

RESOLUTION NO. 479

BOND RESOLUTION OF THE COUNTY OF ALBANY, NEW YORK, ADOPTED DECEMBER 7, 2009, AUTHORIZING THE UNDERTAKING OF ENERGY CONSERVATION IMPROVEMENTS AT THE ALBANY COUNTY TIMES UNION CENTER, STATING THE ESTIMATED MAXIMUM COST THEREOF IS \$1,530,324, APPROPRIATING SAID AMOUNT THEREFOR, AND AUTHORIZING THE ISSUANCE OF \$1,530,324 OF SERIAL BONDS OF SAID COUNTY TO FINANCE SAID APPROPRIATION

Introduced: 12/7/09

By Audit and Finance Committee, Mr. Clenahan, Ms. McKnight and Mr. Ward:

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 an energy conservation improvement project at the Albany County Times Union Center, consisting of the replacement of a 700-ton comfort chiller, pumps, variable speed drives and various other HVAC equipment and controls at the Times Union Center, together with the acquisition and installation of furnishings, equipment, machinery and apparatus for the foregoing purposes, all as more particularly described in an Initial Customer Installation Commitment prepared by the New York Power Authority. The estimated maximum cost of said class of objects or purposes, including preliminary costs and costs incidental thereto and the financing thereof (including costs relating to the issuance of the obligations authorized by this resolution), in an amount not to exceed \$1,530,324 and said amount is hereby appropriated therefor. The plan of financing includes the issuance of an amount not to exceed \$1,530,324 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 cost thereof, but in no event in excess of \$1,530,324 to pay the cost of the capital project.

The period of probable usefulness of the class of objects or purposes herein authorized and for which \$1,530,324 of said serial bonds are herein authorized to be issued, within the limitations of Section 11.00 a. 13 of the New York Local Finance Law (the "Law"), is ten (10) years.

Section 2. Serial bonds (and bond anticipation notes in anticipation of the issuance of such serial bonds) in the aggregate principal amount of \$1,530,324 to finance said appropriations 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 50.00, Sections 56.00 to 60.00, Section 62.00 and Section 63.00 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. By separate resolution or resolutions, the County has complied with the provisions of the State Environmental Quality Review Act ("SEQRA") with respect to the capital project described in this resolution as follows: the County has determined that such capital project described in this resolution is Type II action under SEQRA.

Section 9. 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 10. The County Comptroller is hereby authorized to execute and deliver in the name and on behalf of the County any financing documents and agreements prepared by the New York State Energy Research Development Authority ("NYSERDA") and the New York Power Authority ("NYPA") (collectively, the "Financing Agreements") in connection with the financing of the capital project authorized by this resolution. The County Comptroller and the 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 Financing Agreements.

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) such obligations are authorized for an object or purpose for which the County is not authorized to expend money, or
- (b) 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

(c) 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 Evangelist and the Times Union, newspapers designated as the official newspapers of the County for such publication.

On roll call vote the following voted in favor: Mr. Aylward, Ms. Benedict, Messrs. Beston, Bullock, Carman, Ms. Chapman, Messrs. Clay, Clenahan, Clouse, Commisso, Ms. Connolly, Messrs. Cotrofeld, Dawson, Domalewicz, Ethier, Gordon, Higgins, Hoblock, Horstmyer, Houghtaling, Infante, Joyce, Mss. Lockart, Maffia-Tobler, Messrs. Mayo, McCoy, Ms. McKnight, Messrs. Mendick, Morse, Nichols, Rahm, Reilly, Scavo, Steck, Timmins, Tunny, Ward, Ms. Willingham and Mr. Zeilman – 39.

Those opposed: - 0.

Resolution was adopted. 12/7/09