



DANIEL P. MCCOY
COUNTY EXECUTIVE

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OFFICE OF THE EXECUTIVE
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MICHAEL P. MCLAUGHLIN, JR.
DEPUTY COUNTY EXECUTIVE

October 28, 2024

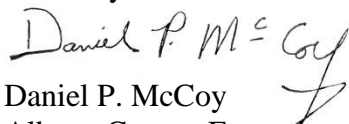
Honorable Joanne Cunningham, Chair
Albany County Legislature
112 State Street, Room 710
Albany, New York 12207

Dear Chairwoman Cunningham:

Authorization is requested to enter into a financing agreement with the Albany County Pine Hills Land Authority (ACPHLA) to support the Authority's objective of acquiring, promoting, and repositioning the campus of the now closed College of Saint Rose for the highest and best use. The ACPHLA is authorized to issue bonds in an aggregate principal amount not to exceed \$80,000,000 in order to accomplish this objective which will prevent the properties from becoming blighted and stimulate economic growth in the County. In order to support this effort, the County is proposing to provide a source of payment for the obligations of the Authority in an amount to be determined based on the size and nature of the bond issuance. The County's investment will be repaid by proceeds from the eventual sale of the properties to end users that will utilize the facilities to their highest and best use.

If you should have any questions, please do not hesitate to contact me.

Sincerely


Daniel P. McCoy
Albany County Executive

cc: Hon. Dennis Feeney, Majority Leader
Hon. Frank Mauriello, Minority Leader
Rebekah Kennedy, Majority Counsel
Arnis Zilgme, Minority Counsel



County of Albany

Harold L. Joyce
Albany County Office
Building
112 State Street - Albany,
NY 12207

Legislation Text

File #: TMP-6078, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):

Requesting authorization to enter into a financing agreement with the Albany County Pine Hills Land Authority (ACPHLA)

Date: 10/28/24
Department: CEO
Attending Meeting: CEO/DMB
Submitted By: Lucas Rogers
Title: Economic Development and Sustainability Coordinator
Phone: 518-447-7040

Purpose of Request: Contract Authorization Enter text.

CONTRACT TERMS/CONDITIONS:

Party Names and Addresses:
Albany County Pine Hills Land Authority
111 Washington Avenue
Suite 100
Albany, NY 122120

Term: (Start/end date or duration) TBD - same as bond issuance
Amount/Raise Schedule/Fee: Enter text.

BUDGET INFORMATION:

Is there a Fiscal Impact: Yes No
 Anticipated in Budget: Yes No
 Spreadsheet attached: Yes No

Source of Funding - (Percentages)

Federal: Enter text. County: 100%
State: Enter text. Local: Enter text.

County Budget Accounts:

Revenue Account and Line: Enter text.
Revenue Amount: Enter text.
Appropriation Account and Line: Debt Reserve
Appropriation Amount: TBD

ADDITIONAL INFORMATION:

Mandated Program/Service: Yes No
If Mandated, Cite Authority: Enter text.
Request for Bids / Proposals:
 Competitive Bidding Exempt: Yes No
 # of Response(s): Enter text.
 # of MWBE: Enter text.
 # of Veteran Business: Enter text.
Bond Resolution No.: Enter text.
Apprenticeship Program Yes No

Previous requests for Identical or Similar Action:

Resolution/Law Number and Date: 321 of 2024

DESCRIPTION OF REQUEST: (state briefly why legislative action is requested)

Authorization is requested to enter into a financing agreement with the Albany County Pine Hills Land Authority (ACPHLA) to support the Authority's objective of acquiring, promoting, and repositioning the campus of the now closed College of Saint Rose for the highest and best use. The ACPHLA is authorized to issue bonds in an aggregate principal amount not to exceed \$80,000,000 in order to accomplish this objective which will prevent the properties from becoming blighted and stimulate economic growth in the County. In order to support this effort, the County is proposing to provide a source of payment for the obligations of the Authority in an amount to be determined based on the size and nature of the bond issuance. The County's investment will be repaid by proceeds from the eventual sale of the properties to end users that will utilize the facilities to their highest and best use.

