

**RESOLUTION AUTHORIZING THE
TRANSACTIONS AND EXECUTION AND
DELIVERY OF CERTAIN DOCUMENTS
CONTEMPLATED IN CONNECTION WITH THE
ISSUANCE OF YIDA SCHOOL FACILITY
REVENUE BONDS (NEW COMMUNITY SCHOOL
PROJECT) AT THE REQUEST OF THE YJSCB TO
FINANCE A PORTION OF THE COSTS OF THE
YONKERS SCHOOLS CONSTRUCTION AND
MODERNIZATION PLAN**

WHEREAS, the Yonkers Joint School Construction Board (the "*YJSCB*") was established pursuant Chapter 355 of the Laws of 2016 (the "*Act*") of the State of New York (the "*State*"); and

WHEREAS, the YJSCB, pursuant to §5 of the Act, has developed the Yonkers Joint Schools Construction and Modernization Plan, jointly with the School District, which encompasses a multi-phase program for the construction of new public school on the site of the former St. Denis parochial school located in southwest Yonkers, highest priority infrastructure improvements on the City's existing public schools, and potential construction of two additional new schools if the City is able to fund the local share of those projects (the "*Program*"); and

WHEREAS, the Act authorized the first phase of the Program for various schools at a cost not to exceed \$523,000,000 ("*Phase I*") which includes construction of up to three new schools along with critical infrastructure system replacements at the existing schools to maintain safe operation of the existing schools until future renovations are made as part of the Joint Schools Construction And Modernization Plan; and

WHEREAS, pursuant to the Act, the YJSCB, acting on behalf of the City School District of the City of Yonkers (the "*School District*") and the City of Yonkers (the "*City*"), submitted a

proposed financial plan (the "*Plan*") with respect to Phase I to the Office of the Comptroller of the State of New York (the "*OSC*") and by letter dated August 4, 2021, OSC notified the City of its approval of the Plan; and

WHEREAS, pursuant to the Act and as contemplated in the Plan, the YJSCB, on behalf of the City and the School District, has requested that the City of Yonkers Industrial Development Agency ("*YIDA*") issue and sell its revenue bonds in an aggregate principal amount of up to \$80,000,000 (the "*Bonds*") to finance all or a portion of the costs of the first Phase I project consisting of (i) acquisition of the site consisting of real property located at 121 McLean Avenue and 469-470 Van Cortlandt Park Avenue in the City (the "*Project Site*"), as well any additional parcel(s) as may be required, including for offsite parking, demolition of three existing buildings thereon, and construction and equipping thereon of a new Pre-K to 8th grade public school including a 4-story Academic Building, a Community Building, playground, parking lot and related improvements (collectively, the "*New Community School Project*" or the "*Facilities*") and (ii) refinancing, in accordance with the Act, of the City's outstanding \$6,000,000 bond anticipation notes which were issued to provide interim financing for a portion of the costs of the New Community School Project, and (iii) funding certain costs of issuance for the Bonds; and

WHEREAS, pursuant to Section 8 of the Act, the YJSCB, on behalf of the City and the School District, has or will have entered into a Program Manager Agreement (the "*Program Manager Agreement*"), with Savin Engineers, P.C.; and

WHEREAS, the City and School District will enter into an intermunicipal agreement with YJSCB for implementation of the New Community School Project by YJSCB on behalf of the City and the School District (the "*IMA*"); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State, as amended, and the regulations of the Department of Environmental Conservation of the State promulgated thereunder (collectively referred to hereinafter as "*SEQRA*"), the YJSCB, as "lead agency," classified the New Community School Project as an "Unlisted Action" and by Resolution 2021-02 adopted on July 13, 2021, determined that the New Community School Project will not have a "significant adverse effect on the environment" (the "*YJSCB SEQRA Findings*"); and

WHEREAS, pursuant to Section 16 of the Act, in order to effect the financing for the New Community School Project, the City and the School District will grant a license (the "*License*") to the YIDA to enter upon the Project Site for the purposes of undertaking and completing the New Community School Project including equipment, furnishings and fixtures, necessary and attendant to and for the New Community School Project to be financed with proceeds of the Bonds; and

WHEREAS, YIDA, by the terms of an Indenture of Trust (New Community School Project) (substantially on the terms and in the form of the proposed Indenture of Trust (New Community School Project) attached hereto as Exhibit "A") (the "*Indenture*") with Manufacturers and Traders Trust Company, as trustee (the "*Trustee*"), will pledge and assign to the Trustee, and grant the Trustee a security interest in, all of its right, title and interest in and to the Installment Sale Agreement (except for YIDA's Reserved Rights (as defined in the Indenture)), State Aid Revenues and other moneys and property described in the Indenture as security for the Bonds; and

