

SUPPLEMENT TO OFFICIAL STATEMENT DATED JUNE 16, 2011  
OF TOWN OF SOMERS, WESTCHESTER COUNTY, NEW YORK

AS TO

\$2,000,000  
PUBLIC IMPROVEMENT (SERIAL) BONDS, 2011

The following supplemental disclosure relates solely to the \$2,000,000 Public Improvement (Serial) Bonds, 2011.

**NEW TAX LEVY LIMITATION LAW**

On June 24, 2011, Chapter 97 of the Laws of 2011 was signed into law by the Governor (the "Tax Levy Limitation Law"). The Tax Levy Limitation Law applies to all local governments, including school districts (with the exception of New York City, the counties comprising New York City and the Big 5 City School Districts (Buffalo, Rochester, Syracuse, Yonkers and New York). It also applies to independent special districts and to town and county improvement districts as part of their parent municipalities tax levies.

The Tax Levy Limitation Law restricts, among other things, the amount of real property taxes (including assessments of certain special improvement districts) that may be levied by or on behalf of a municipality in a particular year, beginning with fiscal years commencing on or after January 1, 2012. It expires on June 16, 2016 unless extended. Pursuant to the Tax Levy Limitation Law, the tax levy of a municipality cannot increase by more than the lesser of (i) two percent (2%) or (ii) the annual increase in the consumer price index ("CPI"), over the amount of the prior year's tax levy. Certain adjustments would be permitted for taxable real property full valuation increases or changes in physical or quantity growth in the real property base as defined in Section 1220 of the Real Property Tax Law. A municipality may exceed the tax levy limitation for the coming fiscal year only if the governing body of such municipality first enacts, by at least a sixty percent vote of the total voting strength of the board, a local law (resolution in the case of fire districts and certain special districts) to override such limitation for such coming fiscal year only. There are permissible exceptions to the tax levy limitation provided in the Tax Levy Limitation Law, including expenditures made on account of certain tort settlements and certain increases in the average actuarial contribution rates of the New York State and Local Employees' Retirement System, the Police and Fire Retirement System, and the Teachers' Retirement System. Municipalities are also permitted to carry forward a certain portion of their unused levy limitation from a prior year. Each municipality prior to adoption of each fiscal year budget must submit for review to the State Comptroller any information that is necessary in the calculation of its tax levy for each fiscal year.

The Tax Levy Limitation Law does not contain an exception from the levy limitation for the payment of debt service on either outstanding general obligation debt of municipalities or such debt incurred after the effective date of the tax levy limitation provisions.

Article 8 Section 2 of the State Constitution requires every issuer of general obligation notes and bonds in the State to pledge its faith and credit for the payment of the principal thereof

and the interest thereon. This has been interpreted by the Court of Appeals, the State's highest court, in Flushing National Bank v. Municipal Assistance Corporation for the City of New York, 40 N.Y.2d 731 (1976), as follows:

“A pledge of the city’s faith and credit is both a commitment to pay and a commitment of the city’s revenue generating powers to produce the funds to pay. Hence, an obligation containing a pledge of the City’s “faith and credit” is secured by a promise both to pay and to use in good faith the city’s general revenue powers to produce sufficient funds to pay the principal and interest of the obligation as it becomes due. That is why both words, “faith” and “credit”, are used and they are not tautological. That is what the words say and that is what courts have held they mean.”

Article 8 Section 12 of the State Constitution specifically provides as follows:

“It shall be the duty of the legislature, subject to the provisions of this constitution, to restrict the power of taxation, assessment, borrowing money, contracting indebtedness, and loaning the credit of counties, cities, towns and villages, so as to prevent abuses in taxation and assessments and in contracting of indebtedness by them. Nothing in this article shall be construed to prevent the legislature from further restricting the powers herein specified of any county, city, town, village or school district to contract indebtedness or to levy taxes on real estate. The legislature shall not, however, restrict the power to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted.”

