

## FINAL OFFICIAL STATEMENT DATED NOVEMBER 22, 2011

### RENEWAL ISSUE

### BOND ANTICIPATION NOTES

*In the opinion of Hodgson Russ LLP, of Buffalo, New York, Bond Counsel, subject to continuing compliance by the Town of Newfane Niagara County, New York (the "Town") with its covenants relating to certain requirements contained in the Internal Revenue Code of 1986, as amended (the "Code"), interest on the Notes is (A) excluded from gross income of the owners thereof for federal income tax purposes under existing law, and (B) exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York). Moreover, interest on the Notes is not an "item of tax preference" for purposes of the individual and corporate alternative minimum taxes. (See the caption "TAX EXEMPTION" herein for a discussion of certain federal taxes applicable to corporate owners of the Notes.)*

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

**TOWN OF NEWFANE  
NIAGARA COUNTY, NEW YORK  
(the "Town")**

**\$1,586,000**

**BOND ANTICIPATION NOTES, 2011  
(the "Notes")  
(Designated/Bank Qualified)**

**Interest Rate: 1.33%      CUSIP: 651282FM2      Not Reoffered**

**First Niagara Bank, N.A.**

**Notes Dated: December 8, 2011**

**Maturity Date: December 6, 2012**

*Security and Sources of Payment:* The Notes will constitute general obligations of the Town and will contain a pledge of its faith and credit for the payment of the principal of and interest on the Notes. Unless paid from other sources, all the taxable real property within the Town will be subject to the levy of *ad valorem* taxes, without limitation as to rate or amount, for such purpose, (subject to certain statutory limitations imposed by Chapter 97 of the 2011 Laws of New York [the "Tax Levy Limit Law"]; see "REAL PROPERTY TAX INFORMATION—Tax Levy Limit Law," herein).

*Prior Redemption:* The Notes will NOT be subject to redemption, in whole or in part, prior to maturity.

*Form and Denomination:* The Notes will be issued as registered Notes, and will be issued in the name of Cede & Co., as nominee of DTC in New York, New York, which will act as Securities Depository for the Notes. Individual purchases will be made in book-entry-only form, in the principal amount of \$5,000 or integral multiples thereof, except for one Note of an odd denomination, as may be determined by such successful bidder. Initial purchasers of the Notes will not receive certificates representing their ownership interest in the Notes. Payments of principal of and interest on the Notes will be made by the Town to DTC, which will in turn remit such principal and interest to its Participants, for subsequent distribution to the Beneficial Owners of the Notes. See "Book-Entry-Only System" herein.

Interest will be calculated on a 30 day month and a 360 day year basis, payable at maturity.

*The Notes are offered when, as and if issued and received by the purchaser and subject to the receipt of the legal opinion as to the validity of the Notes of Hodgson Russ LLP, Bond Counsel, of Buffalo, New York, and certain other conditions. It is anticipated that the Notes will be available for delivery in New York, New York as may be agreed with the purchaser on or about December 8, 2011.*

THE REVISED COVER SUPPLEMENTS THE OFFICIAL STATEMENT OF THE TOWN DATED NOVEMBER 14, 2011 RELATING TO THE OBLIGATIONS THEREOF DESCRIBED THEREIN AND HEREIN BY INCLUDING CERTAIN INFORMATION OMITTED FROM SUCH OFFICIAL STATEMENT IN ACCORDANCE WITH SECURITIES AND EXCHANGE COMMISSION RULE 15C2-12 (THE "RULE"). OTHER THAN AS SET FORTH ON THIS REVISED COVER PAGE, THERE HAVE BEEN NO REVISIONS TO SUCH OFFICIAL STATEMENT. FOR A DESCRIPTION OF THE TOWN'S AGREEMENT TO PROVIDE NOTICE OF CERTAIN DESIGNATED EVENTS (AS SPECIFIED IN THE RULE) AS REQUIRED BY THE RULE (SEE "DISCLOSURE UNDERTAKING," HEREIN).

## OFFICIAL STATEMENT DATED NOVEMBER 14, 2011

### RENEWAL ISSUE

### BOND ANTICIPATION NOTES

*In the opinion of Hodgson Russ LLP, of Buffalo, New York, Bond Counsel, subject to continuing compliance by the Town of Newfane Niagara County, New York (the "Town") with its covenants relating to certain requirements contained in the Internal Revenue Code of 1986, as amended (the "Code"), interest on the Notes is (A) excluded from gross income of the owners thereof for federal income tax purposes under existing law, and (B) exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York). Moreover, interest on the Notes is not an "item of tax preference" for purposes of the individual and corporate alternative minimum taxes. (See the caption "TAX EXEMPTION" herein for a discussion of certain federal taxes applicable to corporate owners of the Notes.)*

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

**TOWN OF NEWFANE  
NIAGARA COUNTY, NEW YORK  
(the "Town")**

**\$1,586,000**

**BOND ANTICIPATION NOTES, 2011  
(the "Notes")  
(Designated/Bank Qualified)**

**Notes Dated: December 8, 2011**

**Maturity Date: December 6, 2012**

*Security and Sources of Payment:* The Notes will constitute general obligations of the Town and will contain a pledge of its faith and credit for the payment of the principal of and interest on the Notes. Unless paid from other sources, all the taxable real property within the Town will be subject to the levy of *ad valorem* taxes, without limitation as to rate or amount, for such purpose, (subject to certain statutory limitations imposed by Chapter 97 of the 2011 Laws of New York [the "Tax Levy Limit Law"]; see "REAL PROPERTY TAX INFORMATION—Tax Levy Limit Law," herein).

*Prior Redemption:* The Notes will NOT be subject to redemption, in whole or in part, prior to maturity.

*Form and Denomination:* The Notes will be issued as registered notes, and at the option of the initial purchaser(s), may be registered to the Depository Trust Company ("DTC" or the "Securities Depository"), or may be registered in the name of the initial purchaser(s).

If the Notes will be issued through DTC, the Notes will be registered in the name of Cede & Co., as nominee of DTC in New York, New York, which will act as Securities Depository for the Notes. Individual purchases will be made in book-entry-only form, in the principal amount of \$5,000 or integral multiples thereof, except for one Note of an odd denomination, as may be determined by such successful bidder(s). Initial purchasers of the Notes will not receive certificates representing their ownership interest in the Notes. Payments of principal of and interest on the Notes will be made by the Town to DTC, which will in turn remit such principal and interest to its Participants, for subsequent distribution to the Beneficial Owners of the Notes. See "Book-Entry-Only System" herein.

If the Notes are registered in the name of the initial purchaser(s), principal of and interest on the Notes will be payable in 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(s). In such case, the Notes will be issued in registered form in denominations of \$5,000, or integral multiples thereof, except for one Note of an odd denomination, as may be determined by such successful bidder(s).

Interest will be calculated on a 30 day month and a 360 day year basis, payable at maturity.

*The Notes are offered when, as and if issued and received by the purchaser and subject to the receipt of the legal opinion as to the validity of the Notes of Hodgson Russ LLP, Bond Counsel, of Buffalo, New York, and certain other conditions. It is anticipated that the Notes will be available for delivery in New York, New York or at such other place as may be agreed with the purchaser on or about December 8, 2011.*

THE TOWN DEEMS THIS OFFICIAL STATEMENT TO BE FINAL FOR PURPOSES OF SECURITIES AND EXCHANGE COMMISSION RULE 15C2-12 (THE "RULE"), EXCEPT FOR CERTAIN INFORMATION THAT HAS BEEN OMITTED HEREFROM IN ACCORDANCE WITH THE RULE AND THAT WILL BE SUPPLIED WHEN THIS OFFICIAL STATEMENT IS UPDATED FOLLOWING THE SALE OF THE NOTES. THIS OFFICIAL STATEMENT WILL BE SO UPDATED UPON REQUEST OF THE SUCCESSFUL BIDDER(S) AS MORE FULLY DESCRIBED IN THE NOTICE OF SALE WITH RESPECT TO THE NOTES. IN ADDITION, THE TOWN WILL ENTER INTO AN UNDERTAKING TO PROVIDE NOTICE OF CERTAIN EVENTS (AS DEFINED IN THE RULE) AS REQUIRED BY THE RULE (SEE "DISCLOSURE UNDERTAKING," HEREIN).

**TOWN OF NEWFANE  
NIAGARA COUNTY, NEW YORK**

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\* \* \*

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No dealer, broker, salesman or other person has been authorized by the Town to give any information or to make any representations not 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 Town. 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 Town from sources which are believed to be reliable but it is not guaranteed as to accuracy or completeness. The information, estimates 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 Town since the date hereof.

