

**ORDINANCE NO. 2009-19**

**AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, RELATING TO CONTRACTING INDEBTEDNESS; PROVIDING FOR THE ISSUANCE OF A \$140,000 PAR VALUE LIMITED TAX GENERAL OBLIGATION BOND, 2009, OF THE TOWN FOR GENERAL TOWN PURPOSES TO PROVIDE FUNDS WITH WHICH TO PAY A PART OF THE COST OF MAKING PUBLIC PARK AND OTHER IMPROVEMENTS RELATED TO THE DOWNTOWN PLAZA PROJECT, AND PAYING THE COSTS OF ISSUANCE AND SALE OF SUCH BOND; FIXING THE DATE, FORM, MATURITY, INTEREST RATE, TERMS AND COVENANTS OF THE BOND; ESTABLISHING A BOND REDEMPTION FUND AND APPROVING THE SALE AND PROVIDING FOR THE DELIVERY OF THE BOND TO KEYBANK NATIONAL ASSOCIATION OF TACOMA, WASHINGTON.**

PASSED November 23, 2009

*This document prepared by:*

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**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON, as follows:**

**Section 1. Recitals.** The Town Council makes the following findings.

- (a) The Town of Eatonville, Washington (the "Town"), is in need of funds to pay a portion of the costs of the Downtown Plaza Project, which may include but is not limited to developing a public park and plaza, developing associated public parking and streets, constructing or improving related structures, amenities and facilities (the "Project"), the estimated cost of which is \$140,000, and the Town does not have available sufficient funds to pay the cost remaining after application of funds received from a federal grant; and
- (b) After due consideration the Town has determined that the Town may issue its limited tax general obligation bond to pay for part of the cost of the Project.
- (c) KeyBank National Association (the "Bank") has submitted to the Town a proposal to purchase such bond (the "Proposal Letter").

**Section 2. Debt Capacity.** The preliminary assessed valuation of the taxable property within the Town as ascertained by the last preceding assessment for Town purposes for the calendar year 2009 is \$230,640,572. As of the date of this ordinance, the Town has outstanding general indebtedness evidenced by a limited tax general obligation bond in the principal amount of \$164,033 incurred within the limit of up to 1½% of the value of the taxable property within the Town permitted for general municipal purposes without a vote of the qualified voters. The Town has no unlimited tax general obligation bonds outstanding issued pursuant to a vote of the qualified voters. The amount of indebtedness for which bonds are authorized herein to be issued is \$140,000.

**Section 3. Authorization of Bond.** The Town shall borrow money on the credit of the Town and issue a single limited tax general obligation bond (the "Bond") evidencing that indebtedness in the amount of \$140,000 for general Town purposes to provide the funds to pay part of the cost of the Project and to pay the costs of issuance and sale of the bond (the "costs of issuance"). The general indebtedness to be incurred shall be within the limit of up to 1½% of the value of the taxable property within the Town permitted for general municipal purposes without a vote of the qualified voters therein.

**Section 4. Description of Bond.** The Bond shall be issued as a single bond designated as the Limited Tax General Obligation Bond, 2009, in the principal amount of \$140,000. It shall be dated its date of delivery and shall be numbered R-1. The Bond shall bear interest at the rate of 3.75% per annum (computed on the basis of a 360-day year of twelve 30-day months) payable in arrears in semiannual payments on each June 1 and December 1 (each a "Payment Date"), commencing June 1, 2010, to the maturity of the Bond, as shown on an amortization schedule to be provided by the Bank. Principal of the Bond shall be repaid in approximately equal semiannual payments of \$23,333.33 each, due on each Payment Date, commencing June 1, 2010. The Bond shall mature on December 1, 2012 (the "Maturity Date") whereupon all remaining principal and accrued interest shall be paid in full. The Town Council finds that fixing the above interest rate is in the best interest of the Town. The life of the capital facilities to be financed with the proceeds of the Bond exceeds the term of the Bond.

