

RESOLUTION NO. 268

BOND RESOLUTION OF THE COUNTY OF ALBANY, NEW YORK, AUTHORIZING THE UNDERTAKING WITH THE COUNTY OF SARATOGA OF A REGIONAL ANAEROBIC DIGESTER PROJECT TO BE LOCATED AT THE ALBANY COUNTY WATER PURIFICATION DISTRICT NORTH PLANT, STATING THE ESTIMATED MAXIMUM COST THEREOF IS \$48,500,000, APPROPRIATING AN AMOUNT EQUAL TO \$24,250,000 THEREFOR, REPRESENTING THE PORTION OF SAID COST TO BE PAID BY THE COUNTY OF ALBANY, AND AUTHORIZING THE ISSUANCE OF \$24,000,000 OF SERIAL BONDS OF SAID COUNTY TO FINANCE A PORTION OF THE ALBANY COUNTY APPROPRIATION

Introduced: 6/11/18

By: Audit and Finance Committee Messrs. A. Joyce, Feeney, Beston, Bullock Ms. Chapman, Messrs. Clay, Commisso, Ms. Cunningham, Messrs. Domalewicz, Ethier, Fein, Higgins, R. Joyce, Ms. Lekakis, Mr. Mayo, Ms. McKnight, Messrs. Miller, O'Brien, Reinhardt, Signoracci, Simpson, Smith, Touchette, Ward, Mss. Willingham and McLean Lane and Lockart:

THE COUNTY LEGISLATURE OF THE COUNTY OF ALBANY, NEW YORK, HEREBY RESOLVES AS FOLLOWS:

Section 1. The County of Albany, New York (the "County") is hereby authorized to undertake, with the County of Saratoga, a Regional Anaerobic Digester Project to be located at the Albany County Water Purification District North Plant. The project consists of the design, acquisition, construction and installation of an anaerobic digester to energy facility at the Albany County Water Purification District North Plant, together with any necessary site work and the acquisition and installation of furnishings, equipment, machinery and apparatus for the foregoing purposes and the preparation of planning, engineering and feasibility studies and review, as further described in the 2018 Capital Plan in the County's 2018-2022 Capital Program, as amended and supplemented (hereinafter referred to as the "Capital Program"). The estimated maximum cost of said specific object or purpose, including preliminary costs and costs incidental thereto and the financing thereof (including costs relating to the issuance of the obligations authorized by this resolution), is an amount not to exceed \$48,500,000. The plan of finance provides for the County and the County of Saratoga to each pay fifty percent (50%) of said estimated maximum cost of \$48,500,000, or \$24,250,000 each. The County portion of said estimated maximum cost, or \$24,250,000, is hereby appropriated therefor. The plan of financing for the County portion includes the issuance of an amount not to exceed \$24,000,000 of serial bonds (and bond anticipation notes in anticipation of the issuance of such serial bonds) in such series and amounts as may be necessary to pay the County portion of the costs of the capital project, but in no event in excess of

\$24,000,000. The balance of the costs of the capital project in the amount of \$250,000 will be paid from appropriations from the County's General Fund.

The period of probable usefulness of the specific object or purpose herein authorized and for which said serial bonds are herein authorized to be issued, within the limitations of Section 11.00(a)(4) of the New York Local Finance Law (the "Law"), is forty (40) years.

Section 2. Serial bonds (and bond anticipation notes in anticipation of the issuance of such serial bonds) in the aggregate principal amount not to exceed \$24,000,000 to finance said appropriation are hereby authorized to be issued pursuant to the provisions of the Law.

Section 3. The following additional matters are hereby determined and stated:

(a) Current funds are not required by the Law to be provided as a down payment prior to the issuance of the serial bonds authorized by this resolution or any bond anticipation notes issued in anticipation thereof in accordance with Section 107.00 of the Law.

(b) The proposed maturity of the bonds authorized by this resolution will exceed five (5) years.

Section 4. The serial bonds authorized by this resolution and any notes issued in anticipation of the sale of such bonds shall contain the recital of validity prescribed by Section 52.00 of the Law and said serial bonds and any notes issued in anticipation of said bonds shall be general obligations of the County, payable as to both principal and interest by a general tax upon all the taxable real property within the County without limitation of rate or amount. The faith and credit of the County are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and provision shall be made annually in the budget of the County by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 5. Subject to the provisions of this resolution and of the Law, pursuant to the provisions of Section 30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals of said notes and of Section 21.00, Section 23.00, Section 23.00, Section 50.00, Sections 56.00 to 60.00, Section 62.00, Section 63.00 and Section 164.00 of the Law, the powers and duties of the County Legislature pertaining or incidental to the sale and issuance of the obligations herein authorized, including but not limited to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said notes, are hereby delegated to the County Comptroller, the chief fiscal officer of the County.

