

ORDINANCE NO. 60-O-11

AN ORDINANCE APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF A NOT TO EXCEED \$16,000,000 AGGREGATE PRINCIPAL AMOUNT OF EDUCATIONAL FACILITY REVENUE BONDS, SERIES 2011 (ROYCEMORE SCHOOL PROJECT) OF THE CITY OF EVANSTON; THE EXECUTION OF A LOAN AGREEMENT AND OTHER DOCUMENTS RELATED THERETO; AUTHORIZING THE SALE OF SAID BONDS TO THE PURCHASER THEREOF; AND RELATED MATTERS THERETO.

WHEREAS, pursuant to the provisions of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois, the City of Evanston, a municipality and home rule unit of the State of Illinois (the "City"), is authorized and empowered to exercise any power or perform any function pertaining to its government or affairs, including the issuance of revenue bonds to finance projects within the territorial limits of the City or to refund bonds issued to finance said projects, and may authorize the issuance of such bonds by ordinance of the City;

WHEREAS, Roycemore School, an Illinois not for profit corporation (the "Borrower"), has requested that the City Council of the City approve the issuance by the City of qualified 501(c)(3) revenue bonds under Section 145 of the Internal Revenue Code of 1986, as amended (the "Code"), the proceeds of which bonds will be used, together with other available funds to finance and refinance (i) the acquisition of approximately 2.4 acres of land located at 1200 Davis Street, Evanston, Illinois 60201 (the "Campus") with an existing three level, 66,000 square foot building (the "Facility" and together with the Campus, the "School Facility"); (ii) the renovation, remodeling, improvement, and equipping of said School Facility; (iii) the construction and equipping of a gymnasium on the Campus (collectively, the "Project"); (iv) fund certain working capital; (v) pay capitalized interest with respect to certain portions of the Project; (vi) fund a debt service reserve fund, if deemed necessary or advisable by the Corporation; and (vii) pay certain costs incurred in connection with the issuance of the Bonds (collectively, the "Financing Purposes");

WHEREAS, the City wishes to provide financing to the Borrower for the foregoing purposes through the issuance and sale of its Educational Facility Revenue Bonds, Series 2011 (Roycemore School Project) (the "Bonds") and the loan of the proceeds of the sale of the Bonds pursuant to a Loan Agreement (the "Loan Agreement") between the City and the Borrower, and in accordance with this Ordinance authorizing the Bonds;

WHEREAS, the City proposes to issue a not to exceed \$16,000,000 aggregate principal amount of the Bonds pursuant to a Trust Indenture (the "Indenture") between the City and a trustee as yet to be determined by the Borrower (the "Trustee");

WHEREAS, the financing of the Project will be beneficial economically to the Borrower and will enable the Borrower to offer more of its services to the City's residents thereby promoting the well being of the residents of the City and will enhance the quality of life of the residents of the City and therefore is for a proper public purpose;

WHEREAS, in connection with the issuance of the Bonds, the following additional documents will be executed and delivered by parties other than the City (collectively, the "Additional Transaction Documents"):

(a) Promissory Note of the Borrower (the "Promissory Note"), which will be pledged as security for the Bonds, in a principal amount equal to the aggregate principal amount of the Bonds and with prepayment, maturity and interest rate provisions similar to the Bonds; and

(b) Mortgage, Security Agreement and Assignment of Rents and Leases between the Corporation, as mortgagor, and the Trustee, as mortgagee (the "Mortgage").

WHEREAS, forms of the Loan Agreement, the Placement Agreement (as hereinafter defined), the Indenture, the Mortgage, the Promissory Note, the Tax Compliance Agreement (as hereinafter defined) and the Private Placement Memorandum (as hereinafter defined) have been prepared and presented to this meeting;

WHEREAS, the Bonds shall be limited obligations of the City, payable solely from the revenues and income pursuant to the Loan Agreement, and the Bonds shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision; and no holder of any Bond shall have the right to compel any exercise of the taxing power of the City to pay the principal of the Bonds or the interest or premium, if any, thereon;

WHEREAS, the Borrower has requested the City to sell the Bonds on a negotiated basis;

WHEREAS, pursuant to the provisions of Section 147(f) of the Internal Revenue Code of 1986, as amended, (the "Code") a public hearing on the proposed plan of financing the Project and the issuance of the Bonds was held by the Mayor and the City Council on July 11, 2011, pursuant to notice published at least 14 days prior to such public hearing in The Evanston Review, a newspaper of general circulation in the City, on June 23, 2011; and

WHEREAS, the funding of the Financing Purposes through the issuance of the Bonds and entering into the transactions contemplated by this Ordinance is for a proper public purpose of the City, pertains to the affairs of the City and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Evanston, Illinois, as follows:

Section 1. All of the recitals contained in the preambles to this Ordinance are true, correct and complete and are hereby incorporated by reference thereto and are made a part hereof.

Section 2. The Financing Purposes are hereby authorized and determined to be in the public interest and in furtherance of the public purposes of the City.

In order to provide for the Financing Purposes, there shall be and there is hereby authorized to be issued by the City its Educational Facility Revenue Bonds, Series 2011 (Roycemore School Project), in the aggregate principal amount not to exceed \$16,000,000, dated the date of issuance thereof.

The Bonds shall be initially issuable in the aggregate principal amount established in the Placement Agreement and the Indenture; shall mature no later than July 1, 2041; shall bear interest at the rate or rates as set forth in the Placement Agreement and the Indenture which rate or rates shall not exceed 10% per annum (exclusive of any original premium or discount), shall be dated, executed and authenticated in the manner set forth in the Indenture; and shall be subject to redemption prior to maturity at the times, under the circumstances, in the manner and at the redemption prices or purchase price set forth in the Indenture, as executed and delivered.

