

## **COOPERATIVE AGREEMENT**

**THIS COOPERATIVE AGREEMENT** (the “Agreement”) is made as of the date last executed by the **City of Rochester**, 30 Church Street, Rochester, New York (the “City”), the **Rochester City School District**, 131 West Broad Street, Rochester, New York (the “School District”) and the **Rochester Joint Schools Construction Board**, 690 St. Paul Street, Rochester, New York (the “RJSCB”).

### **WITNESSETH:**

**WHEREAS**, the State Legislature enacted the City of Rochester and the Board of Education of the City School District of the City of Rochester School Facilities Modernization Program Act, Chapter 416 of the Laws of 2007 of the State of New York (the “Act”) in order to provide the City and School District with increased flexibility to meet the needs of its school children by providing alternative financing mechanisms for up to thirteen “projects” (as defined in the Act) in the School District (collectively, the “FMP projects”); and

**WHEREAS**, the Act creates the RJSCB and designates the RJSCB as agent for the City, the School District, or both to undertake such FMP projects on behalf of the City and the School District; and

**WHEREAS**, the Act authorizes the RJSCB to enter into a cooperative agreement with the City and the School District to carry out the purposes of the Act, including, but not limited to, development of a comprehensive school facilities modernization plan (the “FMP”) relating to the FMP projects; and

**WHEREAS**, the parties wish to enter into this Agreement in order to clarify, among other things, the agency arrangement and the delegation of authority between the City and the School District, on the one hand, and the RJSCB, on the other, as well as their respective obligations and expectations to achieve the purposes of the Act;

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. The City is authorized to enter this Agreement pursuant to Rochester City Council Ordinance 2010-8, the School District is so authorized under Board of Education Resolution No. 2009-2010: 510, and the RJSCB is so authorized pursuant to Resolution 2010: 3 and the Act.
2. The RJSCB hereby acknowledges and agrees that it shall act as the agent of the City and the School District and that the scope of this agency relationship is defined under and limited to the powers expressly provided by the Act and this Agreement, as this Agreement may be amended or supplemented from time to time.
3. The RJSCB, in collaboration with the School District, the City and the RJSCB’s “program manager” (as defined in the Act), shall develop the FMP in accordance with the Act prior to the RJSCB’s submission of the FMP to the State

Comptroller. Every FMP project undertaken by the RJSCB shall be operated and maintained by the School District in the same manner as all other school facilities of the School District.

4. Subject to the provisions of paragraph 3 above and paragraph 5 below, the parties hereby acknowledge and agree that contracts relating to (i) the issuance and sale of bonds, notes and other obligations to finance FMP projects undertaken by the RJSCB, or (ii) the construction, renovation, rehabilitation, and equipping of FMP projects undertaken by the RJSCB for which the costs to be incurred thereunder will be paid or reimbursed from the proceeds of such bonds, notes or other obligations (collectively, "Financing and Construction Contracts"), may be entered into by the RJSCB without the prior approval of the School District. Contractual obligations entered into by the RJSCB for start-up and administrative costs that do not constitute Financing and Construction Contracts ("Other Contracts") may only be entered into with prior written approval of the School District. The parties agree that the Other Contracts shall (i) set forth the agency relationship of the RJSCB to the City and the School District and (ii) condition their validity and enforceability upon their execution by the School District or the provision of other evidence of the School District's written approval. In addition, the parties hereby agree that all Financing and Construction Contracts shall (i) set forth the agency relationship of the RJSCB to the City and the School District, and (ii) include the statement contained in paragraph 9.

Moreover, at the School District's discretion, in lieu of written pre-approval of Other Contracts, the School District may advance monies to the RJSCB for necessary start-up and administrative costs. An accounting of all expenditures made by the RJSCB which relate to such advances shall be provided by the RJSCB to the School District within ten days following the end of each calendar month.