Section 6. The County Comptroller is further authorized to take such actions and execute such documents as may be necessary to ensure the continued status of the interest on the bonds authorized by this resolution and any notes issued in anticipation thereof, as excludable from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”) and to designate the bonds authorized by this resolution and any notes issued in anticipation thereof, if applicable, as “qualified tax-exempt bonds” in accordance with Section 265(b)(3)(B)(i) of the Code.

Section 7. The County Comptroller is further authorized to enter into a continuing disclosure undertaking with the initial purchaser of the bonds or notes authorized by this resolution, containing provisions which are satisfactory to such purchaser in compliance with the provisions of Rule 15c2-12, promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

Section 8. Pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the County must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the above referenced project. Based upon an examination of the project and a completed Environmental Assessment Form prepared by the Albany County Department of Economic Development, Conservation and Planning, and based further upon the County’s knowledge of the area surrounding the project and such further investigation of the project and its environmental effects as the County has deemed appropriate, the County hereby makes the following determinations:

(a) The project constitutes an “Unlisted Action” (as said quoted term is defined in the Regulations) and therefore coordinated review and notification of other involved agencies is strictly optional. The County hereby determines not to undertake a coordinated review of the project, and therefore will not seek lead agency status with respect to the project;

(b) The project will result in no major impacts and, therefore, is one which will not cause significant damage to the environment. Therefore, the County hereby determines that the project will not have a significant impact on the environment, and the County will not require the preparation of an environmental impact statement with respect to the project; and

(c) As a consequence of the foregoing, the County has decided to prepare a negative declaration with respect to the project.

Section 9. The County Comptroller is hereby authorized to execute and deliver in the name and on behalf of the County a project financing and loan agreement prepared by the New York State Environmental Facilities Corporation (“EFC”) (the “SRF Project Financing and Loan Agreement”). The County

Comptroller, County Clerk and all other officers, employees and agents of the County are hereby authorized and directed for and on behalf of the County to execute and deliver all certificates and other documents, perform all acts and do all things required or contemplated to be executed, performed or done by this resolution or any document or agreement approved hereby, including, but not limited to, the SRF Project Financing and Loan Agreement.

Section 10. The County may initially use funds from the General Fund or such other funds that may be available to pay the cost of the specific objects or purposes authorized by this resolution, pursuant to Section 165.10 of the Law. The County then reasonably expects to reimburse such expenditure with the proceeds of the bonds or bond anticipation notes authorized by Section 2 of this resolution. This resolution shall constitute the declaration of the County's "official intent" to reimburse the expenditures authorized by Section 1 hereof with the proceeds of the bonds and notes authorized herein, as required by United States Treasury Regulation Section 1.150-2.

Section 11. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) (1) such obligations are authorized for an object or purpose for which the County is not authorized to expend money, or
- (2) the provisions of law which should be complied with at the date of the publication of such resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or
- (b) such obligations are authorized in violation of the provisions of the constitution.

Section 12. This bond resolution shall take effect immediately and the Clerk of the County Legislature is hereby authorized and directed to publish the foregoing resolution in full, together with a notice attached in substantially the form as prescribed in Section 81.00 of the Law, in the newspapers designated as the official newspapers of the County for such publication.

On roll call vote the following voted in favor: Messrs. Beston, Bullock, Burgdorf, Ms. Chapman, Messrs. Clay, Clenahan, Commisso, Crouse, Ms. Cunningham, Messrs. Dawson, Domalewicz, Drake, Ethier, Feeney, Fein, Grimm, Higgins, Hogan, A. Joyce, R. Joyce, Mss. Lekakis, Lockart, Messrs. Mauriello, Mayo, Mss. McKnight, McLean Lane, Messrs. Mendick, Miller, O'Brien, Ms. Plotsky, Messrs. Reinhardt, Signoracci, Simpson, Smith, Stevens, Touchette, Tunny, Ward and Ms. Willingham - 39

Those opposed: - 0

Resolution was adopted. - 6/11/18