
DRAFT FOR DISCUSSION PURPOSES ONLY

DATED: NOVEMBER 10, 2022

_____ COUNTY

and

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

FINANCING AGREEMENT

RAISE THE AGE REVENUE BOND FINANCING PROGRAM

Dated as of [_____], 2022

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FINANCING AGREEMENT

This **FINANCING AGREEMENT**, dated as of the date set forth on the cover page hereof, between the county set forth on the cover page of this Financing Agreement, duly organized and existing under the laws of the State of New York (the “County”), and the Dormitory Authority of the State of New York, a body corporate and politic constituting a public benefit corporation, established and existing under and by virtue of the laws of the State of New York (the “Authority”).

WITNESSETH:

WHEREAS, the Authority duly adopted on September 7, 2022 its Raise the Age Revenue Bond Financing Program Revenue Bond Resolution (the “Resolution”), and on one or more dates subsequent thereto duly adopted its Series Resolution authorizing a Series of its Raise the Age Revenue Bond Financing Program Revenue Bonds (the “Series Resolution”);

WHEREAS, the Authority deems it necessary and in keeping with its purposes to issue under the Resolution and the Series Resolution, the Bonds therein authorized for the purpose of lending to certain counties funds sufficient to (i) finance or refinance the costs of the Project (as this and certain other terms used herein are defined in Section 1.1 hereof), and (ii) pay the costs of issuance of the Bonds;

WHEREAS, the County has requested the Authority to finance or refinance the Project, and the Authority has agreed, on the basis of the representations and warranties set forth herein, to make the County’s Proportionate Share of the proceeds of the Bonds available to the County pursuant to Article III hereof to finance the Project;

WHEREAS, the County desires to receive such funds upon the terms and conditions as hereinafter set forth in this Financing Agreement;

WHEREAS, the Authority has authorized the issuance of the Bonds pursuant to the Resolution and the Series Resolution, all or a portion of the proceeds of which are to be applied for purposes of making the County’s Proportionate Share of the proceeds of the Bonds available to the County;

WHEREAS, the Bonds shall be special obligations of the Authority payable solely from the revenues or other receipts, funds or moneys to be derived by the Authority under or pursuant to this Financing Agreement and from other revenues pledged and available therefor under the Resolution and the Series Resolution; and

WHEREAS, pursuant to this Financing Agreement the County will pledge to the Authority, to secure the payments to be made by the County hereunder, a sufficient portion of any and all public funds to be apportioned or otherwise made available by the State Office of Children and Family Services to the County;

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the Authority and the County each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. All terms that are defined in the Resolution or the Series Resolution shall have the same meanings, respectively, herein as such terms are given in such Resolutions. In addition, as used herein, unless another meaning is specified in **Exhibit B** hereto, each capitalized term as used in this Financing Agreement (including the Exhibits hereto) shall have the following meanings:

“Act” means the Dormitory Authority Act, being and constituting Title 4 of Article 8 of the Public Authorities Law of the State of New York, as amended.

“Arbitrage and Use of Proceeds Certificate” means the certificate of the County to be delivered pursuant to Section 3.7(B)(i) hereof and to be dated the date of delivery of the Bonds.

“Authority” means the Dormitory Authority of the State of New York established under the Act, and any entity which may succeed to its rights and duties.

“Bank” means a bank, as defined in the Banking Law of the State or a national banking association located and authorized to do business in the State, selected by the County in its capacity as depository for the County pursuant to paragraphs (C) and (D) of Section 3.4 of this Financing Agreement and any successor depository in such capacity.

“Bond Purchase Agreement” means the Bond Purchase Agreement by and among the Authority, the underwriter of the Bonds and the County in connection with the sale of the Bonds.

“Bonds” means the series of bonds of the Authority issued in whole or in part to make the proceeds thereof available to the County to finance the Project, together with any bonds of the Authority issued to refinance such bonds.

“Business Day” means any day that is not a Saturday, a Sunday or a day on which banking institutions chartered by the State or the United States of America are legally authorized to close in The City of New York.

“Code” means the Internal Revenue Code of 1986, as amended and the applicable Treasury regulations promulgated thereunder.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement, dated as of the date of issuance of the Bonds, by and between the Trustee and the County.

“County” means the borrower identified on the cover page of this Financing Agreement.

“County Resolution” means, collectively, the ordinances and resolutions of the County authorizing the execution and delivery of this Financing Agreement and the transaction contemplated herein.

“Existing Indebtedness” means the bonds or notes, if any, of the County described in **Exhibit A-2** hereto, which bonds or notes have financed all or a portion of the Project.

“Financing” means the financing of the Project in the Principal Amount made available to the County from the proceeds of the Bonds pursuant to Section 3.1(A) of this Financing Agreement.

“Financing Agreement” means this Financing Agreement.

“Maximum Rate” means the interest rate per annum identified as such in the Schedule of Additional Provisions attached hereto as **Exhibit B**.

“Memorandum of Understanding” means the Memorandum of Understanding, dated as of the date of issuance of the Bonds, by and among the Authority, the Comptroller of the State, the State Office of Children and Family Services and the County.

“Notice of Terms” means a notice in the form of **Exhibit H** hereto, setting forth and confirming the definitive principal amounts, maturity dates and interest rates of and certain other terms of the Financing, which, to the extent such terms shall be inconsistent with the parameters set forth in this Financing Agreement, shall be subject to the approval of the County.

“Principal Amount” means the original aggregate principal amount of the Financing, which shall be an amount equal to the total principal amount shown as payable in the Anticipated Repayment Schedule attached hereto as **Exhibit E**; provided that such Financing amount may be revised to an amount not greater than the maximum amount shown in **Exhibit E** by the Authority delivering a Notice of Terms to the County to reflect the amount, if any, to be maintained to provide for the payment of the Refunded Obligations.

“Project” means the work undertaken with respect to a detention facility certified by the State Office of Children and Family Services or by such office in conjunction with the state commission of correction or a residential facility licensed by the State Office of Children and Family Services, all or in part pursuant to the Raise the Age Legislation, and described in **Exhibit A-1** hereto.

“Proportionate Share” means the proportion that the outstanding principal amount of the Financing bears to the outstanding principal amount of the Bonds.

“Raise the Age Legislation” means Part WWW of Chapter 59 of the Laws of 2017 and legislation subsequently adopted pursuant thereto.

“Refunded Obligations” means all or a portion of the Existing Indebtedness which is to be refunded with the proceeds of the Bonds, as set forth in **Exhibit A-2**.

“Resolution” means the Raise the Age Revenue Bond Financing Program Revenue Bond Resolution, adopted by the Authority on September 7, 2022, pursuant to which the Bonds are to be issued, as the same may be amended and supplemented from time to time.

“State” means the State of New York.

“State Approvals” means the approvals by (i) the State Public Authorities Control Board of the issuance of Bonds, (ii) the Commissioner of the State Office of Children and Family Services of the execution of this Financing Agreement and of the Project, and (iii) the State Division of the Budget of the Project.

“Tax-Exempt Securities” means a certificate of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 CFR part 344 and any bond (other than a qualified private activity bond), the interest on which is excluded from federal gross income under Section 103 of the Code.

“Trustee” means the institution identified as such in the Schedule of Additional Provisions attached hereto as **Exhibit B**, in its capacity as Trustee under the Resolution and the Series Resolution, and any successor trustee in such capacity.

Section 1.2 Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of the Financing Agreement:

(A) Number. Words importing the singular number shall include the plural number and vice versa.

(B) Gender. Words importing the feminine, masculine and neuter genders shall each include correlative words of the other genders.

(C) Approvals and Consents. All approvals, consents and acceptances required to be given or made by any person or party hereunder shall be at the sole discretion of the person or party whose approval, consent or acceptance is required.

(D) References. All references herein to particular articles, sections or exhibits without reference to a specific document are references to articles or sections of or exhibits to this Financing Agreement.

(E) Headings. The captions and headings and table of contents herein are solely for convenience of reference and shall not constitute part of the Financing Agreement, nor shall they affect its meaning, construction or effect.

(F) Terms. The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Financing Agreement, refer to the Financing Agreement in its entirety and not the particular article or section of the Financing Agreement in which they appear, and the term “hereafter” means after, and the term “theretofore” means before, the date set forth on the cover page of the Financing Agreement.

Section 1.3 Exhibits and Appendices Incorporated. All exhibits and appendices to this Financing Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Financing Agreement.