On the relationship of the Article 8 Section 2 requirement to pledge the faith and credit and the Article 8 Section 12 protection of the levy of real property taxes to pay debt service on bonds subject to the general obligation pledge, the Court of Appeals in the Flushing National Bank case stated:

“So, too, although the Legislature is given the duty to restrict municipalities in order to prevent abuses in taxation, assessment, and in contracting of indebtedness, it may not constrict the city’s power to levy taxes on real estate for the payment of interest on or principal of indebtedness previously contracted....While phrased in permissive language, these provisions, when read together with the requirement of the pledge of faith and credit, express a constitutional imperative: debt obligations must be paid, even if tax limits be exceeded”.

In addition, the Court of Appeals in the Flushing National Bank case has held that the payment of debt service on outstanding general obligation bonds and notes takes precedence over fiscal emergencies and the police power of municipalities.

Therefore, while the New Tax Levy Limitation Law may constrict an issuer's power to levy real property taxes for the payment of debt service on debt contracted after the effective date of said New Tax Levy Limitation Law, it is clear that no statute is able (1) to limit an issuer's pledge of its faith and credit to the payment of any of its general obligation indebtedness or (2) to limit an issuer's levy of real property taxes to pay debt service on general obligation debt contracted prior to the effective date of the New Tax Levy Limitation Law. Whether the Constitution grants a municipality authority to treat debt service payments as a constitutional exception to such statutory tax levy limitation outside of any statutorily determined tax levy amount is not clear.

It is likely that the New Tax Levy Limitation Law will be subject to judicial review to resolve the constitutional issues raised by its adoption.

As a result, the opinion of Bond Counsel as provided in the Official Statement will be revised. A copy of such approving legal opinion of Bond Counsel, as amended, is provided below and will appear as a supplement to the final Official Statement for the Obligations.

All references in the Final Official Statement to the "levy of ad valorem taxes, without limitation as to rate or amount" should be revised to read "levy of ad valorem taxes, subject to the statutory limitation in Chapter 97 of the Laws of 2011."

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Town of Somers,  
County of Westchester,  
State of New York

Re: Town of Somers,  
Westchester County, New York  
\$2,000,000 Public Improvement (Serial) Bonds, 2011

Ladies and Gentlemen:

We have been requested to render our opinion as to the validity of an issue of \$2,000,000 Public Improvement (Serial) Bonds, 2011 (the "Obligations"), of the Town of Somers, County of Westchester, State of New York (the "Obligor"), dated June 30, 2011, initially issued in registered form in denominations such that one bond shall be issued for each maturity of bonds in such amounts as hereinafter set forth, bearing interest at the rate of two per centum (2.00%) per annum as to bonds maturing in the year 2012, at the rate of three per centum (3.00%) per annum as to bonds maturing in each of the years 2013 and 2014, at the rate of four per centum (4.00%) per annum as to bonds maturing in each of the years 2015 and 2016, at the rate of two per centum (2.00%) per annum as to bonds maturing in 2017, at the rate of two and three eighths per centum (2.375%) per annum as to bonds maturing in 2018, at the rate of two and five eighths per centum (2.625%) per annum as to bonds maturing in 2019, and at the rate of three per centum

(3.00%) per annum as to bonds maturing in each of the years 2020 and 2021, payable on November 1, 2011 and semi-annually thereafter on May 1 and November 1, and maturing in the amounts of \$185,000 on May 1 in each of the years 2012 to 2014, both inclusive, \$190,000 on May 1, 2015, \$195,000 on May 1, 2016, \$200,000 on May 1, 2017, \$205,000 on May 1, 2018, \$210,000 on May 1, 2019, \$220,000 on May 1, 2020, and \$225,000 on May 1, 2021.

We have examined:

- (1) the Constitution and statutes of the State of New York;
- (2) the Internal Revenue Code of 1986, including particularly Sections 103 and 141 through 150 thereof, and the applicable regulations of the United States Treasury Department promulgated thereunder (collectively, the "Code");
- (3) an arbitrage certificate executed on behalf of the Obligor which includes, among other things, covenants, relating to compliance with the Code, with the owners of the Obligations that the Obligor will, among other things, (i) take all actions on its part necessary to cause interest on the Obligations not to be includable in the gross income of the owners thereof for Federal income tax purposes, including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Obligations and investment earnings thereon, making required payments to the Federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Obligations to be includable in the gross income of the owners thereof for Federal income tax purposes, including, without limitation, refraining from spending the proceeds of the Obligations and investment earnings thereon on certain specified purposes; and
- (4) a certificate executed on behalf of the Obligor which includes, among other things, a statement that compliance with such covenants is not prohibited by, or violative of, any provision of local or special law, regulation or resolution applicable to the Obligor.