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**TABLE OF CONTENTS**

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	Page		Page
<b>THE NOTES</b> .....	1	Debt Ratios .....	16
Description of the Notes .....	1		
Optional Redemption .....	1	<b>FINANCES OF THE TOWN</b> .....	16
Book-Entry Only System .....	2	Financial Statements and Accounting Procedures .....	16
Certificated Notes .....	3	Fund Structure and Accounts .....	16
Authorization and Purpose of Issue .....	3	Basis of Accounting .....	16
Security and Source of Payment .....	4	Investment Policy .....	17
Remedies of Noteholders on Default .....	4	Budgetary Procedures .....	17
Special Provisions Affecting Remedies Upon Default .....	5	Financial Operations .....	18
		Revenues .....	18
<b>THE TOWN</b> .....	6	Expenditures .....	19
General Information .....	6	Pension System .....	19
Town Organization .....	6	Other Post-Employment Benefits .....	20
Employees .....	6		
		<b>REAL PROPERTY TAX INFORMATION</b> .....	21
<b>DEMOGRAPHIC AND STATISTICAL INFORMATION</b> .....	7	Real Property Taxes .....	21
Population .....	7	Tax Collection Record .....	21
Median Household Income .....	7	Tax Collection Procedure .....	22
Per Capita Income .....	7	Ten Largest Taxpayers .....	22
Unemployment Rate Statistics .....	7		
Selected Listing of Larger Employers .....	8	<b>LITIGATION</b> .....	22
Building Permits .....	8		
		<b>NOTEHOLDER RISKS</b> .....	22
<b>INDEBTEDNESS OF THE TOWN</b> .....	9		
Constitutional Requirements .....	9	<b>TAX EXEMPTION</b> .....	23
Statutory Procedure .....	9		
Debt Limit .....	10	<b>DOCUMENTS ACCOMPANYING DELIVERY OF THE</b>	
Details of Short-Term Indebtedness Outstanding .....	10	<b>NOTES</b> .....	25
Revenue and Tax Anticipation Notes .....	11	Absence of Litigation .....	25
Status of Outstanding Bond Issues .....	11	Legal Matters .....	25
Total Annual Bond Principal and Interest Due .....	13		
Other Obligations .....	13	<b>DISCLOSURE UNDERTAKING</b> .....	26
Trend of Outstanding Debt .....	14		
Computation of Debt Limit & Calculation of Net Debt		<b>RATING</b> .....	27
Contracting Margin .....	14		
Authorized and Unissued Indebtedness .....	14	<b>FINANCIAL ADVISOR</b> .....	27
Capital Project Plans & Anticipated Future Borrowings .....	15		
Direct and Overlapping Indebtedness .....	15	<b>ADDITIONAL INFORMATION</b> .....	27
Calculation of Estimated Overlapping and			
Underlying Indebtedness .....	15	APPENDIX A – Financial Information	

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## **OFFICIAL STATEMENT**

### **TOWN OF NEWFANE NIAGARA COUNTY, NEW YORK (the "Town")**

**\$1,586,000**

### **BOND ANTICIPATION NOTES, 2011 (the "Notes") (Designated/Bank Qualified)**

This Official Statement, which includes the cover page and appendices hereto, presents certain information relating to the Town of Newfane in the County of Niagara, in the State of New York (the "Town," "County" and "State," respectively) in connection with the sale of the Town's \$1,586,000 Bond Anticipation Notes, 2011.

All quotations from and summaries and explanations of provisions of the Constitution and laws of the State and acts and proceedings of the Town 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 Town relating thereto are qualified in their entirety by reference to the definitive form of the Notes and such proceedings.

## **THE NOTES**

### **Description of the Notes**

The Notes will be dated December 8, 2011 and will mature on December 6, 2012, with interest payable at maturity at the annual rate specified by the purchaser(s). Interest on the Notes will be calculated on a 30 day month and a 360 day year basis.

The Notes will be general obligations of the Town, and will contain a pledge of the Town's faith and credit for the payment of the principal thereof and interest thereon as required by the Constitution and laws of the State of New York (State Constitution, Article VIII, Section 2; Local Finance Law, Section 100.00). Unless paid from other sources, all the taxable real property within the Town is subject to the levy of *ad valorem* taxes to pay the Notes and interest thereon, sufficient to pay such principal and interest as the same become due (subject to certain statutory limitations imposed by the Tax Levy Limit Law; see "REAL PROPERTY TAX INFORMATION—Tax Levy Limit Law," herein).

The Notes will be issued in registered form. At the option of the purchaser(s), the Notes may be registered in the name of the purchaser(s), with principal of and interest on the Notes being payable in 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(s). In such case, the Notes will be issued in registered form in denominations of \$5,000, or integral multiples thereof, except for one Note of an odd denomination, as may be determined by such successful bidder(s). Alternatively, the Notes may be registered in the name of Cede & Co. as nominee for The Depository Trust Company ("DTC"), New York, New York, with DTC acting as securities depository for the Notes. See "Book-Entry-Only System" herein. Under the DTC scenario, one fully-registered note certificate will be issued for all Notes bearing the same rate of interest and CUSIP number, each in the aggregate principal amount of such issue, and purchasers will not receive certificates representing their interest in the Notes. Principal and interest will be paid in lawful money of the United States of America (federal funds) by the Town directly to DTC for its nominee, Cede & Co.

The financial condition of the Town as well as the market for the Notes could be affected by a variety of factors, some of which are beyond the control of the Town. See "Noteholder Risks," herein.

### **Optional Redemption**

The Notes will NOT be subject to redemption, in whole or in part, prior to maturity.

## **Book-Entry Only System**

The following is relevant only if the Notes are issued in book-entry form. DTC will act as securities depository for the Notes. The Notes will be issued as fully-registered Notes registered 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 all Notes, bearing the same rate of interest and CUSIP number, and will be deposited with DTC.

DTC, the world's largest depository, 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 securities 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 has issued DTC a rating of AA+. 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 and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in 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 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 account 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 Notes may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Notes, such as redemptions, tenders, defaults, and proposed amendments to the security documents. For example, Beneficial Owners of Notes may wish to ascertain that the nominee holding the Notes for their benefit has agreed to obtain and transmit notices to Beneficial Owners, in the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption proceeds, distributions, and dividend 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 Town, on a 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 notes 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, agent, or the Town, 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 Town, 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 Town. Under such circumstances, in the event that a successor depository is not obtained, note certificates are required to be printed and delivered.

The Town may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Note certificates will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Town believes to be reliable, but the Town takes no responsibility for the accuracy thereof.

Source: The Depository Trust Company

THE TOWN CANNOT AND DOES NOT GIVE ANY ASSURANCES THAT DTC, DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS OF DTC WILL DISTRIBUTE TO THE BENEFICIAL OWNERS OF THE NOTES (1) PAYMENTS OF PRINCIPAL OF OR INTEREST OR REDEMPTION PREMIUM ON THE NOTES (2) CONFIRMATIONS OF THEIR OWNERSHIP INTERESTS IN THE NOTES OR (3) OTHER NOTICES SENT TO DTC OR CEDE & CO., ITS PARTNERSHIP NOMINEE, AS THE REGISTERED OWNER OF THE NOTES, OR THAT THEY WILL DO SO ON A TIMELY BASIS, OR THAT DTC, DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS WILL SERVE AND ACT IN THE MANNER DESCRIBED IN THE OFFICIAL STATEMENT.

THE TOWN WILL NOT HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO DTC, THE DIRECT PARTICIPANTS, THE INDIRECT PARTICIPANTS OF DTC OR THE BENEFICIAL OWNERS WITH RESPECT TO (1) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS OF DTC; (2) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS OF DTC OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT OF OR INTEREST OR REDEMPTION PREMIUM ON THE NOTES; (3) THE DELIVERY BY DTC OR ANY DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS OF DTC OF ANY NOTICE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED TO BE GIVEN TO OWNERS; OR (4) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE REGISTERED HOLDER OF THE NOTES.

THE INFORMATION CONTAINED HEREIN CONCERNING DTC AND ITS BOOK-ENTRY SYSTEM HAS BEEN OBTAINED FROM DTC AND THE TOWN MAKES NO REPRESENTATION AS TO THE COMPLETENESS OR THE ACCURACY OF SUCH INFORMATION OR AS TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE HEREOF.

### **Certificated Notes**

At the option of the purchaser(s) the Notes may be registered in the name of the purchaser(s). In such event, principal of and interest on the Notes will be payable in 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(s). In such case, the Notes will be issued in registered form in denominations of \$5,000, or multiples thereof, except for one Note of an odd denomination, as may be determined by such bidder(s). The Notes will NOT be subject to redemption, in whole or in part, prior to maturity.

