

## **RESOLUTION NO. 249**

### **RESOLUTION OF THE COUNTY OF ALBANY, NEW YORK, AUTHORIZING THE EXECUTION OF A RESERVE FUND REPLENISHMENT AGREEMENT BY AND BETWEEN THE COUNTY AND THE ALBANY CONVENTION CENTER AUTHORITY**

Introduced: 6/9/25

By Cunningham, Feeney, Willingham, Domalewicz, Lane and Miller:

WHEREAS, The Albany Convention Center Authority (the "Authority") is a body corporate and politic constituting a public benefit corporation of the State of New York (the "State"), created and existing under and by virtue of Title 28-BB of Article 8 of the Public Authorities Law of the State (the "PAL"), Chapter 468 of the Laws of 2004 of the State, as amended from time to time (the "Act"), organized for the purpose of, among other things, constructing, transforming and improving new and existing facilities for a convention center in the City of Albany, Albany County, New York. Such a convention center is to include a trade exhibition facility, hotel accommodations, transportation infrastructure, tourism facilities, theatre facilities, retail business, and commercial office space facilities; and

WHEREAS, To accomplish its stated purposes, the Authority is authorized and empowered under the Act to (A) enter into agreements with local entities; (B) to acquire, construct, and reconstruct convention facilities; (C) to borrow money, make contracts and leases, and execute all instruments necessary or convenient for its corporate purposes; and (D) to issue its negotiable bonds to finance the cost of such project(s) or for any other corporate purpose; and

WHEREAS, The Authority is considering participating in a project (the "Project") consisting of (A) (1) the reconstruction and renovation of an existing building containing approximately 40,840 square feet (the "Existing Facility") comprised of six stories in the front portion of the Existing Facility and two stories in the rear portion of the Existing Facility, respectively, located on two parcels of land containing approximately 0.84 acres at 120 and 126 State Street (Tax Map Nos.: 76.33-1-23 and 76.33-1-22) in the City of Albany, Albany County, New York (the "Land"), (2) the construction of an additional two stories to the rear portions of the Existing Building containing approximately 59,810 square feet (the "Addition," and collectively with the Existing Facility, the "Facility") and (3) the acquisition and installation thereon and therein of machinery and equipment (the "Equipment") (the Land, the Facility, and the Equipment being hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be owned by CIDC Albany Center, LLC (the "Borrower") and leased to the Authority, pursuant to a lease agreement (the "Authority Lease") by and between the Borrower and the Authority, for use as a convention facility and any other directly and indirectly related activities; (B) the

financing of all or a portion of the costs of the foregoing, together with necessary incidental costs in connection therewith, by the issuance by the Albany County Capital Resource Corporation (the "Issuer") of its Tax-Exempt Lease Revenue Bonds (Albany Convention Center Authority Project), Series 2025 in the aggregate principal amount of not to exceed \$40,000,000.00 (the "Bonds"); and (C) the paying a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds, capitalized interest and any reserve funds as may be necessary to secure the Bonds; and

WHEREAS, The Bonds will be issued pursuant to the terms of a resolution adopted by the members of the board of directors of the Issuer on June 4, 2025 (the "Bond Resolution"), one or more certificates of determination (each, a "Certificate of Determination") executed by an authorized officer of the Issuer, and a trust indenture (the "Indenture") by and between the Issuer and a financial institution to be selected by the Issuer and the Borrower, as trustee (the "Trustee") for the holders of the Bonds; and

WHEREAS, Prior to or simultaneously with the issuance of the Bonds, the Issuer and the Borrower will execute and deliver a loan agreement (the "Loan Agreement") by and between the Issuer, as lender, and the Borrower, as borrower, pursuant to the terms of which Loan Agreement (A) the Issuer will agree (1) to issue the Bonds, and (2) to make a loan (the "Loan") of the proceeds of the Bonds to the Borrower for the purpose of assisting in financing the Project, and (B) in consideration of the Loan, the Borrower will agree (1) to cause the Project to be undertaken and completed, (2) to use the proceeds of the Loan disbursed under the Indenture to pay (or reimburse the Borrower for the payment of) the costs of the Project, and (3) to make payments sufficient in amount to pay when due all amounts due with respect to the Bonds (the "Loan Payments") to or upon the order of the Issuer in repayment of the Loan, which Loan Payments shall include amounts equal to the debt service payments due on the Bonds; and

WHEREAS, Pursuant to the Authority Lease, among other things, the Authority will agree to lease the Project Facility to the Borrower and to make rental payments (the "Rental Payments") to the Borrower in amounts sufficient to pay when due the Loan Payments; and

WHEREAS, Pursuant to the Indenture, the Issuer and the Trustee will establish a reserve fund with respect to the Bonds (the "Reserve Fund"), within which the Issuer will be required to maintain an amount equal to at least \$2,400,00.00 and in no event to exceed \$3,000,000.00 (the "Reserve Fund Requirement") to provide a source of payment for the Bonds in the event the assets and revenues of the Authority are insufficient to make such Rental Payments; and

WHEREAS, The Authority has requested the County of Albany (the “County”) provide security for the Authority Lease in the form of a source of replenishment for the Reserve Fund Requirement; 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 the Authority in carrying out its respective powers and duties under the Act is deemed to be acting in a governmental capacity; and