ARTICLE II

REPRESENTATIONS OF THE COUNTY

Section 2.1 Representations of the County. The County represents and warrants as follows:

(A) Existence and Authority; Legal Power. The County is a municipal corporation, duly created and existing under the laws of the State and has full legal right, power and authority to (i) conduct its business and own its properties, (ii) enter into this Financing Agreement and the Continuing Disclosure Agreement, (iii) adopt the County Resolution, and (iv) carry out and consummate all other transactions contemplated by each of the aforesaid documents.

(B) Delivery of Documents with Financing Agreement. The County has delivered or caused to be delivered to the Authority prior to or concurrently with the execution and delivery of this Financing Agreement: (i) a certified copy of the County Resolution; (ii) a Tax Questionnaire in the form provided by the Authority's bond counsel; (iii) an opinion of local counsel to the County, dated the date of execution hereof, in the form of **Exhibit F-1** hereto; (iv) a description of the Project in the form set forth in **Exhibit A-1**; (v) a description of the Refunded Obligations (if any) in the form set forth in **Exhibit A-2**; and (vi) disclosure concerning the County for inclusion in the offering document for the Bonds in the form requested by the Authority.

(C) Compliance. The County has complied and will comply with the County Resolution and with all applicable laws of the State.

(D) Raise the Age Aid. The Project is eligible for aid pursuant to the Raise the Age Legislation.

(E) No Local Share Requirement. The County has satisfied Section 54-m of State Finance Law and is not required to contribute a local share of eligible expenditures as therein provided.

(F) Authorization. The County has duly approved the execution and delivery of this Financing Agreement, the Arbitrage and Use of Proceeds Certificate, the Bond Purchase Agreement and the Continuing Disclosure Agreement and has authorized the taking of any and all action as may be required on the part of the County to carry out, give effect to and consummate the transactions contemplated by each of the foregoing.

(G) Binding Obligation. This Financing Agreement has been duly authorized, executed and delivered by the County and, assuming that the State Approvals have been obtained or shall be obtained prior to the date the Financing is made available hereunder, and assuming due authorization and execution by the Authority, constitutes a legal, valid and binding

obligation of the County enforceable in accordance with its terms, and, upon delivery thereof, the Bond Purchase Agreement and the Continuing Disclosure Agreement each will have been duly executed and delivered and will constitute legal, valid and binding obligations of the County in accordance with the provisions hereof. The assignment and pledge of public funds to be apportioned or otherwise made available to the County as set forth in Section 3.1(C) of this Financing Agreement is a valid and binding assignment and pledge by the County, not subject to annual appropriation by the County. The County acknowledges and agrees that the defense of sovereign immunity is not available to the County in any proceedings by the Authority or the Trustee to enforce any of the obligations of the County under this Financing Agreement or the Continuing Disclosure Agreement and, to the fullest extent permitted by law, the County consents to the initiation of any such proceedings in any court of competent jurisdiction and agrees not to assert the defense of sovereign immunity in any such proceedings. The enforceability (but not the validity) of rights or remedies with respect to the Financing Agreement or the Continuing Disclosure Agreement may be limited by bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted.

(H) Consents and Approvals. All consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission, including but not limited to those of the State Office of Children and Family Services and those required by the State Environmental Quality Review Act, which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the County of its obligations hereunder or the consummation of the transactions contemplated hereby have been duly obtained and are in full force and effect, except for the State Approvals, which, if not already obtained, shall be obtained prior to the date of closing of the Financing hereunder; provided, however, the County makes no representation or warranty as to any consents, approvals, authorizations, orders, filings, registrations or declarations that may be required by any federal or state securities law.

(I) No Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the County, threatened against the County, nor is there any basis therefor, (i) affecting the creation, organization or existence of the County or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution of this Financing Agreement, the Bond Purchase Agreement, the Arbitrage and Use of Proceeds Certificate or the Continuing Disclosure Agreement, or (iii) in any way contesting or affecting the validity or enforceability of the County Resolution, this Financing Agreement, the Continuing Disclosure Agreement or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by any of the foregoing.

(J) No Violation. The County is not in any material respect in breach of or in default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the County is a party or by which it or any of its properties is bound, and no event has occurred which with the passage of time, the giving of notice or both would constitute such a breach or default; and the execution and delivery of this Financing Agreement, the Continuing Disclosure

Agreement, the Bond Purchase Agreement and the Arbitrage and Use of Proceeds Certificate and the adoption of the County Resolution and compliance with the respective provisions thereof will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the County is a party or by which it or any of its property is bound.

(K) County Resolution. The County Resolution has been duly adopted by the County and remains in full force and effect as of the date of execution hereof.

(L) Authority to Act. The County has full legal right and authority and all necessary licenses and permits required as of the date hereof to own the Project, to carry on its activities relating thereto, to undertake and complete the Project, to refund the Refunded Obligations, if any, and to carry out and consummate all transactions contemplated by this Financing Agreement, the Bond Purchase Agreement and the Continuing Disclosure Agreement.

(M) Project. The description of the Project set forth in **Exhibit A-1** is an accurate description of the Project. The Project is a detention facility certified by the Office of Children and Family Services or by such office in conjunction with the State Commission of Correction as described in the Act.

(N) Proceeds Compliance. The County will not take or omit to take any action, which action or omission will in any way cause the proceeds of the Bonds advanced to it to be applied in a manner contrary to that provided in the Resolution and the Arbitrage and Use of Proceeds Certificate as each are in force from time to time.

(O) Tax Compliance. The County has not taken and will not take any action, and knows of no action that any other person, firm or corporation has taken or intends to take, which would cause interest on the Bonds to be includable in the gross income of owners thereof for federal income tax purposes.

(P) No Default. The County is not in default under any loan agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness.

(Q) Approvals. All consents, authorizations and approvals, if any, of any third party with respect to the financing or refinancing of the Project, have been duly obtained.

(R) Refunded Obligations. Except as otherwise provided in **Exhibit A-2** hereto and to the extent there are Outstanding Refunded Obligations of the County, as of the date of delivery of this Financing Agreement to the Authority, the County has applied the full amount of the proceeds of the Refunded Obligations to the costs of the Project. Any proceeds of the Refunded Obligations not yet expended for purposes of the Project shall be applied as provided in Section 3.4(D) of this Financing Agreement.

(S) Disclosure Correct and Complete. The information supplied by the County to the Authority for inclusion in the official statement or other disclosure material with respect to the Bonds does not contain any untrue statement of a material fact or omit to state any

material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(T) Accuracy of Certain Information. The County acknowledges that it has supplied to the Authority the information set forth in **Exhibit A-1** hereto and assumes full responsibility for the accuracy of such information. The County also acknowledges that such information will be utilized and relied upon by the Authority in structuring the terms of the Bonds and making a portion of the proceeds thereof available to the County and that the Authority makes no representations or warranties regarding the accuracy of such information or the amount of State Office of Children and Family Services aid that will be apportioned to the County in connection with the Financing hereunder.

(U) Representations Complete. All representations made herein by the County are true, complete and accurate as of the execution date of this Financing Agreement and will be true, complete and accurate as of the date of the closing of the Financing hereunder.

ARTICLE III

FINANCING PROVISIONS

Section 3.1 Financing Clauses.

(A) Financing Consummation.

(i) Subject to the conditions and in accordance with the terms of this Financing Agreement, the Authority hereby agrees to make the proceeds of the Bonds available to the County and the County hereby agrees to accept and repay the Financing in an aggregate principal amount of up to the Principal Amount at a net interest cost not to exceed the Maximum Rate. Subject to the provisions of this Article III, the definitive terms of the Financing shall be as set forth in the Notice of Terms (a form of which is attached hereto as **Exhibit H**) delivered by the Authority to the County.

(ii) The County shall have the right to terminate this Financing Agreement not later than [_____] in which case this Financing Agreement shall be of no further effect. The Authority shall have the right to terminate this Financing Agreement if the County has not provided the documents set forth in Section 2.1(B) and the following items to the Authority on or prior to [_____]:

(1) Evidence of compliance with all requirements of the State Environmental Quality Review Act with respect to the Project;

(2) Copy of required approvals by the County Legislature or County Board of Supervisors, as applicable, the State Office for Children and Family Services, and the State Division of Budget; and

(3) Information in the form requested by the Authority with respect to bond anticipation notes, if any, to be refinanced with the proceeds of the Financing.

(B) Payment to Trustee. On the dates set forth in Schedule A to **Exhibit H** (Notice of Terms), commencing on the date set forth in Schedule A to **Exhibit H**, the County shall deposit or cause to be deposited with the Trustee the full amount of the payment due on such dates, respectively; provided, however, that the County agrees to pay the amount due on such initial payment date on or before the date of issuance of the Bonds or on such other date as may be set forth in Schedule A to **Exhibit H**. Amounts so deposited by the County prior to the payment date for the Bonds shall be invested by the Trustee at the direction of the Authority. Investment earnings on such amounts shall accrue to the benefit of the County and shall be paid to the County at the direction of the Authority in accordance with Section 3.11 hereof.

