

EXTRACTS FROM MINUTES OF MEETING OF THE CITY COUNCIL  
OF THE CITY OF NEWBURGH, NEW YORK

*(\$5,559,000 Capital Projects -2009 Payment and Reimbursement)*

A \_\_\_\_\_ meeting of the City Council of the City of Newburgh, New York, in the County of Orange, New York, was held on November \_\_\_\_\_, 2009, at \_\_ o'clock, \_\_\_\_M., at City Hall, \_\_\_\_\_, Newburgh, New York, at which meeting a quorum was at all times present and acting.

PRESENT:

ABSENT:

ALSO PRESENT:

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Councilperson \_\_\_\_\_ moved the adoption of the following bond resolution. The motion was seconded by Councilperson \_\_\_\_\_. The City Council was polled. The motion was adopted by a vote of \_\_\_\_ affirmative votes (being at least two-thirds of the voting strength of the City Council) and \_\_\_\_ negative votes.

**BOND RESOLUTION, DATED NOVEMBER \_\_, 2009 AUTHORIZING THE ISSUANCE OF \$5,559,000 AGGREGATE PRINCIPAL AMOUNT SERIAL BONDS OF THE CITY OF NEWBURGH, NEW YORK, PURSUANT TO THE LOCAL FINANCE LAW TO FINANCE (1) THE FURTHER ADDITIONAL COSTS OF THE CONSTRUCTION, RECONSTRUCTION AND ACQUISITION OF BUILDINGS, INCLUDING THE ACQUISITION OF LAND OR RIGHTS-IN-LAND (\$3,213,000), AND (2) THE PAYMENT OF A SETTLED CLAIM (\$2,346,000), FOR REIMBURSEMENT TO THE GENERAL FUND, INCLUDING PRELIMINARY AND INCIDENTAL COSTS, INTEREST DURING CONSTRUCTION, AND COSTS OF ISSUANCE AS MAY BE REQUIRED, IN AND FOR THE CITY.**

**WHEREAS**, the City Council of the City of Newburgh (the “City Council” and the “City”, respectively), hereby determines that it is in the public interest of the city to authorize the financing of (1) the further additional costs of construction, reconstruction and acquisition of buildings, including the acquisition of land or rights-in-land (\$3,213,000), and (2) the payment of a settled claim (\$2,346,000), in and for the City, such amounts for the purposes authorized to include preliminary and incidental costs, costs of issuance (2% of the estimated maximum cost of each purpose), and interest during construction (if applicable); and

**WHEREAS**, the City Council has heretofore paid for the costs of the purposes herein authorized from current funds in the City’s 2009 or earlier fiscal year approved budgets, or the cost of the purposes herein authorized are due and payable from current funds of the City not contained in or available from the City’s 2009 fiscal year budget or fund balance s of January 1, 2009; and

**WHEREAS**, with respect to the purposes authorized herein, the City has taken appropriate colorable official action in the record of proceedings of the City Council or papers of City officials pursuant United States Treasury regulations §1.150-2 et seq. to prescribe conditions under which proceeds of the obligations authorized herein may be used to reimburse advances made for capital expenditures paid before the issuance of such obligations; and

**WHEREAS**, the City Council has not taken any action or adopted any local law which would require the effectiveness of this bond resolution be subjected to a permissive or mandatory referendum,

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK** as follows:

Section 1. There is hereby authorized to be issued serial bonds of the City of Newburgh, New York, in the aggregate principal amount of \$5,559,000 pursuant to the Local Finance Law, in order to finance the classes of objects or purposes, or specific objects or purposes, hereinafter described.

Section 2. The classes of objects or purposes, or specific objects or purposes, to be financed pursuant to this bond resolution, the estimated maximum cost of each object or purpose, the principal amount of serial bonds authorized herein for each object or purpose, and the period of probable usefulness of each object or purpose pursuant to the applicable subdivision of paragraph a of Section 11.00 of the Local Finance Law, are as follows:

a. The further additional costs of the construction, reconstruction and acquisition of buildings, including the acquisition of land or rights-in-land, including a court facility at an estimated maximum cost of \$3,213,000 for which \$3,213,000 principal amount of serial bonds is authorized herein, such class of objects or purposes having a period of probable usefulness of thirty (30) years pursuant to subdivision 11(a)(1) of paragraph a of Section 11.00 of the Local Finance Law (such buildings being of Class "A" construction as that term is defined in the Local Finance Law). Such serial bonds shall have a maximum maturity not to exceed thirty (30) years computed from the earlier of (a) the date of the first issue of such serial bonds or (b) the date the first bond anticipation notes issued in anticipation of the issuance of such serial bonds; and

b. The payment of a settled claim (to wit: United States of America v. City of Newburgh, et al., Civil Action No. 08 Civ. 7378 (SCR), United State District Court for the Southern District of New York) at an estimated maximum cost of \$2,346,000 for which \$2,346,000 principal amount of serial bonds is authorized herein, such class of objects or purposes having a period of probable usefulness of five (5) years pursuant to subdivision 33(a)1 of paragraph a of Section 11.00 of the Local Finance Law. Such serial bonds shall have a maximum maturity not to exceed five (5) years computed from the earlier of (a) the date of the first issue of such serial bonds or (b) the date the first bond anticipation notes issued in anticipation of the issuance of such serial bonds.

