

# PRELIMINARY OFFICIAL STATEMENT DATED FEBRUARY 1, 2023

## RENEWALS

## BOND ANTICIPATION NOTES

*In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel to the Village, under existing statutes and court decisions and assuming continuing compliance with certain tax certifications described herein, (i) interest on the Notes is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Notes is not treated as a preference item in calculating the alternative minimum tax under the Code, however for tax years beginning after December 31, 2022, interest on the Notes is included in the "adjusted financial statement income" of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. In addition, in the opinion of Bond Counsel, under existing statutes, interest on the Notes is exempt from personal income taxes of New York State and its political subdivisions, including The City of New York. See "Tax Matters" herein.*

*The Village will designate the Notes as "qualified tax-exempt obligations" pursuant to the provision of Section 265(b)(3) of the Code.*

## VILLAGE OF NYACK ROCKLAND COUNTY, NEW YORK (the "Village")

### \$9,060,000

### BOND ANTICIPATION NOTES – 2023 (the "Notes")

Dated Date: February 22, 2023

Maturity Date: February 22, 2024

*Security and Sources of Payment:* The Notes are general obligations of the Village of Nyack, Rockland County, New York (the "Village"), and will contain a pledge of the faith and credit of the Village for the payment of the principal thereof and interest thereon and, unless paid from other sources, the Notes are payable from ad valorem taxes which may be levied upon all the taxable real property within the Village, subject to certain statutory limitations imposed by Chapter 97 of the New York Laws of 2011, as amended (the "Tax Levy Limit Law"). (See "Tax Levy Limit Law," herein).

*Prior Redemption:* The Notes will not be subject to redemption prior to their maturity.

*Form and Denomination:* At the option of the purchaser, the Notes may be either (i) registered in the name of the purchaser or (ii) registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC") as book-entry notes. A single note certificate shall be delivered to the purchaser(s), for those Notes bearing the same rate of interest in the aggregate principal amount awarded to such purchaser at such interest rate. Those Notes issued in book-entry form will be registered in the name of Cede & Co. as nominee of The Depository Trust Company ("DTC"), New York, New York, which will act as the Securities Depository for the Notes. Individual purchases of any Notes issued in book-entry form may be made only in book-entry form in denominations of \$5,000 or integral multiples thereof. Holders of book-entry Notes will not receive certificates representing their respective ownership interests in any Notes issued in book-entry form. (See "Book-Entry System" herein).

*Payment:* Payment of the principal of and interest on the Notes registered to the Purchaser will be payable in lawful money of the United States of America (Federal Funds) at such bank or trust company located and authorized to do business in the State of New York as may be selected by the successful bidder. Payment of the principal of and interest on any Notes issued in book-entry form will be made by DTC Participants and Indirect Participants in accordance with standing instructions and customary practices. Payment will be the responsibility of the DTC Participants or Indirect Participants and not of DTC or the Village, subject to any statutory and regulatory requirements as may be in effect from time to time. Principal and interest payments on any book-entry Notes shall be payable at the office of the Village Clerk. (See "Book-Entry System" herein).

Proposals for the Notes will be received at 11:00 A.M. (Prevailing Time) on February 9, 2023 at the offices of Munistat Services, Inc., 12 Roosevelt Avenue, Port Jefferson Station, New York 11776.

*The Notes are offered subject to the final approving opinion of Hawkins Delafield & Wood LLP, New York, New York, Bond Counsel, and certain other conditions. It is expected that delivery of the Notes will be made on or about February 22, 2023 in New York, New York, or as otherwise agreed to by the Village and the purchaser.*

THIS PRELIMINARY OFFICIAL STATEMENT IS IN A FORM "DEEMED FINAL" BY THE VILLAGE FOR THE PURPOSES OF SECURITIES AND EXCHANGE COMMISSION RULE 15c2-12 (THE "RULE"). FOR A DESCRIPTION OF THE VILLAGE'S AGREEMENT TO PROVIDE CONTINUING DISCLOSURE FOR THE NOTES, AS DESCRIBED IN THE RULE, SEE "DISCLOSURE UNDERTAKING" HEREIN.

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ROCKLAND COUNTY, NEW YORK**

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Robert S. Knoebel, Village Justice  
Jennifer Hetling, Village Clerk/Treasurer  
Andy Stewart, Village Administrator

Attorney for the Village

Dennis Michaels, Esq

\* \* \*

**BOND COUNSEL**

Hawkins Delafield & Wood LLP  
New York, New York

\* \* \*

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No dealer, broker, salesman or other person has been authorized by the Village to give any information or to make any representations, other than those contained in this Official Statement and if given or made, such other information or representations must not be relied upon as having been authorized by the Village. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Notes by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been obtained by the Village from sources which are believed to be reliable but it is not guaranteed as to accuracy or completeness. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Village since the date hereof.

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# OFFICIAL STATEMENT

Relating to

## VILLAGE OF NYACK ROCKLAND COUNTY, NEW YORK

### \$9,060,000 BOND ANTICIPATION NOTES – 2023 (the “Notes”)

This Official Statement, including the cover page and appendices thereto, has been prepared by the Village of Nyack (the “Village”) and presents certain information relating to the Village's \$9,060,000 Bond Anticipation Notes – 2023 (the “Notes”). All quotations from and summaries and explanations of provisions of the Constitution and laws of the State of New York (the “State”) and acts and proceedings of the Village contained herein do not purport to be complete and are qualified in their entirety by reference to the official compilations thereof and all references to the Notes and the proceedings of the Village relating thereto are qualified in their entirety by reference to the definitive form of the Notes and such proceedings.

This Official Statement should be read with the understanding that the ongoing COVID-19 global pandemic has created prevailing economic conditions (at the global, national, State and local levels) that are highly uncertain, generally negative, and rapidly changing, and these conditions are expected to continue for an indefinite period of time. Accordingly, the Village’s overall economic situation and outlook (and all of the specific Village-related information contained herein) should be carefully reviewed, evaluated and understood in the full light of this unprecedented world-wide event, the effects of which are extremely difficult to predict and quantify. See “*RISK FACTORS*” and “*IMPACT OF COVID-19*” herein.

### THE NOTES

#### Description of the Notes

The Notes are general obligations of the Village. The Village has pledged its faith and credit for the payment of the principal of and interest on the Notes and, unless paid from other sources, the Notes are payable from ad valorem taxes which may be levied upon all the taxable real property within the Village, subject to certain statutory limitations imposed by the Tax Levy Limit Law. (See “*Tax Levy Limit Law*” herein).

The Notes will be dated and will mature, without the option of prior redemption, as indicated on the cover page hereof.

The Village Clerk will act as Fiscal Agent for the Notes. Paying agent fees, if any, will be paid by the purchaser(s). The Village’s contact information is as follows: Jennifer Hetling, Village Clerk/Treasurer of the Village of Nyack, 9 North Broadway, Nyack, NY 10960, Phone (845) 358-0548 and Fax (845) 358-1480 and email: clerktreasurer@nyack-ny.gov.

#### Optional Redemption

The Notes will not be subject to redemption prior to their maturity.

#### Book-Entry System

DTC will act as securities depository for any Notes issued as book-entry notes. Such Notes will be issued as fully-registered securities, in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered note certificate will be issued for each book-entry Note bearing the same rate of interest and CUSIP number and will be deposited with DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of certificates.

Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of the Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). Standard & Poor’s assigns a rating of “AA+” to DTC. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Notes under the DTC system must be made by or through Direct Participants, which will receive a credit for the Notes on DTC’s records. The ownership interest of each actual purchaser of each Note (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Notes are to be accomplished by entries made on the books of Direct or Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interest in the Notes, except in the event that use of the book-entry system for the Notes is discontinued.

To facilitate subsequent transfers, all Notes deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Notes with DTC and their registration in the name of Cede & Co., or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Notes; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Notes are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping accounts of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Beneficial Owners of the Notes may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Notes, such as redemptions, tenders, defaults, and proposed amendments to the Note documents. For example, Beneficial Owners of the Notes may wish to ascertain that the nominee holding the Notes for their benefit has agreed to obtain and transmit notices to the Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Notes unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the issuer as soon as possible after the record date. The omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Notes are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on the Notes will be made to Cede & Co. or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from the Village on the payable date, in accordance with their respective holdings shown on DTC’s records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such Participant and not of DTC (nor its nominee) or the Village, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Village, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Notes at any time by giving reasonable notice to the Village. Under such circumstances, in the event that a successor depository is not obtained, note certificates are required to be printed and delivered to the Noteowners. The Village may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In such event, note certificates will be printed and delivered to the Noteowners.

The information contained in the above section concerning DTC and DTC’s book-entry system has been obtained from sample offering document language supplied by DTC, but the Village takes no responsibility for the accuracy thereof. In addition, the Village will not have any responsibility or obligation to participants, to indirect participants or to any beneficial owner with respect to: (i) the accuracy of any records maintained by DTC, any participant or any indirect participant; (ii) the payments by DTC or any participant or any indirect participant of any amount with respect to the principal of, or premium, if any, or interest on the Notes or (iii) any notice which is permitted or required to be given to Noteowners.

Source: The Depository Trust Company, New York, New York.

### **Authorization and Purpose**

The Notes are being issued pursuant to the Constitution and statutes of the State of New York, including among others, the Village Law and the Local Finance Law, and various bond resolutions duly adopted by the Board of Trustees of the Village as follows:

<u>Date of Authorization</u>	<u>Purpose</u>	<u>Amount Authorized</u>	<u>Amount Outstanding</u>	<u>Amount to Pay</u>	<u>Additional Amount to Be Issued</u>	<u>Amount to Be Issued</u>
03/25/2021	Water System Improvements	\$10,000,000	\$5,700,000	\$ 90,000	\$ 0	\$5,610,000
08/13/2020	Installation of Flocculator	500,000	475,000	25,000	0	450,000
02/24/2022	Replacement of a Culvert on Mill Street	700,000	700,000	0	0	700,000
12/12/2019	Culvert Improvements	500,000	500,000	0	0	500,000
10/14/2021	Sidewalk Improvements	1,800,000	1,800,000	0	0	1,800,000
<b>Total</b>		<b>\$13,500,000</b>	<b>\$9,175,000</b>	<b>\$115,000</b>	<b>\$ 0</b>	<b>\$9,060,000</b>

### **Security and Source of Payment**

Each Note when duly issued and paid for will constitute a contract between the Village and the holder thereof.

The Notes will be general obligations of the Village and will contain a pledge of the faith and credit of the Village for the payment of the principal thereof and the interest thereon. For the payment of such principal of and interest on the Notes, the Village has the power and statutory authorization to levy ad valorem taxes on all taxable real property in the Village, subject to certain statutory limitations imposed by the Tax Levy Limit Law. (See “*Tax Levy Limit Law*,” herein).

Under the Constitution of the State, the Village is required to pledge its faith and credit for the payment of the principal of and interest on the Notes, and the State is specifically precluded from restricting the power of the Village to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted. However, the Tax Levy Limit Law imposes a statutory limitation on the Village’s power to increase its annual tax levy, unless the Village complies with certain procedural requirements to permit the Village to levy certain year-to-year increases in real property taxes. (See “*Tax Levy Limit Law*,” herein).

### **RISK FACTORS**

There are certain potential risks associated with an investment in the Notes, and investors should be thoroughly familiar with this Official Statement, including its appendices, in order to make an informed investment decision. Investors should consider, in particular, the following factors:

The Village’s credit rating could be affected by circumstances beyond the Village’s control. Economic conditions such as the rate of unemployment and inflation, termination of commercial operations by corporate taxpayers and employers, as well as natural catastrophes, could adversely affect the assessed valuation of Village property and its ability to maintain fund balances and other statistical indices commensurate with its current credit rating. As a consequence, a decline in the Village’s credit rating could adversely affect the market value of the Notes.

If and when an owner of any of the Notes should elect to sell a Note prior to its maturity, there can be no assurance that a market will have been established, maintained and continue in existence for the purchase and sale of any of those Notes. The market value of the Notes is dependent upon the ability of holder to potentially incur a capital loss if such Note is sold prior to its maturity.

There can be no assurance that adverse events including, for example, the seeking by another municipality in the State or elsewhere of remedies pursuant to the Federal Bankruptcy Act or otherwise, will not occur which might affect the market price of and the market for the Notes. In particular, if a significant default or other financial crisis should occur in the affairs of the State or any of its municipalities, public authorities or other political subdivisions thereby possibly further impairing the acceptability of obligations issued by those entities, both the ability of the Village to arrange for additional borrowing(s) as well as the market for and market value of outstanding debt obligations, including the Notes, could be adversely affected.