### **Authorization and Purpose of Issue**

The Notes are being issued pursuant to the Constitution and Laws of the State of New York, including among others, the Local Finance Law, Town Law and a bond resolution duly adopted by the Town Board. The proceeds of the Notes, along with available funds of the Town in the amount of \$19,000, will be used by the Town to redeem and renew, in part, outstanding bond anticipation notes of the Town in the amount of \$1,605,000 for sewer system improvements as described below:

<u>Date</u>	<u>Purpose</u>	<u>Amount</u>	<u>Amount</u>	<u>Amount</u>	<u>Amount to</u>
<u>Authorized</u>		<u>Authorized</u>	<u>Outstanding</u>	<u>to be Paid</u>	<u>be Borrowed</u>
03-26-08	Consolidated Sewer District No. 1	\$2,140,000	\$1,605,000	\$19,000	\$1,586,000
		<u>\$2,140,000</u>	<u>\$1,605,000</u>	<u>\$19,000</u>	<u>\$1,586,000</u>

Source: Records of the Town

The Town has received a Letter of Conditions from the United States Department of Agriculture Rural Development (“USDA RD”) notifying the Town that USDA RD will purchase the Town’s long term bonds upon substantial completion of its projects.

The Sewer District No. 1 Project has received a USDA RD Letter of Conditions, dated March 20, 2008, approving a Rural Utilities Service (RUS) loan in the amount of \$1,640,000 and a grant not to exceed \$500,000. The term of the USDA RD loan will be for a period not to exceed 38 years at an interest rate not to exceed 4.375% interest.

The Town anticipates it will receive the USDA RD long term financing for the Sewer District No. 1 Project during the winter of 2012.

For further information regarding bond authorizations of the Town for capital purposes and other matters relating thereto see “Indebtedness of the Town”.

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

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

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

Under the Constitution of the State, the Town 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 Town to levy taxes on real estate therefor. On June 24, 2011, the Tax Levy Limit Law was adopted in the State. The Tax Levy Limit Law establishes certain limitations on the power of local governments and school districts to increase the property tax levy beyond certain prescribed limits (without following certain prescribed procedures). This is new legislation, and it is not yet certain whether the Tax Levy Limit Law will withstand Constitutional scrutiny if, as expected, it is challenged in court. The Tax Levy Limit Law will have its first application with respect to the Town’s 2012 fiscal year, which begins on January 1, 2012. Since the Notes mature in the Town’s 2012 fiscal year, the new legislation could have an effect on the holders of the Notes. See “REAL PROPERTY TAX INFORMATION -- Tax Levy Limit Law” herein.

### **Remedies of Noteholders on Default**

Upon default in payment in full of the principal of or interest on the Notes, a holder of such defaulted Note has a contractual right to sue the Town for the amount then due thereon. Such holder may obtain a judgment against the Town with interest as provided by law from the date of default in such payment or the date of demand therefor, if later. Execution or attachment of Town property cannot be obtained to satisfy the judgment. The General Municipal Law of the State provides that if the Town fails to pay a final judgment for such principal and/or interest, it shall be the duty of the Town Board of the Town to assess, levy and cause to be collected at the same time and in like manner as other moneys for expenses are then next thereafter to be assessed, levied and collected, a sum of money sufficient to pay such judgment with interest thereon. Any moneys so collected shall, from time to time, be paid to the judgment creditors.

In addition, the State Constitution provides that if the Town fails to provide in its annual budget an amount sufficient to meet payment of principal of or interest on the Notes, the Town shall set aside from the first revenues

thereafter received an amount necessary to pay such amounts which were required to be included in the Town's annual budget. In addition, the Town Supervisor may be required to set apart and apply such revenues to the payment of principal and interest on the Notes at the suit of any holder of the Notes. However, such right is subject to the discretionary power of the enforcing court and may be abridged by federal laws affecting creditors' rights or laws involving financial emergencies. (See "Special Provisions Affecting Remedies Upon Default.")

### **Special Provisions Affecting Remedies Upon Default**

Section 3-a of the General Municipal Law provides, subject to exceptions not pertinent, that the rate of interest to be paid by the Town upon any judgment or accrued claim against it shall not exceed nine per centum per annum. This provision might be construed to have application to the holders of the Notes in the event of a default in the payment of the principal of or interest on the Notes.

In accordance with the general rule with respect to municipalities, judgments against the Town may not be enforced by levy and execution against property owned by the Town.

The Federal Bankruptcy Code (the "Bankruptcy Code") allows public bodies such as the Town recourse to the protection of a Federal Court for the purpose of adjusting outstanding indebtedness. Section 85.80 of the Local Finance Law contains specific authorization for any municipality in the State to file a petition under any provision of Federal bankruptcy law for the composition or adjustment of municipal indebtedness.

Under the Bankruptcy Code, a petition may be filed in Federal bankruptcy court by a municipality which is insolvent or unable to meet its debts as they mature. Generally, the filing of such a petition operates as a stay of any proceeding to enforce a claim against the municipality. The Bankruptcy Code also requires the municipality to file a plan for the adjustment of its debts, which may modify or alter the rights of creditors and would authorize the Federal bankruptcy court to permit the municipality to issue certificates of indebtedness, which could have priority over existing creditors and which could be secured. Any plan of adjustment confirmed by the court must be approved by the requisite majority of creditors. If confirmed by the bankruptcy court, the plan would be binding upon all creditors affected by it. The Town has the legal capacity to file a petition under the Bankruptcy Code.

It might be asserted that under the Bankruptcy Code interest and principal payments made by the Town in respect of its indebtedness within ninety days of the filing of a bankruptcy petition with respect to the Town were voidable preferences. If these assertions were made and sustained by the bankruptcy court, the recipients of those preferential payments could be required to refund them, and their claims would then be treated as if the preferential payments had not been made.

At the Extraordinary Session of the State Legislature held in November, 1975, legislation was enacted which purported to suspend the right to commence or continue an action in any court to collect or enforce certain short-term obligations of the City of New York. The effect of such act was to create a three-year moratorium on actions to enforce the payment of such obligations. On November 19, 1976, the Court of Appeals, the State's highest court, declared such act to be invalid on the ground that it violates the provisions of the State Constitution requiring a pledge by such Town of its faith and credit for the payment of such obligations.

As a result of the Court of Appeals decision, the constitutionality of that portion of Title 6-A of the Local Finance Law enacted at the 1975 Extraordinary Session of the State Legislature, authorizing any county, town or Town 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 ever been declared with respect to the Town.

No principal and interest payments on Town indebtedness are past due. The Town has never defaulted in the payment of the principal of and interest on any indebtedness.

## **THE TOWN**

### **General Information**

The Town, which was established in 1824, covers an area of approximately 70 square miles and is located in Niagara County near Lake Ontario. The small hamlets of Burt, Appleton and Olcott Beach and a portion of Wright's Corners are also located within the Town. The Town lies within an easy commuting distance of the larger metropolitan areas of Lockport, Niagara Falls and Buffalo.

The Town is a relatively small rural community when compared to others in Niagara County. However, it is comparable to the other surrounding rural communities. The Town is comprised of residential structures, agricultural lands and several small businesses.

The Town provides and supports the following basic services: highway maintenance, recreation and senior programs, environmental services, sanitation and library services are provided by the Independent Newfane Library. Law enforcement services are provided by the Niagara County Sheriff's Department and the New York State Police.

Major highways serving the Town include New York State Routes 18, 78 and 104. Transportation services are also provided through the Niagara Falls and Greater Buffalo-Niagara Airports.

Electric service is provided by New York State Electric and Gas and Rochester Gas and Electric. Natural gas is provided by New York State Electric and Gas and National Fuel Gas.

Fire protection and ambulance services are provided by the Miller Hose Fire Department, Olcott Fire Company and Wright's Corners Fire Department. These not-for-profit volunteer fire departments are each governed by their own Executive Board. The Newfane Free Library is governed by its own Board of Directors. The local government does not appoint management of these entities nor does it approve their budgets, contract or hiring staff.

Banking facilities located in the Town include Bank of America and First Niagara Bank.

Major employers in the Niagara County area where many Town residents are employed include Delphi Thermal Systems, local school systems and government agencies.

Source: Town Officials

### **Town Organization**

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

The legislative power of the Town is vested in the Town Board, which consists of five members, including the Supervisor, who is the chief fiscal officer of the Town, elected for a term of two years. The four other members of the Town Board are elected to four-year terms, which terms are staggered. All the Town Board members are elected at large and there is no limitation to the number of terms each may serve.

Source: Town Officials

### **Employees**

The Town employs approximately 43 full-time, 5 part-time and 44 part-time summer workers. The Town has a Union contract with Teamsters Local 264 for the employees of the Highway, Water and Waste Water Treatment Plant Departments that expires December 31, 2013.

## DEMOGRAPHIC AND STATISTICAL INFORMATION

The following tables present certain comparative demographic and statistical information regarding the Town, the County, the State and the United States.