**Section 5. Registration and Transfer of Bond; Bond Registrar.** The Bond shall be issued only in registered form as to both principal and interest and shall be recorded on a Bond Register maintained by the Treasurer of the Town acting as Bond Registrar (the "Bond Register"). The Bond Register shall contain the name and mailing address and taxpayer identification number of the Registered Owner of the Bond and the principal amount and number of the Bond.

The Bond may be assigned or transferred only in whole by the registered owner to a single investor that is a financial institution or a person who is reasonably believed to be a qualified institutional buyer or accredited investor within the meaning of the applicable federal securities laws. Any transfer shall be without cost to the owner or transferee, except for governmental charges imposed on any such transfer or exchange. The Bond Registrar shall not be obligated to exchange or transfer the Bond during the 15 days preceding any installment payment or prepayment date. When the Bond has been paid in full, both principal and interest, the Bond shall be surrendered by the Bank to the Bond Registrar, who shall cancel the Bond.

The Bond Registrar shall keep, or cause to be kept at its office in Eatonville, Washington, sufficient books for the registration and transfer of the Bond. The Bond Registrar is authorized, on behalf of the Town, to authenticate and deliver the Bond in accordance with the provisions of the Bond and this ordinance, to serve as the Town's paying agent for the Bond, and to carry out all of the Bond Registrar's powers and duties under this ordinance. The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on the Bond.

Section 6.     **Payment of Bond.** Both principal of and interest on the Bond shall be payable in lawful money of the United States of America solely out of the Bond Fund and shall be paid by checks or drafts of the Bond Registrar mailed, or by electronic transfer on the Payment Date to the registered owner at the address appearing on the Bond Register on the last business day of the month preceding the Payment Date. The Bond shall be presented and surrendered by the Registered Owner to the Bond Registrar on the payment of the final installment of principal of and interest on the Bond, whether on the Maturity Date or upon prepayment in full, and upon presentation and surrender, the Bond shall be destroyed or cancelled in accordance with law. The Town and the Bond Registrar may deem and treat the registered owner of the Bond as the absolute owner of the Bond for the purpose of receiving payment of principal and interest and for all other purposes, and neither the Town nor the Bond Registrar shall be affected by any notice to the contrary.

Section 7.     **Prepayment and Redemption.** The entire principal amount of the Bond, or any portion thereof, may be prepaid at any time prior to the Maturity Date, subject to the payment of a Prepayment Fee as defined below, plus accrued interest to the date of prepayment. The Town shall provide the Bank with written notice of intended prepayment at least 15 days prior to such prepayment date. In case of a partial prepayment, such partial prepayment shall be applied to installments of principal coming due in inverse order of maturity, so that principal payments will continue as provided herein. The "Prepayment Fee" is equal to (a) the principal amount of the prepayment times (b) the number of years in the original term of the Bond minus the number of years the Bond has been outstanding. Any fraction of a year shall be calculated to include the full month in which prepayment occurs plus any prior months in the year in which prepayment occurs, divided by twelve.

Section 8.     **Failure to Redeem Bond.** If the Bond is not redeemed when properly presented at its maturity date, the Town shall be obligated to pay interest on that Bond at the same rate provided from and after its maturity until the Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the bond redemption fund and the Bond has been called for payment by giving notice of that call to the registered owner.

Section 9.     **Pledge of Taxes.** For as long as the Bond is outstanding, the Town irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of the electors of the Town on all of the taxable property within the Town in an amount sufficient, together with other money legally available and to be used therefor, to pay when due the principal of and interest on the Bond, and the full faith, credit and resources of the Town are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Section 10.    **Annual Financial Statements.** For so long as the Bond remains outstanding and the Bank is the Registered Owner, the Town will provide to the Bank a copy of its unaudited annual financial report within 180 days of fiscal year-end, a copy of its audited financial report within ten days of receipt, and such other public records as the Bank may from time to time reasonably request. The Town will also provide notice to the Bank of

any adverse change in the Town's financial position having a material effect on the Town's ability to repay the Bond. As set forth in Section 9, the Town covenants to budget and appropriate the amount necessary in each fiscal year to make required payments of principal and interest on the Bond.

