretary

Attest: _____
 Secretary

Notes

This form is for use only if the constituents (domestic and domestic, or domestic and foreign) are not-for-profit corporations. For plan of merger where a constituent (domestic or foreign) is a business corporation, see herein § 9:24.

The bracketed Article V in the above form would be used only if the surviving corporation is to be a foreign corporation. See N.Y. Not-for-Profit Corp. Law §§ 902(a)(5), 906(d)(2)(D).

Notwithstanding the authorization of the merger by the members of each constituent corporation under N.Y. Not-for-Profit Corp. Law § 903, at any time prior to the filing of the certificate of

merger, the plan of merger may be abandoned pursuant to a provision for such abandonment, if any, contained in the plan. N.Y. Not-for-Profit Corp. Law § 903(b).

If the purposes of any constituent corporation would require the approval or consent of any governmental body or officer or any other person or body under N.Y. Not-for-Profit Corp. Law § 404, no certificate of merger or consolidation will be filed unless such approval or consent is endorsed thereon or annexed thereto. N.Y. Not-for-Profit Corp. Law § 909. Also required to be annexed to such certificate is a certified copy of the approval of the Supreme Court, where any constituent corporation is, or would be if formed under the N.Y. Not-for-Profit Corp. Law, a Type B or Type C corporation under N.Y. Not-for-Profit Corp. Law § 201. See N.Y. Not-for-Profit Corp. Law § 907(a).

The first optional clause above is applicable if the name of a constituent corporation has been changed.

The second optional clause above is applicable if the surviving corporation is to be a foreign corporation.

Appendix J

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:3. Resolution of directors adopting plan of merger [Form: N.Y. Not-for-Profit Corp. Law § 902]

Upon motion duly made, seconded and carried, the following *[resolution/resolutions]* *[was/were]* adopted by the affirmative vote of a majority of the Board of Directors present at the time of the vote, a quorum being presented at such time:

RESOLVED, that the plan of merger of *[name of corporation 1]* with *[name of corporation 2]*, designated as Plan *[designation of plan]* and dated the *[ordinal number]* day of *[name of month]*, *[year]*, a copy of which is annexed hereto, be and the same is hereby adopted and approved. *[OPTIONAL: And be it further]*

[OPTIONAL: The next paragraph is to be included only if the corporation has members entitled to vote on the plan, absent which the plan is deemed approved by the members when it is adopted by the board pursuant to N.Y. Not-for-Profit Corp. Law § 902; see N.Y. Not-for-Profit Corp. Law § 903(a)(3).]

RESOLVED, that such plan be submitted for approval by vote of the members of this corporation entitled to vote thereon at a special meeting to be called for that purpose on the *[ordinal number]* day of *[name of month]*, *[year]*, notice of which meeting is to be given to each member, whether or not entitled to vote, together with a copy of said plan of merger which has this day been adopted and approved by the Board of Directors of this corporation.

Notes

The board of directors of each constituent corporation, upon “approving” the plan of merger, must submit the plan to a vote of the members for their approval. N.Y. Not-for-Profit Corp. Law § 903(a). [Cf. N.Y. Not-for-Profit Corp. Law § 902, which provides that the board shall “adopt” the plan.] Notice of meeting [see form of notice at § 9:7, *infra*] must be given to each member whether or not entitled to vote, accompanied by a copy of the plan or an outline of its material features. N.Y. Not-for-Profit Corp. Law § 903(a)(1).

The plan must be approved at a meeting of the members by two-thirds vote as provided in N.Y. Not-for-Profit Corp. Law § 613(c) [see form of member resolution at § 9:8, *infra*], but as noted in the bracketed italics in the above form, if a merging corporation has no members entitled to vote on the plan, the plan is deemed approved by the members of the corporation when it is adopted by the board pursuant to N.Y. Not-for-Profit Corp. Law § 902. N.Y. Not-for-Profit Corp. Law § 903(a)(2), (3).

Appendix K

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:4. Plan of consolidation—Domestic or foreign consolidated corporation [Form: N.Y. Not-for-Profit Corp. Law § 902]

Plan of Consolidation of *[name of constituent corporation 1]* and *[name of constituent corporation 2]* into *[name of consolidated corporation]*

ARTICLE I

NAMES OF CONSTITUENT CORPORATIONS AND NAME OF CONSOLIDATED CORPORATION

The names of the constituent corporations are *[name of constituent corporation 1]* and *[name of constituent corporation 2]*. *[OPTIONAL: [Name of constituent corporation] was formed under the name [former name constituent corporation].]*

The *[name of the consolidated corporation shall be [name of consolidated corporation]/method of determining the name of the consolidated corporation shall be [specification of method of determining name of consolidated corporation.]*

ARTICLE II

MEMBERSHIP AND HOLDERS OF CERTIFICATES EVIDENCING CAPITAL CONTRIBUTIONS AND SUBVENTIONS AS TO CONSTITUENT CORPORATIONS

The membership and holders of certificates evidencing capital contributions or subventions, including their number, classification, and voting rights, as to each constituent corporation, are described as follows: *[description of membership and holders of certificates of each constituent corporation.]*

ARTICLE III

TERMS AND CONDITIONS OF PROPOSED CONSOLIDATION

[EITHER:]

1. The manner and basis of converting membership and/or other interest in each constituent corporation into membership and/or other interest in the consolidated corporation shall be as follows: *[Specification of manner and basis of converting membership].*

[OR:]

1. The *[cash/[specification of other consideration]]* to be *[paid/delivered]* in exchange for membership and/or other interest in each constituent corporation shall be as follows: *[Specification mode of payment].*

[OR:]

1. The manner and basis of converting membership and/or other interest in each constituent corporation into membership and/or other interest in the consolidated corporation shall be combined with a formula for *[cash/[specification of other consideration]]* to be *[paid/delivered]* in exchange for such membership and/or other interest. The combined manner and basis of such

conversion and exchange shall be as follows: *[Specification of manner and basis of conversion and exchange]*.

2. *[Specification of any other terms or conditions.]*

ARTICLE IV
STATEMENTS FOR CERTIFICATE OF INCORPORATION WITH RESPECT TO PROPOSED
CONSOLIDATED CORPORATION

The statements required to be included in a certificate of incorporation for a corporation formed under the Not-for-Profit Corporation Law *[OPTIONAL: except statements as to facts not available at the time of adoption of this plan of consolidation by the board of directors of each of the constituent corporations]* are:

[If any required statement is omitted because facts are unavailable at time of board adoption of plan, explanatory statement accounting for omission should be set forth in place of required statement. The following contents of the certificate of incorporation are from N.Y. Not-for-Profit Corp. Law § 402.]

(1) The name of the consolidated corporation shall be *[name of consolidated corporation]*.

(2)(a) The consolidated corporation is to be a corporation as defined in N.Y. Not-for-Profit Corp. Law § 102(a)(5).

(b) The consolidated corporation is to be formed for the following purposes: *[specification of purposes for formation of consolidated corporation]*.

(c) The consolidated corporation shall be a Type *[specification of type of consolidated corporation]* corporation under N.Y. Not-for-Profit Corp. Law § 201.

(d) *[OPTIONAL: Following, with respect to each business purpose, is the lawful public or quasi-public objective which each such business purpose will achieve: [Specification of purposes]]*.

(3) The office of the consolidated corporation is to be located in the County of *[name of county]* in the State of New York.

[OPTIONAL: The post office address of the office without the State of New York at which, pursuant to N.Y. Not-for-Profit Corp. Law § 621, the books and records of account of the consolidated corporation shall be kept is [post office address of consolidated corporation],[name of city] City, [name of county]County, State of [name of state]].