The Village is dependent in part upon financial assistance from the State in the form of State aid as well as grants and loans to be received ("State Aid"). The availability of such monies and the timeliness of such payment may be affected by a delay in the adoption of the State budget, the impact to the State's economy and financial condition due to the COVID-19 outbreak and other circumstances, including State fiscal stress. State aid appropriated and apportioned to the Village can be paid only if the State has such monies available therefor. Should the Village fail to receive all or a portion of the amounts of State Aid expected to be received from the State in the amounts and at the times anticipated, occasioned by a delay in the payment of such moneys, the Village is authorized pursuant to the Local Finance Law ("LFL") to provide operating funds by borrowing in anticipation of the receipt of such uncollected State Aid, however, there can be no assurance that, in such event, the Village will have market access for any such borrowing on a cost effective basis. (See also "State Aid" herein.)

Future amendments to applicable statutes whether enacted by the State or the United States of America affecting the treatment of interest paid on municipal obligations, including the Notes, for income taxation purposes could have an adverse effect on the market value of the Notes (see "Tax Matters" herein).

The enactment of the Tax Levy Limit Law, which imposes a tax levy limitation upon municipalities, school districts and fire districts in the State, including the Village, without providing exclusion for debt service on obligations issued by municipalities and fire districts, including the Village, may affect the market price and/or marketability for the Notes. (See "Tax Levy Limit Law" herein.)

Federal or State legislation imposing new or increased mandatory expenditures by municipalities, school districts and fire districts in the State, including the Village, could impair the financial condition of such entities, including the Village, and the ability of such entities, including the Village, to pay debt service on the Notes.

An outbreak of disease or similar public health threat, such as the COVID-19 outbreak, or fear of such an event, could have an adverse impact on the Village's financial condition and operating results by potentially delaying the receipt of real property taxes or resulting in a delay or reduction by the State in the payment of State aid. Currently, the spread of COVID-19, a respiratory disease caused by a new strain of coronavirus, has spread globally, including to the United States, and has been declared a pandemic by the World Health Organization. The outbreak of the disease has affected travel, commerce and financial markets globally and is affecting economic growth worldwide. The current outbreak has caused the Federal government to declare a national state of emergency. The State has also declared a state of emergency and the Governor has taken steps designed to mitigate the spread and impacts of COVID-19, including closing schools and nonessential businesses. The outbreak of COVID-19 and the dramatic steps taken by the State to address it are expected to negatively impact the State's economy and financial condition. The full impact of COVID-19 upon the State is not expected to be known for some time. Similarly, the degree of the impact to the Village's operations and finances is extremely difficult to predict due to the dynamic nature of the COVID-19 outbreak, including uncertainties relating to its (i) duration, and (ii) severity, as well as with regard to what actions may be taken by governmental and other health care authorities, including the State, to contain or mitigate its impact. The continued spread of the outbreak could have a material adverse effect on the State and municipalities and school districts located in the State, including the Village. The Village is monitoring the situation and will take such proactive measures as may be required to maintain its operations and meet its obligations. (See "Revenues - State Aid" and "Impact of COVID-19" herein.)

## **REMEDIES UPON DEFAULT**

Neither the Notes, nor the proceedings with respect thereto, specifically provide any remedies which would be available to owners of the Notes should the Village default in the payment of principal of or interest on the Notes, nor do they contain any provisions for the appointment of a trustee to enforce the interests of the owners of the Notes upon the occurrence of any such default. Each Note is a general obligation contract between the Village and the owners for which the faith and credit of the Village are pledged and while remedies for enforcement of payment are not expressly included in the Village's contract with such owners, any permanent repeal by statute or constitutional amendment of a bond or note holder's remedial right to judicial enforcement of the contract should, in the opinion of Bond Counsel, be held unconstitutional.



Upon default in the payment of principal of or interest on the Notes, at the suit of the owner, a Court has the power, in proper and appropriate proceedings, to render judgment against the Village. The present statute limits interest on the amount adjudged due to contract creditors to nine per centum per annum from the date due to the date of payment. As a general rule, property and funds of a municipal corporation serving the public welfare and interest have not been judicially subjected to execution or attachment to satisfy a judgment. A Court also has the power, in proper and appropriate proceedings, to order payment of a judgment on such Notes from funds lawfully available therefor or, in the absence thereof, to order the Village to take all lawful action to obtain the same, including the raising of the required amount in the next annual tax levy. In exercising its discretion as to whether to issue such an order, the Court may take into account all relevant factors, including the current operating needs of the Village and the availability and adequacy of other remedies. Upon any default in the payment of the principal of or interest on a Note, the owner of such Note could, among other remedies, seek to obtain a writ of mandamus from a Court ordering the governing body of the Village to assess, levy and collect an *ad valorem* tax, upon all taxable property of the Village subject to taxation by the Village, sufficient to pay the principal of and interest on the Notes as the same shall come due and payable (and interest from the due date to date of payment) and otherwise to observe the covenants contained in the Notes and the proceedings with respect thereto all of which are included in the contract with the owners of the Notes. The mandamus remedy, however, may be impracticable and difficult to enforce. Further, the right to enforce payment of the principal of or interest on the Notes may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws and equitable principles, which may limit the specific enforcement of certain remedies.

In 1976, the New York Court of Appeals, the State's highest court, held in *Flushing National Bank v. Municipal Assistance Corporation for the City of New York*, 40 N.Y.2d 731 (1976), that the New York State legislation purporting to postpone the payment of debt service on New York City obligations was an unconstitutional moratorium in violation of the New York State constitutional faith and credit mandate included in all municipal debt obligations. While that case can be viewed as a precedent for protecting the remedies of holders of bonds or notes of the Village, there can be no assurance as to what a Court may determine with respect to future events, including financial crises as they may occur in the State and in municipalities of the State, that require the exercise by the State of its emergency and police powers to assure the continuation of essential public services. (See also, *Flushing National Bank v. Municipal Assistance Corporation for the City of New York*, 40 N.Y.2d 1088 (1977), where the Court of Appeals described the pledge as a direct Constitutional mandate.)

As a result of the Court of Appeals decision, the constitutionality of that portion of Title 6-A of Article 2 of the Local Finance Law enacted at the 1975 Extraordinary Session of the State legislature authorizing any county, city, town or village with respect to which the State has declared a financial emergency to petition the State Supreme Court to stay the enforcement against such municipality of any claim for payment relating to any contract, debt or obligation of the municipality during the emergency period, is subject to doubt. In any event, no such emergency has been declared with respect to the Village.

Pursuant to Article VIII, Section 2 of the State Constitution, the Village is required to provide an annual appropriation of monies for the payment of due and payable principal of and interest on indebtedness. Specifically, this constitutional provision states: "If at any time the respective appropriating authorities shall fail to make such appropriations, a sufficient sum shall be set apart from the first revenues thereafter received and shall be applied to such purposes. The fiscal officer of any county, city, town, village or school district may be required to set aside and apply such revenues as aforesaid at the suit of any holder of obligations issued for any such indebtedness." This constitutes a specific non-exclusive constitutional remedy against a defaulting municipality or school district; however, it does not apply in a context in which monies have been appropriated for debt service but the appropriating authorities decline to use such monies to pay debt service. However, Article VIII, Section 2 of the Constitution of the State also provides that the fiscal officer of any county, city, town, village or school district may be required to set apart and apply such revenues at the suit of any holder of any obligations of indebtedness issued with the pledge of the faith of the credit of such political subdivision. In *Quirk v. Municipal Assistance Corp.*, 41 N.Y.2d 644 (1977), the Court of Appeals described this as a "first lien" on revenues, but one that does not give holders a right to any particular revenues. It should thus be noted that the pledge of the faith and credit of a political subdivision in the State is a pledge of an issuer of a general obligation bond or note to use its general revenue powers, including, but not limited to, its property tax levy, to pay debt service on such obligations, but that such pledge may or may not be interpreted by a court of competent jurisdiction to include a constitutional or statutory lien upon any particular revenues. The Constitutional provision providing for first revenue set asides does not apply to tax anticipation notes, revenue anticipation notes or bond anticipation notes.

While the courts in the State have historically been protective of the rights of holders of general obligation debt of political subdivisions, it is not possible to predict what a future court might hold.

In prior years, certain events and legislation affecting a holder's remedies upon default have resulted in litigation. While courts of final jurisdiction have generally upheld and sustained the rights of holders of bonds or notes, such courts might hold that future events, including a financial crisis as such may occur in the State or in political subdivisions of the State, may require the exercise by the State or its political subdivisions of emergency and police powers to assure the continuation of essential public services prior to the payment of debt service.

## MUNICIPAL BANKRUPTCY

The undertakings of the Village should be considered with reference, specifically, to Chapter IX of the Bankruptcy Act, 11 U.S.C. §401, et seq., as amended (“Chapter IX”) and, in general, to other bankruptcy laws affecting creditors’ rights and municipalities. Chapter IX permits any political subdivision, public agency or instrumentality that is insolvent or unable to meet its debts (i) to file a petition in a Court of Bankruptcy for the purpose of effecting a plan to adjust its debts provided such entity is authorized to do so by applicable state law; (ii) directs such a petitioner to file with the court a list of a petitioner’s creditors; (iii) provides that a petition filed under such chapter shall operate as a stay of the commencement or continuation of any judicial or other proceeding against the petitioner; (iv) grants priority to debt owed for services or material actually provided within three (3) months of the filing of the petition; (v) directs a petitioner to file a plan for the adjustment of its debts; and (vi) provides that the plan must be accepted in writing by or on behalf of creditors holding at least two-thirds (2/3) in amount or more than one-half (1/2) in number of the listed creditors.

Bankruptcy proceedings by the Village could have adverse effects on holders of bonds or notes including (a) delay in the enforcement of their remedies, (b) subordination of their claims to those supplying goods and services to the Village after the initiation of bankruptcy proceedings and to the administrative expenses of bankruptcy proceedings and (c) imposition without their consent of a reorganization plan reducing or delaying payment of the Notes. The Bankruptcy Code contains provisions intended to ensure that, in any reorganization plan not accepted by at least a majority of a class of creditors such as the holders of general obligation bonds, such creditors will have the benefit of their original claim or the “indubitable equivalent”. The effect of these and other provisions of the Bankruptcy Code cannot be predicted and may be significantly affected by judicial interpretation.

Accordingly, enforceability of the rights and remedies of the owners of the Notes, and the obligations incurred by the Village, may become subject to Chapter IX and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditor’s rights generally, now or hereafter in effect, equity principles which may limit the specific enforcement under State law of certain remedies, the exercise by the United States of America of the powers delegated to it by the Constitution, the reasonable and necessary exercise, in certain exceptional situations, of the police powers inherent in the sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose and the limitations on remedies against public agencies in the State. Bankruptcy proceedings, or the exercise of powers by the federal or State government, if initiated, could subject the owners of the Notes to judicial discretion, interpretation and of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

The State has consented (see Title 6-A of the Local Finance Law) that any municipality in the State may file a petition with any United States district court or court of bankruptcy under any provision of the laws of the United States, now or hereafter in effect for the composition or adjustment of municipal indebtedness. However, it is noted that there is no record of any recent filings by a New York municipality. Since the New York City fiscal crisis in 1975, the State has legislated a finance control or review board and assistance corporations to monitor and restructure finance matters in addition to New York City, for the Cities of Yonkers, Troy and Buffalo and for the Counties of Nassau and Erie. Similar active intervention pursuant to State legislation to relieve fiscal stress for the Village in the future cannot be assured.

No current state law purports to create any priority for holders of the Notes should the Village be under the jurisdiction of any court, pursuant to the laws of the United States, now or hereafter in effect, for the composition or adjustment of municipal indebtedness.

The above references to the Bankruptcy Act are not to be construed as an indication that the Village is currently considering or expects to resort to the provisions of the Bankruptcy Act.

### Financial Control Boards

Pursuant to Article IX Section 2(b)(2) of the State Constitution, any municipality in the State may request the intervention of the State in its “property, affairs and government” by a two-thirds vote of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership. This has resulted in the adoption of special acts for the establishment of public benefit corporations with varying degrees of authority to control the finances (including debt issuance) of the Cities of Buffalo, Troy and Yonkers and the County of Nassau. The specific authority, powers and composition of the financial control boards established by these acts varies based upon circumstances and needs. Generally, the State legislature has granted such boards the power to approve or disapprove budget and financial plans and to issue debt on behalf of the municipality, as well as to impose wage and/or hiring freezes and in certain cases approve or disapprove collective bargaining agreements. Implementation is generally left to the discretion of the board of the public benefit corporation. Such a State financial control board was first established for New York City in 1975. In addition, upon the issuance of a certificate of necessity of the Governor reciting facts which in the judgment of the Governor constitute an emergency requiring enactment of such laws, with the concurrences of two-thirds of the members elected in each house of the State legislature, the State is authorized to intervene in the “property, affairs and governments” of local government units. This occurred in the case of the County of Erie in 2005. The authority of the State to intervene in the financial affairs of a local government is further supported by Article VIII, Section 12 of the Constitution which declares it to be the duty of the State legislature to restrict, subject to other provisions of the Constitution, the power of taxation, assessment, borrowing money and contracting indebtedness and loaning the credit of counties, cities, towns and villages so as to prevent abuses in taxation and assessment and in contracting indebtedness by them.

