

Resolution 2011-12: 100

Approval of Closing Documents for Issuance of County of Monroe Industrial Development Agency School Facility Revenue Bonds (Rochester Schools Modernization Project), Series 2012A (Tax-Exempt Bonds) and Series 2012B Bonds (Federally Taxable Qualified School Construction Bonds)

By Member of the Board Roulin

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York (the “State”); and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the County of Monroe Industrial Development Agency (the “Agency”) was established by Chapter 55 of the 1972 Laws of New York, as amended (together with the Enabling Act, the “IDA Act”), for the benefit of the County of Monroe, New York (the “County”) and the inhabitants thereof; and

WHEREAS, many of the public schools of the Rochester City School District (the “District”) are in need of substantial improvement, renovation and reconstruction in order to improve the quality of education in the City of Rochester (the “City”); and

WHEREAS, the Rochester School Facilities Modernization Program Act (the “Rochester Schools Act”) established the Rochester Joint Schools Construction Board (“RJSCB”), a seven voting member board consisting of equal representation by the City and the District, as well as a member jointly selected by the City and the District; and

WHEREAS, under the Rochester Schools Act, the RJSCB has certain enumerated powers to act as agent for the District, the City, or both; and

WHEREAS, pursuant to the Rochester Schools Act and a Cooperative Agreement among the District, the RJSCB and the City, last executed on February 22, 2010 (the “Cooperative Agreement”), the RJSCB has developed a comprehensive school facilities modernization plan (the “Master Plan”) and the State Comptroller has approved the Master Plan, all as contemplated by Section 5 of the Rochester Schools Act; and

WHEREAS, the RJSCB has selected 12 existing school building sites for modernization as a first phase of implementation of the Master Plan (the “Phase I Existing Sites Facilities”);

WHEREAS, the RJSCB, exercising its properly authorized powers conferred upon it for such purposes by the Rochester Schools Act, has selected Gilbane Building Company, a Rhode Island corporation, as its independent program manager under Section 10 of the Rochester Schools Act (the “Program Manager”) to implement the Master Plan, and the Program Manager and the RJSCB (acting for itself and as agent for the District and the City) have entered into a

Program Management Agreement dated as of July 1, 2010 (the “Program Management Agreement”); and

WHEREAS, the RJSCB declared its intent to serve as State Environmental Quality Review Act (“SEQRA”) Lead Agency for the Master Plan on November 28, 2010 (Resolution 2010-11: 23), and subsequently confirmed its Lead Agency status on January 10, 2011 (Resolution 2010-11: 27); and

WHEREAS, after having reviewed the completed long-form Environmental Assessment Forms for each of the twelve projects, the RJSCB formally issued a Negative Declaration to all interested and involved parties on March 28, 2011 (Resolution 2010-11: 38); and

WHEREAS, in addition to the Phase I Existing Sites Facilities, the City and the District have acquired or plan to acquire additional ancillary real property for purposes of facilitating the modernization of the Phase I Existing Sites Facilities pursuant to the Master Plan and to facilitate their subsequent use as school buildings (such real property, together with the Phase I Existing Sites Facilities, the “Phase I Facilities”); and

WHEREAS, a portion of the Phase I Facilities consisting of buildings at the following five sites: Franklin High School, Enrico Fermi School #17, HB Montgomery School #50, Charlotte High School and World of Inquiry School #58 (collectively, the “Phase IA Facilities”) are to be modernized and improved, including implementation of the District-wide technology project at those sites (such modernization of the Phase IA Facilities, the “Phase IA Project”); and

WHEREAS, the RJSCB has presented the plans and specifications for the modernization and improvement of the Phase IA Project to the Commissioner of Education of the State (the “Commissioner”) for approval as contemplated by Section 6 of the Rochester Schools Act, and the Commissioner has approved or is expected to approve said plans and specifications; and

WHEREAS, the RJSCB has begun planning and design work for two subsequent phases involving the Phase I Facilities (respectively, the “Phase IB Project” and the “Phase IC Project”); and