We also have examined a certified copy of proceedings of the finance board of the Obligor and other proofs authorizing and relating to the issuance of the Obligations, including the form of the Obligations. In rendering the opinions expressed herein we have assumed the accuracy and truthfulness of all public records, documents and proceedings, including factual information, expectations and statements contained therein, examined by us which have been executed or certified by public officials acting within the scope of their official capacities, and have not verified the accuracy or truthfulness thereof. We also have assumed the genuineness of the signatures appearing upon such public records, documents and proceedings and the certifications thereof.

In our opinion:

- (a) The Obligations have been authorized and issued in accordance with the Constitution and statutes of the State of New York and constitute valid and legally binding general obligations of the Obligor, for which the Obligor has validly pledged its faith and credit for the payment thereof. All the taxable real property within the Obligor is subject to the levy of ad valorem taxes to pay the principal and interest on the Obligations subject to applicable statutory limitations; however, the power of the Obligor to levy unlimited real estate taxes on all the real property within the Obligor to pay debt service may be subject to the statutory limitations imposed by Chapter 97 of the Laws of 2011, depending upon the interpretation of

such statute by a court of competent jurisdiction in the event of a legal challenge. The enforceability (but not the validity) of the Obligations (i) may be limited by any applicable bankruptcy, insolvency or other law now existing or hereafter enacted by said State or the Federal government affecting the enforcement of creditors' rights, and (ii) may be subject to the exercise of judicial discretion in appropriate cases.

(b) The Obligor has the power to comply with its covenants with respect to compliance with the Code as such covenants relate to the Obligations; provided, however, that the enforceability (but not the validity) of such covenants may be limited by any applicable bankruptcy, insolvency or other law now existing or hereafter enacted by said State or the Federal government affecting the enforcement of creditors' rights.

(c) Interest on the Obligations is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, and is exempt from personal income taxes imposed by the State of New York and any political subdivision thereof (including The School District of New York). Interest on the Obligations is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, nor is it included in adjusted current earnings when calculating corporate alternative minimum taxable income. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Obligations.

Certain agreements, requirements and procedures contained or referred to in the Arbitrage Certificate and other relevant documents may be changed and certain actions (including, without limitation, economic defeasance of the Obligations) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. Accordingly, this opinion is not intended to, and may not, be relied upon in connection with any such actions, events or matters. Our engagement with respect to the Obligations has concluded with their issuance, and we disclaim any obligation to update this opinion. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents. Furthermore, we have assumed compliance with all covenants and agreements contained in the Arbitrage Certificate, including without limitation covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the Obligations to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Obligations and the Arbitrage Certificate and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal corporations such as the Obligor in the State of New York. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, or waiver provisions contained in the foregoing documents.

The scope of our engagement in relation to the issuance of the Obligations has extended solely to the examination of the facts and law incident to rendering the opinions expressed herein. Such opinions are not intended and should not be construed to express or imply

any conclusion that the amount of real property subject to taxation within the boundaries of the Obligor, together with other legally available sources of revenue, if any, will be sufficient to enable the Obligor to pay the principal of or interest on the Obligations as the same respectively become due and payable. Reference should be made to the Official Statement prepared by the Obligor in relation to the Obligations for factual information which, in the judgment of the Obligor, could materially affect the ability of the Obligor to pay such principal and interest. While we have participated in the preparation of such Official Statement, we have not verified the accuracy, completeness or fairness of the factual information contained therein and, accordingly, we express no opinion as to whether the Obligor, in connection with the sale of the Obligations, has made any untrue statement of a material fact or omitted to state a material fact necessary in order to make any statements made, in the light of the circumstances under which they were made, not misleading.

Very truly yours,

/s/ Orrick Herrington & Sutcliffe LLP

Dated: June 28, 2011

Mary Beth Murphy  
Supervisor and Chief Fiscal Officer