(4) *[OPTIONAL: The names and addresses of the initial directors of the consolidated corporation are: [List of names and addresses of initial directors of consolidated corporation]].*

(5) The duration of the corporation shall be *[statement of duration required only if other than perpetual; see N.Y. Not-for-Profit Corp. Law § 402(a)(5)]*.

(6) The Secretary of State of the State of New York is hereby designated as agent of the consolidated corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against it served upon the said Secretary is *[post office address of secretary of state], [name of city] City, [name of county] County, State of [name of state], Zip Code [zip code of area]*.

(7) *[OPTIONAL: [Name and address of registered agent within State of New York and statement that registered agent is to be agent of corporation upon whom process against it may be served.]*

(8) [OPTIONAL: [Specification of statements, with respect to special not-for-profit corporations required under N.Y. Not-for-Profit Corp. Law Article 14.]]

(9) [Specification of provision, not inconsistent with N.Y. Not-for-Profit Corp. Law or any other New York statute, which provision is: (1) for regulation of internal affairs of corporation, including types or classes of membership and distribution of assets on dissolution or final liquidation; or (2) required by any governmental body or officer or other person or body as condition for giving consent or approval required for filing of such certificate of incorporation. N.Y. Not-for-Profit Corp. Law § 402(c).]

[ARTICLE V]

[OPTIONAL: The consolidated corporation, [name of consolidated corporation], hereby agrees that it may be served with process in the State of New York in any action or special proceeding for the enforcement of any liability or obligation of any domestic corporation or of any foreign corporation previously amenable to suit in the State of New York which is a constituent corporation in this consolidation, and [name of consolidated corporation] further agrees that it may be sued in the State of New York in respect of any property transferred or conveyed to it as provided in Not-for-Profit Corporation Law § 907(c), or the use made of such property, or any transaction in connection therewith.]

ARTICLE [V/VI]
Miscellaneous Provisions

[This Article may be included for the purpose of setting forth provisions considered necessary or desirable but which are not required by the N.Y. Not-for-Profit Corp. Law. The provisions which follow here are illustrative only.]

[Select one of the following][EITHER:]

1. Effective Date of Consolidation.

The certificate of consolidation shall contain a provision that the effective date of the consolidation shall be [date of consolidation not to exceed 30 days subsequent to filing of certificate of consolidation by Department of State.]

[OR:]

1. Effective Date of Consolidation.

The proposed consolidation shall become effective upon the filing of the certificate of consolidation by the Department of State, and the certificate of consolidation shall not contain any provision to the contrary.

[OR:]

1. Effective Date of Consolidation.

The proposed consolidation shall become effective upon the filing of the certificate of consolidation by the Department of State unless, prior to delivery of such certificate to the Department of State for filing, it is agreed between the boards of directors of the constituent corporations that a later effective date is advisable, in which event the certificate of consolidation shall specify such later effective date as may be agreed upon between the boards, but which date under N.Y. Not-for-Profit Corp. Law § 905(a) may not exceed 30 days subsequent to the filing of the certificate of consolidation by the Department of State.

2.

Abandonment of Plan.

Notwithstanding authorization of this plan by the members of the constituent corporations, if at any time prior to the filing of the certificate of consolidation by the Department of State it

becomes the opinion of the board of directors of either of the constituent corporations that events or circumstances have occurred which render it inadvisable to consummate the consolidation, this plan of consolidation may be abandoned. The filing of the certificate of consolidation by the Department of State shall conclusively establish that this plan has not been abandoned.

3.

Expenses of Consolidation.

[Name of disbursing constituent] shall pay the expenses of carrying this plan into effect and of accomplishing the consolidation to the extent that such expenses become due and payable prior to the completion of the consolidation, provided that if at any time this plan shall become abandoned, *[name of non-disbursing constituent]* shall reimburse *[name of disbursing constituent]* for 50% of all expenses incurred and paid hereunder. Expenses becoming due and payable after the consolidation has been completed shall be paid by the consolidated corporation.

4.

Counterparts.

For the convenience of the parties and to facilitate approval of this plan, any number of counterparts thereof may be executed, and each such executed counterpart shall be deemed to be an original instrument.

IN WITNESS WHEREOF, this plan of merger has been subscribed on behalf of *[name of constituent corporation 1]* on *[date of subscription]*, and on behalf of *[name of constituent corporation 2]* on *[date of subscription]*, by the undersigned duly authorized officers of those corporations, the plan having been duly adopted by the board of directors of *[name of constituent corporation 1]* on *[date of adopting plan]*, and by the board of directors of *[name of constituent corporation 2]* on *[date of adopting plan]*.

<i>[Name of Corporation]</i>	<i>[Name of Corporation]</i>
by: _____	by: _____
<i>[Title of Officer]</i>	<i>[Title of Officer]</i>
Attest: _____	Attest: _____
Secretary	Secretary

Notes

This form is for use only if the constituents (domestic and domestic, or domestic and foreign) are not-for-profit corporations. For plan of consolidation where a constituent is a business corporation (domestic or foreign), see § 9:25. The bracketed Article V in the above form is used only where the consolidated corporation is to be a foreign corporation. See N.Y. Not-for-Profit Corp. Law §§ 902(a)(5), 906(d)(2)(D). Notwithstanding the authorization of the consolidation by the members of each constituent corporation under N.Y. Not-for-Profit Corp. Law § 903, at any time prior to the filing of the certificate of consolidation, the plan of consolidation may be abandoned pursuant to a provision for such abandonment, if any, contained in such plan. N.Y. Not-for-Profit Corp. Law § 903(b). If the purposes of any constituent or consolidated corporation would require the approval or consent of any governmental body or officer or any other person or body under N.Y. Not-for-Profit Corp. Law § 404, no certificate of merger or consolidation will be filed unless such approval or consent is endorsed thereon or annexed thereto. N.Y. Not-for-Profit Corp. Law § 909. Also required to be annexed to such certificate is a certified copy of the approval of the Supreme Court, where any constituent corporation or the consolidated corporation is, or would be if

formed under the N.Y. Not-for-Profit Corp. Law, a Type B or Type C corporation under N.Y. Not-for-Profit Corp. Law § 201. See N.Y. Not-for-Profit Corp. Law § 907(a).

The third optional clause above is applicable if the name of a constituent corporation has been changed.

The fifth optional clause above is applicable if the consolidated corporation is a Type C corporation.

The seventh optional clause above is applicable if the consolidated corporation is a Type A, Type B, or Type C corporation, and optionally if a Type D corporation.

The ninth optional clause above is applicable if consolidated corporation is to be a foreign corporation.

Appendix L

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:5. Resolution of directors adopting plan of consolidation [Form: N.Y. Not-for-Profit Corp. Law § 902]

Upon motion duly made, seconded and carried, the following *[resolution/resolutions]* *[was/were]* adopted by the affirmative vote of a majority of the Board of Directors present at the time of the vote, a quorum being presented at such time:

RESOLVED, that the plan of consolidation of *[name of corporation 1]* and *[name of corporation 2]*, designated as Plan *[designation of plan]* and dated the *[ordinal number]* day of *[name of month]*, *[year]*, a copy of which is annexed hereto, be and the same is hereby adopted.

[OPTIONAL: And be it further]

[OPTIONAL: The next paragraph is to be included only if the corporation has members entitled to vote on the plan, absent which the plan is deemed approved by the members when it is adopted by the board pursuant to N.Y. Not-for-Profit Corp. Law § 902; see N.Y. Not-for-Profit Corp. Law § 903(a)(3).]