In 2013, the State established a new state advisory board to assist counties, cities, towns and villages in financial distress. The Financial Restructuring Board for Local Governments (the “FRB”), is authorized to conduct a comprehensive review of the finances and operations of any such municipality deemed by the FRB to be fiscally eligible for its services upon request by resolution of the municipal legislative body and concurrence of its chief executive. The FRB is authorized to make recommendations for, but cannot compel improvement of fiscal stability, management and delivery of municipal services, including shared services opportunities and is authorized to offer grants and/or loans of up to \$5,000,000 through a Local Government Performance and Efficiency Program to undertake certain recommendations. If a municipality agrees to undertake the FRB recommendations, it will be automatically bound to fulfill the terms in order to receive the aid.

The FRB is also authorized to serve as an alternative arbitration panel for binding arbitration.

Although from time to time there have been proposals for the creation of a statewide financial control board with broad authority over local governments in the State, the FRB does not have emergency financial control board powers to intervene in the finances and operations of entities such as the public benefit corporations established by special acts as described above.

Several municipalities in the State may be presently working with the FRB. The Village has not applied to the FRB and does not reasonably anticipate submission of a request to the FRB for a comprehensive review of its finances and operations. School districts and fire districts are not eligible for FRB assistance.

### **No Past Due Debt**

No principal or interest payment on Village indebtedness is past due. The Village has never defaulted in the payment of the principal of and/or interest on any indebtedness.

## **THE VILLAGE**

### **Description**

The Village of Nyack is an Incorporated Village (Incorporated in 1883) of which approximately 90% is located in the Town of Orangetown and 10% in the Town of Clarkstown. It has a population of about 7,303 according to the U.S. Census Bureau. The Village is approximately 1.6 square miles, situated on the Hudson River about 20 miles northwest of New York City. It is bordered by the Village of Upper Nyack to the North, the Hudson River to the East, and the Incorporated Village of South Nyack to the South.

The Village is distinguished by charming antique shops, picturesque park lands and cultural resources. It is primarily residential in nature consisting of single family homes and primary education is provided by the Nyack Central School District. Residents find employment in the Village or commute to New York City, Westchester County and Northern New Jersey.

Several primary State and U.S. Highways including the State Thruway, Palisades Interstate Parkway, Garden State Parkway and U.S. Routes 9W and 17 run through the County. The Metro-North Commuter Railroad division of the New York Metropolitan Transportation Authority, in cooperation with New Jersey Transit, provides rail service to Manhattan via PATH rapid transit. Air transportation is provided by the three New York Metropolitan Airports (Kennedy, LaGuardia and Newark), Westchester County Airport and Stewart International Airport in Newburgh, New York.

The Village is serviced by the Orangetown Police Department, Nyack Joint Fire District, Orange & Rockland Utilities (gas & electric), and Nyack Water Department.

Hospital services are provided by Bon Secours Good Samaritan Hospital, Helen Hayes Hospital and Nyack Hospital which offer residents of the County a wide range of inpatient and outpatient services.

### **Governmental Organization**

Subject to the provisions of the State Constitution, the Village operates pursuant to the Village Law, the Local Finance Law, other laws generally applicable to the Village, and any special laws applicable to the Village. Under such laws, there is no authority for the Village to have a charter, but pursuant to the Village Law and other laws generally applicable to home rule, the Village may from time to time adopt local laws.

The Village was incorporated on February 27, 1883. The Village operates under a “Council-Manager” form of government that was instituted in May 2010. The appointed position of Village Administrator was created to serve as the chief administrative officer of the Village, under the policy direction of the Village Board of Trustees. The Village Board of Trustees is a five-member board that are elected at-large to staggered 2 year terms.

The Village employs 38 full-time and 18 part-time employees in all departments. The full-time employees are covered by IBEW Union contract which expires on May 31, 2025.

### DEMOGRAPHIC AND STATISTICAL INFORMATION

The following tables present certain comparative demographic and statistical information regarding the Village, Towns of Orangetown, Clarkstown and County of Rockland.

#### Population Trends

<u>Year</u>	<u>Village</u>	<u>Town of Clarkstown</u>	<u>Town of Orangetown</u>	<u>Rockland County</u>
1990	6,558	79,346	46,742	265,475
2000	6,737	82,082	47,711	286,453
2010	6,765	84,137	49,212	311,687
2014	6,857	85,801	49,905	318,186
2021	7,303	86,783	48,835	336,485

Sources: U.S. Bureau of the Census Population Reports.

#### Income Data

	Per Capita Money Income			
	<u>1990</u>	<u>2000</u>	<u>2010</u>	<u>2021</u>
Village of Nyack	\$24,596	\$32,699	\$33,127	\$63,521
Town of Clarkstown	23,671	34,430	42,042	53,681
Town of Orangetown	21,325	33,170	40,100	59,046
County of Rockland	20,195	28,082	34,304	41,041
State of New York	16,501	23,389	30,948	43,208

  

	Median Household Income			
	<u>1990</u>	<u>2000</u>	<u>2010</u>	<u>2021</u>
Village of Nyack	\$36,569	\$52,534	\$51,244	\$95,000
Town of Clarkstown	68,741	91,827	97,940	123,507
Town of Orangetown	51,493	70,477	91,175	128,699
County of Rockland	60,479	78,806	82,245	99,707
State of New York	32,965	51,591	55,217	75,157

Source: United States Bureau of the Census

\*Note: Based on American Community Survey 5-Year Estimates (2017-2021)

## Selected Listing of Larger Employers - in the County of Rockland

<u>Name of Employer</u>	<u>Nature of Business</u>	<u>Number of Employees</u>
Hamaspik of Rockland County	Health Services	1,993
Nyack Hospital	Pharmaceuticals	1,850
Bon Secours Good Samaritan Hospital	Hospital	1,751
Rockland Psychiatric Center	Nursing Home	1,219
Jawonio, Inc.	Health Services	1,100
Helen Hayes Hospital	Hospital	891
Verizon Wireless	Communications	850
Northern Services Group	Nursing Home	832
St. Dominic's Home	Nursing Home	820
Orange & Rockland Utilities	Public Utility	819
A&T Healthcare	Health Services	800
ARC of Rockland	Health Services	715
Pfizer, Inc.	Pharmaceuticals	700
Camp Venture	Health Services	680
Par Pharmaceuticals, Inc.	Pharmaceuticals	636
Community Home Health & Aid Services	Health Services	600
Lamont-Doherty Earth Observatory	Earth Science Research	560

Source: Rockland County 2021 Comprehensive Annual Financial Report.

### Unemployment Rate Statistics

Unemployment statistics are not available for the Village. The information set forth below with respect to the Town, County and the State is included for information purposes only. It should not be inferred from the inclusion of such data in this Official Statement that the Village is necessarily representative of the Town, County or the State.

<u>Annual Averages:</u>	<u>Town of Clarkstown (%)</u>	<u>Town of Orangetown (%)</u>	<u>Rockland County (%)</u>	<u>New York State (%)</u>
2017	4.3	4.5	4.3	4.6
2018	3.6	3.9	3.7	4.1
2019	3.5	3.6	3.6	4.0
2020	7.7	7.7	8.1	10.0
2021	4.4	4.5	4.6	7.2
2022 (11 Month Average)	2.8	3.0	2.8	3.8

Source: Department of Labor, State of New York

## INDEBTEDNESS OF THE VILLAGE

### Constitutional Requirements

The New York State Constitution limits the power of the Village (and other municipalities and school districts of the State) to issue obligations and to otherwise contract indebtedness. Such constitutional and statutory limitations include the following, in summary form, and are generally applicable to the Village and the Notes.

**Purpose and Pledge.** The Village shall not give or loan any money or property to or in aid of any individual or private corporation or private undertaking or give or loan its credit to or in aid of any of the foregoing or any public corporation.

The Village may contract indebtedness only for a Village purpose and shall pledge its faith and credit for the payment of principal of and interest thereon.

**Payment and Maturity.** Except for certain short-term indebtedness contracted in anticipation of taxes, or to be paid in one of the two fiscal years immediately succeeding the fiscal year in which such indebtedness was contracted, indebtedness shall be paid in annual installments commencing no later than two years after the date such indebtedness shall have been contracted and ending no later than the expiration of the period of probable usefulness of the object or purpose determined by statute or, in the alternative, the weighted average period of probable usefulness of the several objects or purposes for which such indebtedness is to be contracted; no installment may be more than fifty per centum in excess of the smallest prior installment, unless the Village has authorized the issuance of indebtedness having substantially level or declining annual debt service. The Village is required to provide an annual appropriation for the payment of interest due during the year on its indebtedness and for the amounts required in such year for amortization and redemption of its serial bonds, bond anticipation notes and capital notes.

**General.** The Village is further subject to constitutional limitation by the general constitutionally imposed duty on the State Legislature to restrict the power of taxation, assessment, borrowing money, contracting indebtedness and loaning the credit of the Village so as to prevent abuses in the exercise of such powers; however, as has been noted under "*Security and Source of Payment*", the State Legislature is prohibited by a specific constitutional provision from restricting the power of the Village to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted. However, the Tax Levy Limit Law imposes a statutory limitation on the Village's power to increase its annual tax levy, unless the Village complies with certain procedural requirements to permit the Village to levy certain year-to-year increases in real property taxes. (See "*Tax Levy Limit Law*," herein).

### **Statutory Procedure**

In general, the State Legislature has authorized the power and procedure for the Village to borrow and incur indebtedness subject, of course, to the constitutional and statutory provisions set forth above. The power to spend money, however, generally derives from other law, including the Village Law and the General Municipal Law.

Pursuant to the Local Finance Law, the Village authorizes the incurrence of indebtedness by the adoption of a bond resolution approved by at least two-thirds of the members of the Board of Trustees, except in the event that the Village determines to subject the bond resolution to voter approval by mandatory referendum, in which case only a three-fifths vote is required.

The Local Finance Law also provides a twenty-day statute of limitations after publication of a bond resolution which, in effect, estops thereafter legal challenges to the validity of obligations authorized by such bond resolution except for alleged constitutional violations. The Village has complied with this estoppel procedure with respect to the Notes.

Each bond resolution usually authorizes the construction, acquisition or installation of the object or purpose to be financed, sets forth the plan of financing and specifies the maximum maturity of the bonds subject to the legal (Constitution, Local Finance Law and case law) restrictions relating to the period of probable usefulness with respect thereto.

Each bond resolution also authorizes the issuance of bond anticipation notes prior to the issuance of serial bonds. Statutory law in New York permits notes to be renewed each year provided that principal is amortized and provided that such renewals do not (with certain exceptions) extend more than five years beyond the original date of borrowing. However, notes issued in anticipation of the sale of serial bonds for assessable improvements are not subject to such five-year limit and may be renewed subject to annual reductions of principal for the entire period of probable usefulness of the purpose for which such notes were originally issued. (See "*Payment and Maturity*" under "*Constitutional Requirements*").

In addition, under each bond resolution, the Board of Trustees may delegate, and has delegated, power to issue and sell bonds and notes, to the Village Treasurer, the chief fiscal officer of the Village.

In general, the Local Finance Law contains similar provisions providing the Village with power to issue general obligation revenue anticipation notes, tax anticipation notes, deficiency notes and budget notes.

**Debt Limit.** The Village has the power to contract indebtedness for any Village purpose so long as the aggregate outstanding principal amount thereof shall not exceed seven per centum of the average full valuation of taxable real estate of the Village and subject to certain enumerated exclusions and deductions such as water and certain sewer facilities and cash or appropriations for current debt service. The constitutional and statutory method for determining the full valuation is by dividing the assessed valuation of taxable real estate by the respective equalization rates assigned to each assessment roll. Such equalization rates are the ratios which each of such assessed valuations bear to the respective full valuation of such year, as assigned by the New York State Office of Real Property Services. The State Legislature is required to prescribe the manner by which such ratios shall be determined. Average full valuation is determined by adding the full valuations for the most recently completed assessment roll and the four immediately preceding assessments rolls and dividing the resulting sum of such addition by five.

There is no constitutional limitation on the amount that may be raised by the Village by tax on real estate in any fiscal year to pay principal and interest on all indebtedness. However, the Tax Levy Limit Law, imposes a statutory limitation on the power of the Village to increase its annual tax levy. The amount of such increases is limited by the formulas set forth in the Tax Levy Limit Law. (See “*Tax Levy Limit Law*,” herein).

The following pages set forth certain details with respect to the indebtedness of the Village.