### Population

<u>Year</u>	<u>Town</u>	<u>Niagara County</u>	<u>New York State</u>	<u>United States</u>
1990	8,996	220,756	17,990,455	249,632,692
2000	9,657	219,846	18,976,457	281,421,906
2010	9,666	216,469	19,541,453	307,006,550

Source: US Census Bureau

### Median Household Income

<u>Year</u>	<u>Town</u>	<u>Niagara County</u>	<u>New York State</u>	<u>United States</u>
1990	\$29,437	\$28,408	\$32,965	\$30,056
2000	41,438	38,136	43,393	41,994

Source: US Census Bureau

### Per Capita Income

<u>Year</u>	<u>Town</u>	<u>Niagara County</u>	<u>New York State</u>	<u>United States</u>
1990	\$12,764	\$12,710	\$16,501	\$14,420
2000	18,311	19,219	23,389	21,587

Source: US Census Bureau

### Unemployment Rate Statistics

Unemployment statistics are not available for the Town as such. The smallest area for which such statistics are available (which includes the Town) is the County of Niagara. The information set forth below with respect to such County is included for information purposes only. It should not be inferred from the inclusion of such data in this Official Statement that the Town is necessarily representative of the County or vice versa.

<u>Annual Averages:</u>	<u>Niagara County</u>	<u>New York State</u>	<u>United States</u>
2006	5.5%	4.6%	4.6%
2007	5.4	4.5	4.6
2008	6.7	5.3	5.8
2009	9.5	8.4	9.3
2010	9.1	8.6	9.6

### Unemployment Rate Statistics – Continued

<u>2011 Monthly Rates:</u>	<u>Niagara County</u>	<u>New York State</u>	<u>United States</u>
January	10.1%	8.9%	9.8%
February	9.6	8.7	9.5
March	9.0	8.0	9.2
April	8.1	7.6	8.7
May	7.6	7.8	8.7
June	7.7	8.0	9.3
July	8.0	8.0	9.3
August	7.7	7.7	9.1
September	7.3	7.8	8.8

Source: Department of Labor, State of New York, Bureau of Labor Statistics. Information not seasonally adjusted.

### Selected Listing of Larger Employers

<u>Name</u>	<u>Type</u>	<u>Estimated No. of Employees</u>
Inter-Community Memorial Hospital	Health Care	330
Newfane Central School	Education	290
Newfane Rehabilitation Center	Health Care	210
Tops Market	Grocery	144
Budweys Market	Grocery	144
Bucolo Cold Storage	Fruit Packing	50-55
Sun Orchards	Fruit Packing	52

Source: Town Officials

### Building Permits

	Fiscal Year Ended December 31:				
	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
<u>Residential:</u>					
One Family Units	10	11	10	8	5
Number of Permits	10	11	10	8	5
Estimated Value	\$1,072,000	\$1,514,000	\$1,735,000	\$607,000	\$766,500
<u>Retail Business:</u>					
Number of Permits	9	4	6	0	4
Estimated Value	\$818,000	\$1,023,600	\$180,000	\$0	\$420,000
<u>Commercial/Industrial:</u>					
Number of Permits	4	4	6	14	5
Estimated Value	\$193,000	\$183,000	\$575,000	\$3,029,000	\$363,000
<u>Others:</u>					
Number of Permits	85	88	90	95	98
Estimated Value	\$1,098,500	\$1,135,000	\$1,059,300	\$1,081,100	\$1,144,400
<u>Yearly Total:</u>					
Number of Permits	108	107	112	117	112
Estimated Value	\$3,181,500	\$3,855,600	\$3,549,300	\$4,717,100	\$2,693,900

Source: Town Officials

## **INDEBTEDNESS OF THE TOWN**

### **Constitutional Requirements**

The New York State Constitution and Local Finance Law limit the power of the Town (and other municipalities and certain school districts of the State) to issue obligations and to otherwise contract indebtedness. Such constitutional limitations, in summary form and as generally applicable to the Town and the Notes, include the following:

**Purpose and Pledge.** Subject to certain enumerated exceptions, the Town 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 Town may contract indebtedness only for a Town 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 within three fiscal year periods, 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 as determined by statute; no installment may be more than fifty per centum in excess of the smallest prior installment, unless the Town authorizes the issuance of bonds with substantially level or declining debt service. The Town 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 payment of principal on its serial bonds, bond anticipation notes and capital notes.

There is no constitutional limitation on the amount that may be raised by the Town by tax on real estate in any fiscal year to pay interest and principal on all indebtedness, subject to the statutory limitations imposed by the Tax Levy Limit Law.

**General.** The Town is further subject to constitutional limitation by the general constitutionally imposed duty of the State Legislature to restrict the power of taxation, assessment, borrowing money, contracting indebtedness and loaning the credit of the Town so as to prevent abuses in taxation and assessments and in contracting indebtedness; 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 Town to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted. See, however, the discussion of the Tax Levy Limit Law under the heading “REAL PROPERTY TAX INFORMATION—Tax Levy Limit Law,” herein.

### **Statutory Procedure**

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

Pursuant to the Local Finance Law, the Town authorizes the incurrence of indebtedness, including bonds and bond anticipation notes issued in anticipation of such bonds, by the adoption of a resolution, approved by at least two-thirds of the members of the Town Board, the finance board of the Town. Certain of such resolutions may be subject to permissive referendum, or may be submitted to the Town voters at the discretion of the Town Board.

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 Notes subject to the legal (Constitution, Local Finance Law and case law) restrictions relating to the period of probable usefulness with respect thereto.

The Local Finance Law also provides that where a bond resolution is published with a statutory form of notice, the validity of the bonds authorized thereby, including bond anticipation notes issued in anticipation of the sale thereof, may be contested only if:

1. (a) Such obligations were authorized or an object or purpose for which the Town is not authorized to expend money or
- (b) If the provisions of the law which should be complied with as of the date of publication of the notice were not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within 20 days after the date of such publication of the notice; or

2. Such obligations were authorized in violation of the provisions of the Constitution of New York.

Except on rare occasions, the Town complies with this estoppel procedure, and it has done so with respect to the bond resolution under which the Notes are being issued. It is a procedure that is recommended by Bond Counsel, but is not an absolute legal requirement.

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 annual principal installments are made in reduction of the total amount of such notes outstanding, commencing no later than two years from the date of the first issuance of such notes, and provided that such renewals generally do not extend 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 principal reductions for the entire period of probable usefulness of the purpose for which such notes were originally issued. (See "Payment and Maturity" under "Constitutional Requirements," and "Details of Short-Term Indebtedness Outstanding" herein).

In general, the Local Finance Law contains similar provisions providing the Town with power to issue certain other short-term general obligation indebtedness, including revenue and tax anticipation notes and budget and capital notes.

### **Debt Limit**

The Town has the power to contract indebtedness for any Town purpose so long as the principal amount thereof, subject to certain limited exceptions, shall not exceed seven per centum of the average full valuation of taxable real estate of the Town 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 full valuation is by taking the assessed valuation of taxable real estate for the last completed assessment roll of the Town and dividing the same by the equalization rate, or the ratio which such assessed valuation bears to the full valuation, as determined by the State Office of Real Property Services. The State Legislature is required to prescribe the manner by which such ratio shall be determined. Average full valuation is determined by taking the sum of the full valuations of such last completed assessment roll and the four preceding assessment rolls and dividing such sum by five.

The following pages present certain details with respect to the indebtedness of the Town as of the date of this Official Statement.

### **Details of Short-Term Indebtedness Outstanding**

As of the date of this Official Statement, the Town has the following short-term indebtedness outstanding:

<u>Type</u>	<u>Maturity</u>	<u>Purpose</u>	<u>Amount</u>
Bond Anticipation Note	12-08-11	Sewer Project	\$1,605,000 *
Total:			\$1,605,000

Source: Note records of the Town

Notes: \* To be redeemed and renewed, in part, with proceeds of the Notes and \$19,000 of available funds of the Town.

## Revenue and Tax Anticipation Notes

The Town has not found it necessary to borrow in anticipation of taxes and revenues in recent years, nor does it anticipate such borrowing in the near future.

### Status of Outstanding Bond Issues

Year of Issue:	1992	2000A
Amount Issued	\$951,000	\$1,605,724
Last Maturity:	1/15/2012	6/15/2019
Interest Rate/Type:	6.00% - SB	Various - EFC SB
Purpose:	Water and Sewer	Sewer
Balance Principal 12-31-10:	\$50,000	\$790,000

  

Fiscal Year				
<u>Ending December 31:</u>	<u>Principal</u>	<u>Interest</u>	<u>Principal</u>	<u>Interest</u>
2011	\$25,000 *	\$2,250	\$85,000 *	\$42,995
2012	25,000	750	85,000	38,350
2013			85,000	33,632
2014			85,000	28,834
2015			85,000	23,963
2016			90,000	18,892
2017			90,000	13,632
2018			90,000	8,326
2019			95,000	2,831
Totals:	<u>\$50,000</u>	<u>\$3,000</u>	<u>\$790,000</u>	<u>\$211,454</u>

Note: \* Principal payments made prior to Official Statement dated November 14, 2011.

