

**RESOLUTION RELATING TO
INSTALLMENT LEASE PURCHASE FINANCING**

A RESOLUTION OF THE BOARD OF EDUCATION OF THE ELMIRA HEIGHTS CENTRAL SCHOOL DISTRICT, NEW YORK, AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the Elmira Heights Central School District, New York, a body politic and corporate duly organized and existing as a political subdivision of the State of New York ("Lessee"), is authorized by the laws of the State of New York to purchase, acquire and lease personal property for the benefit of Lessee and to enter into contracts with respect thereto; and

WHEREAS, Lessee desires to purchase, acquire, finance and lease certain equipment with an estimated maximum cost of \$975,089 constituting personal property necessary for Lessee to perform essential governmental functions (the "Equipment"); and

WHEREAS, Lessee proposes to enter into a lease purchase agreement (the "Agreement"), with TD Equipment Finance, Inc. or its affiliate or designee ("Lessor"), the form and contents of which shall be approved by the Board President of the Lessee or by the Vice President of the Board in the event of the absence or unavailability of the President; and

WHEREAS, the funds made available by Lessor under the Agreement will be deposited pursuant to the terms of that certain Escrow Agreement, among Lessee, the Lessor, and an escrow agent satisfactory to the Lessor and the Lessee (the "Escrow Agreement," and, together with the Agreement, the "Financing Documents") and will be applied to the acquisition of Equipment in accordance with the Escrow Agreement; and

WHEREAS, the Equipment is essential for Lessee to perform its governmental functions; and

WHEREAS, the board of education of Lessee deems it for the benefit of Lessee and for the efficient and effective administration thereof to enter into the Financing Documents and any other documentation necessary, convenient or appropriate for the purpose of the financing the Equipment on the terms and conditions described therein; and

WHEREAS, the Lessee proposes through such installment purchase contract or lease purchase agreement to finance the acquisition of certain equipment, machinery or apparatus, as described in the Agreement, by and between the Lessor and the Lessee and as set forth in the Project Descriptions and Application for Examination and Approval

of Final Plans and Specifications submitted to the New York State Education Department and all as described, or to be described, in the Agreement, and it is in the public interest and for the public benefit that the Lessee authorize and award an installment purchase contract and/or lease purchase agreement on the terms set forth in a request for proposal process to solicit alternative financing quotations, and authorize and direct execution of an installment purchase contract or lease purchase agreement and certain other documents in connection therewith; and

WHEREAS, the Board of Education of the Lessee has determined that it is in the Lessee's best interest to acquire the Equipment described in the Agreement, and to finance such acquisition under the Agreement; and

WHEREAS, the Lessee hereby determines and finds that the proposed action hereinafter described constitutes a "type II" action under the State Environmental Quality Review Act of the State of New York and the applicable regulations thereunder ("SEQRA") which will not result in any significant adverse environmental impacts in that the purpose consists of routine activities of educational institutions, and such purpose is not subject to any further environmental review under SEQRA; and

WHEREAS, in accordance with the Request for Proposals for Installment Purchase Contract Lease/Purchase Financing for "Energy Performance Contract" (the "Request for Proposals") the Lessee received a proposal for the lease purchase financing described in said Request for Proposals on December 29, 2022; and

WHEREAS, the Lessee has satisfied the legal requirements, including those relating to any applicable public bidding requirements, to arrange for the acquisition and financing of the Equipment and the execution and delivery of the Agreement and the Escrow Agreement; and

WHEREAS, the Lessee proposes to enter into the Agreement with the Lessor and the Escrow Agreement with Lessor and Escrow Agent; and

WHEREAS, nothing contained in this resolution, the Agreement nor any other instrument shall be construed with respect to Lessee as incurring a pecuniary liability or charge upon the general credit of Lessee or against its taxing power, nor shall the breach of any agreement contained in this resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon Lessee or any charge upon its general credit or against its taxing power, except to the extent that the rental payments payable under the Agreement are subject to annual appropriation obligations of Lessee as provided in the Agreement; and

WHEREAS, if any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution; now therefor