**Section 11. Form and Execution of Bond.** The Bond shall be printed or lithographed on good bond paper in a form consistent with the provisions of this ordinance and state law and shall be signed by the Mayor and Town Clerk, either or both of whose signatures may be manual or in facsimile, and the seal of the Town or a facsimile reproduction thereof shall be impressed or printed thereon.

To be valid or obligatory for any purpose or entitled to the benefits of this ordinance the Bond shall bear a Certificate of Authentication in substantially the following form, manually signed by the Bond Registrar: "CERTIFICATE OF AUTHENTICATION: This Bond is the fully registered Town of Eatonville, Washington, Limited Tax General Obligation Bond, 2009, described in the Bond Ordinance." The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

If any officer whose signature appears on the Bond ceases to be an officer of the Town authorized to sign bonds before the Bond bearing his or her signature is authenticated or delivered by the Bond Registrar or issued by the Town, the Bond nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the Town as though that person had continued to be an officer of the Town authorized to sign bonds. The Bond also may be signed on behalf of the Town by any person who, on the actual date of signing of the Bond, is an officer of the Town authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bond.

**Section 12. Preservation of Tax Exemption for Interest on Bond.** The Town covenants that it will take all actions necessary to prevent interest on the Bond from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bond or other funds of the Town treated as proceeds of the Bond at any time during the term of the Bond which will cause interest on the Bond to be included in gross income for federal income tax purposes.

**Section 13. Small Governmental Issuer Arbitrage Rebate Exception and Designation of Bond as "Qualified Tax-Exempt Obligation."** The Town finds and declares that (a) it is a duly organized and existing governmental unit of the State of Washington and has general taxing power; (b) the Bond is not a "private activity bond" within the meaning of Section 141 of the United States Internal Revenue Code of 1986, as amended (the "Code"); (c) at least 95% of the net proceeds of the Bonds will be used for local governmental activities of the Town (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Town); (d) the aggregate face amount of all tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) issued by the Town and all entities subordinate to the

Town (including any entity that the Town controls, that derives its authority to issue tax-exempt obligations from the Town, or that issues tax-exempt obligations on behalf of the Town) during the calendar year in which the Bond is issued is not reasonably expected to exceed \$5,000,000; and (e) the amount of tax-exempt obligations, including the Bond, designated by the Town as “qualified tax-exempt obligations” for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Bond is issued does not exceed \$30,000,000. The Town therefore certifies that the Bond is eligible for the arbitrage rebate exception under Section 148(f)(4)(D) of the Code and designates the Bond as a “qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Code.

**Section 14. Refunding or Defeasance of the Bond.** The Town may issue refunding bonds pursuant to the laws of the State of Washington or use money available from any other lawful source to pay when due the principal of and interest on the Bond, or any portion thereof included in a refunding or defeasance plan, and to redeem and retire, refund or defease all such then-outstanding principal amount of the Bond (hereinafter collectively called the “defeased Bond”) and to pay the costs of the refunding or defeasance. If money and/or “government obligations” (as defined in chapter 39.53 RCW, as now or hereafter amended) maturing at a time or times and bearing interest in amounts (together with money, if necessary) sufficient to redeem and retire, refund or defease the defeased Bond in accordance with their terms are set aside in a special trust fund or escrow account irrevocably pledged to that redemption, retirement or defeasance of the defeased Bond (hereinafter called the “trust account”), then all right and interest of the owner of the defeased Bond in the covenants of this ordinance and in the funds and accounts obligated to the payment of the defeased Bond shall cease and become void. The owner of the defeased Bond shall have the right to receive payment of the principal of and interest on the defeased Bond from the trust account. The Town shall include in the refunding or defeasance plan such provisions as the Town deems necessary for notice of the defeasance to be given to the owner of the defeased Bond and to such other persons as the Town shall determine, and for any required replacement of the Bond. The defeased Bond shall be deemed no longer outstanding, and the Town may apply any money in any other fund or account established for the payment or redemption of the defeased Bond to any lawful purposes as it shall determine.