**Computation of Debt Limit and Calculation of Net Debt Contracting Margin**  
(As of February 1, 2023)

Fiscal Year Ending <u>May 31:</u>	<u>Full Valuation</u>
2017	\$ 711,026,983
2018	705,848,069
2019	755,520,387
2020	803,398,479
2021	857,506,860
Total Five Year Full Valuation	\$3,833,300,778
Average Five Year Full Valuation	766,660,156
Debt Limit - 7% of Average Full Valuation	53,666,211
 Inclusions:	
General Purpose Bonds	3,449,000
Water Bonds	715,000
Bond Anticipation Notes	<u>9,175,000</u>
Total Inclusions	<u>13,339,000</u>
 Exclusions:	
Excluded Water Debt	715,000
Appropriations for Bonds	104,000
Appropriations for Notes	<u>115,000</u>
Total Exclusions	<u>934,000</u>
Total Net Indebtedness Before Issuing the Notes	<u>12,405,000</u>
The Notes	9,060,000
Less: BANs Being Redeemed By the Notes	<u>9,060,000</u>
Net Effect of the Notes	<u>0</u>
Total Net Indebtedness Before Issuing the Notes	<u>12,405,000</u>
Net Debt Contracting Margin	<u><u>\$41,261,211</u></u>
Percent of Debt Contracting Margin Exhausted (%)	23.12

**Details of Short-Term Indebtedness Outstanding**  
(As of November 22, 2022)

As of the date of this Statement, the Village has bond anticipation notes outstanding in the amount of \$9,175,000. Details of such notes are as follows:

<u>Purpose</u>	<u>Amount Outstanding</u>	<u>Maturity Date</u>
New Flocculator for Water Plant	\$ 475,000	02/23/2023
Water System Improvements	5,700,000	02/23/2023
Replacement of a Culvert on Mill Street	700,000	02/23/2023
Improvement to Culverts	500,000	02/23/2023
Construction of Sidewalks Improvements	1,800,000	02/23/2023
	<hr/>	
Total	\$9,175,000 <sup>a</sup>	
	<hr/>	

a. To be redeemed by the issuance of the Notes and available funds in the amount \$115,000.

The Village expects to receive grants to offset all or part of the cost of the above projects. To the extent the expected grant funds are not received on or prior to the maturity dates in amounts sufficient to pay the outstanding amounts, the Village may determine to issue renewal notes.

On September 16, 2022 the Village entered into a Water Infrastructure Emergency Financial Assistant Agreement with New York State Environmental Facilities Corporation in the amount of \$3,000,000. This loan is at zero-interest for the first year and can be redeemed by the issuance of BANs or bonds.

**Debt Service Requirements - Outstanding Bonds <sup>a</sup>**

Fiscal Year Ending			
<u>May 31:</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2023	\$684,000	\$109,232	\$793,232
2024	670,000	93,236	763,236
2025	565,000	79,315	644,315
2026	580,000	67,009	647,009
2027	575,000	54,012	629,012
2028	435,000	41,009	476,009
2029	450,000	30,167	480,167
2030	190,000	20,569	210,569
2031	190,000	14,156	204,156
2032	195,000	7,523	202,523
2033	60,000	1,710	61,710
	<hr/>	<hr/>	<hr/>
Totals	\$4,594,000	\$517,936	\$5,111,936
	<hr/>	<hr/>	<hr/>

a. Does not reflect payments made to date in the 2022–2023 fiscal year.

**Capital Project Plans**

The Village is generally responsible for providing services as required to the Village residents on a Village-wide basis. The Village maintains a road system necessitating road resurfacing and improvements and the acquisition of machinery and, from time to time, equipment. Additionally, although not a capital expense, such road system requires annual expenditures for snow removal as well as regular general operating maintenance expenses. In addition, the Village owns, operates, maintains and improves its own water department. In general, needs for capital funding for the above described projects which the Village has responsibility are anticipated to continue and to be in approximately the same amounts or less than has prevailed in the past.



### Authorized But Unissued Indebtedness

The Village has authorized but unissued debt outstanding in the amount of \$4,200,000 for water improvements within the Village.

### Trend of Village Indebtedness

The following table represents the outstanding indebtedness of the Village at the end of the last five preceding fiscal years.

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Bonds	\$6,000,000	\$5,305,000	\$4,650,000	\$4,610,000	\$4,594,000
BAN's	1,155,000	3,655,000	3,165,000	4,955,000	9,175,000
Other Debt	0	0	0	0	0
<b>Total Debt Outstanding</b>	<b><u>\$7,155,000</u></b>	<b><u>\$8,960,000</u></b>	<b><u>\$7,815,000</u></b>	<b><u>\$9,565,000</u></b>	<b><u>\$13,769,000</u></b>

### Calculation of Estimated Overlapping and Underlying Indebtedness

<u>Overlapping Units</u>	<u>Date of Report</u>	<u>Percentage Applicable (%)</u>	<u>Applicable Total Indebtedness</u>	<u>Applicable Net Indebtedness</u>
County of Rockland	08/11/22	1.89	\$8,342,441	\$8,098,083
Town of Clarkstown	11/04/22	0.55	566,329	558,079
Town of Orangetown	05/26/22	8.28	4,808,493	2,041,848
Nyack UFSD	12/26/21	23.46	3,068,568	3,068,568
Nyack Joint Fire District	06/18/21	20.00	395,000	395,000
<b>Totals</b>			<b><u>\$17,180,831</u></b>	<b><u>\$14,161,578</u></b>

Sources: Annual Reports of the respective units for the most recently completed fiscal year on file with the Office of the State Comptroller or more recently published Official Statements.

### Debt Ratios (As of February 1, 2023)

	<u>Amount</u>	<u>Per Capita</u> <sup>a</sup>	<u>Percentage Of Full Value (%)</u> <sup>b</sup>
Total Direct Debt	\$13,339,000	\$1,827	1.556
Net Direct Debt	12,405,000	1,699	1.447
Total Direct & Applicable Total Overlapping Debt	30,519,831	4,179	3.559
Net Direct & Applicable Net Overlapping Debt	26,566,578	3,638	3.098

a. The current estimated population of the Village is 7,303.

b. The full valuation of taxable real property in the Village is \$857,506,860.

## FINANCES OF THE VILLAGE

### Independent Audit

The financial statements of the Village are audited each year by an independent public accountant. The latest year for which an audit report is available is the fiscal year ending May 31, 2019. As required by law, the Village also prepares an Annual Financial Report Update Document ("AUD" – unaudited and not prepared in accordance with Generally Accepted Accounting Principles) for submission to the office of the State Comptroller. A copy of the unaudited annual financial report update document for the fiscal year ended May 31, 2021 is attached as Appendix B. A summary of operating results for the past five fiscal years are presented in Appendix A.

#### *Fund Structure and Accounts*

The Village utilizes fund accounting to record and report its various service activities. A fund represents both a legal and an accounting entity which segregates the transactions of specific programs in accordance with special regulations, restrictions or limitations.

There are three basic fund types: (1) governmental funds that are used to account for basic services and capital projects; (2) proprietary funds that account for operations of a commercial nature; and, (3) fiduciary funds that account for assets held in a trustee capacity. Account groups, which do not represent funds, are used to record fixed assets and long-term obligations that are not accounted for in a specific fund.

The Village presently maintains the following governmental funds: General Fund, and the Capital Projects Fund. Fiduciary funds consist of a Trust and Agency Fund. There are no proprietary funds. Account groups are maintained for fixed assets and long-term debt.

#### *Basis of Accounting*

The Village's governmental funds are accounted for on a modified accrual basis of accounting. Under the modified accrual basis, revenues are recognized when they become susceptible to accrual - that is, when they become "measurable" and "available" to finance expenditures to the current period. Revenues which are susceptible to accrual include real property taxes, intergovernmental revenues (State and Federal aid) and operating transfers.

Expenditures are generally recognized under the modified accrual basis of accounting, that is when the related fund liability is incurred. Exceptions to this general rule are (1) payments to employee retirement systems which are recorded in the General Long-Term Debt Account Group and recognized as an expenditure when due, and, (2) unmaturing interest on general long-term debt which is recognized when due.

### Investment Policy

Pursuant to State law, including Sections 10 and 11 of the General Municipal Law (the "GML"), the Village is generally permitted to deposit moneys in banks or trust companies located and authorized to do business in the State. All such deposits, including special time deposit accounts and certificates of deposit, in excess of the amount insured under the Federal Deposit Insurance Act, are required to be secured in accordance with the provisions of and subject to the limitations of Section 10 of the GML.

The Village may also temporarily invest moneys in: (1) obligations of the United States of America; (2) obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America; (3) obligations of the State of New York; (4) with the approval of the New York State Comptroller, in tax anticipation notes or revenue anticipation notes issued by any municipality, school district, or district corporation, other than those notes issued by the Village, itself; (5) certificates of participation issued in connection with installment purchase agreements entered into by political subdivisions of the State pursuant to Section 109-b(10) of the GML; (6) obligations of a New York public benefit corporation which are made lawful investments for municipalities pursuant to the enabling statute of such public benefit corporation; or (7) in the case of moneys held in certain reserve funds established by the Village pursuant to law, in obligations of the Village.

All of the foregoing investments are required to be payable or redeemable at the option of the owner within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable in any event, at the option of the owner, within two years of the date of purchase. Unless registered or inscribed in the name of the Village, such instruments and investments must be purchased through, delivered to and held in custody of a bank or trust company in the State pursuant to a written custodial agreement as provided by Section 10 of the GML.

The Board of Trustees of the Village has adopted an investment policy and such policy conforms with applicable laws of the State governing the deposit and investment of public moneys. All deposits and investments of the Village are made in accordance with such policy.

### **Budgetary Procedures**

The Village Treasurer is responsible for the preparation and submission of the tentative annual budget to the Board no later than January 1. The Village Board reviews the tentative budget and prepares a preliminary budget and a public hearing is held thereon no later than April 15. Subsequent to the public hearing, revisions (if any) are made. The budget is then adopted by the Village Board by February 1 as final for the year beginning May 1. The budget is not subject to referendum. Municipal law provides that no expenditures may exceed budgeted appropriations. Any revisions to the annual budget proposed to accommodate changes in departments or other programs must be adopted by resolution of the Village Board. The annual budget is subject to the provisions of the Tax Levy Limit Law. (See "*Tax Levy Limit Law*" herein).

### **Financial Operations**

The Village Treasurer functions as the chief fiscal officer as provided in Section 2.00 of the Local Finance Law; in this role, the Village Treasurer is responsible for the Village's accounting and financial reporting activities. In addition, the Mayor is also the Village's budget officer and prepares the annual tentative budget for submission to the Board of Trustees. Budgetary control during the year is the responsibility of the Village Treasurer. Pursuant to Section 30.00 of the Local Finance Law, the Village Treasurer has been authorized to issue or renew certain specific types of notes. As required by law, the Village Treasurer must execute an authorizing certificate which then becomes a matter of public record.

The Board of Trustees, as a whole, serves as the finance board of the Village and is responsible for authorizing, by resolution, all material financial transactions such as operating and capital budgets and bonded debt.

Village finances are operated primarily through the General Fund. All real property taxes and most of the other Village revenues are credited to this fund. Current operating expenditures are paid from this fund subject to available appropriations. Capital projects and selected equipment purchases are accounted for in special capital projects funds. The Village observes a June 1 - May 31 fiscal year for operating and reporting purposes.

### **Revenues**

The Village receives most of its revenues from a real property tax on all non-exempt real property situated within the Village, non-property taxes, departmental income and State aid. According to the unaudited financial statements for the fiscal year ending May 31, 2021, non-property taxes were \$407,187, most of which was attributed to the Utility Receipts Tax. Departmental Income was \$148,316 of which approximately 75% of such amount was for fees. A summary of such revenues for the five most recently completed fiscal years and budgeted revenues for the current fiscal year may be found in Appendix A.

#### *Real Property Taxes*

See "*Tax Information*", herein.

See also "*Tax Levy Limit Law*" herein.

#### *State Aid*

The Village receives financial assistance from the State. If the State should not adopt its budget in a timely manner, municipalities and school districts in the State, including the Village, may be affected by a delay in the payment of State aid. Additionally, if the State should experience difficulty in borrowing funds in anticipation of the receipt of State taxes in order to pay State aid to municipalities and school districts in the State, including the Village, in this year or future years, the Village may be affected by a delay in the receipt of State aid until sufficient State taxes have been received by the State to make State aid payments.

Based on the unaudited financial results of the Village, the Village received approximately 6.92% of its General Fund revenue from State aid in the fiscal year ending May 31, 2021. The Village expects to receive approximately 5.06% of its General Fund revenue from State aid in fiscal 2022. There is no assurance, however, that State appropriations for aid to municipalities will continue, either pursuant to existing formulas or in any form whatsoever. The State is not constitutionally obligated to maintain or continue such aid and, in fact, the State has drastically reduced funding to municipalities and school districts in certain years in order to balance its own budget.