RESOLVED, that such plan be submitted for approval by vote of the members of this corporation entitled to vote thereon at a special meeting to be called for that purpose on the *[ordinal number]* day of *[name of month]*, *[year]*, notice of which meeting is to be given to each member, whether or not entitled to vote, together with a copy of said plan of consolidation which has this day been adopted by the Board of Directors of this corporation.

Notes

The board of directors of each constituent corporation, upon “approving” the plan of consolidation, must submit the plan to a vote of the members for their approval. N.Y. Not-for-Profit Corp. Law § 903(a). [Cf. N.Y. Not-for-Profit Corp. Law § 902, which provides that the board shall “adopt” the plan.] Notice of meeting [see form of notice at § 9:9, *infra*] must be given to each member whether or not entitled to vote, accompanied by a copy of the plan or an outline of its material features. N.Y. Not-for-Profit Corp. Law § 903(a)(1).

The plan must be approved at a meeting of the members by two-thirds vote as provided in N.Y. Not-for-Profit Corp. Law § 613(c) [see form of member resolution at § 9:10, *infra*], but as noted in the bracketed italics in the above form, if a consolidating corporation has no members entitled to vote on the plan, the plan is deemed approved by the members of the corporation when it is adopted by the board pursuant to N.Y. Not-for-Profit Corp. Law § 902. N.Y. Not-for-Profit Corp. Law § 903(a)(2), (3).

Appendix M

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:7. Notice of special meeting of members to vote on plan of merger [Form: N.Y. Not-for-Profit Corp. Law § 903]

Notice of Special Meeting of Members

To the Members of *[name of corporation]*:

PLEASE TAKE NOTICE, that a special meeting of the members of *[name of corporation]* will be held at *[street address of corporation]*, City of *[name of city]*, County of *[name of county]*, State of New York, on the *[ordinal number]* day of *[name of month]*, *[year]*, at *[time of meeting]* o'clock *[A.M./P.M.]* for the purpose of voting upon a plan of merger of *[name of corporation 1]* into *[name of corporation 2]*, both of which are not-for-profit domestic corporations organized and existing under and by virtue of the laws of the State of New York *[OPTIONAL: [specification of foreign jurisdiction in which incorporated]]*.

[A copy/An outline of the material features] of the plan of merger, which plan has been approved and adopted by the board of directors of your corporation, is enclosed with this notice.

This notice of meeting is being issued at the direction of *[name of person calling for meeting]*.

Dated: *[date of notice]*.

[Name of person issuing notice]

[Title of person issuing notice]

Notes

Notice is to be given to each member whether or not entitled to vote, and a copy of the plan of merger or an outline of the material features of the plan is to accompany such notice. See N.Y. Not-for-Profit Corp. Law § 903(a)(1).

If any merging corporation has no members entitled to vote thereon, the plan of merger is deemed approved by the members when, pursuant to N.Y. Not-for-Profit Corp. Law § 902, it is adopted by the board. N.Y. Not-for-Profit Corp. Law § 903(a)(3).

Notwithstanding authorization by the members, at any time prior to the filing of the certificate of merger, the plan of merger may be abandoned pursuant to a provision for such abandonment, if any, contained in the plan of merger. N.Y. Not-for-Profit Corp. Law § 903(b).

See N.Y. Not-for-Profit Corp. Law § 605(a) for further requirements as to the notice, which are satisfied by the above form.

Appendix N

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:8. Resolution of members approving plan of merger [Form: N.Y. Not-for-Profit Corp. Law § 903]

Upon motion duly made, seconded and carried, the following resolutions were duly adopted by the affirmative vote of two-thirds of the members casting votes, the votes cast in favor of these resolutions being at least equal to the quorum and all members casting votes being entitled to vote thereon:

RESOLVED, that the plan of merger of *[name of corporation]* into *[name of surviving corporation]*, designated as Plan *[designation of plan]*, and approved and adopted by resolution of the Board of Directors of this corporation on the *[ordinal number]* day of *[name of month]*, *[year]*, be and the same is hereby approved and adopted in all respects by the members of this corporation this *[ordinal number]* day of *[name of month]*, *[year]*, and be it further RESOLVED, that the President and the Secretary of this corporation be and are hereby authorized to effectuate the aforesaid merger and to execute and deliver to the Department of State a certificate of merger pursuant to the Not-For-Profit Corporation Law of the State of New York.

Notes

The plan must be approved at a meeting of the members by a two-thirds vote as provided in N.Y. Not-for-Profit Corp. Law § 613(c), i.e., two-thirds of the votes cast at the meeting, provided that the affirmative votes cast are at least equal to the quorum. N.Y. Not-for-Profit Corp. Law § 903(a)(2). As to quorum, see N.Y. Not-for-Profit Corp. Law § 608.

Appendix O

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:9. Notice of special meeting of members to vote on plan of consolidation [Form: N.Y. Not-for-Profit Corp. Law § 903]

Notice of Special Meeting of Members

To the Members of *[name of corporation]*:

PLEASE TAKE NOTICE, that a special meeting of the members of *[name of corporation]* will be held at *[street address of corporation]*, City of *[name of city]*, County of *[name of county]*, State of New York, on the *[ordinal number]* day of *[name of month]*, *[year]*, at *[time of meeting]* o'clock *[A.M./P.M.]* for the purpose of voting upon a plan of consolidation of *[name of corporation 1]* and *[name of corporation 2]*, both of which are not-for-profit domestic corporations organized and existing under and by virtue of the laws of the State of New York *[OPTIONAL: [specification of foreign jurisdiction of incorporation]]* into a consolidated corporation to be named *[name of consolidated corporation]* to be organized and to exist under and by virtue of laws of the State of *[name of state]*.

[A copy/An outline of the material features] of the plan of consolidation, which has been approved and adopted by the board of directors of your corporation, is enclosed with this notice. This notice is being issued at the direction of *[name of person calling for meeting]*.

Dated: *[date of notice]*.

[Name of person issuing notice]

[Title of person issuing notice]

Notes

Notice is to be given to each member whether or not entitled to vote, and a copy of the plan of consolidation or an outline of the material features of the plan must accompany such notice. See N.Y. Not-for-Profit Corp. Law § 903(a)(1).

If any consolidating corporation has no members entitled to vote thereon, the plan of consolidation is deemed approved by the members when, pursuant to N.Y. Not-for-Profit Corp. Law § 902, it is adopted by the board. N.Y. Not-for-Profit Corp. Law § 903(a)(3).

Notwithstanding authorization by the member, at any time prior to the filing of the certificate of consolidation, the plan of consolidation may be abandoned pursuant to a provision for such abandonment, if any contained in the plan of consolidation. N.Y. Not-for-Profit Corp. Law § 903(b).

See N.Y. Not-for-Profit Corp. Law § 605(a) for further requirements as to the notice, which are satisfied by the above form.

Appendix P

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:10. Resolution of members approving plan of consolidation [Form: N.Y. Not-for-Profit Corp. Law § 903]

Upon motion duly made, seconded and carried, the following resolutions were duly adopted by the affirmative vote of two-thirds of the members casting votes, the votes cast in favor of these resolutions being at least equal to the quorum and all members casting votes being entitled to vote thereon:

RESOLVED, that the plan of consolidation of *[name of corporation 1]* and *[name of corporation 2]*, Plan *[designation of plan]* and approved and adopted by resolution of the Board of Directors of this corporation on the *[ordinal number]* day of *[name of month]*, *[year]*, be and the same is hereby approved and adopted in all respects by the members of this corporation this *[ordinal number]* day of *[name of month]*, *[year]*, and be it further

RESOLVED, that the President and Secretary of this corporation be and are hereby authorized to effectuate the aforesaid consolidation and to execute and deliver to the Department of State a certificate of consolidation pursuant to the Not-For-Profit Corporation Law of the State of New York.