**Status of Outstanding Bond Issues**

Year of Issue:	2003	2010
Amount Issued	\$501,128	\$1,488,000
Last Maturity:	7/15/2023	12/8/1933
Interest Rate/Type:	0% - EFC	3.75% - RD SB
Purpose:	Sewer	Building
Balance Principal 12-31-10:	\$349,730	\$1,488,000

  

Fiscal Year				
<u>Ending December 31:</u>	<u>Principal</u>	<u>Interest</u>	<u>Principal</u>	<u>Interest</u>
2011	\$23,738 *	\$0	\$42,000	\$55,800
2012	24,265	0	43,000	54,225
2013	24,792	0	45,000	52,613
2014	25,320	0	47,000	50,925
2015	25,847	0	48,000	49,163
2016	26,375	0	50,000	47,363
2017	26,902	0	52,000	45,488
2018	27,430	0	54,000	43,538
2019	27,957	0	56,000	41,513
2020	28,485	0	58,000	39,413
2021	29,012	0	60,000	37,238
2022	29,540	0	63,000	34,988
2023	30,067	0	65,000	32,625
2024			68,000	30,188
2025			70,000	27,638
2026			73,000	25,013
2027			76,000	22,275
2028			79,000	19,425
2029			82,000	16,463
2030			85,000	13,388
2031			87,000	10,200
2032			91,000	6,938
2033			94,000	3,525
<b>Totals:</b>	<u>\$349,730</u>	<u>\$0</u>	<u>\$1,488,000</u>	<u>\$759,938</u>

Note: \* Principal payments made prior to Official Statement dated November 14, 2011.

**Status of Outstanding Bond Issues**

Year of Issue:	2011
Amount Issued	\$60,000
Last Maturity:	6/17/2015
Interest Rate/Type:	3.98% - SB
Purpose:	Marina Improvements
Balance Principal 12-31-10:	\$60,000

  

Fiscal Year		
<u>Ending December 31:</u>	<u>Principal</u>	<u>Interest</u>
2011	\$12,000 *	\$2,334
2012	12,000	1,867
2013	12,000	1,400
2014	12,000	934
2015	12,000	467
<b>Totals:</b>	<u>\$60,000</u>	<u>\$7,002</u>

Note: \* Principal payments made prior to Official Statement dated November 14, 2011.

**Total Annual Bond Principal and Interest Due**

<u>Fiscal Year</u> <u>Ending December 31:</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u> <u>Debt Service</u>	<u>% Paid</u>
2011	\$187,738	\$103,379	\$291,117	6.86%
2012	189,265	95,192	284,457	13.77%
2013	166,792	87,645	254,437	19.86%
2014	169,320	80,693	250,013	26.05%
2015	170,847	73,593	244,440	32.29%
2016	166,375	66,255	232,630	38.37%
2017	168,902	59,119	228,021	44.53%
2018	171,430	51,864	223,294	50.80%
2019	178,957	44,344	223,301	57.33%
2020	86,485	39,413	125,898	60.49%
2021	89,012	37,238	126,250	63.74%
2022	92,540	34,988	127,528	67.12%
2023	95,067	32,625	127,692	70.60%
2024	68,000	30,188	98,188	73.08%
2025	70,000	27,638	97,638	75.64%
2026	73,000	25,013	98,013	78.30%
2027	76,000	22,275	98,275	81.08%
2028	79,000	19,425	98,425	83.96%
2029	82,000	16,463	98,463	86.96%
2030	85,000	13,388	98,388	90.06%
2031	87,000	10,200	97,200	93.24%
2032	91,000	6,938	97,938	96.57%
2033	94,000	3,525	97,525	100.00%
<b>Totals:</b>	<u><u>\$2,737,730</u></u>	<u><u>\$981,393</u></u>	<u><u>\$3,719,123</u></u>	

Source: Town Bond Records

**Other Obligations**

As of the date of this Official Statement, the Town has \$627,557 in capital leases for various vehicles and equipment. Annual payments are \$96,940 with final payment due July 1, 2018. The implicit rate is 4.96%. The obligation under the lease can be summarized as follows:

Fiscal Year Ended December 31:	
2011	\$96,940
2012	96,940
2013	96,940
2014	96,940
2015	96,940
2016-2018	<u>290,820</u>
Total minimum lease payments	\$775,519
Less: Amount representing imputed interest costs	<u>(147,962)</u>
Present value of minimum lease payments	<u><u>\$627,557</u></u>

### Trend of Outstanding Debt

	Fiscal Year Ending December 31:				
	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Bonds	\$2,299,408	\$1,949,307	\$1,545,624	\$1,367,941	\$2,737,730
Bond Anticipation Notes	206,400	158,200	3,204,300	3,150,000	1,605,000
<b>Total Debt Outstanding</b>	<b><u>\$2,505,808</u></b>	<b><u>\$2,107,507</u></b>	<b><u>\$4,749,924</u></b>	<b><u>\$4,517,941</u></b>	<b><u>\$4,342,730</u></b>

Source: Annual Update Documents of the Town

### Computation of Debt Limit and Calculation of Net Indebtedness

(As of November 14, 2011)

<u>Fiscal Year Ended</u> <u>December 31:</u>	Assessed <u>Valuation</u>	State Equalization <u>Rate</u>	<u>Full Valuation</u>
2007	\$444,285,631	100.00%	\$444,285,631
2008	448,654,013	100.00%	448,654,013
2009	450,557,195	100.00%	450,557,195
2010	454,934,931	97.00%	469,005,084
2011	<u>456,310,656</u>	98.00%	<u>465,623,118</u>
Total <sup>1</sup>	<u>\$2,667,738,484</u>		<u>\$2,278,125,041</u>
Five Year Average Full Valuation			\$455,625,008
Debt Limit: 7% of Average Full Valuation			\$31,893,751
Inclusions:			
Bonds			\$2,591,992
Bond Anticipation Notes			<u>1,605,000</u>
Gross Indebtedness Outstanding			<u>\$4,196,992</u>
Exclusions:			
Budgeted Appropriations <sup>2</sup>			\$61,000
Water Indebtedness <sup>2</sup>			<u>16,250</u>
Total Exclusions			<u>\$77,250</u>
Total Net Indebtedness <sup>3</sup>			<u>\$4,119,742</u>
Net Debt-Contracting Margin			\$27,774,009

Notes: <sup>1</sup> Equalization rates are established by the New York State Office of Real Property Services.

<sup>2</sup> Budgeted appropriations and water indebtedness are automatically excluded pursuant to provisions of the New York State Constitution and Section 136.00 of the Local Finance Law.

<sup>3</sup> Represents 12.92% of the Debt Limit of the Town.

### Authorized and Unissued Indebtedness

As of the date of this Official Statement the Town has no other authorized and unissued debt.

## Capital Project Plans and Anticipated Future Borrowings

The Town is generally responsible for providing services as required by the citizens on a Town-wide basis. The Town 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 Town owns, operates, maintains and improves recreation facilities.

The Town is in the process of constructing a \$2,400,000 sewer rehabilitation project which consists of improvements to the Waste Water Treatment Plant, Compost Facility and some replacement sewer lines in the Town. Proceeds of the Notes in the amount of \$1,586,000 will be used to finance a portion of the project. The Town expects completion of the project by Fall 2012.

Other than the above mentioned projects no additional major capital projects are planned for the next few years.

### Direct and Overlapping Indebtedness

In addition to the Town, the following political subdivisions have the power to issue bonds and to levy taxes or cause taxes to be levied on taxable real property in the Town.

The real property taxpayers of the Town are responsible for a proportionate share of outstanding debt obligations of the political subdivisions located within the Town's boundaries. Such taxpayer's share of this overlapping debt is based upon the amount of the Town's equalized property values taken as a percentage of each separate units total values. The table below sets forth both the total outstanding principal amount of debt issued by the Town and the appropriate magnitude of the burden on taxable property of the Town of the debt issued and outstanding by such overlapping entities, as of the dates shown.