**Section 15. The Project Fund and the Bond Redemption Fund.**

- (a) The Project Fund. There has previously been created and established in the office of the Treasurer a special fund designated as the Downtown Corridor Fund (the “Project Fund”). The principal proceeds of the Bond shall be deposited in the Project Fund and used to carry out the Project and to pay costs of issuance.
- (b) The Bond Redemption Fund. For the purpose of paying principal of and interest on the Bond, the Treasurer is authorized and directed to create and establish a special fund designated as the Limited Tax General Obligation Bond Fund, 2009 (the “Bond Fund”). All taxes collected for and allocated to the payment of the principal of and interest on the Bond shall be deposited in the Bond Fund.

Until needed to pay costs of the Project, the Town may invest money temporarily in any legal investment, and the investment earnings shall be retained in the Project Fund or the Bond Fund, as applicable, and be spent for the purposes of that particular fund. However, earnings subject to a federal tax or rebate requirement may be withdrawn from the Project Fund or Bond Fund and used for those tax or rebate purposes.

**Section 16. Approval of Proposal Letter.** The Bank has proposed to purchase the Bond at a price of par under the terms and conditions provided in the Proposal Letter, which Proposal Letter is on file with the Town Clerk and is incorporated herein by this reference. The Town Council finds that accepting an offer consisting of the same terms and conditions as the Proposal Letter is in the Town's best interest and authorizes the Mayor to accept such offer on behalf of the Town. Pursuant to the Proposal Letter, upon issuance of the Bond the Town will pay, from Bond proceeds or from other money of the Town, the Bank's origination fee of \$1,000, the legal fees of bond counsel and Bank's counsel, and all other costs of issuance.

The Bond will be printed at Town expense and will be delivered to the Bank in accordance with the Proposal Letter, with the approving legal opinion of Foster Pepper PLLC, municipal bond counsel of Seattle, Washington, regarding the Bond.

The proper Town officials are authorized and directed to do everything necessary for the prompt delivery of the Bond to the Bank and for the proper application and use of the proceeds of the sale thereof.

**Section 17. Effective Date of Ordinance.** This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

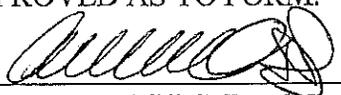
**PASSED by the Town Council and APPROVED** by the Mayor of the Town of Eatonville, Washington, at a regular open public meeting thereof this 23 day of November, 2009.

  
\_\_\_\_\_  
Tom Smallwood, Mayor

ATTEST:

  
\_\_\_\_\_  
Chrystal McGlone, Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Foster Pepper PLLC, Bond Counsel

CERTIFICATION

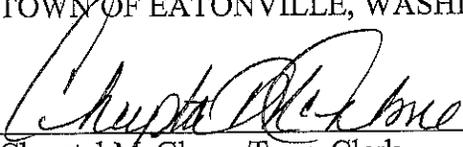
I, the undersigned, Town Clerk of the Town of Eatonville, Washington (the "Town"), hereby certify as follows:

1. The attached copy of Ordinance No. 2009-19 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the Town Council of the Town held at the regular meeting place thereof on November 23, 2009, as that ordinance appears on the minute book of the Town; and the Ordinance will be in full force and effect five days after publication in the Town's official newspaper; and

2. A quorum of the members of the Town Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of November, 2009.

TOWN OF EATONVILLE, WASHINGTON

  
\_\_\_\_\_  
Chrystal McGlone, Town Clerk