DRAFT FOR DISCUSSION PURPOSES ONLY
DATED: OCTOBER 25, 2024



COUNTY OF ALBANY, NEW YORK

AND

ALBANY COUNTY PINE HILLS LAND AUTHORITY

FINANCING AGREEMENT



Dated as of _____, 2024



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[TO BE PROVIDED]

FINANCING AGREEMENT

This FINANCING AGREEMENT, dated as of the date set forth on the cover page hereof, between ALBANY COUNTY, NEW YORK, a municipal corporation duly organized and existing under the laws of the State of New York (the “County”), and ALBANY COUNTY PINE HILLS LAND AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York (the “Authority”).

WITNESSETH:

WHEREAS, the Authority was created and existing under and by virtue of Title 28-C of Article 8 of the Public Authorities Law of the State of New York (the “PAL”), Chapter 168 of the Laws of 2024 of the State, as amended from time to time (the “Act”), organized for the purpose of, among other things, acquiring, promoting, and repositioning the campus of the now closed The College of Saint Rose (“Saint Rose”) to the highest and best use; and

WHEREAS, the Authority is authorized and empowered by the provisions of the Act to protect adequate and accessible performing arts centers, athletic fields, educational facilities, and residential facilities; preserve facilities at risk of being underutilized and becoming blighted; and stimulate and promote a healthy economy within the County of Albany, New York; and

WHEREAS, to accomplish its stated purposes, the Authority is authorized and empowered under the Act to (A) to acquire, construct, reconstruct, continue, develop, equip, expand, improve, maintain, finance, and operate the college of Saint Rose facilities and services within the County; (B) to make contracts and leases and to execute all instruments necessary or convenient for its corporate purposes; and (C) to issue its negotiable bonds to finance the cost such project or for any other corporate purpose; and

WHEREAS, pursuant to the terms of the Act, the Authority’s purposes are deemed to be public purposes and involve the performance of an essential governmental function for which public funds may be expended, and both the County and the Authority in carrying out their respective powers and duties under the Act are deemed to be acting in a governmental capacity; and

WHEREAS, pursuant to a resolution adopted by the members of the board of directors of the Authority on _____, 2024 (the “Authority Resolution”), the Authority authorized (A) the issuance of taxable and/or tax-exempt bonds of the Authority in one or more issues or series in an aggregate principal amount not to exceed \$80,000,000 (the “Bonds”) for the purpose of financing a project (the “Project”) consisting of the following: (1) (a) the acquisition, administration, maintenance, security, operating and redevelopment of St. Rose’s approximately 29 acre campus generally located on, but not limited to, Madison Avenue, Western Avenue, Morris Street, Partridge Street, Yates Street and State Street in the City of Albany, Albany County, New York (the “Land”), together with various existing buildings and related improvements located thereon (collectively, the “Facility”); and (b) the acquisition and installation thereon and therein of certain related furniture, fixtures, machinery and equipment (the “Equipment”) (the Land, the Facility and the Equipment hereinafter collectively referred to as the “Project Facility”), all of the foregoing to be maintained, operated, and/or marketed to an end user or users which would utilize the Project

Facility for its highest and best use; (2) the financing of all or a portion of the costs of the foregoing, together with necessary incidental costs in connection therewith, by the issuance of the Bonds; and (3) the payment of a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds and any reserve funds as may be necessary to secure the Bonds and (B) the Authority to enter into this Financing Agreement; and

WHEREAS, the Authority has requested Albany County (the “County”) to provide a source of payment for the Obligations to assist the Authority with its obligation to repay the Obligations; and

WHEREAS, pursuant to the terms of the Act, the Authority’s purposes are deemed to be public purposes and involve the performance of an essential governmental function for which public funds may be expended, and both the County and the Authority in carrying out their respective powers and duties under the Act are deemed to be acting in a governmental capacity; and

WHEREAS, pursuant to Section 2676-d of the Act, the County may, from time to time, appropriate sums of money toward project costs or other costs and expenses of the Authority; and