#### Calculation of Estimated Overlapping and Underlying Indebtedness

Overlapping Units	Date of Report	Applicable Total Indebtedness	Exclusions <sup>1</sup>	Applicable Net Indebtedness	Full Value of Town in Municipality	Total Full Value of Municipality	% Within Town	Estimated Applicable Overlapping Debt
County:								
Niagara	2011	\$46,168,567	\$27,572,000	\$18,596,567	\$465,623,118	\$9,207,672,225	5.06%	\$940,410
School Districts:								
Barker	2011	8,515,000	8,080,735	434,265	12,129,794	246,720,245	4.92%	21,350
Newfane	2011	24,583,184	23,329,442	1,253,742	452,990,366	460,311,673	98.41%	1,233,801
Wilson	2011	15,020,000	13,653,180	1,366,820	502,958	431,926,202	0.12%	1,592
Total Net Overlapping Debt:								\$2,197,154
Total Net Direct Debt:								4,119,742
Total Overlapping and Direct Debt:								<u>\$6,316,896</u>

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.

Note: <sup>1</sup> Exclusions consist of indebtedness deductible from gross indebtedness for debt limit purposes pursuant to constitutional and statutory provisions (including water and sewer debt and revenue anticipation notes)

## Debt Ratios

The following table presents certain debt ratios relating to the Town's direct and overlapping indebtedness as of November 14, 2011:

	<u>Amount</u>	<u>Debt Per Capita</u> <sup>1</sup>	<u>Debt Full Value</u> <sup>2</sup>
Net Direct Debt	\$4,119,742	\$426.21	0.88%
Total Direct & Applicable Total Overlapping Debt	6,316,896	653.52	1.36%

Notes: <sup>1</sup> The population of the Town is 9,666 according to the 2010 US Census Bureau.

<sup>2</sup> The full valuation of real property located in the Town for the 2011 fiscal year is \$465,623,118.

## FINANCES OF THE TOWN

### Financial Statements and Accounting Procedures

The Town maintains its financial records in accordance with the Uniform System of Accounts for Towns prescribed by the State Comptroller. The financial affairs of the Town are subject to periodic compliance review by the Office of the State Comptroller to ascertain whether the Town has complied with the requirements of various state and federal statutes.

In June, 1999, the Governmental Accounting Standards Board ("GASB") issued Statement 34, "Basic Financial Statements and Management's Discussions and Analysis for State and Local Governments". This Statement established new financial reporting requirements for state and local governments throughout the United States. Statement 34 requires new information and restructured much of the information that governments had presented in the past. Comparability with reports issued in all prior years have been affected. GASB required the Town to implement this standard for the fiscal year ending December 31, 2003. The Town has complied with the requirements of GASB Statement 34.

The Statements of Revenues, Expenditures and Changes in Fund Balances presented in Appendix A of this Official Statement are based on annual financial reports for the Town for the 2006 – 2010 fiscal years.

### Fund Structure and Accounts

The Town 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 Town presently maintains the following governmental funds: General Fund, General-Part-Town, Highway-Part-Town, Capital Projects and Special District Funds. 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 Town'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 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. An exception to this general rule is un-matured interest on general long-term debt which is recognized when due.

### **Investment Policy**

The primary objectives of the Town's investment policy are, in priority order, as follows:

- To conform to all applicable federal, state and other legal requirements.
- To adequately safeguard principal.
- To provide sufficient liquidity to meet all operating requirements.
- To obtain a reasonable rate of return on invested funds.

Pursuant to State law, including Sections 10 and 11 of the General Municipal Law (the "GML"), the Town 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 Town may also temporarily invest moneys in: (1) obligations of the United States of America; (2) obligations of the State of New York; (3) In repurchase agreements involving the purchase and sale of direct obligations of the United States; (4) certificates of deposit issued by a bank or trust company authorized to do business in New York State; (5) time deposit accounts in a bank or trust company authorized to do business in New York State; (6) in the case of moneys held in certain reserve funds established by the Town pursuant to law, in obligations of the Town.

All funds may be invested in: (1) 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; (2) 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 obligations issued by the Town.

Reserve funds may be invested in obligations of the Town.

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 Town, 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 Town Board 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 Town are made in accordance with such policy.

### **Budgetary Procedures**

No later than September 30, the Budget Officer submits a tentative budget to the Town Clerk for the fiscal year commencing the following January 1. The tentative budget includes proposed expenditures and the proposed means of financing for all funds except for the Capital Reserve.

After public hearings are conducted to obtain taxpayers comments, the governing board adopts the budget. The Town expects to adopt the proposed 2012 budget on November 16, 2011.

All modification of the budget must be approved by the governing board. (However, the Town Supervisor is authorized to transfer certain budgeted amounts within departments.)

Budgetary controls are established for the Capital Projects Fund through resolutions authorizing individual projects which remain in effect for the life of the projects.

The Tax Levy Limit Law will have a significant impact on the Town's budgeting procedures and (possibly) outcomes, beginning with the Town's budget for its 2012 fiscal year. See "REAL PROPERTY TAX INFORMATION—Tax Levy Limit Law," herein.

### **Financial Operations**

The Town Supervisor functions as the chief fiscal officer of the Town as provided by Section 2 of the Local Finance Law. In this role, the Supervisor is responsible for the Town's accounting and financial reporting activities. In addition, the Town Supervisor has a bookkeeper who primarily prepares abstracts, does accounts receivable and payable and other duties as per the Supervisor's direction. The Supervisor is also the Town's budget officer and must, therefore, prepare the annual tentative budget for submission to the Town Board. Budgetary control during the year is the responsibility of the Supervisor.

Pursuant to Section 30 of the Local Finance Law, the Supervisor has been authorized to issue or renew certain specific types of notes. As required by law, the Supervisor must execute an authorizing certificate which then becomes a matter of public record.

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

Town finances are operated primarily through the General Fund and Special Revenue Funds. All real property taxes and most of the other Town revenues are credited to these funds. Current operating expenditures are paid from these funds subject to available appropriations. The Town also has lighting, refuse and garbage, fire protection and water districts, which are accounted for within separate funds. The primary sources of income for these districts comes from special assessments levied against district properties at the same time real estate taxes are levied. Capital projects and equipment purchases are accounted for in the special projects funds.

### **Revenues**

The Town receives most of its revenues from real property taxes, County sales tax, State aid and assessments. For the year ending December 31, 2010, real property taxes and assessments accounted for 63.40% of the General Fund revenue.

A summary of such revenues and other financing sources for the last five completed fiscal years ending with December 31, 2010 and the budget for fiscal year ending 2011 and proposed budget for fiscal year ending 2012 may be found in Appendix A – Financial Information.

#### *Real Property Taxes*

See "Real Property Tax Information", herein.

#### *State Aid*

The Town received approximately 10.46% of its total General Fund operating revenue from State aid in the fiscal year ending 2010. The Town estimates State aid for fiscal years ending 2011 will be \$183,180. The Town is dependent to a modest degree on financial assistance from New York State. However, 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 Town, in any year, the Town may be affected by a delay, until sufficient State taxes have been received by the State to make State aid payments to the Town.

The State is not constitutionally obligated to maintain or continue State aid to the Town. No assurance can be given that present State aid levels will be maintained in the future. State budgetary restrictions which eliminate or substantially reduce State aid could have a material adverse affect upon the Town requiring either a counterbalancing increase in revenues from other sources to the extent available, or a curtailment of expenditures. (See also "Noteholder Risks," herein).

The State faces the prospect of multi-billion dollar deficits for the next several years, and cuts in State aid to municipalities have been included in the New York State budget for the fiscal year ending March 31, 2012, which was adopted on March 31, 2011 (and additional cuts can be expected in future years).

**Expenditures**

The major categories of expenditure for the Town are General Government Support, Public Safety, Transportation, Culture and Recreation, Employee Benefits and Debt Service. A summary of the expenditures for the five most recently completed fiscal years ending December 31, 2010 and the estimated expenditures for the current fiscal year may be found in Appendix A – Financial Information.

**Pension System**

Substantially all employees of the Town are members of the New York State and Local Employees' Retirement System ("ERS"). (The System is referred to hereinafter as the "Retirement System" where appropriate.) The Retirement System is a cost-sharing multiple public employee retirement systems. The obligation of employers and employees to contribute and the benefit to employees are governed by the New York State Retirement System and Social Security Law (the "Retirement System Law"). The Retirement System offer 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 each 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 are non-contributory with respect to members hired prior to July 27, 1976. All members hired on or after July 27, 1976 must contribute 3% of gross annual salary, for the first ten years of service, toward the cost of retirement programs.

The following schedule reflects the Town’s contribution to the ERS for the last five fiscal years and the amount budgeted for fiscal year 2011:

<u>Fiscal Year Ending December 31:</u>	<u>ERS</u>
Budgeted 2011	\$160,624
2010	189,624
2009	93,577
2008	110,739
2007	131,227
2006	124,988

Chapter 49 of the Laws of 2003 changed the cycle of billing to better match budget cycles of the Town and other governmental employers. Under the previous method, the Town was unsure of how much it would be required to pay to the system until after its budget was implemented. The contribution for a given fiscal year is now based on the value of the pension fund on the prior April 1 instead of the following April 1, so the Town is now able to more accurately build the cost of the contribution in its budget. The Town is required to a minimum contribution of 4.50% of payroll every year, including years in which the investment performance of the fund would make a lower contribution possible.