(C) Pledge and Assignment. The County hereby assigns and pledges to the Authority a sufficient portion of any and all public funds to be apportioned or otherwise to be made payable by the State Office of Children and Family Services to the County to cover the payments required hereunder and directs and acknowledges that such amounts shall be paid directly to the Trustee as provided in the Act and the Memorandum of Understanding upon the failure of the County to pay any amounts due hereunder. Such assignment and pledge shall be irrevocable, shall not be subject to annual appropriation by the County, and shall continue until the date on which the liabilities of the Authority and the County with respect to the Project have been discharged and the County's Proportionate Share of the Bonds have been paid or otherwise discharged. The County agrees that it will not create or suffer to be created any pledge or assignment of the public funds mentioned in this Section to be apportioned or otherwise payable by the State other than pledges or assignments to secure subsequent Series of Bonds or to secure bonds issued by any agency or instrumentality of the United States of America or the State of New York or any authority, agency or political subdivision thereof, or as otherwise consented to in writing by the Authority.

(D) Nature of Financing. The County is obligated only to pay such Financing payment as may lawfully be made from funds budgeted and appropriated for that purpose during the County's then-current fiscal year. The County agrees to deliver notice to the Authority and the Trustee promptly after any decision to not appropriate is made. For purposes of Section 1680 of the Public Authorities Law of the State of New York, the Authority and the County hereby agree that this Financing Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the Financing Agreement, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this Financing Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of this Financing Agreement. This Financing Agreement shall not constitute indebtedness of the County for purposes of the State Constitution or Section 20.00 of the Local Finance Law. This Financing Agreement is not a general obligation of the County. Neither the faith and credit nor the taxing power of the County are pledged to the payment of any amount due or to become due under this Financing Agreement.

(E) Bankruptcy. The County hereby acknowledges, stipulates and agrees that as a result of the County's operation of its support system providing services to its residents in need of help in areas including but not limited to child support, food, housing and medical services, the County receives payments from the State Office of Children and Family Services ("OCFS"), and that such payments have been pledged by the County pursuant to Section 3.1(C) of this Financing Agreement in order to secure the County's payment obligations under this Financing Agreement. The County further acknowledges, stipulates and agrees that those OCFS payments constitute "special revenues" as defined in 11 U.S.C. Section 902, and that pursuant to 11 U.S.C. Section 922(d), the filing of a petition under Chapter 9 of Title 11 of the United States Code shall not prohibit the OFCS payments from being collected pursuant to the Memorandum of Understanding and the County shall be obligated to cooperate in all respects to ensure receipt of the OCFS payments in accordance with the Memorandum of Understanding.

Section 3.2 Other Amounts Payable.

(A) The County hereby expressly agrees to pay:

(i) Upon the issuance and sale of the Bonds, the initial financing fee and the County's Proportionate Share (or such other portion thereof as shall be agreed upon by the County and the Authority) of the costs and expenses of the Authority in the preparation, sale and delivery of the Bonds, the preparation and delivery of any legal instruments, closing transcripts and documents necessary in connection herewith and therewith and their filing and recording, if required, and all taxes and charges payable in connection with any of the foregoing, all as specified in the Notice of Terms. Such costs shall be payable from the sources identified in **Exhibit B** hereto and shall be in the amount specified in the Notice of Terms;

(ii) When due, other Costs of Issuance payable to consultants and attorneys utilized by the County in connection with the execution and delivery of this Financing Agreement;

(iii) In semi-annual installments to be paid by the County at the same time as payments to be made by the County pursuant to Section 3.1(b) hereof, the annual administrative fee of the Authority in the amount of (i) \$27,750 annually for the first ten years, and (ii) \$8,000 annually thereafter.;

(iv) As such expenses are incurred, the amount of any Authority expenses (including but not limited to investment losses and the reasonable fees and expenses of the Authority, the Trustee, the owners of Bonds, and attorneys representing any of the foregoing) incurred as a result of the County's failure to make any payment under this Financing Agreement when due or failure to otherwise comply with the terms of this Financing Agreement; and

(v) In the event that after the date set forth in the first sentence of Section 3.1(A)(ii) hereof the County does not proceed to the closing of the

Financing, the County shall pay to the Authority the fees of the Authority's bond counsel incurred with respect to the Financing.

(B) Indemnification. To the extent permitted by law, the County agrees to indemnify, defend and hold harmless the Authority and each member, officer and employee of the Authority against any and all liabilities, losses, costs, damages or claims, and shall pay any and all judgments or expenses of any and all kinds or nature and however arising, imposed by law, including interest thereon, which it or any of them may sustain, be subject to or be caused to incur by reason of any claim, action, suit, charge or proceeding arising from or out of (1) the Financing by the Authority to the County hereunder, or (2) an allegation that an official statement, prospectus, placement memorandum or other offering document prepared in connection with the sale and issuance of the Bonds contained an untrue or misleading statement of a material fact obtained from the County relating to the County or the Project, or omitted to state a material fact relating to the County or the Project necessary in order to make the statements made therein in light of the circumstances under which they were made not misleading; provided, however, that neither the Authority nor a member, officer or employee of the Authority shall be released, indemnified or held harmless from any claim for damages, liability, loss, cost, damage, judgment or expense arising out of the gross negligence or willful misconduct of the Authority, such member, officer or employee.

The Authority agrees to give the County prompt notice in writing of the assertion of any claim or the institution of each such suit, action or proceeding and to cooperate with the County in the investigation of such claim and the defense, adjustment, settlement or compromise of any such action or proceeding. The Authority shall not settle any such suit, action or proceeding without the prior written consent of counsel to the County.

Except as provided in the following paragraph of this Section, the County, at its own cost and expense, shall defend any and all suits, actions or proceedings which may be brought or asserted against the Authority, its members, officers or employees for which the County is required to indemnify the Authority or hold the Authority harmless pursuant to the first paragraph of this Section, but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for herein from its obligation to defend the County, the Authority and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy.

The Authority and each member, officer or employee thereof shall, at the cost and expense of the County, be entitled to employ separate counsel in any action or proceeding arising out of any alleged act or omission which occurred or is alleged to have occurred while the member, officer or employee was acting within the scope of his or her employment or duties in connection with the issuance of the Bonds or use of the Project, and to conduct the defense thereof, in which (i) the counsel to the County determines, based on his or her investigation and review of the facts and circumstances of the case, that the interests of such person and the interests of the County are in conflict, or in the event such counsel determines that no conflict exists, a court of competent jurisdiction subsequently determines that such person is entitled to employ separate counsel, or (ii) such person may have an available defense which cannot as a matter of law be asserted on behalf of such person by the County or by counsel employed by it, or (iii) such person may be subject to criminal liability, penalty or forfeiture, or (iv) the County

has consented to the employment of separate counsel or the counsel retained by the County pursuant to this subsection (B) is not reasonably acceptable to the Authority; provided, however, that the County shall not be liable for attorneys' fees of separate counsel so retained or any other expenses incurred in connection with the defense of an action or proceeding described in clause (iii) of this paragraph, unless the member, officer or employee shall have prevailed on the merits or such action or proceeding was dismissed or withdrawn, or an adverse judgment was reversed upon appeal, and such action or proceeding may not be recommenced. Attorney's fees of separate counsel retained in accordance with this paragraph shall be paid only upon the audit of an appropriate County officer.

Section 3.3 Prepayment of the Financing.

(A) Prepayment Provisions. The Financing shall be subject to prepayment prior to maturity in accordance with the Notice of Terms and **Exhibit B (IV)**. The County shall not, without the prior written consent of the Authority, prepay prior to maturity any of the Financing prior to the date on which any corresponding outstanding Bonds are redeemable.

(B) Costs. The County shall pay all costs and expenses of the Authority in effecting the redemption of any Bonds prior to maturity that are so redeemed due to the prepayment prior to maturity of any of the Financing, including any difference in the amount of interest due with respect to the Financing and the amount of interest due on the Bonds.

Section 3.4 Application of Financing Proceeds.