WHEREAS, Pursuant to Local Law No. D of 2025 of the County (the “County Law”), the County may, from time to time, appropriate sums of money toward project costs or other costs and expenses related to Convention Facility Projects (as defined in the County Law) and make advances, loans, subsidies or contributions of such funds to the Authority; and

WHEREAS, The terms of the payments to be made by the County are to be set forth in a reserve fund replenishment agreement by and between the County and the Authority (the “Replenishment Agreement”) pursuant to which (i) the County will agree to make payments in sufficient amounts to replenish, if necessary, the Reserve Fund Requirement, and (ii) the Authority will agree to reimburse the County for such payments; and

WHEREAS, The County desires to enter into the Replenishment Agreement and various other documents and agreements in connection therewith including, but not limited to, a proposed continuing disclosure agreement by and among the Trustee, the Borrower, the Authority and the County (hereinafter, collectively, the “County Documents”), and to be responsible for the replenishment, if necessary, of the Reserve Fund Requirement upon the terms and conditions set forth in the Replenishment Agreement; and

WHEREAS, Pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively, with the SEQR Act, “SEQRA”), by resolution adopted by the members of the board of directors of the Issuer on June 4, 2025 (the “SEQR Resolution”), the Issuer (A) concurred in the determination that the City of Albany Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board dated April 8, 2025 (the “Negative Declaration”) in which the Planning Board determined that the Project is a “Type I action” and that the Project will result in no significant adverse impacts on the environment, and , therefore, an environmental impact statement need not be prepared; and

WHEREAS, The providing for the replenishment of the Reserve Fund Requirement and the execution and delivery of the County Documents (collectively, the “Action”) appears to constitute a “Type II action” (as said quoted term is defined in the Regulations), and, therefore, it appears that no further determination or procedure under SEQRA is required with respect to the Action; now, therefore, be it

RESOLVED, By the Albany County Legislature as follows:

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

Section 2. This Honorable Body hereby finds and determines that:

- (A) (1) Pursuant to Section 617.5(c)(1), (24) and (26) of the Regulations, the Action is a “Type II action” (as said quoted term is defined in the Regulations); and  
(2) Therefore, the County hereby determines that no environmental impact statement or any other determination or procedure is required under the Regulations with respect to the Action;
- (B) By virtue of the laws of the State, and the Charter of the County (the “Charter”), the County has been vested with all powers necessary and convenient to carry out and effectuate the purpose and provisions of the Charter and to exercise all powers granted to it under the Charter.
- (C) The Project constitutes a “project” as defined in the Act.
- (D) The undertaking of the Project, and the replenishment of the Reserve Fund Requirement by the County, will promote and encourage a Convention Facility Project (as such capitalized term is defined in the County Law).
- (E) Pursuant to the Act and the County Law, the County’s participation in the Project constitutes an essential governmental function of the County for which the County is authorized to expend public funds.
- (F) It is desirable and in the public interest for the County to enter into the County Documents and to provide for the replenishment of the Reserve Fund Requirement as necessary pursuant to the terms set forth in the Replenishment Agreement.

Section 3. The form and substance of the Replenishment Agreement is hereby approved.

Section 4. The replenishment of the Reserve Fund Requirement by the County, all pursuant to the laws of the State and in accordance with the terms of the Replenishment Agreement, is hereby authorized and approved.

Section 5. The County Executive, or the Deputy County Executive, is hereby authorized, on behalf of the County, to execute and deliver the County Documents and, where appropriate, the Clerk of the County and/or the County Attorney of the County is hereby authorized to affix the seal of the County thereto and to attest the same, all in substantially the form thereof as the County Executive, or the Deputy County Executive, with advice from the County Attorney, shall approve, with such changes, variations, omissions and insertions as the County Executive, or the Deputy County Executive, shall approve, the execution and delivery thereof by the County Executive, or the Deputy County Executive, to constitute conclusive evidence of such approval.

Section 6. The officers, employees and agents of the County are hereby authorized and directed for and in the name and on behalf of the County to do all lawful acts and things required or provided for by the provisions of the County Documents, and to execute and deliver all such additional certificates, instruments, and documents, 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 the County with all of the terms, covenants and provisions of the County Documents binding upon the County.

Section 7. The appropriation of County funds in an amount not to exceed any replenishment of the Reserve Fund Requirement, as authorized pursuant to the Act and the County Law, is hereby approved.

Section 8. The County is hereby authorized and directed to prepare information concerning the County and to furnish such information for use in an offering document to be distributed by the Issuer in connection with the sale of the Bonds (hereinafter referred to as the "Official Statement"), and the County Executive, or Deputy County Executive, is hereby authorized and directed to deliver letters or certificates to the Issuer and the underwriter(s) of the Bonds signed on behalf of the County, stating in substance that the information contained in the Official Statement relating to the County 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 the County hereby authorizes the distribution of the Official Statement in connection with any public offering of the Bonds.

Section 9. The County Executive, or Deputy County Executive is authorized and directed to distribute copies of this resolution, or cause such copies to be distributed, to the Authority and the Issuer and 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 County Documents, together with any documents referenced in Sections 6 and 8 hereof, as to form and content.

Section 11. The Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

Section 12. This resolution shall take effect immediately.

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