WHEREAS, YIDA, the City, the School District and the YJSCB will enter into an Installment Sale Agreement (New Community School Project) (substantially on the terms and in the form of the proposed Installment Sale Agreement (New Community School Project) attached hereto as Exhibit "B") (the "*Installment Sale Agreement*"), pursuant to which YIDA will sell its

interest in the New Community School Project to the City and School District, the YJSCB, on behalf of the City and School District, will agree to undertake and complete the New Community School Project and the City and the School District will, among other things, agree to make installment purchase payments in an amount sufficient to pay debt service on the Bonds and other amounts due under the Installment Sale Agreement solely from and to the extent of State Aid Revenues (as defined in the State Aid Trust Agreement); and

WHEREAS, the City and the School District will enter into a State Aid Trust Agreement (substantially on the terms and in the form of the proposed State Aid Trust Agreement attached hereto as Exhibit "C") with Manufacturers and Traders Trust Company, acting as Depository Bank (the "*Depository*") and the Trustee, to provide for, among other things, the payment of all State Aid Revenues into the State Aid Depository Fund (as defined therein) maintained with the Depository for periodic transfer to the Bond Fund (as defined in the Indenture) toward payment of the Bonds and the balance to the General Fund (as defined therein); and

WHEREAS, pursuant to the Act, in the event that the City and the School District shall fail to make a payment due under the Installment Sale Agreement, YIDA (or the Trustee acting on its behalf) shall so certify the amount not paid to the OSC who shall thereupon withhold such amount from the City or the School District any state and/or school aid payable to the City or the School District to the extent of such amount so stated in such certificate as not having been made and immediately pay over same to the YIDA (or the Trustee acting on its behalf); and

WHEREAS, pursuant to the Act, the City and the School District will give an irrevocable written direction to the OSC to pay all State Aid Revenues to the Depository for deposit into the State Aid Depository Fund; and

WHEREAS, Roosevelt & Cross Incorporated, as representative of the Underwriters (the "*Underwriters*"), has offered to purchase the Bonds and, together with YIDA, the City, the School District and YJSCB, will prepare a preliminary official statement (substantially in the form of the proposed preliminary official statement attached hereto as Exhibit "D") ("*Preliminary Official Statement*") and will prepare a final official statement with respect to each series of the Bonds (the "*Official Statement*") for use in the offering of each series of the Bonds by the Underwriters; and

WHEREAS, the terms and conditions of the proposed purchase of each series of the Bonds by the Underwriters will be set forth in a Bond Purchase Agreement (the "*Bond Purchase Agreement*") to be entered into by YIDA, the YJSCB on behalf of itself, the City and the School District, and the Underwriters; and

WHEREAS, by Resolution 2020-04, the YJSCB made a comparison of the financing available from YIDA with the financing expected to be available from the New York State Municipal Bond Bank Agency ("*MBBA*") for the New Community School Project and made a determination that financing the New Community School Project through the Bonds may reasonably be expected to be more financially advantageous than the issuance of bonds through the MBBA; and

WHEREAS, the issuance of the Bonds is subject to the School District, the City, the YJSCB and YIDA determining based on pricing and other information furnished by the Underwriters that financing the New Community School Project through the Bonds rather than through financing from MBBA results in the lowest cost to the taxpayers of the City and the State; and

WHEREAS, by Resolution No. 128-2021 adopted on August 3, 2021, the Yonkers City Council approved the transactions and execution and delivery of certain documents contemplated in connection with the issuance of the Bonds to finance the New Community School Project; and

WHEREAS, by Resolution 2021-09 adopted on August 4, 2021, the YJSCB approved the transactions and execution and delivery of certain documents contemplated in connection with the issuance of the Bonds to finance the New Community School Project; and

WHEREAS, the issuance of the Bonds is subject to approval thereof by YIDA;

NOW, THEREFORE,

BE IT RESOLVED, that the School District hereby adopts the YJSCB SEQRA Findings and determines that the New Community School Project is essential to the proper administration of the public schools within the City, meets the essential needs of the students and residents, respectively, of the School District and the City and will continue to be essential to such administration and to meet such needs throughout the term of the Installment Sale Agreement.

BE IT FURTHER RESOLVED, in consequence of the foregoing, the School District hereby determines to:

(a) grant a license to YIDA to enter the Project Site for the purpose of undertaking and completing the New Community School Project pursuant to the License Agreement including all Equipment necessary or attendant to the New Community School Project, on such terms and in the form as the President of the Board of Education or the Superintendent of the School District (referred to hereinafter individually and collectively as an "Authorized Officer") deems necessary under the circumstances upon advice of the Corporation Counsel;

(b) sell its interest in the Facilities to YIDA pursuant to the Installment Sale Agreement, in substantially the form attached hereto, with such amendments or modifications as an Authorized Officer deems necessary under the circumstances upon approval of the Corporation Counsel;

(c) approve the issuance of each series of the Bonds, in an aggregate principal amount of up to \$80,000,000, in accordance with the Indenture on substantially the terms set forth in the form of Indenture attached hereto, with such amendments or modifications as an Authorized Officer deems necessary under the circumstances upon approval of the Corporation Counsel;