WHEREAS, pursuant to a resolution duly adopted by the members of the County Legislature of Albany County (the “County Legislature”) on _____, 2024, the County Legislature authorized the County to enter into this Financing Agreement and to be responsible for the repayment of the Bonds upon the terms and conditions set forth herein; and

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; 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 to the County for purposes of the payment of debt service becoming due on the Bonds;

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 Indenture shall have the same meanings, respectively, herein as such terms are given in such Indenture. In addition, as used herein, unless another meaning is specified in **Exhibit** __ hereto, each capitalized term as used in this Financing Agreement (including the Exhibits hereto) shall have the following meanings:

“Act” means Title 28-C of Article 8 of the Public Authorities Law of the State of New York (the “PAL”), Chapter 168 of the Laws of 2024 of the State, as amended from time to time.

“Authority” means the Albany County Pine Hills Land Authority, a public authority established under the Act, and any entity which may succeed to its rights and duties.

“Authority Resolution” shall have the meaning given such term in _____.

“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 Authority.

“County” means Albany County.

“County Resolution” shall have the meaning given to such term in _____.

“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.

“Indenture” means _____.

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

“Principal Amount” means the original aggregate principal amount of the Financing.

“Project” shall have the meaning given to such term in _____.

“State” means the State of New York.

“Trustee” means _____, in its capacity as trustee for the holders of the Bonds, 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 AND THE AUTHORITY

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, [the Bond Purchase 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) Compliance. The County has complied and will comply with the County Resolution and with all applicable laws of the State.

(C) Authorization. The County has duly approved the execution and delivery of this Financing Agreement, [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.

(D) Binding Obligation. This Financing Agreement has been duly authorized, executed and delivered by the County 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 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.

(E) 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 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.

(F) 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 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.

(G) 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 [and the Bond Purchase Agreement] 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.

(H) 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.

(I) 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.

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

(K) 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.

(L) 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.

Section 2.2 Representations of the Authority. The Authority represents and warrants as follows:

(A) Existence and Authority; Legal Power. The Authority is a public authority, 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, the Bond Purchase Agreement and the Continuing Disclosure Agreement, (iii) adopt the Authority Resolution, and (iv) carry out and consummate all other transactions contemplated by each of the aforesaid documents.

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

(E) Authorization. The Authority 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 Authority and, assuming due authorization and execution by the Authority, constitutes a legal, valid and binding obligation of the Authority 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 Authority in accordance with the provisions hereof. 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 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 Authority 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 Authority 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 Authority, threatened against the Authority, nor is there any basis therefor, (i) affecting the creation, organization or existence of the Authority 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 or the Continuing Disclosure Agreement, or (iii) in any way contesting or affecting the validity or enforceability of the Authority 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 Authority 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 Authority 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 and the Bond Purchase Agreement and the adoption of the Authority 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 Authority is a party or by which it or any of its property is bound.

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

(L) Authority to Act. The Authority 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 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 Authority Resolution is an accurate description of the Project.

(N) Proceeds Compliance. The Authority 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 Authority 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 Authority 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.

(S) Disclosure Correct and Complete. The information supplied by 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.

(U) Representations Complete. All representations made herein by the Authority 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. Subject to the conditions and in accordance with the terms of this Financing Agreement, the Authority hereby agrees to issue the Bonds 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.

(B) Payment to Trustee. On the dates and at the times _____, 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 _____. 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.

(C) 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. 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.

Section 3.2 Other Amounts Payable.

(A) The County hereby expressly agrees to pay as such expenses are incurred, the amount of any expenses incurred by the Authority as a result of the Count's failure to make any payment under this Financing Agreement when due or failure to otherwise comply with the terms of this Financing Agreement (including but not limited to the reasonable fees and expenses of the Authority, the Trustee, the owners of Bonds, and attorneys representing any of the foregoing); and

(B) The Authority hereby expressly agrees to pay:

- (i) Upon the issuance and sale of the Bonds, the costs and expenses relating to 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;
- (ii) When due, other Costs of Issuance payable to consultants and attorneys utilized by the Authority and the County in connection with the execution and delivery of this Financing Agreement; and
- (iii) As such expenses are incurred, the amount of any 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.