Due to significant capital market declines in the recent past, the State's Retirement System portfolio has experienced negative investment performance and severe downward trends in market earnings (until quite recently). As a result of the foregoing, New York State Comptroller Thomas DiNapoli has announced that the employer contribution rate for the State’s Retirement System in 2012 year and subsequent years will be higher than the minimum contribution rate established by Chapter 49. For fiscal year 2012-13, the average contribution rate for the ERS will increase 16.3% to 18.9% of salaries and from 21.6% to 25.8% for the PFRS.

The Town is current with all its pension obligations and prepays all pension payments in December of each year to take advantage of the discounted payment amount offered by the System for paying pension obligations in advance of the February 1 due date.

Chapter 57 of the Laws of 2010 (Part TT) amended the Retirement and Social Security Law to authorize participating local government employers, if they so elect, to amortize an eligible portion of their annual required contributions to both ERS and PFRS, when employer contribution rates rise above certain levels. The option to amortize the eligible portion began with the annual contribution due February 1, 2011. The amortizable portion of an annual required contribution is based on a “graded” rate by the State Comptroller in accordance with installments over a ten-year period, but may be prepaid at any time. Interest is to be charged on the unpaid amortized portion at a rate to be determined by State Comptroller, which approximates a market rate of return on taxable fixed rate securities of a comparable duration issued by comparable issuers. The interest rate is established annually for that year’s amortized amount and then applies to the entire ten years of the amortization cycle of that amount. When in any fiscal year, the participating employer’s graded payment eliminates all balances owed on prior amortized amounts, any remaining graded payments are to be paid into an employer contribution reserve fund established by the State Comptroller for the employer, to the extent that amortizing employer has no currently unpaid prior amortized amount, for future use.

On December 10, 2009, former Governor Paterson signed into law pension reform legislation that will provide (according to a Division of the Budget analysis) more than \$35 billion in long-term savings to State taxpayers over the next thirty years. The legislation creates a new Tier V pension level, the most significant reform of the State’s pension system in more than a quarter-century. Key components of Tier V include:

- Raising the minimum age at which most civilians can retire without penalty from 55 to 62 and imposing a penalty of up to 38 percent for any civilian who retires prior to age 62.
- Requiring employees to continue contributing three percent of their salaries toward pension costs so long as they accumulate additional pension credits.
- Increasing the minimum years of service required to draw a pension from five years to 10 years.
- Capping the amount of overtime that can be considered in the calculation of pension benefits for civilians at \$15,000 per year, and for police and firefighters at 15 percent of non-overtime wages.

In accordance with constitutional requirements, these new pension reforms apply only to public employees hired on or after January 1, 2010.

The investment of monies and assumptions underlying same, of the Retirement Systems covering the Town’s employees is not subject to the direction of the Town. Thus, it is not possible to predict, control or prepare for future unfunded accrued actuarial liabilities of the Retirement Systems (“UAALs”). The UAAL is the difference between total actuarially accrued liabilities and actuarially calculated assets available for the payment of such benefits. The UAAL is based on assumptions as to retirement age, mortality, projected salary increases attributed to inflation, across-the-board raises and merit raises, increases in retirement benefits, cost-of-living adjustments, valuation of current assets, investment return and other matters. Such UAALs could be substantial in the future, requiring significantly increased contributions from the Town which could affect other budgetary matters. Concerned investors should contact the Retirement Systems administrative staff for further information on the latest actuarial valuations of the Retirement Systems.

### **Other Post-Employment Benefits**

It should be noted that the Town provides post-employment healthcare benefits to various categories of former employees. These costs may be expected to rise substantially in the future.

GASB and OPEB. OPEB refers to “other post-employment benefits,” and refers to benefits other than pension benefits. OPEB consists primarily of health care benefits, and may include other benefits such as disability benefits and life insurance. Before GASB 45, OPEB costs were generally accounted for and managed on a pay-as-you-go basis.

Recently enacted accounting rule, GASB Statement No. 45 (“GASB 45”) of the Governmental Accounting Standards Board (“GASB”), requires state and local governments to account for and report their costs associated with post-retirement benefits and other non-pension benefits (“OPEB”), as it accounts for vested pension benefits. OPEB consists primarily of health care benefits, and may include other benefits such as disability benefits and life insurance.

GASB 45 requires municipalities and school districts to account for OPEB liabilities in the same manner as they already account for pension liabilities. It will require them to adopt the actuarial methodologies used for pensions, with adjustments for the different characteristics of OPEB and the fact that most municipalities and school districts have not set aside any funds against this liability. Unlike GASB Statement No. 27, which covers accounting for pensions, GASB 45 does not require municipalities or school districts to report a net OPEB obligation at the start.

Under GASB 45, based on actuarial valuation, an annual required contribution (“ARC”) will be determined for each municipality or school district. 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 or school district 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. The Town is not in compliance with GASB 45.

GASB 45 does not require that the unfunded liability actually be amortized nor that it be advance funded, only that the municipality or school district account for its unfunded accrued liability and its compliance in meeting its ARC.

Actuarial valuation will be required every two years for OPEB plans with more than 200 members, every three years if there are less than 200 members.

Additional information about GASB 45 and other accounting rules applicable to municipalities and school districts may be obtained from GASB.

**REAL PROPERTY TAX INFORMATION**

**Real Property Taxes**

The Town derives a significant portion of its annual revenue through a direct real property tax.

The following table presents the total tax levy tax rates and collection performance for each of the last five fiscal years.

**Tax Collection Record**

	Fiscal Year Ended December 31:				
	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<b>Town Taxes:</b>					
Special Districts	\$1,343,945	\$1,297,525	\$1,317,825	\$1,371,374	\$1,638,885
Water Districts	126,205	126,395	126,798	127,035	127,212
Sewer Districts	583,290	582,125	581,616	609,078	610,692
Total Town Tax Items:	<u>\$2,053,440</u>	<u>\$2,006,045</u>	<u>\$2,026,239</u>	<u>\$2,107,487</u>	<u>\$2,376,789</u>
Total Town and County	\$6,096,025	\$5,958,263	\$5,761,879	\$6,685,325	\$6,165,330
Total Taxes Collected by Town Prior to Return to County	<u>5,404,625</u>	<u>5,343,108</u>	<u>5,195,816</u>	<u>6,047,527</u>	<u>5,654,690</u>
Amount of Unpaid Taxes Returned to County	\$691,400	\$615,155	\$566,063	\$637,798	\$510,640
Percentage of Total Levy Collected by Town Prior to Return to County	88.66%	89.68%	90.18%	90.46%	91.72%

Source: Town Officials

## Tax Collection Procedure

The Town Tax Collector is responsible for the collection of Town taxes. Taxes are due January 1, payable without penalty to and including January 31. Penalties thereafter are 1% if paid in the month of February and 2% if paid in the month of March.

The Town deducts the amount due for Town tax purposes prior to returning the balance collected to the County on August 1 and is thus assured of 100% collection of its levy each year. If, however, the amount collected is less than the amount due the Town, the County reimburses the Town for any uncollected taxes.

## Ten Largest Taxpayers

### 2011 Assessment Roll

<u>Name</u>	<u>Type</u>	<u>Estimated Assessed Valuation</u>
Niagara Mohawk Power Co.	Utility	\$9,092,509
Morgan Management LLC	Housing/Mobile Home Park	6,146,224
NYSEG	Utility	4,965,577
Buffalo Fields LLC	Grocery	4,390,306
Russell Farms	Agriculture/Fruit	3,701,224
Ridgeview Homes	Housing/Mobile Home Park	2,694,490
Singer Farms	Agriculture	2,086,020
1093 Group LLC	Pharmacy (Rite Aid)	1,914,184
Verison New York Inc.	Utility	1,570,336
James M. McDonough	Real Estate	1,471,224
		<u>\$38,032,094</u> <sup>1</sup>

Note: <sup>1</sup> Represents 8.33% of the 2011 assessed valuation of \$456,310,656 of the Town.

## LITIGATION

In common with other local governments and school districts, the Town from time to time receives notices of claim and is a party to litigation. In the opinion of the Town, after consultation with its 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 Town has not asserted a substantial and adequate defense, nor which if determined against the Town, would have an adverse material effect on the financial condition of the Town.