All RJSCB capital expenditures shall be for FMP project expenditures authorized pursuant to the Act and applicable New York State Education Laws and regulations, and contemplated by the FMP and this Agreement. The School District shall have the right to audit all expenditures incurred in connection with Financing and Construction Contracts as well as Other Contracts upon 15 days notice to the RJSCB and the RJSCB shall provide the School District written quarterly reports of such expenditures within 30 days of the end of each calendar quarter.

5. Under no circumstances shall the RJSCB undertake any FMP project with a "local share" (defined as a cost that is not: (a) reimbursed out of New York State building aid or other State aid specially designed for such purpose, or (b) contractually payable by a party other than the School District) without the express written approval of the School District. The RJSCB and School District will identify jointly other private and public sources of funding FMP projects. The RJSCB shall use any available private and public sources before seeking financial contributions from the School District for local share. The parties

acknowledge that they shall develop a process to address issues that may emerge regarding the incurrence of local share financial obligations.

6. The School District, City and the RJSCB may partner to maximize FMP resources and promote efficiency and coordination in their ongoing effort to modernize and improve school facilities. As such, the City, School District and RJSCB hereby agree, that to the maximum extent possible, in-kind resources and expertise of the School District (including, among others departments, Administration and Operations, Facilities, Engineering, Architecture, Finance/Accounting, Purchasing and Legal) may be utilized. Consistent with the principles and understandings contained in this Agreement, a written coordination plan relating to the FMP Program shall be developed between the School District and the RJSCB and used in connection with each phase of FMP projects undertaken by the RJSCB.
7. The School District will provide input to the RJSCB on the RJSCB's selection and evaluation of the Program Manager.
8. Subject to the provisions of the Act, the RJSCB Program Manager shall manage all contracts duly entered into by the RJSCB, and shall provide executed copies of each contract promptly to the School District.
9. The City shall not be obligated, directly or indirectly, to provide funding for FMP projects or be legally obligated for the payment of debt service on any bonds, notes or other obligations issued to finance any FMP project, including, specifically, any local share obligation related thereto. The City hereby agrees to promptly pay over or assign to a bond trustee for any bonds, notes or other obligations issued to finance one or more FMP projects undertaken by the RJSCB, all State Building Aid or other designated State aid received for or attributable to any such FMP projects. A statement setting forth these understandings shall be included in any bond indenture or bond resolution, in any bond, note or other obligation issued to finance the cost of any FMP project undertaken by the RJSCB and in any disclosure document related to the offering of such bonds, notes or other obligations. From time to time, the School District may approve and contribute School District moneys, grants, and other financial resources to assist the RJSCB to pay for a local share of FMP projects. The provisions of this Agreement, including the limitation contained in this paragraph, are not intended to apply to any capital project that is outside the scope of the FMP and undertaken by the School District independently or jointly undertaken between the City and the School District.
10. The RJSCB, along with the program manager, will work with the School District to determine and utilize the appropriate standards and practices as they pertain to health, safety, construction and design to be used on the FMP projects.
11. This Agreement is made solely for the benefit of the City, the School District and the RJSCB, as agent of the City and School District, and no other person shall have any rights or claims hereunder or by virtue hereof.

12. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all shall together constitute one and the same instrument.

[The remainder of this page is intentionally blank, with signature page to follow.]

**SIGNATURE PAGE TO THE COOPERATIVE AGREEMENT**

**IN WITNESS WHEREOF**, the undersigned have caused this Cooperative Agreement to be executed as of the date of execution by all parties hereto.

---

Robert J. Duffy  
Mayor  
**City of Rochester**

---

Jean-Claude Brizard  
Superintendent  
**Rochester City School District**

---

Date

---

Date

---

Kenneth Bell  
Chairperson  
**Rochester Joint Schools  
Construction Board**

---

Date

---

Lovely Warren  
President  
**Rochester City Council**

---

Malik Evans  
President  
**Rochester Board of Education**

---

Date

---

Date