Section 3.3 Prepayment of the Financing. The Financing shall be subject to prepayment prior to maturity in accordance with the provisions contained in the Bonds. 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.

Section 3.4 Application of Financing Proceeds.

(A) Subject to the conditions hereof, the Authority will undertake the Project with the proceeds of the Bonds.

(B) The Authority shall permit the County and its authorized representatives, at all reasonable times and upon reasonable notice, to enter upon the property of the Authority and the Project Facility, and to examine all documents relating thereto. The Authority 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.

Section 3.5 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 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 3.6 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) a closing certificate in the form of **Exhibit** __ hereof as to confirmation of certain matters set forth in this Financing Agreement, signatures and incumbency of authorized signatories and certain other matters;

(ii) the opinion of the County Attorney, dated the date of issuance of the Bonds, in the form of **Exhibit** __ 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 3.6, in form and substance satisfactory to the Authority. 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).

ARTICLE IV

GENERAL PROJECT CONDITIONS, COVENANTS AND REPRESENTATIONS

Section 4.1 Compliance with Laws and Agreements.

(A) Compliance. The Authority 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 Authority will at all times maintain and operate (or cause to be maintained and operated) the Project, in compliance with all applicable federal, State and local laws, ordinances, rules, regulations 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 Authority 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.

[RESERVED]

Section 4.3 Undertaking of Project.

[RESERVED]

Section 4.4 Accounting and Records.

(A) Access to Records. The Authority agrees: (i) to permit any authorized representatives of the County to review or audit all records relative to the Project and the Bonds; and (ii) to promptly fulfill information requests by the County or its authorized representatives.

(B) Record Retention. The Authority agrees to retain all files and records relating to the undertaking 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 Authority agrees to rectify promptly any breach of this Article IV with or without notice from the County.

ARTICLE V

COVENANTS

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

Section 5.2 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 _____ 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 5.3 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.

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 5.3, 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.

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) County:

[ADDRESSES TO BE INSERTED WHEN FINALIZED]

(B) Authority:

[ADDRESSES TO BE INSERTED WHEN FINALIZED]

(C) Trustee:

[ADDRESSES TO BE INSERTED WHEN FINALIZED]

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.

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 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 herein, 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 the Bonds 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.

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 OF ALBANY, NEW YORK

BY: _____
County Executive

ALBANY COUNTY PINE HILLS
LAND AUTHORITY

BY: _____
Authorized Officer

[Financing Agreement Signature Page]

EXHIBIT A
FORM OF BOND
[TO BE PROVIDED]

RESOLUTION NO. 321

REQUESTING THE NEW YORK STATE LEGISLATURE TO ENACT ASSEMBLY BILL NO. A.10358A/SENATE BILL NO. S.9569A REGARDING THE CREATION OF THE ALBANY COUNTY PINE HILLS LAND AUTHORITY

Introduced: 5/28/24

By Cunningham:

WHEREAS, Authorization for the creation of the Albany County Pine Hills Land Authority will establish a public authority to transition the future use of facilities of the College of Saint Rose in a way to promote and stimulate economic development in Albany County, and

WHEREAS, Authorization for the creation of this public authority must be enacted by the State Legislature, and

WHEREAS, Currently, bills entitled, “AN ACT to amend the public authorities law, in relation to creating the Albany county pine hills land authority” are before both houses of the New York State Legislature: in the Assembly, Bill A.10358A, and in the Senate, Bill S.9569A, now, therefore, be it

RESOLVED, By the Albany County Legislature, pursuant to Article IX of the New York State Constitution and Section 2 of the Municipal Home Rule Law, that the County Legislature hereby requests the enactment of legislation by the Legislature of the State of New York as contained in Assembly Bill A.10358A and Senate Bill S.9569A, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials; Senators Neil Breslin and Jacob Ashby; and Members of Assembly Patricia Fahy, John T. McDonald III, and Phillip G. Steck.