BE IT RESOLVED BY THE BOARD OF EDUCATION OF THE ELMIRA HEIGHTS CENTRAL SCHOOL DISTRICT, NEW YORK (by the favorable vote of at least two-thirds of all the members of the voting strength of said Board of Education), AS FOLLOWS:

Section 1. The President of the Board of Education of said Lessee, the chief fiscal officer (the "Board President"), or the Vice President in the event of the absence or unavailability of the Board President, is hereby authorized and directed to execute, and the District Clerk is hereby authorized (but not required) to attest and countersign, the Agreement and any related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the respective parties thereto pursuant to the requirements of Section 109-b of the General Municipal Law of the State of New York when the Agreement shall have been prepared for execution and the Board President or District Clerk is authorized (but not required) to attest the seal of the Lessee on the Agreement.

Section 2. The Agreement shall be for a term of approximately sixteen (16) years but not to exceed eighteen (18) years, beginning with the earlier of (x) the time of receipt of possession of the Equipment, and (y) the execution and delivery of the Agreement, or such lesser term permitted by law or by regulation of the State Education Department, the aggregate principal amount of the installment lease/purchase payments pursuant to the Agreement shall be approximately \$975,089 plus the interest portion accruing thereon, and the total amount of installment lease/purchase payments in any fiscal year shall not exceed an amount necessary to comply with Section 109-b of the General Municipal Law of the State of New York and the Agreement shall otherwise comply with the requirements of said Section 109-b, to the extent applicable thereto, except for certain competitive bidding, and referendum requirements which, pursuant to the Energy Law shall not apply to the Agreement. It is hereby found and determined that the Agreement and the Escrow Agreement (collectively, the "Financing Documents") are in the best interests of the Lessee for the acquisition of the Equipment. The Financing Documents shall be subsequently in the form approved by the Board President with all necessary and appropriate variations, omissions and insertions as approved, permitted or required by such Board President (or the Vice President in the event of the absence or unavailability of the Board President) and the execution and delivery thereof by such Board President or Vice President shall be conclusive evidence of such approval. Subject to the express limitations as set forth above the installment lease/purchase payments under the Agreement shall be a sum necessary to pay the sum required to lease and acquire the Equipment in accordance with the Agreement at the interest rate or rates applicable therein, such debt service reserve fund and/or lease/purchase payment fund as shall be necessary or desirable to be capitalized with respect to any financing in connection with the Agreement, and a sum sufficient to pay the costs and expenses allocable to any financing respecting the Agreement including the costs of credit enhancement, insurance, or municipal credit rating, if any.

Section 3. The Board of Education hereby determines and finds that execution and delivery of the Agreement is in the best financial interests of the Lessee based on due consideration of the other available acquisition and financing alternatives, other administrative and management considerations with respect to the location and utilization

of the Equipment and the successful timely utilization of the Equipment and considering the successful timely utilization of such installment lease/purchase financing by other school districts with respect to other capital projects. An evaluation of financing alternatives pursuant to, and in accordance with, the regulations of the State Comptroller, is attached hereto. As set forth therein, the financing alternatives are: (1) borrowing pursuant to the Local Finance Law or borrowing through the Dormitory Authority of the State of New York; (2) lease/installment purchase financing pursuant to Section 109-b of the General Municipal Law and the Energy Law; (3) the creation and funding over time of a capital reserve fund or funds, and (4) current budgetary appropriations. Alternatives number 1, 3 and 4 are not presently authorized and would not meet the time and financial constraints for the energy project. Based on a review of the evaluation of financing alternatives, the Board of Education hereby determines that it is in the best interests of the Lessee to finance the Equipment pursuant to an installment purchase contract or lease purchase agreement.

Section 4. Nothing contained in this Resolution, the Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution or in the Agreement impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the lease/purchase payments payable under the Agreement are subject to annual appropriation obligations of the Lessee as provided in the Agreement.