Although the Village cannot predict at this time whether there will be any delays and/or reductions in State aid in the current year or in future fiscal years, the Village may be able to mitigate the impact of any delays or reductions by reducing expenditures, increasing revenues appropriating other available funds on hand, and/or by any combination of the foregoing.

Should the Village fail to receive State aid expected from the State in the amounts and at the times expected, occasioned by a delay in the payment of such monies, the Village is authorized by the Local Finance Law to provide operating funds by borrowing on account of the uncollected State aid.

The following table sets forth the percentage of the Village’s General Fund revenue comprised of State aid for each of the fiscal years 2017 through 2021 and, as budgeted, for the fiscal year ending 2022 and 2023.

Year Ended May 31:	Village General Fund		State Aid To Revenues (%)
	Town Revenues	State Aid	
2017	\$5,732,800	\$384,949	6.71
2018	6,820,393	287,647	4.22
2019	5,876,670	232,414	3.95
2020	5,883,045	375,161	6.38
2021	5,537,726	383,188	6.92
2022 (Budgeted)	5,798,711	293,580	5.06
2023 (Budgeted)	5,993,533	329,575	5.50

Source: Audited financial statements (2017-2019), Unaudited Annual Financial Report (2020-2021) and the adopted budgets for the fiscal years ended May 31, 2022 and 2023.

### Expenditures

The major categories of expenditure for the Village are General Government Support, Public Safety, Transportation, Home & Community Services and Employee Benefits. A summary of the expenditures for the five most recently completed fiscal years and the estimated expenditures for the current fiscal year may be found in Appendix A.

### The State Comptroller’s Fiscal Stress Monitoring System and OSC Compliance Reviews

The New York State Comptroller has reported that New York State’s school districts and municipalities are facing significant fiscal challenges. As a result, the Office of the State Comptroller has developed a Fiscal Stress Monitoring System (“FSMS”) to provide independent, objectively measured and quantifiable information to school districts and municipal officials, taxpayers and policy makers regarding the various levels of fiscal stress under which the State’s school districts and municipalities are operating.

The fiscal stress scores are based on financial information submitted as part of each school ST-3 report filed with the State Education Department annually, and each municipality’s annual report filed with the Office of the State Comptroller (OSC). Using financial indicators that include year-end fund balance, cash position and patterns of operating deficits, the system creates an overall fiscal stress score which classifies whether a school district or municipality is in “significant fiscal stress”, in “moderate fiscal stress,” as “susceptible to fiscal stress” or “no designation”. Entities that do not accumulate the number of points that would place them in a stress category will receive a financial score but will be classified in a category of “no designation.” This classification should not be interpreted to imply that the entity is completely free of fiscal stress conditions. Rather, the entity’s financial information, when objectively scored according to the FSMS criteria, did not generate sufficient points to place them in one of the three established stress categories.

The most current applicable report of OSC designates the Village as “No Designation” (Fiscal Score: 5.0%, Environmental Score: 0.0%). More information on the FSMS may be obtained from the Office of the State Comptroller.

In addition, OSC helps local government officials manage government resources efficiently and effectively. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through its audits, which identify opportunities for improving operations and governance. The Village has not been audited in the previous five years.

## Employee Pension System

Substantially all employees of the Village are members of the New York State and Local Employees' Retirement System (the "Retirement System" or "ERS"). The Retirement System is a cost-sharing multiple public employer retirement system. The obligation of employers and employees to contribute and the benefits to employees are governed by the New York State Retirement System and Social Security Law (the "Retirement System Law"). The Retirement System offers a wide range of plans and benefits which are related to years of service and final average salary, vesting of retirement benefits, death and disability benefits and optional methods of benefit payments. All benefits generally vest after five years of credited service. The Retirement System Law generally provides that all participating employers in the Retirement System are jointly and severally liable for any unfunded amounts. Such amounts are collected through annual billings to all participating employers. Generally, all employees, except certain part-time employees, participate in the Retirement System. The Retirement System is non-contributory with respect to members hired prior to July 27, 1976. Generally, all members hired on or after July 27, 1976 through and including December 31, 2009 must contribute three percent of their gross annual salary towards the costs of retirement programs until they attain ten years in the Retirement Systems, at such time contributions become voluntary. On December 10, 2009, the Governor signed into law the creation of a new Tier 5, which is effective for ERS employees hired on or after January 1, 2010 through March 31, 2012. Tier 5 employees contribute 3% of their salaries and there is no provision for these contributions to cease for Tier 5 employees after a certain period of service. Additionally, on March 16, 2012, the Governor signed into law the new Tier 6 pension program, effective for ERS employees hired on or after April 1, 2012. The Tier 6 legislation provides for increased employee contribution rates of between 3% and 6%, an increase in the retirement age from 62 years to 63 years, a readjustment of the pension multiplier, and a change in the time period for final average salary calculation from 3 years to 5 years. Tier 6 employees will vest in the system after five years of employment and will continue to make employee contributions throughout employment.

As a result of significant capital market declines in the recent past, in certain years the State's Retirement System portfolio has experienced negative investment performance and severe downward trends in market earnings. As a result of the foregoing, it is anticipated that the employer contribution rate for the State's Retirement System in future years may remain higher than the minimum contribution rate established under applicable law. Since 2010, various forms of legislation have been enacted to allow local governments and school districts the option of amortizing required contributions to the Retirement System. However, although these options reduce near term payments, it will require higher than normal contributions in later years.

The Village has decided not to amortize any pension contributions.

The following table sets forth the required contributions for the five most recently completed fiscal years:

### Required Contributions to the Retirement Systems

Fiscal Year <u>Ending May 31:</u>	<u>ERS</u>
2018	\$457,884
2019	457,884
2020	453,385
2021	482,849
2022	485,254
2023 (Budgeted)	362,814

### Other Post-Employment Benefits

Accounting rules now require governmental entities, such as the Village, to account for post-retirement health care benefits as it accounts for vested pension benefits. GASB Statement No. 75 ("GASB 75") described below requires such accounting.

GASB 75 of the Governmental Accounting Standards Board ("GASB"), requires state and local governments to account for and report their costs associated with post-retirement healthcare benefits and other non-pension benefits, referred to as "Other Post-Employment Benefits" ("OPEB"). GASB 75 generally requires that employers account for and report the annual cost of the OPEB and the outstanding obligations and commitments related to OPEB in essentially the same manner as they currently do for pensions. Under previous rules, these benefits have generally been administered on a pay-as-you-go basis and have not been reported as a liability on governmental financial statements. Only current payments to existing retirees were recorded as an expense.

GASB 75 requires that state and local governments adopt the actuarial methodologies to determine annual OPEB costs. Annual OPEB cost for most employers will be based on actuarially determined amounts that, if paid on an ongoing basis, generally would provide sufficient resources to pay benefits as they come due.

During the year ended May 31, 2018, the Village adopted GASB 75, which eliminates GASB 45. Under GASB 75, based on actuarial valuation, an annual required contribution (“ARC”) will be determined for each state or local government. The ARC is the sum of (a) the normal cost for the year (the present value of future benefits being earned by current employees) plus (b) amortization of the unfunded accrued liability (benefits already earned by current and former employees but not yet provided for), using an amortization period of not more than 30 years. If a municipality contributes an amount less than the ARC, a net OPEB obligation will result, which is required to be recorded as a liability on its financial statements.

GASB 75 establishes new standards for recognizing and measuring OPEB liabilities, deferred outflows of resources, deferred inflows of resources, and expense/expenditures to provide more transparent reporting and useful information about the liability and cost of benefits. Municipalities and school districts are required to account for OPEB within the financial statements rather than only noted in the footnotes as previously required by GASB 45. It is measured as of a date no earlier than the end of the employer’s prior fiscal year and no later than the employer’s current fiscal year. The discount rate is based on 20-year, tax exempt general obligation municipal bonds. There is no amortization of prior service cost.

Those that have 200 or more participants are required to have a full actuarial valuation annually. Plans with fewer than 200 participants are required to have a full valuation every two years.

## REAL PROPERTY TAXES

### Real Property Taxes

The Village derives its power to levy an ad valorem real property tax from the Constitution of the State. The Village's power to levy real property taxes, other than for debt service and certain other purposes, is limited by the State Constitution to two percent of the five-year average full valuation of taxable property of the Village. (See “*Tax Limit*” herein.) The State Board of Real Property Services annually establishes State Equalization Rates for all localities in the State, which are determined by statistical sampling of market sales/assessment studies. The equalization rates are used in the calculation and distribution of certain State aids and are used by many localities in the calculation or debt contracting and real property taxing limitations.

The following table sets forth the percentage of the Village’s General Fund revenue (excluding other financing sources) comprised of real property taxes for each of the fiscal years 2017 through 2021 and the budgeted amount for 2022 and 2023.

Fiscal Year <u>Ending May 31:</u>	<u>Total Revenue</u>	<u>Property Taxes</u>	<u>Property Taxes To Revenues (%)</u>
2017	\$5,732,800	\$3,446,521	60.12
2018	6,820,393	3,514,376	51.53
2019	5,876,670	3,589,508	61.08
2020	5,883,045	3,712,190	63.10
2021	5,537,726	3,875,462	69.98
2022 (Budgeted)	5,798,711	3,998,731	68.96
2023 (Budgeted)	5,993,533	4,110,608	68.58

Source: Audited financial statements (2017-2019), Unaudited Annual Financial Report (2020-2021) and the adopted budgets for the fiscal years ended May 31, 2022 and 2023.

## Tax Collection Procedure

Real property taxes are levied annually in June. The Village assumes enforcement responsibility for a five-month period for all taxes levied in the Village. On November 1<sup>st</sup> unpaid Village taxes are then turned over to the County for enforcement. Any such taxes remaining unpaid at the year end are paid by the County.

## Tax Levy Limit Law

Prior to the enactment of Chapter 97 of the Laws New York of 2011 (the “Tax Levy Limit Law”) on June 24, 2011, all the taxable real property within the Village had been subject to the levy of ad valorem taxes to pay the bonds and notes of the Village and interest thereon without limitation as to rate or amount. However, the Tax Levy Limit Law, as amended, imposes a tax levy limitation upon the Village for any fiscal year commencing after January 1, 2012 without providing an exclusion for debt service on obligations issued by the Village. As a result, the power of the Village to levy real estate taxes on all the taxable real property within the Village to pay the bonds and notes of the Village and interest thereon is subject to statutory limitations set forth in Tax Levy Limit Law.

The following is a brief summary of certain relevant provisions of Tax Levy Limit Law. The summary is not complete and the full text of the Tax Levy Limit Law should be read in order to understand the details and implications thereof. The Tax Levy Limit Law imposes a limitation on increases in the real property tax levy of the Village, subject to certain exceptions. The Tax Levy Limit Law permits the Village to increase its overall real property tax levy over the tax levy of the prior year by no more than the “Allowable Levy Growth Factor”, which is the lesser of one and two-one hundredths or the sum of one plus the Inflation Factor; provided, however that in no case shall the levy growth factor be less than one. The "Inflation Factor" is the quotient of: (i) the average of the 20 National Consumer Price Indexes determined by the United States Department of Labor for the twelve-month period ending six months prior to the start of the coming fiscal year minus the average of the National Consumer Price Indexes determined by the United States Department of Labor for the twelve-month period ending six months prior to the start of the prior fiscal year, divided by: (ii) the average of the National Consumer Price Indexes determined by the United States Department of Labor for the twelve-month period ending six months prior to the start of the prior fiscal year, with the result expressed as a decimal to four places. The Village is required to calculate its tax levy limit for the upcoming year in accordance with the provision above and provide all relevant information to the New York State Comptroller prior to adopting its budget. The Tax Levy Limit Law sets forth certain exclusions to the real property tax levy limitation of the Village, including exclusions for certain portions of the expenditures for retirement system contributions and tort judgments payable by the Village. The Village Board is authorized to adopt a budget that exceeds the tax levy limit for the coming fiscal year, only if the Village Board first enacts, by a vote of at least sixty percent of the total voting power of the governing board of the Village, a local law to override such limit for such coming fiscal year.

The Tax Levy Limit Law does not contain an exception from the levy limitation for the payment of debt service on either outstanding general obligation bonds or notes of the Village or such indebtedness incurred after the effective date of the Tax Levy Limit Law. As such, there can be no assurances that the Tax Levy Limit Law will not come under legal challenge for violating (i) Article VIII, Section 12 of the State Constitution for not providing an exception for debt service on obligations issued prior to the enactment of the Tax Levy Limit Law, (ii) Article VIII, Section 10 of the State Constitution by effectively eliminating the exception for debt service to general real estate tax limitations, and (iii) Article VIII, Section 2 of the State Constitution by limiting the pledge of its faith and credit by a municipality or school district for the payment of debt service on obligations issued by such municipality or school district.

