

RESOLUTION NO. 539

RESOLUTION OF THE COUNTY OF ALBANY, NEW YORK (“ALBANY”), AUTHORIZING (1) THE EXECUTION OF A FINANCING AGREEMENT BY AND BETWEEN ALBANY AND THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK (THE “AUTHORITY”), AND (2) THE EXECUTION OF A MUNICIPAL COOPERATION AGREEMENT AND RELATED AGREEMENTS IN CONNECTION WITH ALL OF THE FOREGOING

Introduced: 12/5/22

By Audit and Finance Committee:

RESOLVED, By the Albany County Legislature, that Resolution No. 472 for 2022 is hereby amended to read as follows:

“WHEREAS, Capital District Youth Center, Inc. (the “CDYCI”) is a not-for profit corporation organized for the purpose of, among other things, assisting the Counties of Albany, Rensselaer, Saratoga and Schenectady (collectively, the “Counties”) and thus lessening the burdens of government by acquiring, financing, constructing, reconstructing, remodeling, enlarging, altering, repairing, operating, managing, leasing (as lessee or lessor), selling or otherwise disposing of a regional juvenile detention facility for the benefit of the Counties; and

WHEREAS, CDYCI, by resolution adopted on February 6, 1997 issued bonds (the “1997 Bonds”) in the aggregate principal amount of \$5,070,000 for the purpose of financing a project (the “1997 Project”) consisting of constructing and equipping a regional juvenile secure detention facility known as the Capital District Juvenile Secure Detention Facility (the “Detention Facility”) upon land owned by County of Albany (“Albany”) and located at 838 Albany-Shaker Road, Colonie, New York (the “Land”); and

WHEREAS, pursuant to the terms of a ground lease dated as of February 1, 1997 (the “Ground Lease”) by and between Albany, as landlord, and the CDYCI, as tenant, the CDYCI leased an interest in the Detention Facility consisting of (1) the Land, (2) certain improvements constructed thereon (the “Facility”) and (3) certain machinery and equipment acquired and installed thereon (the “Equipment”) (the Land, the Facility, and the Equipment being collectively referred to as the “Project Facility”); and

WHEREAS, on February 10, 2017, the 1997 Bonds were discharged and pursuant to Section 4.4 of a municipal cooperation agreement dated as of February 1, 1997 by and among the Counties (the “1997 Municipal Cooperation Agreement”), fee title to the Detention Facility was conveyed by CDYCI to Albany without consideration and all leases, including the Ground Lease, management contracts and other encumbrances automatically terminated on the date of such discharge; and

WHEREAS, notwithstanding the automatic transfer of title in the Project Facility to Albany, the Counties desired to maintain CDYCI’s role in the

administration, management and operation of the Project Facility on behalf of the Counties in accordance with Article 5-G of the General Municipal Law of the State of New York (the “GML”) and Section 218-a of the County Law of the State of New York (the “County Law”); and

WHEREAS, following the automatic transfer of title in the Project Facility to Albany, Albany and CDYCI entered into a series of leases to provide for the leasing of the Project Facility to CDYCI (collectively, the “Prior Leases”); and

WHEREAS, the Prior Leases have been superseded and replaced by a single lease dated as of January 1, 2020 (the “Lease Agreement”) by and between Albany and CDYCI; and

WHEREAS, pursuant to a first amendment to lease dated as of July 1, 2022 (the “First Amendment to Lease”) by and between Albany and CDYCI, the Lease Agreement has been amended to extend the term of the Lease Agreement to December 31, 2039; and

WHEREAS, by Resolution No. 356 for 2022, this Honorable Body authorized the Albany County Executive (the “County Executive”) to execute and deliver a second amendment to lease (the “Second Amendment to Lease”) by and between Albany and CDYCI to extend the term of the Lease Agreement for a term commencing January 1, 2020 and ending December 31, 2044; and

WHEREAS, Albany has requested that the Dormitory Authority of the State of New York, a body corporate and politic constituting a public benefit corporation, established under and by virtue of the laws of the State of New York (the “Authority”) finance the Project (as defined in the hereinafter defined Financing Agreement) by the issuance of its Series of Raise the Age Revenue Bond Financing Program Revenue Bonds (the “Bonds”), and to make the proceeds of the Bonds available to Albany pursuant to a financing agreement by and between Albany and the Authority (the “Financing Agreement”); and

WHEREAS, in connection with the issuance of the Bonds, Albany intends to enter into the following additional documents: a bond purchase agreement (the “Bond Purchase Agreement”), a continuing disclosure agreement (the “Continuing Disclosure Agreement”), a Memorandum of Understanding (the “MOU”) and an arbitrage and use of proceeds certificate (the “Arbitrage and Use of Proceeds Certificate”); and