Section 5. The Board President (or the Vice President in the event of absence or unavailability of the Board President) is hereby authorized and directed to execute and deliver (and may cause to be sealed and attested the seal of the Lessee) for and on behalf of the Lessee any and all instruments, affidavits, certificates, those portions of any offering materials referring particularly to the Lessee, financing statements, including specifically UCC- 1 financing statements and exhibits thereto to the extent, if any, deemed necessary or appropriate, Internal Revenue Service information returns, an arbitrage certificate and agreement, documents or other papers in connection therewith and to do and to perform or cause to be done any and all acts as such Board President or Vice President may deem necessary or appropriate or as Lessee's counsel or special legal counsel shall require or deem necessary or appropriate in order to implement and carry out this Resolution, the Financing Documents and the matters herein authorized including, without limitation, the power to cause certificates of participation to be sold pursuant to Section 39.6 or Section 39.7 of the State Comptroller Regulations and otherwise comply with such regulations and with the applicable provisions of General Municipal Law §109-b applicable thereto.

Section 6. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. It is hereby determined and declared that the Elmira Heights Central

School District reasonably expects to reimburse the general fund, or such other fund as may be utilized, not to exceed the maximum amount authorized herein, from the proceeds of the Agreement authorized hereby for expenditures, if any, from such fund that may be made for the purpose prior to the date of issuance of such Agreement. This is a declaration of official intent under Treasury Regulation §1.150-2.

Section 8. This resolution shall take effect immediately upon its adoption.

Duly put to a vote as follows:

AYES

NAYS

EVALUATION OF
FINANCING ALTERNATIVES
(NYS Comptroller Reg. §39.2)

- (a) a statement indicating the estimated cost of each capital improvement to be financed, exclusive of the cost of financing:

\$975,089

- (b) a statement indicating whether the proposed capital improvements may be financed with indebtedness issued under the Local Financing Law and if not, the specific reasons why such financing is not authorized:

[Financing under the Local Finance Law or through the auspices of the NYS Dormitory Authority (“DASNY”) would require an additional authorizing referendum and may not be assured in as timely a manner as installment lease/purchase financing.]

- (c) if the capital improvements may be financed with indebtedness, a statement indicating the estimated total cost of the capital improvements, inclusive of the cost of financing, if financed pursuant to the Local Finance Law:

[Financing under the Local Finance Law or through DASNY has not been authorized.]

- (d) a statement indicating the estimated total cost of the proposed capital improvements, inclusive of the cost of financing, if financed pursuant to an installment purchase contract:

[EPC amount of \$975,089 + interest as set forth on the Lease Schedule]

- (e) a comparison of the estimated total costs required by subdivisions (c) and (d) above:

[Financing under the Local Finance Law or through DASNY is not authorized.]

- (f) a recommendation as to whether it is in the best interests of the School District to finance the capital improvements pursuant to the Local Finance Law, or pursuant to an installment purchase contract and the specific reasons for such recommendation:

[Installment Lease/Purchase financing is a board prerogative and the request for proposal process assures a market interest rate on the lease/purchase financing.]

STATE OF NEW YORK }
 }
COUNTY OF CHEMUNG }

SS:

I, the undersigned District Clerk of the Elmira Heights Central School District, New York (the "Issuer"), DO HEREBY CERTIFY as follows:

1. A meeting of the Board of Education of the Issuer was held on February 1, 2023 and Minutes of said meeting have been duly recorded in the Minute Book kept by me in accordance with law for the purpose of recording the minutes of meetings of said Board.

1. I have compared the attached Extract with said Minutes so recorded and said Extract is a true copy of said Minutes and of the whole thereof insofar as said Minutes relate to matters referred to in said Extracts.

2. Said minutes correctly state the time when said Meeting was convened and the place where such Meeting was held and the members of said Board who attended said Meeting.

3. Public Notice of the time and place of said Meeting was duly given to the public and the news media in accordance with the Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, as modified by the Governor's COVID-19 Executive Orders, if applicable, and that all members of said Board had due notice of said Meeting and that the Meeting was in all respects duly held and a quorum was present and acted throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and to have hereunto affixed the corporate seal of the Elmira Heights Central School District, New York as of the ____ day of February, 2023.

District Clerk