### Tax Levies

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Tax Levy	\$3,504,451	\$3,712,190	\$3,891,226	\$3,960,933	\$4,069,811
Taxes Rate per \$1,000 of					
Assessed Valuation (Orangetown)					
Homestead	\$8.51	\$8.76	\$9.10	\$9.18	\$9.38
Non-Homestead	12.62	12.93	13.47	13.63	13.94
Taxes Rate per \$1,000 of					
Assessed Valuation (Clarkstown)					
Homestead	\$12.01	\$12.65	\$13.23	\$13.63	\$13.18
Non-Homestead	17.53	18.68	19.58	19.26	19.58

## Tax Limit

The Constitution limits the amount that may be raised by the Village ad valorem tax levy on real estate in any fiscal year to two per centum (2%) of the five-year average full valuation of taxable real estate of the Village plus (1) the amounts required for principal and interest on all capital indebtedness, and (2) current appropriations for certain capital purposes. The tax limit for the Village for the 2020-2021 fiscal year is as follows:

Five-year Average Full Valuation	\$757,983,034
Tax Limit - 2% thereof	15,159,661
Tax Levy for General Village Purposes	3,891,226
Less: Exclusions	0
Tax Levy Subject to Tax Limit	\$3,891,226
 Constitutional Tax Margin	 \$11,268,435

### Selected Listing of Large Taxable Properties <sup>a</sup> 2021-2022 Assessment Roll

Name	Type	Full Valuation
Hudson Shore Assoc.	Commercial	\$8,500,000
103 Gedney St. Owners Inc.	Commercial	4,842,683
Orange & Rockland Utilities	Commercial	4,263,882
Juniper Time Owner LLC	Commercial	4,422,000
Nyack Housing Authority	Commercial	3,695,000
Nyack Plaza Housing Assoc.	Commercial	3,504,467
Warren Hills Assoc.	Commercial	3,502,000
Pavion Holdings LLC	Commercial	4,900,000
222 Main LLC	Commercial	1,964,200
Abphil Assoc.	Commercial	1,938,500
Nyack Plaza Housing Assoc.	Commercial	1,920,533
Ivanhoe Apartment Inc.	Commercial	1,885,259
Pondview Corp.	Commercial	1,677,000
CNB Realty Corp.	Commercial	1,573,743
TZ Vista LLC	Commercial	1,170,000
TZ Vista LLC	Commercial	1,540,000
Rockland Garden Assoc.	Commercial	1,510,000
<b>Total <sup>a</sup></b>		<b>\$52,809,267</b>

a. The Village has given up its assessing unit status, therefore, any tax certiorari claims are defended by the Town of Orangetown. See "Tax Collection Procedure" herein.

b. Represents 6.16% of the total taxable full valuation for 2021.

## Tax Certiorari Claims

In common with other municipalities, there are a number of tax certiorari proceedings pending involving properties that are subject to the levy of Village taxes. The plaintiffs in these matters have asserted that their properties are over-assessed and are seeking assessment reductions. A refund of excess taxes is also generally requested. Historically, certiorari claims have been settled through negotiations, resulting in amounts, at times, substantially less than originally claimed. Many settlements provide for future adjustments with no direct outlay of money. There are no significant claims filed by the larger taxpayers at this time.



## **LITIGATION**

In common with other villages, the Village from time to time receives notices of claim and is party to litigation. In the opinion of the Village Attorney, unless otherwise set forth herein and apart from matters provided for by applicable insurance coverage, there are no significant claims or actions pending in which the Village has not asserted a substantial and adequate defense, nor which, if determined against the Village, would have an adverse material effect on the financial conditions of the Village.

## **CYBERSECURITY**

The Village, like many other public and private entities, relies on technology to conduct its operations. As a recipient and provider of personal, private, or sensitive information, the Village faces multiple cyber threats including, but not limited to, hacking, viruses, malware and other attacks on computer and other sensitive digital networks and systems. To mitigate the risk of business operations impact and/or damage from cyber incidents or cyber-attacks, the Village invests in various forms of cybersecurity and operational controls; however, no assurances can be given that such security and operational control measures will be completely successful to guard against cyber threats and attacks. The results of any such attack could impact business operations and/or damage Village digital networks and systems and the costs of remedying any such damage could be substantial.

## **IMPACT OF COVID-19**

An outbreak of disease or similar public health threat, such as the COVID-19 outbreak, or fear of such an event, could have an adverse impact on the Village's financial condition and operating results. Currently, the spread of COVID-19, a respiratory disease caused by a new strain of coronavirus, has spread globally, including to the United States, and has been declared a pandemic by the World Health Organization. The outbreak of the disease has affected travel, commerce and financial markets globally and is widely expected to affect economic growth worldwide. The current outbreak has caused the Federal government to declare a national state of emergency. The State has also declared a state of emergency and the Governor has taken steps designed to mitigate the spread and impacts of COVID-19, including closing schools and non-essential businesses. The outbreak of COVID-19 and the dramatic steps taken by the State to address it are expected to negatively impact the State's economy and financial condition. The full impact of COVID-19 upon the State is not expected to be known for some time. Similarly, the degree of the impact to the Village's operations and finances is extremely difficult to predict due to the dynamic nature of the COVID-19 outbreak, including uncertainties relating to its (i) duration, and (ii) severity, as well as with regard to what actions may be taken by governmental and other health care authorities, including the State, to contain or mitigate its impact. The continued spread of the outbreak could have an adverse effect on the State and municipalities and school districts located in the State, including the Village. The Village did not incur any significant expenditure increases due to the COVID-19 pandemic. Due to the timing of the outbreak, the Village was able to make certain revenue adjustments in the budget for the fiscal year beginning June 1, 2020. The Village does not expect the COVID-19 pandemic to have a material adverse effect on the financial condition of the Village. The Village is monitoring the situation and will take such proactive measures as may be required to maintain its operations and meet its obligations.

## **TAX MATTERS**

### **Opinion of Bond Counsel**

In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel to the Village, under existing statutes and court decisions and assuming continuing compliance with certain tax certifications described herein, (i) interest on the Notes is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Notes is not treated as a preference item in calculating the alternative minimum tax under the Code, however for tax years beginning after December 31, 2022, interest on the Notes is included in the "adjusted financial statement income" of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. The Tax Certificate of the Village (the "Tax Certificate"), which will be delivered concurrently with the delivery of the Notes will contain provisions and procedures relating to compliance with applicable requirements of the Code. In rendering its opinion, Bond Counsel has relied on certain representations, certifications of fact, and statements of reasonable expectations made by the Village in connection with the Notes, and Bond Counsel has assumed compliance by the Village with certain ongoing provisions and procedures set forth in the Tax Certificate relating to compliance with applicable requirements of the Code to assure the exclusion of interest on the Notes from gross income under Section 103 of the Code.

In addition, in the opinion of Bond Counsel to the Village, under existing statutes, interest on the Notes is exempt from personal income taxes of New York State and its political subdivisions, including The City of New York.

Bond Counsel expresses no opinion as to any other federal, state or local tax consequences arising with respect to the Notes, or the ownership or disposition thereof, except as stated above. Bond Counsel renders its opinion under existing statutes and court decisions as of the issue date, and assumes no obligation to update, revise or supplement its opinion to reflect any action thereafter taken or not taken, any fact or circumstance that may thereafter come to its attention, any change in law or interpretation thereof that may thereafter occur, or for any other reason. Bond Counsel expresses no opinion as to the consequence of any of the events described in the preceding sentence or the likelihood of their occurrence. In addition, Bond Counsel expresses no opinion on the effect of any action taken or not taken in reliance upon an opinion of other counsel regarding federal, state or local tax matters, including, without limitation, exclusion from gross income for federal income tax purposes of interest on the Notes.

### **Certain Ongoing Federal Tax Requirements and Certifications**

The Code establishes certain ongoing requirements that must be met subsequent to the issuance and delivery of the Notes in order that interest on the Notes be and remain excluded from gross income under Section 103 of the Code. These requirements include, but are not limited to, requirements relating to use and expenditure of gross proceeds of the Notes, yield and other restrictions on investments of gross proceeds, and the arbitrage rebate requirement that certain excess earnings on gross proceeds be rebated to the federal government. Noncompliance with such requirements may cause interest on the Notes to become included in gross income for federal income tax purposes retroactive to their issue date, irrespective of the date on which such noncompliance occurs or is discovered. The Village, in executing the Tax Certificate, will certify to the effect that the Village will comply with the provisions and procedures set forth therein and that it will do and perform all acts and things necessary or desirable to assure the exclusion of interest on the Notes from gross income under Section 103 of the Code.

### **Certain Collateral Federal Tax Consequences**

The following is a brief discussion of certain collateral federal income tax matters with respect to the Notes. It does not purport to address all aspects of federal taxation that may be relevant to a particular owner of a Note. Prospective investors, particularly those who may be subject to special rules, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the Notes.

Prospective owners of the Notes should be aware that the ownership of such obligations may result in collateral federal income tax consequences to various categories of persons, such as corporations (including S corporations and foreign corporations), financial institutions, property and casualty and life insurance companies, individual recipients of Social Security and railroad retirement benefits, individuals otherwise eligible for the earned income tax credit, and taxpayers deemed to have incurred or continued indebtedness to purchase or carry obligations the interest on which is excluded from gross income for federal income tax purposes. Interest on the Notes may be taken into account in determining the tax liability of foreign corporations subject to the branch profits tax imposed by Section 884 of the Code.

### **Original Issue Discount**

“Original issue discount” (“OID”) is the excess of the sum of all amounts payable at the stated maturity of a Note (excluding certain “qualified stated interest” that is unconditionally payable at least annually at prescribed rates) over the issue price of that maturity. In general, the “issue price” of a maturity (a note with the same maturity date, interest rate, and credit terms) means the first price at which at least 10 percent of such maturity was sold to the public, i.e., a purchaser who is not, directly or indirectly, a signatory to a written contract to participate in the initial sale of the Notes. In general, the issue price for each maturity of Notes is expected to be the initial public offering price set forth in this Official Statement. Bond Counsel further is of the opinion that, for any Notes having OID (a “Discount Note”), OID that has accrued and is properly allocable to the owners of the Discount Notes under Section 1288 of the Code is excludable from gross income for federal income tax purposes to the same extent as other interest on the Notes.

In general, under Section 1288 of the Code, OID on a Discount Note accrues under a constant yield method, based on periodic compounding of interest over prescribed accrual periods using a compounding rate determined by reference to the yield on that Discount Note. An owner’s adjusted basis in a Discount Note is increased by accrued OID for purposes of determining gain or loss on sale, exchange, or other disposition of such Discount Note. Accrued OID may be taken into account as an increase in the amount of tax-exempt income received or deemed to have been received for purposes of determining various other tax consequences of owning a Discount Note even though there will not be a corresponding cash payment.

Owners of Discount Notes should consult their own tax advisors with respect to the treatment of original issue discount for federal income tax purposes, including various special rules relating thereto, and the state and local tax consequences of acquiring, holding, and disposing of Discount Notes.

## **Note Premium**

In general, if an owner acquires a note for a purchase price (excluding accrued interest) or otherwise at a tax basis that reflects a premium over the sum of all amounts payable on the note after the acquisition date (excluding certain “qualified stated interest” that is unconditionally payable at least annually at prescribed rates), that premium constitutes “note premium” on that note (a “Premium Note”). In general, under Section 171 of the Code, an owner of a Premium Note must amortize the note premium over the remaining term of the Premium Note, based on the owner’s yield over the remaining term of the Premium Note, determined based on constant yield principles (in certain cases involving a Premium Note callable prior to its stated maturity date, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on such note). An owner of a Premium Note must amortize the note premium by offsetting the qualified stated interest allocable to each interest accrual period under the owner’s regular method of accounting against the note premium allocable to that period. In the case of a tax-exempt Premium Note, if the note premium allocable to an accrual period exceeds the qualified stated interest allocable to that accrual period, the excess is a nondeductible loss. Under certain circumstances, the owner of a Premium Note may realize a taxable gain upon disposition of the Premium Note even though it is sold or redeemed for an amount less than or equal to the owner’s original acquisition cost. Owners of any Premium Note should consult their own tax advisors regarding the treatment of note premium for federal income tax purposes, including various special rules relating thereto, and state and local tax consequences, in connection with the acquisition, ownership, amortization of note premium on, sale, exchange, or other disposition of Premium Notes.

## **Information Reporting and Backup Withholding**

Information reporting requirements apply to interest on tax-exempt obligations, including the Notes. In general, such requirements are satisfied if the interest recipient completes, and provides the payor with, a Form W-9, “Request for Taxpayer Identification Number and Certification,” or if the recipient is one of a limited class of exempt recipients. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to “backup withholding,” which means that the payor is required to deduct and withhold a tax from the interest payment, calculated in the manner set forth in the Code. For the foregoing purpose, a “payor” generally refers to the person or entity from whom a recipient receives its payments of interest or who collects such payments on behalf of the recipient.