(A) Subject to the conditions hereof, the Authority will, to the extent of moneys available in the Applicable Construction Account, cause the County to be reimbursed for, or pay, any costs and expenses incurred by the County that constitute Costs of the Project or any Cost of Issuance reimbursable to the County, provided such costs and expenses are approved by an Authorized Officer of the Authority as follows:

(i) To the extent that moneys are available therefor, moneys in the Applicable Construction Account shall be disbursed as the construction of the Project progresses in amounts as shall be requested by the County pursuant to a request for disbursement as hereinafter provided to reimburse the County for, or to pay, any costs and expenses constituting Costs of the Project previously paid or then due that were incurred by the County in connection with the Project.

(ii) Prior to the Authority making and delivering any certificate required to be delivered to the Trustee in connection with payments to be made pursuant to Section 6.3(c) of the Resolution for Costs of a Project, other than interest on Outstanding Bonds or any Cost of Issuance reimbursable to the County, the Authority shall have received a certificate of the County substantially in the form of **Exhibit C** hereto.

(B) The County will receive the disbursements of moneys in the Applicable Construction Account to be made hereunder, and will hold the right to receive the same, as a trust fund for the purpose of paying the Costs of the Project for which each disbursement was

made, and will apply the same first to such payment before using any part thereof for any other purposes.

(C) The County shall permit the Authority and its authorized representatives, at all reasonable times and upon reasonable notice, to enter upon the property of the County and the Projects to inspect the Project and all materials, fixtures and articles used or to be used in construction of the Project, and to examine all documents relating thereto. The County agrees to retain all original documentation related to expenditures for items which constitute Costs of the Project for at least three (3) years after the last of the Bonds or any related refunding bonds are retired, for inspection at any time by the Authority or its auditors.

(D) The County acknowledges and agrees that disbursements from the Applicable Construction Account are to be made by the Trustee and shall be made in accordance with the Resolution only upon receipt by the Trustee of the documents required by the Resolution to be executed and delivered in connection with such disbursements. The Authority agrees to provide the County, upon request therefor, copies of requisitions, invoices and any related documents detailing payments made from the Construction Fund.

Section 3.5 Certificates of Completion; Completion by County. .

(A) The Project shall be deemed to be complete upon delivery to the Authority and the Trustee of a certificate signed by an Authorized Officer of the County, which certificate shall be substantially in the form attached hereto as **Exhibit D** and shall be delivered as soon as practicable after the completion of the Project in accordance with Section 6.3 of the Resolution. The moneys, if any, remaining in the Construction Fund after such Project has been deemed to be complete shall be paid as provided in Section 6.3 of the Resolution. The County agrees to complete the renovation, construction, equipping and furnishing of the Project on or before three years from date of issuance of the Bonds unless the County provides a Favorable Opinion of Bond Counsel addressed to the Authority and the Trustee relating to the extension of the completion date to a subsequent completion date or permitting an application of funds then on deposit in the Applicable Construction Account in a manner other than as required under Section 6.3 of the Resolution.

(B) The Authority makes no warranty, either express or implied, as to the condition, design, operation, merchantability or fitness, or title to, the Project or that it is or will be suitable for the County's purposes or needs.

Section 3.6 Effective Date and Term. The date of this Financing Agreement is for reference purposes only and this Financing Agreement shall become effective upon the date of execution and delivery hereof by the parties hereto, shall (subject to Section 3.1(A)(ii) and Section 3.7(C)) remain in full force and effect from such date and shall expire on such date as all Bonds shall be discharged and satisfied in accordance with the provisions thereof and all obligations of the County to the Authority hereunder are satisfied.

Section 3.7 Execution and Delivery of Other Documents.

(A) Execution and Delivery of Documents Upon Sale of Bonds. Prior to or on the date of sale of the Bonds, the County agrees to deliver to the Authority:

- (i) the Bond Purchase Agreement; and
- (ii) such other documents, instruments and certificates as the Authority may reasonably require in connection with sale of the Bonds.

(B) Execution and Delivery of Closing Documents. The County further agrees to deliver to the Authority:

- (i) an Arbitrage and Use of Proceeds Certificate in a form acceptable to the Authority and its bond counsel;
- (ii) a closing certificate in the form of **Exhibit G** hereof as to confirmation of certain matters set forth in this Financing Agreement, signatures and incumbency of authorized signatories and certain other matters;
- (iii) the opinion(s) of local counsel(s) to the County, dated the date of issuance of the Bonds, in the form of **Exhibit F-2** hereto;
- (iv) the Continuing Disclosure Agreement; and
- (v) such additional certificates, documents and opinions as may be reasonably requested by the Authority.

The obligation of the Authority to issue, deliver and sell the Bonds and to consummate the Financing are conditioned upon the delivery of the opinions, certificates and documents required by this Section 3.7, in form and substance satisfactory to the Authority and the receipt of the State Approvals. With respect to such opinions, certificates and documents the forms of which are appended hereto, the County hereby acknowledges that it and its counsel have reviewed such forms and the County hereby agrees to deliver or cause to be delivered such items in the forms appended hereto (except for the insertion of the appropriate names and titles).

(C) Authority's Obligation to Consummate the Financing. The County acknowledges that the Authority's commitment to consummate the Financing shall be solely from the proceeds of the Bonds. In accordance therewith, the obligation of the Authority to consummate the Financing is subject to purchase of the Bonds (i) in the case of a negotiated sale, by the Underwriters (hereinafter defined) pursuant to a bond purchase agreement between the Authority and certain underwriters identified therein (the "Underwriters") and (ii) in the case of a competitive sale, pursuant to a notice of sale and the winning bid submitted pursuant thereto by the purchasers identified in such winning bid (also the "Underwriters"). In the event that the Underwriters do not purchase the Bonds, then upon written notice delivered to the County by the Authority, the Authority may terminate its obligation to consummate the Financing upon the terms set forth in this Financing Agreement, provided that the County's obligation to pay its Proportionate Share of costs and expenses related to preparation of the preliminary and/or final official statement(s) relating to the Bonds shall survive any such termination.

Section 3.8 Trustee; Investment of Financing Proceeds and Prepayments. The County hereby authorizes the Trustee to invest, in accordance with instructions of the Authority, amounts that are held by the Trustee for the account of the County in accordance with the

provisions of the Resolution. The County hereby acknowledges that the Authority and the Trustee shall not be liable or responsible for any loss, direct or indirect, resulting from any investment authorized by the Resolution and this Financing Agreement or from the redemption, sale or maturity of any such investment as therein authorized or from any depreciation in value of any such investment.

Section 3.9 Commitment to Proceed with Financing; Agreement to Pay Proportionate Share of Certain Expenses. The County hereby commits to participate as a borrower of all or a portion of the bond proceeds from the Bonds. The County's obligation to repay the Financing is as set forth in this Financing Agreement and in the Notice of Terms. In order to induce the Authority to consummate the Financing from the proceeds of the Bonds, the County hereby:

(1) represents that (i) it has provided the information concerning the County submitted to the Authority, including any supplemental information provided to the Authority on or before the date of this Financing Agreement, (ii) such information was true and complete in all material respects as of its date, (iii) there have been no material adverse changes in such information, and (iv) this information may be relied upon by the Authority and its Underwriters in connection with the issuance of the Bonds.

(2) agrees that it will accept its Proportionate Share of the proceeds of the Financing hereunder in accordance with the terms to be specified by the Authority in the Notice of Terms; provided that such Notice of Terms shall include terms to the following effect:

(i) except to the extent that the County otherwise agrees (as evidenced by its acceptance of a Notice of Terms containing different maturity dates and principal amounts), maturity dates and principal amounts as set forth in **Exhibit E** to the Financing Agreement;

(ii) a net interest cost not to exceed the Maximum Rate; and

(iii) the amount of the initial financing fee, which shall not exceed the amount set forth in **Exhibit B** hereto;

(3) agrees that in the event the Authority is unable to issue the Bonds, the County will pay an amount equal to what would have been such County's Proportionate Share of the costs and expenses incurred by the Authority to provide for the issuance of the Bonds and shall have full responsibility for paying the fees and expenses of any consultants or attorneys retained by the County in connection with the execution and delivery of this Financing Agreement.

(4) agrees that it will pay an amount equal to the payment that would have been its Proportionate Share (had it received its Proportionate Share of the proceeds of the Financing) of: (1) any Costs of Issuance that, in the reasonable judgment of the Authority would have been allocable to the County had it received its Proportionate Share of the Proceeds of the Financing as required by this Financing Agreement; and (2) any other costs and expenses incurred by the Authority as a result of the failure of such

County to receive its Proportionate Share of the proceeds of the Bonds. The County shall have full responsibility for paying the fees and expenses of any consultants or attorneys retained by the County in connection with the Financing.

Section 3.10 Authorization to Acquire Investments. The County hereby authorizes the Authority to acquire the investments, if any, required by Section 3.4 of this Financing Agreement, including forward purchase contracts.