None of the amounts authorized in this section 2 have been included in a prior bond authorization in any prior bond resolutions adopted by the City Council of the City for an object or purpose specifically described or referred to in such section.

Section 3. The City Council has ascertained and hereby states that (a) the estimated maximum cost of the classes of objects or purposes or specific objects or purposes listed in Section 2 above is \$5,559,000, (b) except as otherwise provided in the financial records of the City Comptroller, no money has heretofore been authorized to be applied to the payment of the costs of such objects or purposes, (c) the City Council plans to finance the costs of such objects or purposes from funds raised by the issuance of obligations authorized herein, the proceeds of which are to be paid to the City for reimbursement of payments made or to be made for such objects or purposes; except to the extent of grant funds received by the City to permanently finance such objects or purposes which amount of grants so received shall reduce the amount of serial bonds authorized herein *pro tanto*, and (d) on or before the expenditure of moneys to pay for any item within an object or purpose set forth herein for which proceeds of obligations are to be applied to reimburse

the City, the City Council took “official action” for federal income tax purposes to authorize capital financing of such item.

Section 4. Subject to the terms and conditions of this bond resolution and the Local Finance Law, and pursuant to the provisions of Sections 21.00, 30.00, 50.00 and 56.00 to 60.00, inclusive, of the Local Finance Law, the power to authorize bond anticipation notes in anticipation of the issuance of the serial bonds authorized by this bond resolution and the renewal of such bond anticipation notes and the power to prescribe the terms, form and contents of such serial bonds and such bond anticipation notes, including renewals thereof, and the power to issue, sell and deliver such serial bonds and such bond anticipation notes, including renewals thereof, is hereby delegated to the Comptroller of the City, as chief fiscal officer of the City. The Comptroller is hereby authorized to execute on behalf of the City all serial bonds, issued pursuant to this bond resolution and all bond anticipation notes, including renewals thereof, issued in anticipation of the issuance of such serial bonds, and the City Clerk is hereby authorized to affix the seal of the City to all such serial bonds and all such bond anticipation notes, including renewals thereof, and to attest such seal. Each interest coupon, if any, representing interest payable on such serial bonds shall be authenticated by the facsimile signature of the Comptroller. Such serial bonds, if, as and when issued shall be authenticated by the countersignature of a fiscal agent of the City or by the appropriate designated officer of the City pursuant to Section 60.00, as amended, of the Local Finance Law. In the absence of the Comptroller, the Director of Finance is hereby authorized to exercise the powers delegated to the Director of Finance by this Resolution.

Section 5. When this bond resolution takes effect, the City Clerk of the City shall cause the same to be published together with a notice in substantially the form prescribed by Section 81.00 of the Local Finance Law in \_\_\_\_\_, a newspaper having a general circulation in the

City. The validity of the bonds authorized by this bond resolution and of bond anticipation notes issued in anticipation of the sale of such bonds may be contested only if such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or the provisions of law which should be complied with at the date of the publication of this bond resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of such publication, or such obligations are authorized in violation of the provisions of the Constitution of the State of New York.

Section 6. The faith and credit of the City are hereby and shall be irrevocably pledged for the punctual payment of the principal of and interest on all obligations authorized and issued pursuant to this bond resolution as the same shall become due.

Section 7. The City intends to issue the obligations authorized by this bond resolution to finance the costs of the purposes described in Section 2 hereof. The City covenants for the benefit of the holders of the obligations authorized herein that it will not make any use of the proceeds of such obligations, any funds reasonably expected to be used to pay the principal of or interest on such obligations, or any other funds of the City, and will not make any use of the facilities financed with the proceeds of such obligations which would cause the interest on such obligations to become subject to federal income taxation under the Internal Revenue Code of 1986, as amended (the "Code") (except for the alternative minimum tax imposed on corporations by section 55 of the Code) or subject the City to any penalties under section 148 of the Code, and that it will not take any action or omit to take any action with respect to such obligations, the proceeds thereof or any facilities financed thereby if such action or omission would cause the interest on such obligations to become subject to federal income taxation under the Code (except for the alternative minimum tax

imposed on corporations by section 55 of the Code) or subject the City to any penalties under Section 148 of the Code. The foregoing covenants shall remain in full force and effect notwithstanding the defeasance of such obligations until the date which is 60 days after the final maturity date or earlier prior redemption date thereof. The proceeds of the bonds and any bond anticipation notes issued in anticipation of the sale of bonds may be applied to reimburse expenditures or commitments made for such purposes on or after a date which is not more than 60 days prior to the adoption date of this bond resolution of the City. The City expects to expend general funds or other available moneys for the purposes described in Section 2 hereof which shall be reimbursed from the proceeds of such obligations.