WHEREAS, the Phase I Projects collectively constitute a “project” within the meaning of the IDA Act by reason of Section 16 of the Rochester Schools Act; and

WHEREAS, to accomplish the purposes of the IDA Act, the Agency, in response to an application from the RJSCB requesting Agency financing for the Phase I Projects, adopted a resolution on December 20, 2011 authorizing the issuance of up to \$325,000,000 of bonds;

WHEREAS, pursuant to the provisions of the American Recovery and Reinvestment Tax Act of 2009 and the Hiring Incentives to Restore Employment Act of 2010, the United States Department of the Treasury awarded to the District an allocation of qualified school construction bonds (the “Qualified School Construction Bonds”) in the amounts of \$29,535,000 in calendar year 2009 and \$28,376,000 in calendar year 2010 (collectively, the “Allocation”); and

WHEREAS, the District wishes to transfer the Allocation to the Agency and has requested the Agency to issue the Qualified School Construction Bonds in an amount not to exceed the total of the Allocation; and

WHEREAS, the Agency will authorize the issuance of the Agency's School Facility Revenue Bonds (Rochester Schools Modernization Project), consisting of Series 2012A (Tax-Exempt Bonds) and Series 2012B (Federally Taxable Qualified School Construction Bonds) (collectively, the "Series 2012 Bonds"), to effect the financing of the Phase IA Project, certain planning and design costs of the Phase IB and Phase IC Projects, and costs of issuance of the Series 2012 Bonds (collectively, the "Series 2012 Project Costs"), pursuant to a resolution of the Agency and an Indenture of Trust (the "Indenture") between the Agency and Deutsche Bank Trust Company Americas, as trustee of the Series 2012 Bonds (the "Trustee"); and

WHEREAS, the District and the City will lease, pursuant to a ground lease (the "Ground Lease"), the Phase I Facilities and certain additional property described in the Ground Lease (collectively, the "Ground Lease Facilities") to the Agency; and

WHEREAS, the District and the City will sublease, pursuant to a sublease agreement (the "Sublease Agreement"), the Ground Lease Facilities from the Agency; and

WHEREAS, payments to be made by the District under the Sublease Agreement are expected to be sufficient to pay the principal and interest on the Series 2012 Bonds; and

WHEREAS, the District and the City will enter into a State Aid Trust Agreement, with Deutsche Bank Trust Company Americas, acting as depository bank (the "Depository Bank"), and the Trustee, to provide for, among other things, the payment of all State Aid Revenues (as defined therein) into the State Aid Depository Fund (as defined therein) maintained with the Depository Bank for periodic transfer to the Bond Fund (as defined in the Indenture) toward payment of the Series 2012 Bonds, and the balance to the General Fund (as defined therein); and

WHEREAS, such State Aid Revenues deposited to the Bond Fund shall be credited against Sublease Payments otherwise payable by the District under the Sublease Agreement; and

WHEREAS, the Series 2012 Bonds will be marketed pursuant to a Preliminary Official Statement and an Official Statement containing certain information relating to the Agency, the District, the City and the RJSCB, and will be sold pursuant to a contract of purchase; and

WHEREAS, the respective counsels to the Agency, the City, the District, the RJSCB, Citigroup Global Markets Inc., as representative of the Underwriters (the "Underwriter"), the Depository Bank, and the Trustee, have prepared or reviewed the following documents relating to the issuance of the Series 2012 Bonds (collectively, the "Transaction Documents"):

1. An Indenture of Trust between the Agency and Deutsche Bank Trust Company Americas, as trustee (the "Series Trustee");
2. The Ground Lease;
3. The Sublease Agreement;

4. A State Aid Trust Agreement between the School District, the City, the Depository Bank and the Series Trustee;
5. An Environmental Compliance and Indemnification Agreement from the City and the District to the Agency;
6. A Preliminary Official Statement and an Official Statement, with respect to the offering of the Series 2012 Bonds;
7. A Purchase Contract between the Underwriter, the Agency and the District;
8. A Continuing Disclosure Agreement between the District and the Series Trustee; and
9. A Continuing Disclosure Agreement between the City and the Series Trustee; and