If an owner purchasing a Note through a brokerage account has executed a Form W-9 in connection with the establishment of such account, as generally can be expected, no backup withholding should occur. In any event, backup withholding does not affect the excludability of the interest on the Notes from gross income for federal income tax purposes. Any amounts withheld pursuant to backup withholding would be allowed as a refund or a credit against the owner’s federal income tax once the required information is furnished to the Internal Revenue Service.

## **Miscellaneous**

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the federal or state level, may adversely affect the tax-exempt status of interest on the Notes under federal or state law or otherwise prevent beneficial owners of the Notes from realizing the full current benefit of the tax status of such interest. In addition, such legislation or actions (whether currently proposed, proposed in the future, or enacted) and such decisions could affect the market price or marketability of the Notes.

Prospective purchasers of the Notes should consult their own tax advisors regarding the foregoing matters.

## **LEGAL MATTERS**

Legal matters incident to the authorization, issuance and sale of the Notes will be subject to the final approving opinion of the law firm of Hawkins Delafield & Wood LLP, Bond Counsel to the Village with respect to the Notes, which will be available at the time of delivery of the Notes, substantially in the form set forth in Appendix C.

## **DISCLOSURE UNDERTAKING**

This Official Statement is in a form “deemed final” by the Village for the purposes of Securities and Exchange Commission Rule 15c2-12 (the “Rule”). At the time of the delivery of the Notes, the Village will provide an executed copy of its “Undertaking to Provide Notices of Events” (the “Undertaking”) substantially in the form appearing in Appendix D.

### **Compliance History**

On March 6, 2015, December 2, 2016, June 13, 2017 and June 11, 2018, event notices were filed for the failure to file financial information in a timely manner pursuant to the Disclosure Undertaking entered into in conjunction with certain bond issues of the Village.

On December 6, 2021, the Village filed a material event notice for the failure to file its unaudited financial statements for fiscal year May 31, 2021 in a timely manner.

On June 3, 2022, the Village filed a material event notice for the failure to file its audited financial statements for fiscal year ended May 31, 2021.

On December 1, 2022, the Village filed a material event notice for the failure to file its unaudited financial statements for fiscal year ended May 31, 2022.

## **RATING**

The Notes are not rated. Standard & Poor’s Corporation (“S&P”) has assigned a rating of “AA-” to the outstanding bonds of the Village. This rating reflects only the view of such rating agency and an explanation of the significance of such rating should be obtained from S&P. Generally, a rating agency bases its ratings on the information and materials furnished to it and on investigation, studies and assumptions by the rating agency. There is no assurance that a particular rating will apply for any given period of time or that it will not be lowered or withdrawn entirely if, in the judgment of the agency originally establishing the rating, circumstances so warrant. Any downward revision or withdrawal of such rating could have an adverse effect on the market price of the Notes or the availability of a secondary market for such Notes.

## **MUNICIPAL ADVISOR**

Munistat Services, Inc. (the “Municipal Advisor”), is a Municipal Advisor, registered with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board. The Municipal Advisor serves as independent municipal advisor to the Village on matters relating to debt management. The Municipal Advisor is a municipal advisory and consulting organization and is not engaged in the business of underwriting, marketing, or trading municipal securities or any other negotiated instruments. The Municipal Advisor has provided advice as to the plan of financing and the structuring of the Notes and has reviewed and commented on certain legal documents, including this Official Statement. The advice on the plan of financing and the structuring of the Notes was based on materials provided by the Village and other sources of information believed to be reliable. The Municipal Advisor has not audited, authenticated, or otherwise verified the information provided by the Village or the information set forth in this Official Statement or any other information available to the Village with respect to the appropriateness, accuracy, or completeness of disclosure of such information and no guarantee, warranty, or other representation is made by the Municipal Advisor respecting the accuracy and completeness of or any other matter related to such information and this Official Statement.

## **ADDITIONAL INFORMATION**

Additional information may be obtained from the office of: Jennifer Hetling, Village Clerk/Treasurer of the Village of Nyack, 9 North Broadway, Nyack, NY 10960, Phone (845) 358-0548 and Fax (845) 358-1480 and email: [clerktreasurer@nyack-ny.gov](mailto:clerktreasurer@nyack-ny.gov), or from the office of Munistat Services, Inc., 12 Roosevelt Avenue, Port Jefferson Station, New York 11776, telephone number 631/331-8888 and website: <http://www.munistat.com>.

Statements in the Official Statement, and the documents included by specific reference, that are not historical facts are “forward-looking statements”, within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and as defined in the Private Securities Litigation Reform Act of 1995, which involve a number of risks and uncertainties, and which are based on the District’s management’s beliefs as well as assumptions made by, and information currently available to, the District’s management and staff. Because the statements are based on expectations about future events and economic performance and are not statements of fact, actual results may differ materially from those projected. Important factors that could cause future results to differ include legislative and regulatory changes, changes in the economy, and other factors discussed in this and other documents that the District’s files with the repositories. When used in District’s documents or oral presentation, the words “anticipate”, “believe”, “intend”,

“plan”, “foresee”, “likely”, “estimate”, “expect”, “objective”, “projection”, “forecast”, “goal”, “will”, or “should”, or similar words or phrases are intended to identify forward-looking statements.

To the extent any statements made in this Official Statement involve matters of opinion or estimates whether or not expressly stated, they are set forth as such and not as representations of fact, and no representation is made that any of the statements will be realized. Neither this Official Statement nor any statement which may have been made verbally or in writing is to be construed as a contract with the holder of the Notes

Munistat Services, Inc. may place a copy of this Official Statement on its website at [www.munistat.com](http://www.munistat.com). Unless this Official Statement specifically indicates otherwise, no statement on such website is included by specific reference or constitutes a part of this Official Statement. Munistat Services, Inc. has prepared such website information for convenience, but no decisions should be made in reliance upon that information. Typographical or other errors may have occurred in converting original source documents to digital format, and neither the Village nor Munistat Services, Inc. assumes any liability or responsibility for errors or omissions on such website. Further, Munistat Services, Inc. and the Village disclaim any duty or obligation either to update or to maintain that information or any responsibility or liability for any damages caused by viruses in the electronic files on the website. Munistat Services, Inc. and the Village also assume no liability or responsibility for any errors or omissions or for any updates to dated website information.

Any statements in this Official Statement involving matters of opinion or estimates, whether or not expressly stated, are intended as such and not as representations of fact. No representation is made that any of such statements will be, in fact, realized. This Official Statement is not to be construed as a contract or agreement between the Village and the original purchasers or owners of any of the Notes.

The preparation and distribution of this Official Statement has been authorized by various resolutions of the Village which delegates to the Village Treasurer the power to sell and issue the Notes.

By: s/s JENNIFER HETLING  
Village Treasurer  
Village of Nyack  
Nyack, New York

February , 2023

**APPENDIX A**

**FINANCIAL INFORMATION**

**Statement of Revenues, Expenditures and Fund Balances  
General Fund**

	Fiscal Year Ending May 31:				
	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Revenues:					
Real Property Taxes	\$ 3,446,521	\$ 3,514,376	\$ 3,591,577	\$ 3,712,190	\$ 3,875,462
Real Property Tax Items	14,615	22,648	24,254	17,119	38,144
Non Property Tax	396,983	432,589	431,015	417,504	407,187
Charges for Services	1,042,792	1,312,970	908,543	497,555	148,316
Use of Money and Property	6,799	6,662	9,407	6,821	181
Forfeitures and Fines	86,960	105,891	105,178	60,556	31,606
Licenses and Permits	53,505	120,481	117,172	345,119	548,727
Sale of Property and Comp. for Loss	67,366	59,928	19,075	28,174	14,173
Miscellaneous	10,310	45,201	10,719	8,070	90,742
Interfund Transfers	222,000	912,000	222,000	222,000	222,000
State Sources	384,949	287,647	232,414	375,161	383,188
Federal Sources				192,776	
<b>Total Revenues</b>	<u>5,732,800</u>	<u>6,820,393</u>	<u>5,671,354</u>	<u>5,883,045</u>	<u>5,759,726</u>
Expenditures:					
General Government Support	1,385,520	1,420,717	1,237,776	1,421,140	1,118,971
Culture and Recreation	366,906	490,985	446,698	435,004	366,319
Economic Assistance and Opportunity	43,447			8,450	
Home and Community Services	604,162	440,031	379,291	348,710	186,331
Transportation	848,592	984,451	1,255,231	1,275,493	1,159,442
Employee Benefits	1,264,080	1,473,359	1,213,266	1,227,900	1,336,013
Debt Service	701,449	1,024,751	1,064,297	703,689	690,412
Public Safety	402,238	441,896	416,101	482,629	412,551
Health	5,501	2,741	17,851	36,542	34,590
Capital Outlay			23,884		
Interfund Transfers	58,877	768,197			
<b>Total Expenditures</b>	<u>5,680,772</u>	<u>7,047,128</u>	<u>6,054,395</u>	<u>5,939,557</u>	<u>5,304,629</u>
Excess (Deficiency) of Revenues & Other Financing Sources Over Expenditures & Other Uses	52,028	(226,735)	(383,041)	(56,512)	455,097
Prior Period Adjustments	93,609		228,527	(88)	(28,904)
Fund Balance Beginning of Year	<u>1,943,251</u>	<u>2,088,888</u>	<u>1,862,153</u>	<u>1,707,639</u>	<u>1,651,039</u>
Fund Balance End of Year	<u>\$ 2,088,888</u>	<u>\$ 1,862,153</u>	<u>\$ 1,707,639</u>	<u>\$ 1,651,039</u>	<u>\$ 2,077,232</u>

Source: Audited Annual Financial Reports of the Village (2017-2020), Annual Financial Report Update Document (2021)

NOTE: This Schedule NOT audited.

**Statement of Revenues, Expenditures and Fund Balances  
Water Fund**

	Fiscal Year Ending May 31:				
	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Revenues:					
Charges for Services	\$ 3,634,898	\$ 3,685,556	\$ 3,718,616	\$ 3,934,980	\$ 3,385,515
Use of Money and Property	315	842	1,593	559	
Sale of Property and Comp. for Loss				33,458	8,441
Miscellaneous	35,586				
<b>Total Revenues</b>	<u>3,670,799</u>	<u>3,686,398</u>	<u>3,720,209</u>	<u>3,968,997</u>	<u>3,393,956</u>
Expenditures:					
General Governmental Support			241,097	239,844	245,340
Interfund Transfers	222,000	209,276	222,000	222,000	222,000
Personal Services	256,846	222,000			
Contractual Expenses	2,348,949	2,225,267	1,994,065	2,317,136	2,367,201
Employee Benefits	720,874	722,628	774,421	840,109	815,511
Debt Service	166,016	161,946	163,639	164,179	104,459
<b>Total Expenditures</b>	<u>3,714,685</u>	<u>3,541,117</u>	<u>3,395,222</u>	<u>3,783,268</u>	<u>3,754,511</u>
Excess (Deficiency) of Revenues & Other Financing Sources Over Expenditures & Other Uses	(43,886)	145,281	324,987	185,729	(360,555)
Fund Balance Beginning of Year	656,476	1,147,929	1,293,210	1,593,483	1,780,214
Change in Accounting Method	535,339		(24,714)	1,002	(38,556)
Fund Balance at Beginning as Restated	<u>1,191,815</u>	<u>1,147,929</u>	<u>1,268,496</u>	<u>1,594,485</u>	<u>1,741,658</u>
Fund Balance End of Year	<u>\$ 1,147,929</u>	<u>\$ 1,293,210</u>	<u>\$ 1,593,483</u>	<u>\$ 1,780,214</u>	<u>\$ 1,381,103</u>

Beginning in the Fiscal Year Ending May 31, 2016, the Village changed the accounting method in the Water Fund from an Enterprise Fund to a Governmental Fund.

Source: Audited Annual Financial Reports of the Village (2017-2020), Annual Financial Report Update Document (2021)

NOTE: This Schedule NOT audited.