Section 3.11 Application of Interest Earnings. The Authority agrees that it will cause to be deposited in the Debt Service Fund the interest earned and paid on the investment of moneys in the Debt Service Fund. Pursuant to Section 6.5(c)(ii) of the Resolution, the Authority hereby agrees that, so long as no event of default has occurred under this Financing Agreement, the Authority shall direct the Trustee to pay to the County annually the County's Proportionate Share (as determined by the Authority) of excess amounts in the Debt Service Fund described in Section 6.5(c)(ii) of the Resolution.

ARTICLE IV

GENERAL PROJECT CONDITIONS, COVENANTS AND REPRESENTATIONS

Section 4.1 Compliance with Laws and Agreements.

(A) Compliance. The County agrees that the Project shall at all times during the term of this Financing Agreement be in compliance with applicable federal and State laws and regulations. The County will at all times construct and operate (or cause to be constructed and operated) the Project, in compliance with all applicable federal, State and local laws, ordinances, rules, regulations (including approvals of the State Office for Children and Family Services) and the Financing Agreement, and with all other applicable laws and regulations to the extent necessary to ensure the availability of the Project for its intended purposes and to ensure the safety of the public.

(B) SEQRA. The County certifies with respect to the Project that it has complied, and agrees to continue to comply, with all requirements of the State Environmental Quality Review Act.

Section 4.2 No Warranty Regarding Condition, Suitability or Cost of Project. The Authority makes no warranty, either express or implied, as to the Project or its condition or that it will be suitable for the County's purposes or needs, or that the proceeds of the Financing will be sufficient to pay the costs of the Project. Nothing in this Financing Agreement shall relieve the County of its responsibility to properly plan, design, build and effectively operate and maintain the Project as required by laws, regulations, permits and good management practices. The County acknowledges and agrees that the Authority or its representatives are not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other Project documents. Nothing in this section prohibits the County from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.

Section 4.3 Construction of Project.

(A) Construction. To the extent, if any, that the Project is not yet complete, the County agrees to ensure that the Project will be constructed expeditiously.

(B) Completion Certificate. To the extent, if any, that the Project is not yet complete, the County shall deliver to the Authority a certificate of the County in accordance with Section 3.5 of this Financing Agreement within seven (7) Business Days following such completion.

Section 4.4 Accounting and Records.

(A) Access to Records. The County agrees: (i) to permit the State Comptroller, the State Office of Children and Family Services, the State Division of the Budget or the Authority, or their authorized representatives to review or audit all records relative to the Project and the Existing Indebtedness; and (ii) to promptly fulfill information requests by any of them or their authorized representatives.

(B) Record Retention. The County agrees to retain all files and records relating to the construction of the Project for at least six (6) years after Project completion and to retain all other files and records relating to the Financing for the term of this Financing Agreement.

Section 4.5 Remediation. The County agrees to rectify promptly any breach of this Article IV with or without notice from the Authority.

ARTICLE V

COVENANTS

Section 5.1 Application of Financing Proceeds. The County shall apply the proceeds of the Financing solely as provided in Section 3.4 of this Financing Agreement.

Section 5.2 Tax Covenant. The County covenants that it shall not take any action or inaction, nor fail to take any action or permit any action to be taken, with respect to the Project or its Proportionate Share of the proceeds of the Bonds made available to it as part of the Financing including amounts treated as proceeds of the Bonds for any purpose of Section 103 of the Code, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds under Section 103 of the Code. This provision shall control in case of conflict or ambiguity with any other provision of this Financing Agreement. Without limiting the generality of the foregoing, the County covenants that it will comply with the instructions and requirements of the Arbitrage and Use of Proceeds Certificate, which is incorporated herein as if fully set forth herein. The County (or any related party within the meaning of Treasury Regulation Section 1.150-1(b)) shall not, pursuant to an arrangement, formal or informal, purchase Bonds in an amount related to the amount of any obligation to be acquired from the County by the Authority. The County will, on a timely basis, provide the Authority with all necessary information and funds to the extent required to enable the Authority to comply with the arbitrage and rebate requirements of the Code.

Section 5.3 Covenant as to Restrictions on Religious Use. The County agrees that with respect to the Project or any portion thereof, so long as the Project or portion thereof exists and unless and until the Project or portion thereof is sold for the fair market value thereof, the Project or any portion thereof shall not be used for sectarian religious instruction or as a place of religious worship or in connection with any part of a program of a school or department of divinity for any religious denomination; provided, however, that the foregoing restriction shall not prohibit the free exercise of any religion; and, provided, further, that if at any time hereafter, in the opinion of Bond Counsel, the then applicable law would permit the Project or a portion thereof to be used without regard to the above stated restriction, said restriction shall not apply to the Project or any portion thereof. The Authority and its agents may conduct such inspections as the Authority deems necessary to determine whether the Project or any portion of real property thereof refinanced by the Bonds is being used for any purpose proscribed hereby. The County hereby further agrees that prior to any disposition of any portion of the Project for less than fair market value, it shall execute and record in the appropriate real property records an instrument subjecting, to the satisfaction of the Authority, the use of such portion of the Project to the restriction that (i) so long as such portion of the Project (and, if included in the Project, the real property on or in which such portion of the Project is situated) shall exist and (ii) until such portion of the Project is sold or otherwise transferred to a person who purchases the same for the fair market value thereof at the time of such sale or transfer, such portion of the Project shall not be used for sectarian religious instruction or as a place of religious worship or used in connection with any part of the program of a school or department of divinity of any religious denomination. The instrument containing such restriction shall further provide that such restriction may be enforced at the instance of the Authority or the Attorney General of the State, by a proceeding in any court of competent jurisdiction, by injunction, mandamus or by other appropriate remedy. The instrument containing such restriction shall also provide that if at any time thereafter, in the opinion of Bond Counsel, the then applicable law would permit such portion of the Project, or, if included in the Project, the real property on or in which such portion is situated, to be used without regard to the above stated restriction, then said restriction shall be without any force or effect. For the purposes of this Section an involuntary transfer or disposition of the Project or a portion thereof, upon foreclosure or otherwise, shall be considered a sale for the fair market value thereof.

Section 5.4 Payment of the Financing. The County covenants and agrees that it shall duly and punctually pay or cause to be paid the principal installments or redemption price of its Financing and the interest thereon, subject to annual appropriation, at the dates and places and in the manner stated in its Notice of Terms and in accordance with Section 3.1 hereof and that such obligation shall not be subject to any defense (other than payment) or any rights of setoff, recoupment, abatement, counterclaim or deduction and shall be without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Authority, the Trustee or the owner of any Bond.

Section 5.5 Actions Regarding State Office of Children and Family Services Aid. The County covenants and agrees that it shall submit to the State Office of Children and Family Services all documentation required by the State Office of Children and Family Services as a condition to the payment of any aid from the State Office of Children and Family Services in sufficient time to permit such aid to be paid on its scheduled payment date.

Section 5.6 County Appropriation. The County intends, subject to Section 3.1 hereof, to make all Financing payments due hereunder. The County reasonably believes that an amount sufficient to make all Financing payments due hereunder can be obtained from legally available funds of the County. The County covenants and agrees that it will include within each fiscal year budget during the term of this Financing Agreement funds sufficient to discharge its obligation to make Financing payments due hereunder.

Section 5.7 Essential Use. During the term of this Financing Agreement, the County covenants and agrees that the Project will be used by the County only for the purpose of performing essential governmental functions of the County consistent with the permissible scope of the County's authority. The County does not intend to sell or otherwise dispose of the Project or any interest therein prior to the last Financing payment scheduled to be paid hereunder.

ARTICLE VI

DEFAULTS

Section 6.1 Defaults. An "event of default" or a "default" shall mean, whenever they are used herein, any one or more of the following events:

(A) Failure by the County to pay or cause to be paid when due the amounts to be paid under the Financing, other than a failure to pay pursuant to Section 3.1 hereof due to an event of non-appropriation;

(B) Failure by the County to pay or to cause to be paid when due any other payment required to be made hereunder, which failure continues for a period of thirty (30) days after payment thereof was due, provided that written notice thereof shall have been given to the County not less than thirty (30) days prior to the due date thereof, other than a failure to pay pursuant to Section 3.1 hereof due to an event of non-appropriation;

(C) Failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsections (A) and (B) of this Section and other than in Section 5.6, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the County by the Authority or such longer period, as is required to cure such default, if by reason of the nature of such failure the same cannot be remedied within such thirty (30) day period and the County has within such thirty (30) day period commenced to take appropriate actions to remedy such failure and is diligently pursuing such actions;

(D) Any representation or warranty of the County contained herein shall have been at the time it was made untrue in any material respect; or

(E) The County shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the County seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of

an order for relief or the appointment of a receiver, trustee, or other similar official for it for any substantial part of its property; or the County shall authorize any of the actions set forth above in this subsection (E).