Notes

The plan must be approved at a meeting of the members by a two-thirds vote as provided in N.Y. Not-for-Profit Corp. Law § 613(c), i.e., two-thirds of the votes cast at the meeting, provided that the affirmative votes cast are at least equal to the quorum. N.Y. Not-for-Profit Corp. Law § 903(a)(2). As to quorum, see N.Y. Not-for-Profit Corp. Law § 608.

Appendix Q

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:14. Certificate of merger [Form: N.Y. Not-for-Profit Corp. Law § 904]

Certificate of Merger of *[name of constituent corporation 1]* and *[name of constituent corporation 2]* into *[name of consolidated corporation]*

UNDER N.Y. NOT-FOR-PROFIT CORP. § 904

The undersigned, *[list of names of persons entitled to sign]*, being the *[title of persons entitled to sign pursuant to N.Y. Not-for-Profit Corp. Law § 104(d)]* of *[name of constituent corporation 1]*, and *[list of names of persons entitled to sign]*, being the *[title of persons entitled to sign pursuant to N.Y. Not-for-Profit Corp. Law § 104(d)]* of *[name of constituent corporation 2]*, said corporations being domestic corporations organized and existing under and by virtue of the laws of the State of New York, hereby certify:

(1) The names of the constituent corporations are *[name of constituent corporation 1]* and *[name of constituent corporation 2]*. *[OPTIONAL: [name of constituent corporation] was formed under the name [former name of constituent corporation].]* The name of the surviving corporation is *[name of surviving corporation]*.

(2) The membership and holders of certificates evidencing capital contributions and subventions, including their number, classification, and voting rights, as to each constituent corporation, are described as follows: *[Description of membership and holders of certificates of each constituent corporation.]*

(3) The amendments or changes in the certificate of incorporation of the surviving corporation to be effected by the merger are:

[To amend an existing provision:] Paragraph *[designation of paragraph]*, which relates to *[specification of subject matter of paragraph]*, is amended to read as follows: *[designation and recitation of paragraph paragraph to be substituted]*.

[To eliminate a provision:] Paragraph *[designation of paragraph]*, which relates to *[specification of subject matter of paragraph]*, is eliminated.

[To add a new provision:] A paragraph numbered *[designation of paragraph]* is added to read as follows: *[designation and recitation of paragraph to be added]*.

(4) *[OPTIONAL: The effective date of the merger shall be [date of merger not to exceed 30 days subsequent to filing of certificate of merger by Department of State]; see N.Y. Not-for-Profit Corp. Law § 905(a)].*

(5) The certificate of incorporation of *[name of constituent corporation 1]* was filed by the Department of State on *[date of filing certificate of incorporation]*. The certificate of incorporation of *[name of constituent corporation 2]* was filed by the Department of State on *[date of filing certificate of incorporation]*. *[Name of constituent]* was created by special law, to wit, chapter *[number of chapter]* of the laws of *[name of act]*.

(6) The merger was authorized with respect to *[name of constituent corporation 1]* in the following manner: *[Specification of statement pursuant to form of alternative 1 or 2 below]*.
[Alternative 1, if constituent has members:] A plan of merger was adopted by the board of *[name of constituent corporation]* *[at a meeting on [date of meeting], by vote of a majority of the directors present at the time of the vote, a quorum being present at the time/without a meeting by the consent in writing of all the members of the board to the adoption of a resolution authorizing adoption of the plan. The resolution and the written consents thereto by the board members were filed with the minutes of the proceedings of the board]*. The board submitted the plan to a vote of the members. Notice of meeting was given to each member whether or not entitled to vote. *[A copy of the plan of merger/An outline of the material features of the plan of merger]* accompanied the notice. The plan was approved at a meeting of the members on *[date of approval]*, by two thirds of the votes cast at the meeting, the affirmative votes cast in favor of the plan being at least equal to the quorum, blank votes and abstentions not being counted in the number of votes cast.
[Alternative 2, if constituent has no members:] *[Name of constituent corporation]* having no members, the merger was deemed approved when a plan of merger was adopted by the board of *[name of constituent corporation]* at a meeting on *[date of meeting]*, by vote of a majority of the directors present at the time of the vote, a quorum being present at such time OR *[Name of constituent corporation]* having no members, the merger was deemed approved when a plan of merger was adopted by the board of *[name of constituent corporation]*, without a meeting, by the consent in writing of all the members of the board to the adoption of a resolution authorizing adoption of the plan. The resolution and the written consents thereto by the board members were filed with the minutes of the proceedings of the board.

The merger was authorized with respect to *[name of constituent corporation]* in the following manner: *[Specification of statement pursuant to form of alternative 1 or 2 above]*.
IN WITNESS WHEREOF, the undersigned have, on behalf of each constituent corporation, signed this certificate and hereby affirm it as true under the penalties of perjury this *[ordinal number]* day of *[name of month]*, *[year]*.

[Name of officer]

[Title of officer]

[Name of officer]

[Title of officer]

for *[name of constituent corporation 1]*

[Name of officer]

[Title of officer]

[Name of officer]

[Title of officer]

for *[name of constituent corporation 2]*

[Certified copy of approval by the Supreme Court where required pursuant to N.Y. Not-for-Profit Corp. Law § 907; see §§ 9:21 to 9:23]

[Consents or approvals under N.Y. Not-for-Profit Corp. Law § 404 where mandated by N.Y. Not-for-Profit Corp. Law § 909]

Notes

The first optional clause above is applicable if the name of a constituent corporation has been changed.

The second optional clause above is applicable if the merger is to become effective other than upon filing of the certificate of merger by the Department of State.

This form is only for merger of domestic not-for-profit corporations. For merger of domestic and foreign not-for-profit corporations, use § 9:17 or § 9:19, as appropriate. For merger of business and not-for-profit corporations, use § 9:26, § 9:28, or § 9:31, as appropriate.

Delivery to Department of State; filings in county offices. The certificate of merger must be delivered to the Department of State (N.Y. Not-for-Profit Corp. Law § 904(a)), and the surviving corporation thereafter must cause a copy of the certificate, certified by the Department of State, to be filed in the office of the clerk of each county in which the office of a constituent corporation, other than the surviving corporation, is located, and in the office of the official who is the recording officer of each county in this State in which real property of a constituent corporation, other than the surviving corporation, is situated (N.Y. Not-for-Profit Corp. Law § 904(b)).

Approvals and Consents. If the purposes of any surviving or consolidated corporation require the approval or consent of any governmental body or officer or any other person or body under N.Y. Not-for-Profit Corp. Law § 404, no certificate of merger or consolidation will be filed pursuant to N.Y. Not-for-Profit Corp. Law Article 9 unless such approval or consent is endorsed thereon or annexed thereto. N.Y. Not-for-Profit Corp. Law § 909. For approval by the Supreme Court in the case of Type B or C corporations, see N.Y. Not-for-Profit Corp. Law § 907. As to education corporations, see below in this Notes to Form.

Effect of Merger. When the merger has been effected:

(1) The surviving corporation shall thereafter, consistently with its certificate of incorporation as altered by the merger, possess all the rights, privileges, immunities, powers and purposes of each of the constituent corporations. N.Y. Not-for-Profit Corp. Law § 905(b)(1).