Section 8. Prior to the issuance of obligations authorized by this resolution the City Council of the City shall comply with all relevant provisions prescribed in Article 8 of the Environmental Conservation Law and the regulations promulgated thereunder by the New York State Department of Environmental Conservation, and all applicable Federal laws and regulations in connection with environmental quality review relating to the purposes described in Section 2 hereof (the "Project") (collectively, the "environmental compliance proceedings"). In the event that any of the environmental compliance proceedings are not completed, or require amendment or modification subsequent to the date of adoption of this bond resolution, the City Council of the City covenants that it will re-adopt, amend or modify this bond resolution prior to the issuance of obligations authorized to be issued herein upon the advice of bond counsel. It is hereby determined by the City Council of the City that the Project will not have significant impact or effect on the environment.

Section 9. For the benefit of the holders and beneficial owners from time to time of the obligations authorized pursuant to this resolution (the "obligations"), the City agrees, in accordance

with and as an obligated person with respect to the obligations, under Rule 15c2-12 promulgated by the Securities Exchange Commission pursuant to the Securities Exchange Act of 1934 (the “Rule”), to provide or cause to be provided such financial information and operating data, financial statements and notices, in such manner, as may be required for purposes of the Rule. In order to describe and specify certain terms of the City’s continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination, the Comptroller is authorized and directed to sign and deliver, in the name and on behalf of the City, the commitment authorized by subsection 6(c) of the Rule (the “Commitment”) to be placed on file with the City Clerk, which shall constitute the continuing disclosure agreement made by the City for the benefit of holders and beneficial owners of the obligations in accordance with the Rule, with any changes or amendments that are not inconsistent with this resolution and not substantially adverse to the City and that are approved by the Comptroller of the City on behalf of the City, all of which shall be conclusively evidenced by the signing of the Commitment or amendments thereto. The agreement formed, collectively, by this paragraph and the Commitment, shall be the City’s continuing disclosure agreement for purposes of the Rule, and its performance shall be subject to the availability of funds and their annual appropriation to meet costs the City would be required to incur to perform thereunder. The Comptroller of the City is further authorized and directed to establish procedures in order to ensure compliance by the City with its continuing disclosure agreement, including the timely provision of information and notices. Prior to making any filing in accordance with the agreement or providing notice of the occurrence of any material event, the Comptroller of the City shall consult with, as appropriate, the Corporation Counsel and bond counsel or other qualified independent special counsel to the City. The Comptroller of the City acting in the name and on behalf of the City, shall be entitled to rely upon any legal advice

provided by the Corporation Counsel or such bond counsel or other special counsel in determining whether a filing should be made.

Section 10. This bond resolution shall take effect immediately upon its adoption by the City Council of the City.

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I, **LORENE VITEK**, City Clerk of the City of Newburgh (the "City"), situated in the County of Orange, New York, **HEREBY CERTIFY** as follows:

1. A \_\_\_\_\_ meeting of the City Council of the City was duly held on \_\_\_\_\_, 2009, 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 the City Council of the City.

2. I have compared the attached extract with such minutes so recorded and such extract is a true and correct copy of such minutes and of the whole thereof insofar as such minutes relate to matters referred to in such extract.

3. Such minutes correctly state the time when such meeting was convened and the place where such meeting was held and the members of the City Council who attended such meeting.

4. Notice of such meeting was given as prescribed by law and such meeting was open to all persons who were entitled by law to attend such meeting.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the City Council, this \_\_\_ day of \_\_\_\_\_, 2009.

(SEAL)

\_\_\_\_\_  
**LORENE VITEK**  
City Clerk  
City of Newburgh, New York

**CITY OF NEWBURGH, NEW YORK**  
**ESTOPPEL NOTICE**

The bond resolution published herewith has been adopted by the City Council of the City of Newburgh on \_\_\_\_\_, 2009. The validity of the obligations authorized by such bond resolution may be hereafter contested only if: (i) such obligations were authorized for an object or purpose for which the City of Newburgh is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of publication of this notice; or (ii) such obligations were authorized in violation of the provisions of the Constitution of New York.

Dated: \_\_\_\_\_, 2009

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**LORENE VITEK**  
City Clerk  
City of Newburgh, New York