**Balance Sheet  
General Fund**

	Fiscal Year Ending May 31:	
	2020	2021
<b>Assets:</b>		
Cash	\$ 201,721	\$ 984,784
Other State Receivables	93,432	54,887
Accounts Receivable		
Due from Other Governments	1,720,256	1,948,763
Prepaid Expenses	7,500	7,500
Due from Related Party		
Federal and State Aid Receivable		
Due from Other Funds	643,114	594,165
Total Assets:	\$ 2,666,023	\$ 3,590,100
<b>Liabilities:</b>		
Accounts Payable & Accrued Liabilities	\$ 321,439	\$ 212,919
Due to Other Funds	614,615	641,329
Due to Other Governments	6,142	66
Other Deposits		549,124
Other Liabilities	39,288	76,430
Total Liabilities and Deferred Revenues	981,484	1,479,868
<b>Fund Equity:</b>		
Nonspendable	120,000	120,000
Deferred Inflows Of Resurces	33,500	33,000
Undesignated Fund Balance	1,531,039	1,957,232
Total Fund Equity	1,684,539	2,110,232
Total Liabilities, Deferred Revenues and Fund Equity	\$ 2,666,023	\$ 3,590,100

Sources: Audited Financial Report (2020) & Annual Financial Report Update Document (2021)

**Balance Sheet-Water Fund**  
**Fiscal Year Ending May 31:**

	<u>2020</u>	<u>2021</u>
<b>Assets:</b>		
Cash	\$ 545,998	\$ 659,845
Receivables	1,911,554	1,463,533
Due From Other Funds		
Federal and State Aid Receivables		
Prepaid Expenses	<u>26,155</u>	<u>29,816</u>
 Total Assets:	 <u>\$ 2,483,707</u>	 <u>\$ 2,153,194</u>
 <b>Liabilities:</b>		
Accounts Payable & Accrued Liabilities	\$ 404,494	\$ 282,532
Compensated Absences		
Bonds Payable		
Due to Other Funds	<u>199,520</u>	<u>390,080</u>
 Total Liabilities and Deferred Revenues	 <u>604,014</u>	 <u>672,612</u>
 <b>Fund Equity:</b>		
Reserved Fund Balances	1,780,214	1,381,103
Deferred Inflow of Resoucrs	99,478	99,478
Undesignated Fund Balance		
 Total Fund Equity	 <u>1,879,692</u>	 <u>1,480,581</u>
 Total Liabilities, Deferred Revenues and Fund Equity	 <u>\$ 2,483,707</u>	 <u>\$ 2,153,194</u>

Sources: Audited Financial Report (2020) & Annual Financial Report Update Document (2021)

**Budget Summaries**  
**General fund**

	<u>2021-2022</u>	<u>2022-2023</u>
Revenues:		
Real Property Taxes	\$ 3,998,731	\$ 4,110,608
Other Tax Items	380,000	390,000
Departmental Income	193,000	228,450
Use of Money and Property	100	
Intergovernmental Charges		934,900
Licenses & Permits	389,300	
Fines & Forfeitures	75,000	
Sale of Property	14,500	
Miscellaneous	454,500	
State & Federal Aid	<u>293,580</u>	<u>329,575</u>
Total Revenues	<u>\$ 5,798,711</u>	<u>\$ 5,993,533</u>
Expenditures:		
General Government Support	\$ 1,255,951	\$ 1,254,618
Public Safety	436,491	538,286
Health	36,145	38,741
Highway	1,181,506	1,305,424
Culture and Recreation	356,500	387,453
Sanitation		
Community Environment	217,000	239,000
Employee Benefits	1,516,153	1,418,344
Debt Service	<u>798,965</u>	<u>811,666</u>
Total Expenditures	<u>\$ 5,798,711</u>	<u>\$ 5,993,533</u>

Source: Adopted Budget of the Village for 2021-22, 2022-23

**VILLAGE OF NYACK**

**APPENDIX B**

**UNAUDITED ANNUAL FINANCIAL REPORT UPDATE DOCUMENT  
FOR THE FISCAL YEAR ENDED MAY 31, 2021**

**[▶ Click Here For 2021 AUD](#)**

NOTE: SUCH FINANCIAL REPORT AND OPINIONS WERE PREPARED AS OF THE DATE THEREOF AND HAVE NOT BEEN REVIEWED AND/OR UPDATED IN CONNECTION WITH THE PREPARATION AND DISSEMINATION OF THIS OFFICIAL STATEMENT

**APPENDIX C**

**FORM OF BOND COUNSEL OPINION**

## FORM OF OPINION OF BOND COUNSEL

Hawkins Delafield & Wood LLP  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007

February , 2023

The Board of Trustees of the  
Village of Nyack  
County of Rockland, New York

Ladies and Gentlemen:

We have acted as Bond Counsel to the Village of Nyack (the “Village”), in the County of Rockland, a municipal corporation of the State of New York, and have examined a record of proceedings relating to the authorization, sale and issuance of the \$9,060,000 Bond Anticipation Notes – 2023 (the “Notes”) of the Village dated and delivered on the date hereof.

In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with originals of all documents submitted to us as copies thereof. Based upon and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Notes are valid and legally binding general obligations of the Village for which the Village has validly pledged its faith and credit and, unless paid from other sources, all the taxable real property within the Village is subject to the levy of ad valorem real estate taxes to pay the Notes and interest thereon, subject to certain statutory limitations imposed by Chapter 97 of the New York Laws of 2011, as amended. The enforceability of rights or remedies with respect to such Notes may be limited by bankruptcy, insolvency, or other laws affecting creditors’ rights or remedies heretofore or hereafter enacted.

2. Under existing statutes and court decisions and assuming continuing compliance with certain tax certifications described herein, (i) interest on the Notes is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), and (ii) interest on the Notes is not treated as a preference item in calculating the alternative minimum tax under the Code, however for tax years beginning after December 31, 2022, interest on the Notes is included in the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code

The Code establishes certain requirements that must be met subsequent to the issuance of the Notes in order that the interest on the Notes be and remain excludable from gross income under Section 103 of the Code. These requirements include, but are not limited to, requirements relating to the use and expenditure of proceeds of the Notes, restrictions on the investment of proceeds of the Notes prior to expenditure and the requirement that certain earnings be rebated to the federal government. Noncompliance with such requirements may cause the interest on the Notes to become subject to federal income taxation retroactive to the date of issuance thereof, irrespective of the date on which such noncompliance occurs or is ascertained.

On the date of issuance of the Notes, the Village will execute a Tax Certificate relating to the Notes containing provisions and procedures pursuant to which such requirements can be satisfied. In executing the Tax Certificate, the Village represents that it will comply with the provisions and procedures set forth therein and that it will do and perform all acts and things necessary or desirable to assure that the interest on the Notes will, for federal income tax purposes, be excluded from gross income.

In rendering the opinion in this paragraph 2, we have relied upon and assumed (i) the material accuracy of the Village's certifications, statements of intention and reasonable expectations, and certifications of fact contained in the Tax Certificate with respect to matters affecting the status of the interest on the Notes, and (ii) compliance by the Village with the procedures and certifications set forth in the Tax Certificate as to such tax matters.

3. Under existing statutes, interest on the Notes is exempt from personal income taxes of New York State and its political subdivisions, including The City of New York.

We express no opinion as to any other federal, state or local tax consequences arising with respect to the Notes, or the ownership or disposition thereof, except as stated in paragraphs 2 and 3 above. We render our opinion under existing statutes and court decisions as of the date hereof, and assume no obligation to update, revise or supplement our opinion to reflect any action hereafter taken or not taken, any fact or circumstance that may hereafter come to our attention, any change in law or interpretation thereof that may hereafter occur, or for any other reason. We express no opinion as to the consequence of any of the events described in the preceding sentence or the likelihood of their occurrence. In addition, we express no opinion on the effect of any action taken or not taken in reliance upon an opinion of other counsel regarding federal, state or local tax matters, including, without limitation, exclusion from gross income for federal income tax purposes of interest on the Notes.

We give no assurances as to the accuracy, sufficiency or completeness of the Preliminary or Final Official Statement or any proceedings, reports, correspondence, financial statements or other documents, containing financial or other information relative to the Village which have been or may hereafter be furnished or disclosed to purchasers of said Notes.

Very truly yours,

**APPENDIX D**

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**



## UNDERTAKING TO PROVIDE NOTICES OF EVENTS

### Section 1. Definitions

“EMMA” shall mean the Electronic Municipal Market Access System implemented by the MSRB.

“Financial Obligation” shall mean “financial obligation” as such term is defined in the Rule.

“GAAP” shall mean generally accepted accounting principles as in effect from time to time in the United States.

“Holder” shall mean any registered owner of the Securities and any beneficial owner of Securities within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934.

“Issuer” shall mean the Village of Nyack, in the County of Rockland, a municipal corporation of the State of New York.

“MSRB” shall mean the Municipal Securities Rulemaking Board established in accordance with the provisions of Section 15B(b)(1) of the Securities Exchange Act of 1934.

“Purchaser” shall mean the financial institution referred to in the Certificate of Determination, executed by the Village Treasurer as of February 22, 2023.

“Rule 15c2-12” shall mean Rule 15c2-12 under the Securities Exchange Act of 1934, as amended through the date of this Undertaking, including any official interpretations thereof.

“Securities” shall mean the Issuer’s **\$9,060,000 Bond Anticipation Note-2023**, dated February 22, 2023, maturing February 22, 2024, and delivered on the date hereof.

Section 2. Obligation to Provide Notices of Events. (a) The Issuer hereby undertakes, for the benefit of Holders of the Securities, to provide or cause to be provided either directly or through Munistat Services, Inc., 12 Roosevelt Avenue, Port Jefferson Station, New York 11776 to the Electronic Municipal Market Access (“EMMA”) System implemented by the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, or any successor thereto or to the functions of such Board contemplated by the Undertaking, in a timely manner, not in excess of ten (10) business days after the occurrence of any such event, notice of any of the following events with respect to the Securities:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;

- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of the Securities, or other material events affecting the tax status of the Securities;
- (vii) modifications to rights of Securities holders, if material;
- (viii) Bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Securities, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or similar event of the Issuer;

Note to clause (12): For the purposes of the event identified in clause (12) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Issuer in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or government authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer;

- (xiii) the consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material;

- (xv) incurrence of a financial obligation, as defined in Rule 15c2-12, of the Village, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Issuer, any of which affect security holders, if material; and
- (xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Issuer, any of which reflect financial difficulties.

(b) Nothing herein shall be deemed to prevent the Issuer from disseminating any other information in addition to that required hereby in the manner set forth herein or in any other manner. If the Issuer disseminates any such additional information, the Issuer shall have no obligation to update such information or include it in any future materials disseminated hereunder.

(c) Nothing herein shall be deemed to prevent the Issuer from providing notice of the occurrence of certain other events, in addition to those listed above, if the Issuer determines that any such other event is material with respect to the Securities; but the Issuer does not undertake to commit to provide any such notice of the occurrence of any event except those events listed above.

Section 3. Remedies. If the Issuer shall fail to comply with any provision of this Undertaking, then any Holder of Securities may enforce, for the equal benefit and protection of all Holders similarly situated, by mandamus or other suit or proceeding at law or in equity, this Undertaking against the Issuer and any of the officers, agents and employees of the Issuer, and may compel the Issuer or any such officers, agents or employees to perform and carry out their duties under this Undertaking; provided that the sole and exclusive remedy for breach of this Undertaking shall be an action to compel specific performance of the obligations of the Issuer hereunder and no person or entity shall be entitled to recover monetary damages hereunder under any circumstances. Failure to comply with any provision of this Undertaking shall not constitute an event of default on the Securities.

Section 4. Parties in Interest. This Undertaking is executed to assist the Purchaser to comply with (b)(5) of the Rule and is delivered for the benefit of the Holders. No other person shall have any right to enforce the provisions hereof or any other rights hereunder.

Section 5. Amendments. Without the consent of any holders of Securities, the Issuer at any time and from time to time may enter into any amendments or changes to this Undertaking for any of the following purposes:

- (a) to comply with or conform to any changes in Rule 15c2-12 (whether required or optional);
- (b) to add a dissemination agent for the information required to be provided hereby and to make any necessary or desirable provisions with respect thereto;
- (c) to evidence the succession of another person to the Issuer and the assumption of any such successor of the duties of the Issuer hereunder;

- (d) to add to the duties of the Issuer for the benefit of the Holders, or to surrender any right or power herein conferred upon the Issuer;
- (e) to cure any ambiguity, to correct or supplement any provision hereof which may be inconsistent with any other provision hereof, or to make any other provisions with respect to matters or questions arising under this Undertaking which, in each case, comply with Rule 15c2-12 or Rule 15c2-12 as in effect at the time of such amendment or change;

provided that no such action pursuant to this Section 5 shall adversely affect the interests of the Holders in any material respect. In making such determination, the Issuer shall rely upon an opinion of nationally recognized bond counsel.

Section 6. Termination. This Undertaking shall remain in full force and effect until such time as all principal, redemption premiums, if any, and interest on the Securities shall have been paid in full or the Securities shall have otherwise been paid or legally defeased in accordance with their terms. Upon any such legal defeasance, the Issuer shall provide notice of such defeasance to the EMMA System. Such notice shall state whether the Securities have been defeased to maturity or to redemption and the timing of such maturity or redemption.

Section 7. Undertaking to Constitute Written Agreement or Contract. This Undertaking shall constitute the written agreement or contract for the benefit of Holders of Securities, as contemplated under Rule 15c2-12.

Section 8. Governing Law. This Undertaking shall be governed by the laws of the State of New York determined without regard to principles of conflict of law.

IN WITNESS WHEREOF, the undersigned has duly authorized, executed and delivered this Undertaking as of **February 22, 2023**.

**VILLAGE OF NYACK, NEW YORK**

By: \_\_\_\_\_  
Village Treasurer