(2) All the property, real and personal, including causes of action and every other asset of each of the constituent corporations, vests in such surviving corporation without further act or deed, except as otherwise provided in N.Y. Not-for-Profit Corp. Law § 907(b). Except as the court may otherwise direct, as provided in N.Y. Est. Powers & Trusts Law § 8-1.1, any disposition made in the will of a person dying domiciled in this State or in any other instrument executed under the laws of this state, taking effect after such merger, to or for any of the constituent corporations inures to the benefit of the surviving corporation. So far as is necessary for that purpose, or for the purpose of a like result with respect to a disposition governed by the law of any other jurisdiction, the existence of each constituent domestic corporation shall be deemed to continue in and through the surviving corporation. N.Y. Not-for-Profit Corp. Law § 904(b)(2).

(3) The surviving corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent corporations. No liability or obligation due or to become due, claim or demand for any cause existing against any such corporation, or any member, officer or director thereof, is released or impaired by such merger. No action or proceeding, whether civil or criminal, then pending by or against any such constituent corporation, or any member, officer or director thereof, abates or is discontinued by such merger, but may be enforced, prosecuted, settled or compromised

as if such merger had not occurred, or such surviving corporation may be substituted in such action or special proceeding in place of any constituent corporation. N.Y. Not-for-Profit Corp. Law § 905(b)(3).

(4) The certificate of incorporation of the surviving corporation is automatically amended to the extent, if any, that changes in its certificate of incorporation are set forth in the plan of merger. N.Y. Not-for-Profit Corp. Law § 905(b)(4).

Education Corporations. In addition to the requirements of N.Y. Not-for-Profit Corp. Law § 909, the consent of the Regents shall be endorsed on or annexed to a certificate of merger if any constituent corporation was chartered, or formed by special act with a purpose for which a corporation might be created by the regents. N.Y. Educ. Law § 216-a(4)(d)(11).

Appendix R

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:15. Certificate of consolidation [Form: N.Y. Not-for-Profit Corp. Law § 904]

Certificate of Consolidation *[name of constituent corporation 1]* and *[name of constituent corporation 2]* into *[name of consolidated corporation]*

UNDER N.Y. NOT-FOR-PROFIT CORP. § 904

The undersigned, *[list of names of persons entitled to sign]*, being the *[title of persons entitled to sign pursuant to N.Y. Not-for-Profit Corp. Law § 104(d)]* of *[name of constituent corporation 1]*, and *[list of names of persons entitled to sign]*, being the *[title of persons entitled to sign pursuant to N.Y. Not-for-Profit Corp. Law § 104(d)]* of *[name of constituent corporation 2]*, said corporations being domestic corporations organized and existing under and by virtue of the laws of the State of New York, hereby certify:

(1) The names of the constituent corporations are *[name of constituent corporation 1]* and *[name of constituent corporation 2]*. *[OPTIONAL: The name under which [name of constituent corporation] was formed is [former name of constituent corporation].]*
The name of the consolidated corporation is *[name of consolidated corporation]*.

(2) The membership and holders of certificates evidencing capital contributions and subventions, including their number, classification, and voting rights, are described as follows: *[description of membership and holders of certificates of each constituent corporation.]*

(3) The statements required to be included in a certificate of incorporation for a corporation formed under the Not-for-Profit Corporation Law with respect to the consolidated corporation, including statements which were omitted in the plan of consolidation because facts were not available at the time said plan was adopted by the board of directors of each of the constituent corporations, are:

I. The name of the consolidated corporation is *[name of consolidated corporation]*.

II(a) The consolidated corporation is a corporation as defined in Not-for-Profit Corporation Law § 102(a)(5).

(b) The consolidated corporation is formed for the following purposes: *[list of purposes for formation of consolidated corporation]*.

(c) The consolidated corporation shall be a Type *[specification of type of corporation]* corporation under section 201 of the Not-for-Profit Corporation Law.

(d) *[OPTIONAL: Following, with respect to each business purpose, is the lawful public or quasi-public objective which each such business purpose will achieve: [Specification of lawful public or quasi-public objective]].*

III. The office of the consolidated corporation is to be located in the County of *[name of county]* in the State of New York.

[OPTIONAL: The post office address of the office without the State of New York at which, pursuant to N.Y. Not-for-Profit Corp. § 621, the books and records of account of the consolidated corporation shall be kept is [place of record], [address of corporation], [name of city] City, [name of county] County, State of [name of state]].

IV. *[OPTIONAL: The names and addresses of the initial directors of the consolidated corporation are: [List of names and addresses of initial directors of consolidated corporation]].*

V. The duration of the corporation shall be *[duration of corporation under N.Y. Not-for-Profit Corp. Law § 402(a)(5), to be specified only if other than perpetual]*.

VI. The Secretary of State of the State of New York is hereby designated as agent of the consolidated corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against it served upon the said Secretary is *[post office address of secretary of state], [name of city] City, [name of county] County, State of [name of state], Zip Code [zip code of area]*.

VII. *[OPTIONAL: [Name and address of registered agent within State of New York and statement that registered agent is to be agent of corporation upon whom process against it may be served.]]*

VIII. *[OPTIONAL: [Specification of statements, with respect to special not-for-profit corporations required under N.Y. Not-for-Profit Corp. Law Article 14.]]*

IX. *[Specification of provision, not inconsistent with N.Y. Not-for-Profit Corp. Law or any other New York statute, which provision is: (1) for regulation of internal affairs of corporation, including types or classes of membership and distribution of assets on dissolution or final liquidation; or (2) required by any governmental body or officer or other person or body as condition for giving consent or approval required for filing of such certificate of incorporation. N.Y. Not-for-Profit Corp. Law § 402(c).]*

(4) *[OPTIONAL: The effective date of the consolidation shall be [effective date of consolidation not to exceed 30 days subsequent to filing of certificate of consolidation by Department of State]; see N.Y. Not-for-Profit Corp. Law § 905(a).]*

[EITHER:]

(5) The certificate of incorporation of *[name of constituent corporation]* was filed on *[date of filing certificate of incorporation]*.

The certificate of incorporation of *[name of constituent corporation 2]* was filed on *[date of filing certificate of incorporation]*.

[OR:]

(5) *[Name of constituent corporation]* was created by special law, to wit, chapter *[number of act]* of the laws of *[name of act]*.

(6) The consolidation was authorized with respect to *[name of constituent corporation]* in the following manner: *[Specification of statement pursuant to form of alternative 1 or 2 below]*.

[Alternative 1, if constituent has members:] A plan of consolidation was adopted by the board of *[name of constituent corporation]* *[at a meeting on [date of meeting], by vote of a majority of the directors present at the time of the vote, a quorum being present at the time/without a meeting by the consent in writing of all the members of the board to the adoption of a resolution authorizing adoption of the plan. The resolution and the written consents thereto by the board members were filed with the minutes of the proceedings of the board]*. The board submitted the plan to a vote of the members. Notice of meeting

was given to each member whether or not entitled to vote. *[A copy of the plan of consolidation/An outline of the material features of the plan of consolidation]* accompanied the notice. The plan was approved at a meeting of the members on *[date of meeting]*, by two thirds of the votes cast at the meeting, the affirmative votes cast in favor of the plan being at least equal to the quorum, blank votes and abstentions not being counted in the number of votes cast.

[Alternative 2, if constituent has no members:] [Name of constituent corporation] having no members, the consolidation was deemed approved when a plan of consolidation was adopted by the board of [name of constituent corporation] [at a meeting on [date of meeting], by vote of a majority of the directors present at the time of the vote, a quorum being present at such time without a meeting, by the consent in writing of all the members of the board to the adoption of a resolution authorizing adoption of the plan. The resolution and the written consents thereto by the board members were filed with the minutes of the proceedings of the board.]