ARTICLE VII

REMEDIES

Section 7.1 Remedies. Whenever any event of default referred to in Section 6.1 hereof shall have happened and be continuing, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the County hereunder, including requiring payment to the Trustee of any public funds otherwise payable to the County by the State Office of Children and Family Services as provided in the Memorandum of Understanding, and any other administrative enforcement action and actions for breach of contract.

Section 7.2 No Remedy Exclusive. No remedy herein conferred upon or reserved hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 7.3 Waiver and Non-Waiver. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No delay or omission by the Authority to exercise any right or power accruing upon default shall impair any right or power or shall be construed to be a waiver of any such default or acquiescence therein.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given, and shall be deemed given, when delivered in writing to the address or fax number (if expressly permitted in the provision requiring such communication) of the identified party or parties set forth below:

(A) Authority:

Dormitory Authority of the State of New York
515 Broadway
Albany, New York 12207
Attn.: Executive Director
Fax No.: (518) 257-3100

and

Attn.: General Counsel
Fax No.: (518) 257-3101

(B) Trustee: to the address specified in **Exhibit B** hereto.

(C) [] County: to the address specified in **Exhibit B** hereto.

Any of the foregoing parties may designate any further or different addresses or fax numbers to which subsequent notices, certificates or other communications shall be sent by notice in writing given to the others.

Section 8.2 Binding Effect. Upon execution and delivery by the County and the Authority, this Financing Agreement shall inure to the benefit of and shall be binding upon the Authority and the County and their respective successors and assigns.

Section 8.3 Severability. In the event that any provision of this Financing Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 8.4 Amendments, Supplements and Modifications. This Financing Agreement shall not be amended, supplemented or modified except by a written instrument executed by the Authority and the County and, if such amendment occurs after the issuance of the Bonds, upon compliance with the provisions of Section 8.10 of the Resolution.

Section 8.5 Execution in Counterparts. This Financing Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.6 Applicable Law. This Financing Agreement shall be governed by and construed in accordance with the laws of the State, including the Act.

Section 8.7 Captions. The captions or headings in this Financing Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Financing Agreement.

Section 8.8 Benefit of Financing Agreement. This Financing Agreement is executed, among other reasons, to induce the Financing by the Authority to the County and, to the extent that the Authority may so determine from time to time in accordance with Section 8.10

hereof, to secure the Bonds. Accordingly, those rights of the Authority to enforce the duties, covenants, obligations and agreements of the County set forth in clause (i) of the first sentence of Section 8.10 hereof, including the right to enforce the payment of amounts due under the Financing, may at any time, in whole or in part, be assigned and pledged by the Authority to the Trustee for the benefit of the owners of the Bonds and thereafter such duties, covenants, obligations and agreements so assigned and pledged shall be for the benefit of and enforceable by the Trustee and the Authority except that beneficial owners of bonds hereafter issued under the Resolution shall be third-party beneficiaries of Section 8.9(B) of this Financing Agreement.

Section 8.9 Further Assurances; Disclosure of Financial Information, Operating Data and Other Information.

(A) The County shall, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be deemed necessary or desirable by the Authority, in its sole discretion, for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Financing Agreement. The County also agrees to furnish to the Authority such additional information concerning the financial condition of the County as the Authority may from time to time reasonably request.

(B) Without limiting the generality of the foregoing, the County agrees to comply with the terms of the Continuing Disclosure Agreement.

(C) If and so long as the offering of the Bonds continues (a) the County will furnish such information with respect to itself as the underwriters of the Bonds may from time to time reasonably request in writing and (b) if any event relating to the County shall occur as a result of which it is necessary, in the opinion of Bond Counsel to the Authority, General Counsel of the Authority or counsel for such Underwriters, to amend or supplement the preliminary and/or final official statement of the Authority used in connection with the offering of the Bonds in order to make such information not misleading in light of the circumstances then existing, the County will forthwith prepare and furnish to the Authority and the Underwriters such information relating to the County as may be necessary to permit the preparation of an amendment of or supplement to such preliminary and/or final official statement (in form and substance satisfactory to the Bond Counsel to the Authority and counsel for the Underwriters) which will amend or supplement such preliminary and/or final official statement so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make statements therein, in light of the circumstances then existing, not misleading. Unless the County shall have been notified to the contrary in writing by the Authority or the Underwriters, the County shall be entitled to presume that the offering by the Authority and that its obligations under this subsection shall have ceased twenty-five (25) days after the date of delivery of the Bonds.

Section 8.10 Assignment of Financing Agreement. The County consents to the pledge and assignment at any time of any portion of the Authority's estate, right, title and interest and claim in, to and under this Financing Agreement and the right to make all related waivers and agreements in the name and on behalf of the Authority, as agent and attorney-in-fact, and to

perform all other related acts which are necessary and appropriate under this Financing Agreement, if any.

Section 8.11 Financing Agreement Supersedes Prior Agreements. This Financing Agreement supersedes any other prior or contemporaneous agreements or understandings, written or oral, between the parties relating to the financing of the Project.

Section 8.12 Resolutions to Control. In the event of any inconsistency between the provisions of this Financing Agreement and the provisions of the Resolution and the Series Resolution, the provisions of the Resolution and Series Resolution shall take precedence.

IN WITNESS WHEREOF, the County and the Authority have each caused this Financing Agreement to be executed and delivered as of the date first above written.

COUNTY:

By: _____
Name:
Title:

DORMITORY AUTHORITY OF THE
STATE OF NEW YORK

By: _____
Authorized Officer

EXHIBIT A-1 - PROJECT DESCRIPTION

DATE:

Please provide the following information regarding each project you are interested in financing or refinancing through the Authority. The following information should be provided to the Authority as quickly as possible. The County can thereafter supplement or revise the information if necessary. Please note that the Authority will rely on the information provided by the County and its consultants when structuring the Financing. Therefore, it is the responsibility of the County to verify that this information is consistent with the data maintained by the State Office of Children and Family Services well in advance of any sale of bonds by the Authority.

NAME OF COUNTY:					
Project Description*	DOB Approval Date**	OCFS Approval Date**	SEQRA Determination Date**	County Resolution Date**	Preferred Semi-Annual Payment Dates

* For each issue of bond anticipation notes which financed any of these projects in whole or in part, please complete Exhibit A-2 - BAN History.

**Please provide copies of the associated documentation to the Authority.

EXHIBIT A-2
BAN HISTORY

Please complete this form for each BAN to be refinanced

COUNTY: _____

BAN purpose(s): _____

Date(s) of adoption of applicable bond resolution(s): _____

Maximum amount of bonds authorized by applicable resolution(s): _____

Amount of unspent BAN proceeds, if any: _____

Original and each Subsequent Date of Issue	Par Amount	Indicate whether New or Renewal BAN	Maturity Date	Principal, if any, paid at Renewal	Portion, if any, Refinanced with Bonds

DATE: _____

EXHIBIT B

SCHEDULE OF ADDITIONAL PROVISIONS

COUNTY: _____

I. Definitions

“Maximum Rate” means the maximum interest rate per annum on the Financing and agreed to pursuant to Section 3.1(A) of the Financing Agreement, which shall be [____]% per annum, provided that in no event shall the net interest cost exceed [____]%.

“Trustee” means [____], in its capacity as Trustee under the Resolution and the Series Resolution, and any successor trustee in such capacity.

II. Other Amounts Payable

The County agrees to pay the initial financing fee payable by the County to the Authority, which shall be in the amount of \$[_____] per issue of Bonds of the Authority from which the County borrows proceeds to be divided equally among the various counties borrowing proceeds from such issue (with all Bonds of the Authority issued on any one date considered one issue for purposes of determining this fee) and other Costs of Issuance as provided in Section 3.2 of this Financing Agreement. Such amounts shall be payable from the proceeds of the Bonds.