WHEREAS, a Preliminary Official Statement and final Official Statement (collectively, the “Official Statement”) will be prepared by the Authority in connection with the marketing and sale of the Bonds and the Official Statement will contain certain information concerning Albany; and

WHEREAS, Albany desires to agree to receive the proceeds of the Bonds and to be solely responsible for the repayment to the Authority of the Bonds upon the terms and conditions set forth in the Financing Agreement; and

WHEREAS, to provide a source of payment for the Bonds, the Counties propose to enter into a municipal cooperation agreement (the "Municipal Cooperation Agreement") by and among the Counties pursuant to which the Counties will agree with Albany to share the cost of repayment of the Bonds to be made by Albany to the Authority pursuant to the Financing Agreement and certain other matters relating thereto; and

WHEREAS, in connection with the issuance of the Bonds by the Authority, Albany desires to execute and deliver the Financing Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Arbitrage and Use of Proceeds Certificate and the Municipal Cooperation Agreement, and various other documents related thereto;

NOW THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE COUNTY LEGISLATURE OF THE COUNTY OF ALBANY AS FOLLOWS:

Section 1. All action taken by this Honorable Body or the County Executive with respect to the Project is hereby ratified and confirmed.

Section 2. The form and substance of the Financing Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the MOU, the Arbitrage and Use of Proceeds Certificate, the Municipal Cooperation Agreement and the Official Statement are hereby approved.

Section 3. The acceptance of the proceeds of the Bonds by Albany in an amount to be set forth in the Financing Agreement, all pursuant to the laws of the State of New York and in accordance with the Financing Agreement, is hereby authorized and approved, provided that the proceeds of the Bonds shall be accepted solely for the purpose of providing funds to finance the Project.

Section 4. The County Executive is hereby authorized, on behalf of Albany, to execute and deliver the Financing Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the MOU, and the Municipal Cooperation Agreement, and any other agreement in connection with the Project (hereinafter collectively called the "Albany Documents"), and, where appropriate, the Clerk of Albany and/or the County Attorney of Albany is hereby authorized to affix the seal of Albany thereto and to attest the same, all in substantially the forms thereof presented to this meeting, with such changes, variations, omissions and insertions as the County Executive shall approve, the execution thereof by the County Executive to constitute conclusive evidence of such approval.

Section 5. Albany is hereby authorized and directed to prepare information concerning Albany and to furnish such information for use in the Official Statement and the County Executive is hereby authorized and directed to deliver letters or certificates to the Authority and the underwriters of the Bonds signed on behalf of Albany, stating in substance that the information contained in the Official Statement relating to Albany is approved and does not contain any untrue statement of material

fact and does not omit any material facts necessary to make the statements made, in light of the circumstances under which they were made not misleading and Albany hereby authorizes the distribution of the Official Statement in connection with the public offering of the Bonds.

Section 6. The officers, employees and agents of Albany are hereby authorized and directed for and in the name and on behalf of Albany to do all lawful acts and things required or provided for by the provisions of the Albany Documents, and to execute and deliver all such additional certificates, instruments and documents, including, but not limited to, the Arbitrage and Use of Proceeds Certificate, to pay all such fees, charges and expenses and to do all such further lawful acts and things as may be necessary or in the opinion of the officer, employee or agent acting desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by Albany with all of the terms, covenants and provisions of the Albany Documents binding upon Albany.

Section 7. The Authority has previously determined that the undertaking of the Project is an “unlisted action” and issued a “negative declaration” and, accordingly, no other determination or procedures under the State Environmental Quality Review Act (“SEQR”) is required.

Section 8. The temporary use of available funds of the County, not immediately required for the purpose or purposes for which the same were borrowed, raised or otherwise created, is hereby authorized pursuant to Section 165.10 of the Local Finance Law, for the Project described in this resolution. The County then reasonably expects to reimburse such expenditure with the proceeds of the Bonds described in this resolution. This resolution shall constitute the declaration of the County’s “official intent” to reimburse the expenditures authorized hereof with the proceeds of the Bonds, as required by United States Treasury Regulation Section 1.150-2.

Section 9. The County Executive is authorized and directed to distribute copies of this Resolution to the CDYCI and the Authority to do such further things or perform such lawful acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 10. The County Attorney is authorized to approve the Albany Documents, together with any documents referenced in Section 4 hereof, as to form and content.

Section 11. This Resolution shall take effect immediately.”

and, be it further

RESOLVED, That the County Attorney is authorized to approve said agreement as to form and content, 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, and, be it further

RESOLVED, This Resolution shall take effect immediately.