The consolidation was authorized with respect to *[name of constituent corporation]* in the following manner: *[Specification of statement pursuant to form of alternative 1 or 2 above]*. IN WITNESS WHEREOF, the undersigned have, on behalf of each constituent corporation, signed this certificate and hereby affirm it as true under the penalties of perjury this *[ordinal number]* day of *[name of month]*, *[year]*.

[Name of officer]

[Title of officer]

[Name of officer]

[Title of officer]

for *[name of constituent corporation 1]*

[Name of officer]

[Title of officer]

[Name of officer]

[Title of officer]

for *[name of constituent corporation 2]*

[Certified copy of approval by the Supreme Court where required pursuant to N.Y. Not-for-Profit Corp. Law § 907; see §§ 9:21 to 9:23]

[Consents or approvals under N.Y. Not-for-Profit Corp. Law § 404 where mandated by N.Y. Not-for-Profit Corp. Law § 909]

Notes

The first optional clause above is applicable if the name of a constituent corporation has been changed.

The second optional clause above is applicable if the corporation is a Type C corporation

The fourth optional clause above is applicable if the corporation is the corporation is a Type A, Type B, or Type C corporation, and optionally if a Type D corporation,

The seventh optional clause above is applicable if the consolidation is to become effective other than upon filing of the certificate of consolidation by the Department of State.

This form is only for consolidation of domestic not-for-profit corporations. For consolidation of domestic and foreign not-for-profit corporations, use § 9:18 or § 9:20, as appropriate. For consolidation of business and not-for-profit corporations, use § 9:27, § 9:29, § 9:30, § 9:32, or § 9:33, as appropriate.

Delivery to Department of State; filings in county offices. The certificate of consolidation is to be delivered to the Department of State and the consolidated corporation shall cause a copy of the certificate, certified by the Department of State, to be filed in the office of the clerk of each county in which the office of each constituent corporation is located and in the office of the official who is the recording officer of each county in this State in which real property of each constituent corporation is situated. N.Y. Not-for-Profit Corp. Law § 904(a), (b).

Approvals and Consents. If the purposes of any consolidated corporation require the approval or consent of any governmental body or officer or any other person or body under N.Y. Not-for-Profit Corp. Law § 404, no certificate of consolidation will be filed pursuant to N.Y. Not-for-Profit Corp. Law Article 9 unless such approval or consent is endorsed thereon or annexed thereto. N.Y. Not-for-Profit Corp. Law § 909. For approval by Supreme Court in the case of Type B or C corporations, see N.Y. Not-for-Profit Corp. Law § 907. As to education corporations, see below in this Notes to Form.

Effect of Consolidation. When the consolidation has been effected:

(1) The consolidated corporation thereafter, consistently with its certificate of incorporation as established by the consolidation, possesses all the rights, privileges, immunities, powers and purposes of each of the constituent corporations. N.Y. Not-for-Profit Corp. Law § 905(b)(1).

(2) All the property, real and personal, including causes of action and every other asset of each of the constituent corporations, vests in such consolidated corporation without further act or deed, except as otherwise provided in N.Y. Not-for-Profit Corp. Law § 907(b). Except as the court may otherwise direct, as provided in NY. Est. Powers & Trusts Law § 8-1.1, any disposition made in the will of a person dying domiciled in this state or in any other instrument executed under the laws of this State, taking effect after such consolidation, to or for any of the constituent corporations inures to the benefit of the consolidated corporation. So far as is necessary for that purpose, or for the purpose of a like result with respect to a disposition governed by the law of any other jurisdiction, the existence of each constituent domestic corporation shall be deemed to continue in and through the consolidated corporation. N.Y. Not-for-Profit Corp. Law § 905(b)(2).

(3) The consolidated corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent corporations. No liability or obligation due or to become due, claim or demand for any cause existing against any such corporation, or any member, officer or director thereof, is released or impaired by such consolidation. No action or proceeding, whether civil or criminal, then pending by or against any such constituent corporation, or any member, officer or director thereof, abates or is discontinued by such consolidation, but may be enforced, prosecuted, settled or compromised as if such consolidation had not occurred, or such consolidated corporation may be substituted in such action or special proceeding in place of any constituent corporation. N.Y. Not-for-Profit Corp. Law § 905(b)(3).

(4) The statements set forth in the certificate of consolidation and which are required or permitted to be set forth in a certificate of incorporation of a corporation formed under the N.Y. Not-for-Profit Corp. Law shall be the certificate of incorporation of the consolidated corporation. N.Y. Not-for-Profit Corp. Law § 905(b)(4).

Education Corporations. In addition to the requirements of N.Y. Not-for-Profit Corp. Law § 909, the consent of the Regents shall be endorsed on or annexed to a certificate of consolidation if any constituent or consolidated corporation was chartered, or formed by special act with a purpose for which a corporation might be created by the regents. N.Y. Educ. Law § 216-a(4)(d)(11).

Appendix S

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:16. Certificate of consolidation; Type B corporation [Form: N.Y. Not-for-Profit Corp. Law § 904]

Certificate of Consolidation of *[name of constituent corporation 1]* and *[name of constituent corporation 2]* into *[name of consolidated corporation]*

UNDER N.Y. NOT-FOR-PROFIT CORP. LAW § 904

The undersigned, *[name of president 1]* and *[name of secretary 1]*, being the President and Secretary of *[name of constituent corporation 1]* and *[name of president 2]* and *[name of secretary 2]*, being the President and Secretary of *[name of constituent corporation 2]*, said corporations being domestic corporations organized and existing under and by virtue of the laws of the State of New York, hereby certify:

- (1) The names of the constituent corporations are *[name of constituent corporation 1]* and *[name of constituent corporation 2]*. The name of neither corporation has been changed since the date of filing of its certificate of incorporation by the Department of State.
- (2) The certificate of incorporation of *[name of constituent corporation 1]* was duly filed by the Department of State on *[date of filing certificate of incorporation]* and the certificate of incorporation of *[name of constituent corporation 2]* was duly filed by the Department of State on *[date of filing certificate of incorporation]*.
- (3) Neither constituent corporation has any members or other persons holding any certificates evidencing capital contributions or subventions and neither corporation has ever issued any such certificates.
- (4) The name of consolidated corporation is *[name of consolidated corporation]*.
- (5) The consolidated corporation shall be a corporation as defined in N.Y. Not-for-Profit Corp. Law § 102(a)(5).
- (6) The purposes and objects of the consolidated corporation shall be as follows:
 - a. To assist, aid, direct, manage, and otherwise operate and control facilities connected with the improvement of the conditions of the poor, including community organization, development, planning and operation of such activities as housing, job opportunities and development, counseling and training, and activities of a similar nature maintained for the welfare and benefit of the community as a whole;
 - b. To coordinate efforts of private non-profit social agencies, governmental agencies, school districts, and community volunteers in programs devised under or which shall be devised under the Economic Opportunity Act of 1964;

c. To study, plan, sponsor, encourage, contract for, and administer programs aimed at increasing opportunities for the victims of poverty;

d. To establish, operate, and maintain day care centers in the County of *[name of county]* for children between the ages of three (3) and five (5) years inclusive for a period of two years from the date this certificate of consolidation is filed in the Office of the Secretary of State provided, however, that before each such facility is established and opened the written approval of the State Board of Social Welfare shall be obtained;

e. To organize, operate and maintain a Community Center containing facilities for entertainment, educational and social opportunities for members of the community; to provide recreational, athletic and sports activities for young people under adult supervision; to establish, equip, maintain and operate playgrounds and other recreational areas; to furnish instruction and guidance in trades and industrial occupations and in domestic arts and sciences and such other branches as relate to industrial and commercial education and the construction, equipment and maintenance of buildings or the manufacture of useful or ornamental articles; to construct or acquire or maintain a center for its own activities, as well as for the activities of other community organizations of a non-profit nature as set forth under the provisions of Section 703 of the Housing and Urban Development Act of 1965, and for such other auxiliary and incidental purposes as may be necessary to carry out the foregoing objects;

f. The corporation is not organized for pecuniary profit; it shall have no stock or stockholders and none of the income or surplus assets of the corporation, if any, shall be distributed in dividends to members, or for the personal profit of any individual or non-charitable institution or corporation.