III. Notice Addresses

For purposes of Section 8.1(C) of the Financing Agreement, the address of the Trustee shall be:

For purposes of Section 8.1(C) of the Financing Agreement, the address of the County shall be:

IV. Prepayment of County Financing

Commencing not later than ten and one-half years after the date of issuance of the Bonds (the "First Optional Redemption Date"), at the option of the County, the County may prepay the Financing, in whole at any time and in part in principal amounts of \$5,000 or integral multiples thereof on any interest payment date, from any moneys available therefor, at a redemption price, in either case, equal to the principal amount of such Financing to be prepaid, together with (i) the Applicable Redemption Premium and (ii) the accrued and unpaid interest on the principal amount to be prepaid to the date fixed for redemption. In the event of any partial prepayment, the Financing shall be prepaid in such order of payment as shall be determined by the County. As used herein "Applicable Redemption Premium" with respect to any payment date of the Financing to be prepaid means the redemption premium specified in the Notice of Terms for such payment date, or any earlier date specified in the Notice of Terms provided that such redemption premium shall not exceed 4% of the principal amount of the Financing proposed to be prepaid. Pursuant to Section 3.3(B) of the Financing Agreement, the County shall also pay all costs and expenses of the Authority in effecting the redemption or defeasance of any Bonds that are redeemed due to the prepayment any portion of the Financing (including interest accruing on the Bonds to the date of redemption of the Bonds).

Notwithstanding the foregoing, no Financing or portion of a Financing that is not in an amount which is an integral multiple of \$5,000 shall be subject to such prepayment at the option of the County without the express written consent of the Authority.

Any such prepayment, either as a whole or in part, shall be made upon at least sixty (60) days and no more than seventy-five (75) days prior written notice to the Authority and to the Trustee.

The moneys necessary for any prepayment of the Financing shall be paid to or deposited with the Trustee. Such prepaid portion of the Financing will cease to bear interest on the specified prepayment date, provided funds sufficient for the prepayment of such portion of the Financing are on deposit with the Trustee. If such moneys are not available on the prepayment date, the Financing or portions thereof will continue to bear interest until paid at the same rate as it would have borne had it not been called for prepayment.

EXHIBIT C

REQUEST FOR DISBURSEMENT OF PROCEEDS OF THE RAISE THE AGE REVENUE BOND FINANCING PROGRAM REVENUE BONDS, SERIES 20[]

This certificate is delivered by [Name of County] (the “County”) pursuant to the Financing Agreement dated as of [_____, 20__] (the “Agreement”) by and between the Dormitory Authority of the State of New York (the “Authority”) and the County in connection with the disbursement of proceeds of the above-referenced Bonds (the “Bonds”) issued under the Authority’s Raise The Age Revenue Bond Financing Program Revenue Bond Resolution, adopted September 7, 2022, as amended or supplemented and the Series [_____] Resolution Authorizing the Issuance of a Series of Raise The Age Revenue Bond Financing Program Revenue Bonds, adopted [_____] (collectively, the “Resolution”). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement or the Resolution, as applicable.

- A. The undersigned is an Authorized Officer of the County.
 - B. Expenses or monies for which payment is requisitioned in the amount of \$_____ have been incurred or expended for capital items which constitute Costs of the Project. The Project has not been modified except as permitted by the Agreement.
 - C. Expenses or monies for which payment is requisitioned in the amount of \$_____, corresponding to the enclosed list of invoices and detail provided with respect thereto, have been incurred or expended for items which constitute Costs of Issuance, as that term is defined in the Resolution,
 - C. No amount for which payment is being requisitioned hereby has been the basis of any prior disbursement from the Applicable Construction Account established for the County in connection with the Bonds.
 - D. The County has complied with all provisions of the Agreement and the Arbitrage and Use of Proceeds Certificate executed by the County in connection with the issuance of the Bonds, including, but not limited to those related to the use of the Project, prohibitions against use for sectarian religious instruction or religious worship and certain non tax-exempt purposes, and timing of the expenditures for which reimbursement is being requested.
 - E. The County will retain all original documentation related to expenditures for items which constitute Costs of the Project for at least three (3) years (or such longer requirements as may be applicable for the County) after the last of the Bonds or any related refunding bonds are retired, for inspection at any time by the Authority or its auditors.
- ☐ The payment should be transmitted electronically using the following banking instructions:

Bank Name:
Bank ABA #:
Bank Account #:
Bank Account Name:

- ☐ The reimbursement should be sent via check to:
Address:

The undersigned attests to the accuracy of the representations made hereunder and acknowledges the Authority will be relying upon them.

Facsimile signature shall constitute original signature for purposes of this reimbursement.

(Signature of Authorized Officer)

EXHIBIT D

PROJECT COMPLETION CERTIFICATE

Relating to

**Raise The Age Revenue Bond Financing Program
Revenue Bonds, Series 20[] [the “Bonds”]**

The undersigned hereby certifies, pursuant to Section 3.5(A) of the Financing Agreement dated as of [] (the “Agreement”) between the [Name of County] (the “County”) and the Dormitory Authority of the State of New York (the “Authority”) that construction of the Project has been substantially completed and there are no remaining Costs of the Project to be paid from proceeds of the Bonds. The County further acknowledges and agrees that any proceeds of the Bonds remaining in the Applicable Construction Account are subject to application as provided in the Resolution. Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Agreement.

[NAME OF COUNTY]

By: _____
Authorized Officer

EXHIBIT E

**Dormitory Authority of the State of New York
Raise the Age Revenue Bond Financing Program
Revenue Bonds
Series 20[]**

_____ **County**

Exhibit E

Anticipated Principal Repayment Schedule⁽¹⁾

Principal Payment Date	Financing Principal
------------------------------	------------------------

TOTAL:

⁽¹⁾ Final interest rates, maturity dates and final principal amounts shall be as set forth in the Notice of Terms (*Form of Notice of Terms set forth in Exhibit F*).

EXHIBIT F-1

FORM OF OPINION OF LOCAL COUNSEL (PRELIMINARY)

[Letterhead of Local Counsel to County]

[Date]

[Name and address of County]

Dormitory Authority of the State of New York
515 Broadway
Albany, New York 12207

[_____] , as Trustee

RBC Capital Markets LLC
455 Patroon Creek Boulevard, Suite 207
Albany, New York 12206,
acting on its own behalf and, if applicable,
on behalf of the other underwriters named in
the Bond Purchase Agreement relating to the
Bonds (defined herein) between the
Dormitory Authority of the State of New
York and such underwriters

Ladies and Gentlemen:

I am an attorney admitted to practice in the State of New York and have acted as counsel to the county referred to above (the “County”), which has entered into a Financing Agreement (as hereinafter defined) with the Dormitory Authority of the State of New York (the “Authority”). Terms used but not otherwise defined herein shall have the respective meanings set forth in such Financing Agreement.

I have examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

(A) the Financing Agreement, dated as of [_____], 2022 (the “Financing Agreement”), by and between the Authority and the County, in the form executed by the County; and

(B) proceedings of the County [legislature/board of supervisors] relating to the approval of the Financing Agreement and the execution and delivery thereof, and the authorization of the undertaking and completion of the Project (as defined in the Financing Agreement).

I have also examined and relied upon originals, or copies certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in my judgment I have deemed necessary or appropriate to enable me to deliver this opinion.

Based upon the foregoing, I am of the opinion that:

1. There is no litigation of any nature pending or, to my knowledge, threatened to restrain or enjoin the execution or delivery of the Financing Agreement, or any of the proceedings taken with respect to the Financing Agreement, the application of moneys to the payment of the Financing Agreement or in any manner questioning the proceedings and authority under which the Financing Agreement was authorized or affecting the validity of the Financing Agreement, the existence or boundaries of the County or the title of officials of the County who have acted with respect to the proceedings for the authorization of the Financing Agreement to their respective offices, and no authority or proceedings for the authorization of the Financing Agreement have been repealed, revoked or rescinded.

2. The execution and delivery by the County of the Financing Agreement, the adoption of the resolution by the County and compliance with the provisions thereof will not conflict with or constitute a breach of or a default under any local law or administrative regulation, or any judgment, decree or any agreement or other instrument known to me to which the County is a party or otherwise subject.

Very truly yours,

EXHIBIT F-2

FORM OF OPINION OF LOCAL COUNSEL (CLOSING)

[Letterhead of Local Counsel to County]

[Date]

[Name and address of County]

Dormitory Authority of the State of New York
515 Broadway
Albany, New York 12207

[____], as Trustee

RBC Capital Markets LLC
455 Patroon Creek Boulevard, Suite 207
Albany, New York 12206,
acting on its own behalf and, if applicable,
on behalf of the other underwriters named in
the Bond Purchase Agreement relating to the
Bonds (defined herein) between the
Dormitory Authority of the State of New
York and such underwriters

Ladies and Gentlemen:

I am an attorney admitted to practice in the State of New York and have acted as counsel to the county referred to above (the “County”), which has entered into a Financing Agreement (as hereinafter defined) with the Dormitory Authority of the State of New York (the “Authority”). Terms used but not otherwise defined herein shall have the respective meanings set forth in such Financing Agreement.