WHEREAS, the Agency is expected to adopt a resolution authorizing the issuance by the Agency of the Series 2012 Bonds and the execution and delivery of the Transaction Documents; and

WHEREAS, the District has adopted or is expected to adopt a resolution authorizing the issuance by the Agency of the Series 2012 Bonds and the execution and delivery of the Transaction Documents; and

WHEREAS, the City is expected to adopt a resolution authorizing the issuance by the Agency of the Series 2012 Bonds and the execution and delivery of the Transaction Documents; and

WHEREAS, the Rochester Schools Act requires the RJSCB and the District to compare the financing available for the Rochester Schools Modernization Project through the Agency with the financing available through the Dormitory Authority of the State of New York (“DASNY”) and employ the financing mechanism that will result in the lowest cost to taxpayers of the City and State; and

WHEREAS, the RJSCB has previously set forth its intent, in accordance with the Internal Revenue Code of 1986, as amended, and applicable regulations promulgated pursuant thereto, to reimburse itself for the payment of certain expenses of the Rochester Schools Modernization Project incurred prior to the issuance of the 2012 Bonds (Resolution 2009-10:5).

THEREFORE, BE IT RESOLVED:

1. The RJSCB hereby ratifies and confirms that the RJSCB, acting on behalf of the District and the City, has filed an application with the Agency, requesting the Agency to provide financing for the Phase I Projects.

2. In order to finance the Series 2012 Project Costs, the RJSCB hereby approves the issuance by the Agency of the Series 2012 Bonds in an amount not to exceed \$150,000,000.

3. The RJSCB hereby ratifies and confirms that the RJSCB, acting on behalf of the District and the City, has compared or will compare prior to closing, the financing available for the Rochester Schools Modernization Project through the Agency with financing through DASNY and has determined, or will determine prior to closing, that financing through the Agency will result in the lowest cost to the taxpayers of the City and State.

4. The RJSCB acknowledges that the President of the Board of Education of the District, and in his absence his appointed designees (individually and collectively, the “District’s Authorized Officer”), is expected to be authorized on behalf of the District to approve, execute and deliver documents necessary to facilitate the financing of the Series 2012 Project Costs, including without limitation the Transaction Documents, draft forms of which have been provided to the RJSCB and the final forms of which will be satisfactory to the Executive Director, all of which are expected to be approved by the Board of Education of the District.

5. The RJSCB acknowledges that (i) pursuant to the Rochester Schools Act and the Cooperative Agreement, the RJSCB will serve as the City’s and the District’s agent with respect to the Phase IA Project, the Phase IB Project and the Phase IC Project, and (ii) pursuant to the Transaction Documents, the RJSCB will serve as an authorized representative of the District with respect to certain obligations and responsibilities of the District in connection with the Phase IA Project, the Phase IB Project, the Phase IC Project and the Series 2012 Bonds, as further described in the Transaction Documents.

6. The Chair, Vice Chair, or Executive Director of the RJSCB is hereby authorized on behalf of the RJSCB to enter into such agreements and execute such certificates and documents as may be appropriate to facilitate the completion of the Phase IA Project, the planning and design of the Phase IB and IC Projects and the issuance of the Series 2012 Bonds.

7. The RJSCB affirms that it will continue to act as SEQRA Lead Agency.

8. Citigroup Global Markets Inc., as representative of the Underwriters, is authorized to utilize information about the RJSCB and the Program Manager in connection with the distribution of the Preliminary Official Statement and final Official Statement with respect to the offering and sale of the Series 2012 Bonds, the forms of which will be satisfactory to the Executive Director.

9. This Resolution shall take effect immediately.

Second by Member of the Board Brown

Approved 5-0 with Chairman Bell and Member Castro away