(7) The consolidated corporation shall be a Type B corporation under N.Y. Not-for-Profit Corp. Law § 201.

(8) The office of the consolidated corporation shall be located in the County of *[name of county]*, State of New York.

(9) The names and addresses of the initial directors of the consolidated corporation are:

Name	Address
_____	_____
_____	_____
_____	_____

(10) The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is *[post office address of secretary of state], [name of city] City, [name of county] County, State of [name of state].*

(11) The effective date of the consolidation of *[name of constituent corporation 1]* and *[name of constituent corporation 2]* into *[name of consolidated corporation]* is the date of filing of this certificate of consolidation by the Department of State. *[Note: Under N.Y. Not-for-Profit Corp. Law § 905(a), the certificate alternatively may set forth an effective date which is subsequent (not more than 30 days) to the filing date.]*

(12) The plan of consolidation of *[name of constituent corporation 1]* and *[name of constituent corporation 2]* into *[name of consolidated corporation]* was approved and adopted by a resolution of the board of directors of *[name of constituent corporation 1]* on *[date of resolution]*, and duly adopted by the members of *[name of constituent corporation 1]*, who authorized the President and Secretary to execute and deliver a certificate of consolidation, by

the affirmative vote of two-thirds of the members casting votes at a meeting of the members duly called and held on the *[ordinal number]* day of *[name of month]*, *[year]*, the votes cast in the affirmative being at least equal to the quorum and all members casting votes being entitled to vote thereon.

(13) The plan of consolidation of *[name of constituent corporation 1]* and *[name of constituent corporation 2]* into *[name of consolidated corporation]* was approved and adopted by a resolution of the board of directors of *[name of constituent corporation 2]* on *[date of resolution]*, and duly adopted by the members of *[name of constituent corporation 2]*, who authorized the President and Secretary to execute and deliver a certificate of consolidation, by the affirmative vote of two-thirds of the members casting votes at a meeting of the members duly called and held on the *[ordinal number]* day of *[name of month]*, *[year]*, the votes cast in the affirmative being at least equal to the quorum and all members casting votes being entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned have, on behalf of each constituent corporation, signed this certificate and hereby affirm it as true under the penalties of perjury this *[ordinal number]* day of *[name of month]*, *[year]*.

[Name of officer]

[Title of officer]

[Name of officer]

[Title of officer]

for *[name of constituent corporation 1]*

[Name of officer]

[Title of officer]

[Name of officer]

[Title of officer]

for *[name of constituent corporation 2]*

[Consents and approvals, see Notes to Form below]

Notes

The consent of the Commissioner of Education was annexed to the certificate of consolidation from which the above form was derived. See N.Y. Not-for-Profit Corp. Law § 404(d). Also

annexed thereto was the approval of the State Board of Social Welfare, which approval authority is now vested in the Commissioner of Social Services. See N.Y. Not-for-Profit Corp. Law § 404(b), Social Services Law § 460-a.

Pursuant to N.Y. Not-for-Profit Corp. Law § 907, a certified copy of the order of the Supreme Court of the judicial district in which the principal office of the consolidated corporation is located, approving the plan of consolidation and authorizing the filing of the certificate of consolidation, was also annexed to the certificate. The waiver of the notice of application by the attorney-general was stamped on said order. See N.Y. Not-for-Profit Corp. Law §§ 404(a) and 909.

See, also, Notes to Form under section 9:15, *supra*.

6. That the aforesaid plan of merger was duly approved in respect of *[name of constituent corporation 1]*, as required by N.Y. Not-for-Profit Corp. Law § 903, *[by the vote in person or by proxy of at least two-thirds of the members of said corporation, at a meeting held for that purpose upon due notice pursuant to said statute, the affirmative votes cast in favor of the plan being at least equal to the quorum as required by N.Y. Not-for-Profit Corp. Law § 613(c)/upon its adoption by the Board of Directors of said corporation pursuant to N.Y. Not-for-Profit Corp. Law § 902, said corporation having no members entitled to vote thereon].*

7. *[Specification of statement similar to paragraph (6) above with respect to other domestic constituent./As required by N.Y. Not-for-Profit Corp. Law § 906(b), the aforesaid plan of merger was approved in respect of [name of foreign constituent] in compliance with the applicable provisions of the law of the jurisdiction wherein the said corporation was incorporated, to wit: [specification of jurisdiction and applicable provisions of law thereof], as follows: [recitation of particulars of approval of plan of merger]].*

8. The objects and purposes of each of the aforesaid constituent corporations to be promoted by the merger proposed herein are as follows: *[specification of objects and purposes of each constituent corporation].*

9. That as to the property, liabilities, and annual income of *[name of constituent corporation 1]*:
(a) The following is a statement of all property of said corporation and the manner in which it is held: *[specification of manner of holding property].*

(b) The following is a statement of all liabilities of said corporation: *[statement of all liabilities].*

(c) The following is a statement of the amount and sources of the annual income of said corporation: *[statement of amount and sources of annual income].*

10. That as to the property, liabilities, and annual income of *[name of constituent corporation 2]*:
(a) The following is a statement of all property of said corporation and the manner in which it is held: *[specification of manner of holding property].*

(b) The following is a statement of all liabilities of said corporation: *[statement of all liabilities].*

(c) The following is a statement of the amount and sources of the annual income of said corporation: *[statement of amount and sources of annual income].*

11. That at the meeting of *[name of constituent corporation]* at which the resolution approving the plan of merger was adopted, *[no votes/[number of votes] votes, out of [number of votes] votes cast]*, were cast against adoption of the resolution, and that at the meeting of *[name of constituent corporation 2]* at which the resolution approving the plan of merger was adopted, *[no votes/[number of votes] votes, out of [number of votes] votes cast,]* were cast against the resolution.

12. That the proposed merger is authorized by N.Y. Not-for-Profit Corp. Law § 901 in that both of the constituent corporations are domestic corporations duly organized under the Not-for-Profit Corporation Law. *[OPTIONAL: [description of facts showing that merger is authorized by laws of foreign jurisdictions for foreign constituent corporations.]*

13. No previous application for the relief prayed for herein has been made.
WHEREFORE, it is jointly requested by *[name of constituent corporation 1]* and *[name of constituent corporation 2]* that an order be made herein, pursuant to N.Y. Not-for-Profit Corp.

Law § 907, approving the aforesaid plan of merger and authorizing the filing, pursuant to N.Y. Not-for-Profit Corp. Law § 904, of the Certificate of Merger of *[name of corporation 1]* and *[name of corporation 2]* Into *[name of consolidated corporation]* Under N.Y. Not-for-Profit Corp. Law § 904, and granting such other and further relief as may be just and proper.