I have examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

(A) the Financing Agreement, dated as of [____], 2022 (the “Financing Agreement”), by and between the Authority and the County, in the form executed by the County;

(B) the Bond Purchase Agreement;

(C) the Continuing Disclosure Agreement;

(D) the Memorandum of Understanding;

(E) the Arbitrage and Use of Proceeds Certificate; and

(F) proceedings of the County [legislature/board of supervisors] relating to the approval of Financing Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Memorandum of Understanding and the Arbitrage and Use of Proceeds Certificate and the execution and delivery thereof, and the authorization of the undertaking and completion of the Project (as defined in the Financing Agreement).

I have also examined and relied upon originals, or copies certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in my judgment I have deemed necessary or appropriate to enable me to deliver this opinion.

Based upon the foregoing, I am of the opinion that:

1. There is no litigation of any nature pending or, to my knowledge, threatened to restrain or enjoin the execution or delivery of the Financing Agreement, or any of the proceedings taken with respect to the Financing Agreement, the application of moneys to the payment of the Financing Agreement or in any manner questioning the proceedings and authority under which the Financing Agreement was authorized or affecting the validity of the Financing Agreement, the existence or boundaries of the County or the title of officials of the County who have acted with respect to the proceedings for the authorization of the Financing Agreement to their respective offices, and no authority or proceedings for the authorization of the Financing Agreement have been repealed, revoked or rescinded.

2. The execution and delivery by the County of the Financing Agreement, the adoption of the resolution by the County and compliance with the provisions thereof will not conflict with or constitute a breach of or a default under any local law or administrative regulation, or any judgment, decree or any agreement or other instrument known to me to which the County is a party or otherwise subject.

3. In my opinion, the Financing Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Memorandum of Understanding and the Arbitrage and Use of Proceeds Certificate have been duly authorized, executed and delivered by the County; and, assuming the due authorization, execution and delivery of the Financing Agreement by the Authority, will constitute legal, valid and binding obligations of the County, enforceable in accordance with their terms. The enforceability of rights or remedies with respect to the Financing Agreement may be limited by bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted.

4. The Financing being made to the County under the terms of the Financing Agreement is being made with the proceeds of bonds being issued by the Authority, the interest on which is intended to be and remain excluded from gross income pursuant to Section 103(a) of the Internal Revenue Code of 1986 (the "Code"). In connection with the Financing, the County has executed and delivered an Arbitrage and Use of Proceeds Certificate. Pursuant to such Arbitrage and Use of Proceeds Certificate and the Financing Agreement, the County has certified and agreed that the County will comply with the provisions and procedures set forth in the

Arbitrage and Use of Proceeds Certificate and that it will not take any action or inaction, nor fail to take any action or permit any action to be taken, if any such action or inaction, which would cause the Bonds to be “private activity bonds”, “private loan bonds,” “arbitrage bonds” or “prohibited advance refunding bonds” within the meaning of Sections 141, 148 and 149 of the Code. Based on the foregoing and assuming compliance with the Arbitrage and Use of Proceeds Certificate and with the covenants contained in Section 5.2 of the Financing Agreement, we are of the opinion that the application of the proceeds of the Bonds to the purposes contemplated by the Financing Agreement will not cause the Bonds (a) to meet either (i) the “private business” tests of Section 141(b) of the Code or (ii) the “private loan financing” test of Section 141 (c) of the Code, (b) to be “arbitrage bonds” within the meaning of Section 148 of the Code or (c) to be a “prohibited advance refunding bond” within the meaning of Section 149(d) of the Code.

Very truly yours,

EXHIBIT G

FORM OF COUNTY CLOSING CERTIFICATE

COUNTY
CLOSING CERTIFICATE
dated [Closing Date]

as to (i) Confirmation of Certain Matters set forth in the Financing Agreement, (ii) Signatures and Incumbency of Authorized Signatories, and (iii) Certain Other Matters

I am authorized officer of the County named above (the “County”), and hereby certify that:

1. This Certificate has been executed in connection with the issuance and sale by the Dormitory Authority of the State of New York (the “Authority”) of its Dormitory Authority of the State of New York Raise the Age Revenue Bond Financing Program Revenue Bonds, Series 2022 (the “Bonds”). A portion of the proceeds of said Bonds has been made available to the County, which has entered in a Financing Agreement with the Authority to evidence its obligation to repay such Financing subject to annual appropriation .

2. The representations and warranties of the County set forth in the Financing Agreement between the Authority and the County dated as of [____], 2022, are true and correct as of the date hereof as if made on and as of the date hereof, the Financing Agreement remains in full force and effect as of the date hereof, and the County has complied with and performed and will continue to comply with and perform all of its covenants and agreements in the Financing Agreement.

3. The representations and warranties of the County set forth in the Bond Purchase Agreement, dated the date of sale of the Bonds, among the Authority, the underwriters of the Bonds and the County, are true and correct as of the date hereof as if made on and as of the date hereof.

4. The County is not in default in the performance of any of the covenants, conditions, agreements or provisions contained in the Authority’s Revenue Bond Resolution, the Authority’s Series Resolution, the County Resolution authorizing the capital projects financed with the proceeds of the Refunded Obligations and/or the Bonds, or in the Financing Agreement.

5. No litigation of any nature is now pending or, to our knowledge, threatened (a) to restrain or enjoin the execution or delivery of the Financing Agreement, (b) in any manner questioning or affecting, directly or indirectly, the validity of the Financing Agreement or the proceedings or authority therefor, (c) relative to the validity or enforceability of the Financing Agreement or (d) contesting the corporate existence or boundaries of the County or the title of the undersigned officers to their respective offices.

6. No authority or proceedings for the execution and delivery of the Financing Agreement has been repealed, revoked or rescinded, and compliance with the

covenants contained in the Arbitrage and Use of Proceeds Certificate of the County executed the date hereof is not prohibited by or violative of any provision of local or special law, regulation or resolution applicable to the County.

7. The undersigned are authorized signatories of the County as of the date hereof and were authorized signatories of the County as of the date of execution of any documents which they executed in connection with this transaction. Each of the undersigned hereby confirms that the signature(s) of the other officer(s) is(are) genuine.

<u>SIGNATURE</u>	<u>NAME OF OFFICER</u>	<u>OFFICIAL TITLE</u>	<u>TERM OF OFFICE EXPIRES</u>
_____	_____	County Executive	_____
_____	_____	County Clerk [Add any other officers who signed documents related to this transaction]	_____

(Print)

IN WITNESS WHEREOF, I have hereunto set my hand as of the date first written above.

_____ **COUNTY**

By: _____
County Executive

EXHIBIT H

NOTICE OF TERMS

delivered by the Dormitory Authority of the State of New York
relating to
Financing Agreement
dated as of _____, between
Dormitory Authority of the State of New York
and
_____ County

1. This Notice of Terms is being delivered pursuant to the Financing Agreement referred to above (the "Financing Agreement"). All capitalized terms used but not defined herein shall have the respective meanings set forth in the Financing Agreement.

2. The terms of the Financing, in addition to those set forth in the Financing Agreement, are as set forth below (including Schedule A attached hereto). The maturity date(s), principal amount(s), interest rate(s) and aggregate debt service on the Financing are as set forth in **Schedule A**.

3. Pursuant to Section 3.3(B) of the Financing Agreement the County shall pay all costs and expenses of the Authority in effecting the redemption of any Bonds that are redeemed due to the prepayment of the County Financing (including interest accruing on the Bonds to the date of redemption of the Bonds).

4. The County's share of costs and expenses specified in Section 3.2(A) of the Financing Agreement shall be in the amount and for the purposes set forth in Schedule A hereto and shall be utilized for the payment of the following costs of issuance: underwriters' discount, bond insurance premium (if any), State bond issuance charge, Authority fees, financial advisor fee, Authority bond counsel fee, including preparation of transcripts, local counsel fee, printing of Preliminary and Final Official Statements and any supplement or amendment thereto, verification charges (if any), rating agency fees and trustee and bank fees.

[COUNTY]

Schedule A to Exhibit H

Terms of the Loan

Maturity <u>Date</u>	Principal <u>Amount</u>	Interest <u>Rate</u>	<u>Interest</u>	Semi-Annual <u>Debt Service</u>	Annual Debt Service-Fiscal <u>Year</u>
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TOTAL _____

Costs of Issuance payable pursuant to section 4 of the Notice of Terms: \$ _____

County Interest Rate: _____%

First Optional Redemption Date: _____

Applicable Redemption Premium: _____