(d) approve the State Aid Trust Agreement and direct the OSC to pay all State Aid Revenues to the Depository for deposit into the State Aid Depository Fund, with such amendments or modifications as an Authorized Officer deems necessary under the circumstances upon approval of the Corporation Counsel;

(e) approve the Bond Purchase Agreement for each series of the Bonds on such terms and in the form approved by an Authorized Officer upon approval of the Corporation Counsel;

(f) use the proceeds of the Bonds to accomplish the New Community School Project, to pay necessary incidental expenses in accordance with the Indenture, and to refinance, in accordance with the Act, the City's outstanding \$6,000,000 bond anticipation notes issued to provide interim financing for a portion of the costs of the New Community School Project;

(g) approve a Tax Compliance Certificate among YIDA, the City, the YJSCB and the School District (the "*Tax Compliance Certificate*"), in connection with the issuance of each series of the Bonds, on such terms and in the form as the Authorized Officer shall approve based on information from Bond Counsel that such terms and conditions are necessary for the tax-exempt status of interest on the Bonds and upon approval thereof by the Corporation Counsel;

(h) approve a Continuing Disclosure Agreement among the City, the YJSCB, the School District and the Trustee (the "*Continuing Disclosure Agreement*") in connection with the issuance of each series of the Bonds, on such terms and in the form as the Authorized Officer shall

approve based on a recommendation from counsel to the YJSCB that such terms and conditions are customary for similar financings and required under applicable law and the approval thereof by the Corporation Counsel;

(i) approve an Environmental Compliance and Indemnification Agreement in favor of YIDA (the "*Environmental Compliance Agreement*"), on such terms and in the form as the Authorized Officer shall approve based on a recommendation from counsel to the YJSCB that such terms and conditions are customary for similar financings through YIDA and the approval thereof by the Corporation Counsel;

(j) approve the IMA on such terms and in the form as the Authorized Officer deems necessary under the circumstances upon advice of the Corporation Counsel;

(k) approve the Program Manager Agreement; and

(l) approve all other certificates and documents required in connection with the issuance and sale of each series of the Bonds and any other documents as may be required by Bond Counsel or the Underwriters or otherwise required to accomplish the financing of the New Community School Project and qualify the interest on the Bonds for tax-exempt status under Section 103 of the Internal Revenue Code of 1986, as amended (collectively, and with the Program Manager Agreement, the License, the Installment Sale Agreement, the Bond Purchase Agreement, the Indenture, the State Aid Trust Agreement, the Tax Compliance Agreement, the Continuing Disclosure Agreement and the Environmental Compliance Agreement, the "*Financing Documents*").

BE IT FURTHER RESOLVED, pursuant to Section 16 of the Act, it is the duty of the School District, the City, the YJSCB and YIDA to compare the financing available from YIDA with the financing available from the MBBA for the New Community School Project and employ the

financing mechanism that will result in the lowest cost to the taxpayers of the City and the State and to share with the MBBA information that is required for MBBA to determine that the cost of financing therefor and calculate the interest rate thereon. Prior to the Closing Date for each series of the Bonds, the Authorized Officer is hereby directed to compare the costs of financing available from MBBA with the costs of the Bonds based on the final terms of the Indenture and Bond Purchase Contract and to share the required information with MBBA; and

BE IT FURTHER RESOLVED, upon a determination by an Authorized Officer and by YIDA, the YJSCB and the School District that financing the New Community School Project by the Bonds will result in the lowest cost to the taxpayers of the City and the State, an Authorized Officer is authorized to execute and deliver the Financing Documents for each series of the Bonds; and

BE IT FURTHER RESOLVED, the School District hereby authorizes (A) the distribution of the Preliminary Official Statement and the final Official Statement by the Underwriters, (B) the execution and delivery by the Authorized Officer of the City of the final Official Statement, and (C) the use of the Preliminary Official Statement and final Official Statement by the Underwriters in the offering of each series of the Bonds; and

BE IT FURTHER RESOLVED, in addition to the authority hereinabove granted, the Authorized Officer of the School District is hereby authorized and directed, for and in the name and on behalf of the School District, to do and cause to be done any such other acts and things, to execute and deliver any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, and to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to this Resolution, as he determines may be necessary or

desirable to consummate the transactions contemplated by this Resolution, the Financing Documents and the other documents referred to above; and

BE IT FURTHER RESOLVED, no covenant, stipulation, obligation or agreement contained in this Resolution or the Financing Documents or any other document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the School District in his or her individual capacity. Neither the officials, directors, members, officers or employees of the School District, nor any person executing any of the Financing Documents or other documents referred to above on behalf of the School District, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately.

EXHIBITS A-D TO RESOLUTION _____ -
ON FILE WITH THE CLERK, YONKERS CITY SCHOOL
DISTRICT