[Name of affiant 1]

[Name of affiant 2]

[Jurat]

[Exhibit [designation of exhibit] annexed]

Notes

The optional clause above is applicable if any of the constituent corporations are foreign corporations.

The application must be made by all constituent corporations jointly. N.Y. Not-for-Profit Corp. Law § 907(a).

Application for the order may be made in the judicial district in which the principal office of the surviving or consolidated corporation is to be located, or in which the office of one of the domestic constituent corporations is located. N.Y. Not-for-Profit Corp. Law § 907(a).

Education Corporations. The provisions of N.Y. Not-for-Profit Corp. Law § 907 are not applicable to education corporations. N.Y. Educ. Law § 216-a(4)(c).

See, also, Notes to Form under § 9:21, *supra*.

Appendix U

Reprinted from *Not-For-Profit Corporation Law 2d (West's McKinney's Forms for New York)* with permission of Thomson/West. For more information about this publication please visit www.west.thomson.com.

Chapter 9. Not-for-Profit Corporation Law Article 9—Merger or Consolidation

§ 9:23. Order approving merger [Form: N.Y. Not-for-Profit Corp. Law § 907]

At a Term, Part _____, of
the Supreme Court of the
State of New York, held in
and for the County of
_____, at _____, on the
_____ day of _____,
_____.

Present: Hon. *[name of justice]*, Justice.

[Add title of cause. See § 9:21, supra]

ORDER
Index No. _____

[Name of constituent corporation] and *[name of other constituent corporation]* having duly made joint application for an order, pursuant to N.Y. Not-for-Profit Corp. Law § 907, approving the plan of merger of said corporations and authorizing the filing of a certificate of merger in accordance with N.Y. Not-for-Profit Corp. Law § 904, and said application having regularly come on to be heard,

Now upon reading the order to show cause dated *[date of order]*, the joint affidavit of *[name of president 1]*, President of *[name of constituent corporation]* and *[name of president] 2*, President of *[name of other constituent corporation]*, sworn to on *[date of oath]*, and the plan of merger designated Exhibit *[designation of exhibit]* herein, and the certificate of merger of said corporations into *[name of surviving corporation]* under N.Y. Not-for-Profit Corp. Law § 904, all in support of the application, and the affidavit of *[name of affiant]*, sworn to on *[date of oath]*, in opposition thereto, and after hearing *[name of attorney for applicants]*, Esq. for the applicants in support of the application and *[specification of any person interested who appeared in opposition at hearing, whether in person or by counsel]* in opposition thereto, and after due deliberation having been held thereon, and it appearing that the interests of the constituent corporations and the public interest will not be adversely affected by the proposed merger,

Now, upon motion of *[name of attorney for applicants]*, attorney for the applicants, it is ORDERED, that the plan of merger between *[name of constituent corporation]* and *[name of other constituent corporation]* designated Exhibit *[designation of exhibit]* herein, be and the same hereby is approved, and it is further

ORDERED, that the aforesaid certificate of merger is authorized to be filed by the Department of State in accordance with N.Y. Not-for-Profit Corp. Law § 904, to which certificate a certified copy of this order shall be annexed, and it is further

ORDERED, *[if the court finds that any of the assets of any of the constituent corporations are held for a Type B purpose or are legally required to be used for a particular purpose, but not*

upon a condition requiring return, transfer or conveyance by reason of the merger, it may, in its discretion, pursuant to N.Y. Not-for-Profit Corp. Law § 907(c), direct that such assets be transferred or conveyed to the surviving corporation (or the consolidated corporation in case of a consolidation) subject to such purpose or use, or that such assets be transferred or conveyed to the surviving (or consolidated) corporation or to one or more other domestic or foreign corporations or organizations engaged in substantially similar activities, upon an express trust with court approved terms], and it is further ORDERED, [specification of any other terms or conditions prescribed by court].

Enter,

Dated: *[date of order]*

[Name of judge]

[Title of judge]

Entered on *[date of entry of order]*.

[Name of court clerk]

[Title of court clerk]

Notes

If it appears to the satisfaction of the court that the provisions of N.Y. Not-for-Profit Corp. Law § 907 have been complied with, and that the interests of the constituent corporations and the public interest will not be adversely affected by the merger or consolidation, the court should approve the merger or consolidation upon such terms and conditions as it may prescribe. N.Y. Not-for-Profit Corp. Law § 907(e).

Modification of Plan. If the court finds that the interests of non-consenting members are or may be substantially prejudiced by the proposed merger or consolidation, it may disapprove the plan or may direct a modification thereof. In the event of a modification, if the court finds that the interests of any members may be substantially prejudiced by the proposed merger or consolidation as modified, it should direct that the modified plan be submitted to vote of the members of the constituent corporations, or if the court finds that there is not such substantial prejudice, it should approve the agreement as so modified without further approval by the members. If the court, upon directing a modification of the plan of merger or consolidation, directs that a further approval be obtained from members of the constituent corporations or any of them, such further approval must be obtained in the manner specified in section 903 or section 906(b) of the N.Y. Not-for-Profit Corp. Law. N.Y. Not-for-Profit Corp. Law § 907(d).

BIBLIOGRAPHY

Books:

JACK W. SNOOK & JEFFREY D. JOHNSON, COOPERATIVE SERVICES THROUGH CONSOLIDATIONS, MERGERS AND CONTRACTS: MAKING THE PIECES FIT (Mary Jo Wagner ed., Jones & Bartlett Publishers, Inc., 1997).

Statutes:

N.Y. TOWN LAW Article 11.

N.Y. TOWN LAW Article 11-A.

N.Y. NOT-FOR-PROFIT CORP. LAW Article 9.

N.Y. GEN. MUN. LAW Article 5-G.

N.Y. GEN. MUN. LAW Article 11-A.

Forms:

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:2.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:4.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:7.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:8.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:9.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:10.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:14.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:15.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:16.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:21.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:22.

19A West's McKinney's Forms Not-for-Profit Corporation Law § 9:23.

24 West's McKinney's Forms Town Law §172 Form 1.

24 West's McKinney's Forms Town Law §172 Form 2.

24 West's McKinney's Forms Town Law §172 Form 3.

24 West's McKinney's Forms Town Law §172 Form 4.

24 West's McKinney's Forms Town Law §172-b Form 1.

24 West's McKinney's Forms Town Law §172-b Form 2.

24 West's McKinney's Forms Town Law §172-b Form 3.

24 West's McKinney's Forms Town Law §172-b Form 4.

Other:

NYS Department of State, Albany Law School/Government Law Center, Shared Municipal Services Technical Assistance Project, Case Study Template

<http://www.dos.state.ny.us/lgss/smsi/smsicasestudies/MoriahFireDepartmentsCaseStudy.pdf>

County of Albermarle and City of Charlottesville, Virginia, Regional Fire and Rescue Study

<http://www.cvilletomorrow.org/docs/20070420-Fire-Rescue-Consolidation.pdf>

Advisory Study of Merger of the Larchmont Fire Department and the Town of Mamaroneck Fire District http://www.lfdny.org/Merger2007_203.pdf

Fire Department Consolidation, A View From Those Effected (an applied research project submitted to Eastern Michigan University, August 2001)

<http://www.emich.edu/cerns/downloads/papers/FireStaff/Managing%20the%20Fire%20and%20EMS%20Service/Fire%20Department%20Consolidation.pdf>

Successful Fire Department Consolidations and Their Implications for the Coventry Fire Departments (an applied research project submitted to the Coventry Emergency Services Affiliated Fire Districts, October 2004)

http://www.dccwf.org/main/download.php?pdf=bench/Sample-Benchmarking-Report-No-1_COVFD