The Bonds are issued in the exercise of the City's powers as a home rule unit of government under the provisions of Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and this Ordinance and do not and shall never constitute an indebtedness or obligation of the City, the State or any political subdivision thereof within the purview of any constitutional limitation or statutory provision, or a charge against the credit or general taxing powers, if any, of the State, the City, or any other political subdivision thereof. The Bonds are special, limited obligations of the City, payable solely out of the revenues and income of the City derived pursuant to the Loan Agreement. **No owner of the Bonds shall have the right to compel any exercise of the taxing power of the City, the State or any other political subdivision thereof to pay the Bonds or the interest or premium, if any, thereon.**

No recourse shall be had for the payment of the principal of, premium, if any, or the interest on the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Loan Agreement against any past, present or future member, officer, alderman, agent, employee or official of the City. No covenant, stipulation, promise, agreement or obligation contained in the Bonds, the Loan Agreement or any other document executed in connection therewith shall be deemed to be the covenant, stipulation, promise, agreement or obligation of any present or future official, officer, alderman, agent or employee of the City in his or her individual capacity and neither any official of the City nor any officers executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 3. The Bonds shall be executed on behalf of the City with the official manual or facsimile signatures of the Mayor and attested with the official manual or facsimile signature of its City Clerk and shall have printed thereon a facsimile of its corporate seal or impressed thereon manually its corporate seal. In case any officer who shall have signed (whether manually or in facsimile) any of the Bonds shall cease to be such officer of the City before the Bonds have been delivered or sold, such Bonds with the signatures thereto affixed may nevertheless be delivered and may be sold by the City as though the person or persons who signed such Bonds had remained in office.

Section 4. The form, terms and provisions of the Loan Agreement, the Indenture and the Tax Compliance Agreement dated the date of delivery of the Bonds (the "Tax Compliance Agreement"), between the City and the Borrower are hereby in all respects approved, and the Mayor is hereby authorized, empowered and directed to execute and deliver the Loan Agreement, the Indenture and the Tax Compliance Agreement in the name and on behalf of the City. The Loan Agreement, as executed and delivered, shall be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the officer of the City executing the same, and the Tax Compliance Agreement, as executed and delivered, shall be in substantially the form approved by Bond Counsel. Execution of the Loan Agreement, the Indenture and the Tax Compliance Agreement constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form of the Loan Agreement or the Indenture now before this meeting and of the approval of the Tax Compliance Agreement provided by Bond Counsel; and from and after the execution and delivery of the Loan Agreement, the Indenture and the Tax Compliance Agreement, the officers, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute and approve all such documents as may be necessary to carry out the intent and accomplish the purposes of this Ordinance, the Indenture and the Loan Agreement, including the approval of a mortgage or other security interests granted by the Borrower to secure the Bonds, and to comply with and make effective the provisions of the Loan Agreement, the Indenture and the Tax Compliance Agreement, as executed.

Section 5. The sale of the Bonds to Oppenheimer & Co. Inc., as the placement agent named in the hereinafter described placement agreement (the "Placement Agent"), at a price not less than 98 percent of the principal amount thereof, pursuant to a placement agreement (the "Placement Agreement"), to be entered into among the City, the Placement Agent and the Borrower, is hereby approved, and the Mayor is hereby authorized, empowered and directed to execute and deliver the Placement Agreement in the name and on behalf of the City. The Placement Agreement, as executed and delivered, shall be in such form thereof now before this meeting or with such changes as shall be approved by the Mayor executing the same, their execution thereof to constitute conclusive evidence of their approval thereof; and from and after the execution and delivery of the Placement Agreement, the officers, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things to execute all such documents as may be necessary to carry out the intent and accomplish the purposes of this Ordinance and to comply with and

make effective the provisions of the Placement Agreement as executed. In connection with the sale of the Bonds, it is contemplated that a Preliminary Private Placement Memorandum and a Final Private Placement Memorandum (collectively, the "Private Placement Memorandum") will be distributed and the City hereby approves the distribution of the Private Placement Memorandum by the Placement Agent in connection with the sale of the Bonds.

Section 6. From and after the execution and delivery of the foregoing documents, the proper officials, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents, including a Letter of Representations with The Depository Trust Company, as may be necessary to carry out and comply with the provisions of said documents as executed, and to further the purposes and intent of this Ordinance, including the preambles hereto.

Section 7. The Mayor and the City Council hereby acknowledge that a Public Hearing was held on July 11, 2011 and hereby approves the Project, the plan of financing and the Financing Purposes.

Section 8. All acts and doings of the officials of the City that are in conformity with the purposes and intent of this Ordinance and in furtherance of the issuance of the Bonds be, and the same are hereby in all respects, approved and confirmed. The City hereby covenants that it will take no action or fail to take any action that would cause the Bonds to become invalid.

Section 9. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of the sections, phrases and provisions hereof.

Section 10. All ordinances, orders and resolutions and parts thereof in conflict herewith are to the extent of such conflict hereby repealed.

Section 11. A copy of this Ordinance shall be filed in the office of the City Clerk and shall be made available for public inspection in the manner required by law.

Section 12. That this Ordinance 60-O-11 shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: June 27, 2011

Adopted: July 11, 2011

Approved:

July 13, 2011

Elizabeth B. Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene
Rodney Greene, City Clerk

Approved as to form:

W. Grant Farrar
W. Grant Farrar, Corporation Counsel