There is no action, suit, proceeding or investigation, at law or in equity, before or by any court, public board or body pending or, to the best knowledge of the Town, threatened against or affecting the Town to restrain or enjoin the issuance, sale or delivery of the Notes or the levy and collection of taxes or assessments to pay same, or in any way contesting or affecting the validity of the Notes or any proceedings or authority of the Town taken with respect to the authorization, issuance or sale of the Notes or contesting the corporate existence or boundaries of the Town.

## NOTEHOLDER RISKS

There are various forms of risk associated with investing in the Notes. One such risk is that the Town will be unable to promptly pay interest and principal on the Notes as they become due (see "Remedies Upon Default", herein). If a Noteholder elects to sell his or her investment prior to its scheduled maturity date, market access or price risk may be incurred. The following is a discussion of certain events that could affect the risk of investing in the Notes. In addition, there may be other risk factors which a potential investor must consider. In order to make an informed investment

decision, an investor should be thoroughly familiar with the entire Official Statement, including its appendices, as well as all areas of potential risk.

There are a number of factors which could have a detrimental effect on the ability of the Town to continue to generate revenues, particularly its property taxes. For instance, the termination of a major commercial enterprise or an unexpected increase in tax certiorari proceedings could result in a reduction in the assessed valuation of taxable real property in the Town. In addition, to the extent that the Town is dependent on State aid, there can be no assurance that such aid will be continued in the future (see "Finances of the Town", herein). Unforeseen developments could also result in substantial increases in Town expenditures, thus placing considerable strain on the Town's financial condition.

The subprime mortgage crisis and various economic events growing out of it created a significant disruption in the U.S. and global credit and securities markets, and the health of those markets was impaired to the point where significant governmental intervention was deemed necessary. These developments have had significant adverse effects on the finances of New York State, on which the Town depends for a modest amount of State aid. The exact impact on the Town cannot be predicted, but, to date, it has been negative and could persist for a significant period of time. The State faces the prospect of multi-billion dollar deficits for the next several years, and cuts in State aid to municipalities and school districts have been included in the New York State budget for the fiscal year ending March 31, 2012, which was adopted on March 31, 2011 (and are likely in future years).

The financial condition of the Town as well as the market for the Notes could be affected by a variety of factors, some of which are beyond the Town's control. There can be no assurance that adverse events in the State, including, for example, the seeking by a municipality of remedies pursuant to the Federal Bankruptcy Code or otherwise, will not occur which might affect the market price of and market for the Notes. If a significant default or other financial crisis should occur in the affairs of the State or any of its agencies or political subdivisions, thereby further impairing the acceptability of obligations issued by borrowers within the State, both the ability of the Town to arrange for additional borrowings and the market for and market value of outstanding debt obligations, including the Notes, could be adversely affected.

Amendments to U.S. Internal Revenue Code of 1986, as amended (the "Code") could reduce or eliminate the favorable tax treatment granted to municipal debt, including the Notes and other debt issued by the Town. Any such future legislation could have an adverse effect on the market value of the Notes (See "Tax Exemption" herein).

On September 12, 2011, President Obama sent to Congress a \$447 billion American Jobs Act of 2011 (the "Jobs Act") in an attempt to address persistently high unemployment in the United States. The Jobs Act contained proposals for the raising of revenue to offset the spending proposals contained in the Jobs Act. In pertinent part, the Jobs Act would bar higher-income investors from using tax-exempt bond interest (and certain other tax exclusions, expenditures and deductions) to reduce their income tax rates below 28%. If adopted in its proposed form, the Jobs Act would have a significant adverse impact on the municipal bond market. The restriction would apply to single taxpayers with incomes of \$200,000 or greater and married couples with incomes of \$250,000 or greater. It would apply to taxable years beginning on or after Jan. 1, 2013. The Jobs Act failed, on a procedural vote, to be taken up by the U.S. Senate. The President has stated that he will now submit the Jobs act to the Congress in piecemeal fashion, forcing votes on particular elements of the overall legislation. It is extremely difficult to predict whether the Jobs Act will be adopted in its present form or in any form. If enacted, the Jobs Act would in all likelihood affect (negatively) the market price for, and the marketability of, the Notes. Potential purchasers of the Notes are advised to consult with their own financial and legal advisors with respect to the Jobs Act and its possible implications for an investment in the Notes.

If and when a holder of any of the Notes should elect to sell a Note prior to its maturity, there can be no assurance that a market shall have been established, maintained and be in existence for the purchase and sale of any of the Notes. In addition, the price and principal value of the Notes is dependent on the prevailing level of interest rates; if interest rates rise, the price of a note will decline, causing the noteholder to incur a capital loss upon the sale of such note (unless such note is held to maturity).

#### **TAX EXEMPTION**

In the opinion of Hodgson Russ LLP, of Buffalo, New York, Bond Counsel, under existing law, the interest on the Notes is excluded from gross income of the owners thereof for federal income tax purposes, and is not an "item of tax

preference" for purposes of the individual and corporate alternative minimum taxes imposed by the Code. However, it should be noted that (1) the Town, by failing to comply with certain restrictions contained in the Code, may cause interest on the Notes to become subject to federal income taxation from the date of issuance of the Notes; (2) Section 56 of the Code provides that for purposes of computing the alternative minimum tax on corporations (as defined for federal income tax purposes) interest on the Notes is taken into account in determining adjusted current earnings; and (3) interest on the Notes earned by foreign corporations doing business in the United States could be subject to the branch profits tax imposed by Section 884 of the Code. Interest on the Notes is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York).

In rendering the foregoing opinions, Hodgson Russ LLP noted that the exclusion of the interest on the Notes from gross income for federal income tax purposes is subject to, among other things, continuing compliance by the Town with the applicable requirements of Sections 141, 148 and 149 of the Code and the regulations promulgated thereunder (collectively, the "Tax Requirements"). In the opinion of Hodgson Russ LLP, the tax certificate and the non-arbitrage certificate (or similar documentation) that will be executed and delivered by the Town in connection with the issuance of the Notes (collectively the "Tax Certificates") establish requirements and procedures, compliance with which will satisfy the Tax Requirements applicable to the Notes.

The Tax Requirements referred to above, which must be complied with in order that interest on the Notes remains excluded from gross income for federal income tax purposes, include, but are not limited to:

- (1) The requirement that the proceeds of the Notes be used in a manner so that the Notes are not obligations which meet the definition of a "private activity bond" within the meaning of Section 141 of the Code.
- (2) The requirements contained in Section 148 of the Code relating to arbitrage bonds.
- (3) The requirements that payment of principal or interest on the Notes not be directly or indirectly guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof) as provided in Section 149(b) of the Code.

In the Tax Certificate that will be delivered in connection with the issuance of the Notes, the Town has covenanted to comply with the Tax Requirements, and to refrain from taking any action which would cause the interest on the Notes to be includable in gross income for federal income tax purposes. Any violation of the Tax Requirements may cause the interest on the Notes to be included in gross income for federal income tax purposes from the date of issuance of the Notes. Hodgson Russ LLP, Bond Counsel, expresses no opinion regarding other federal tax consequences arising with respect to the Notes.

The interest on the Notes is subject to, among others, the following provisions contained in the Code:

- (1) Interest on the Notes is not an "item of tax preference" for purposes of the individual and corporate alternative minimum taxes imposed by the Code. However, interest on the Notes is includable in the "adjusted current earnings" of any corporate owner of the Notes and 75% of the interest on the Notes is thus includable in the tax base for computing a corporation's liability with respect to the 20% alternative minimum tax imposed on corporations by the Code.
- (2) If the Notes are held by certain foreign corporations doing business in the United States, the interest on the Notes will be included in "effectively connected earnings and profits" for purposes of computing a branch profits tax of up to 30%.
- (3) A property casualty insurance company's deduction for the losses incurred will be reduced by 15% of the income received from tax-exempt obligations.
- (4) The United States Treasury Department has promulgated regulations which might have the effect of imposing a tax at ordinary income rates with respect to interest on the Notes owned by "S Corporations" in certain cases.

- (5) In addition, the Notes will constitute "qualified tax-exempt obligations" within the meaning of the Code, and if the Notes are held by a financial institution, a portion of the interest expense allocable to the Notes will be deductible for federal income tax purposes.

Under the Code, the benefits of the exclusion of the interest on the Notes from gross income for federal income tax purposes may be diminished by operation of certain provisions of the Code which affect recipients of Social Security and railroad retirement benefits.

Amendments to Code could reduce or eliminate the favorable tax treatment granted to municipal debt, including the Notes and other debt issued by the Town. Any such future legislation could have an adverse effect on the market value of the Notes.

Each purchaser of the Notes should consult his or her tax advisor regarding the impact of the foregoing and other provisions of the Code on his or her individual tax position.

## **DOCUMENTS ACCOMPANYING DELIVERY OF THE NOTES**

### **Absence of Litigation**

Upon delivery of the Notes, the Town will furnish a certificate, dated the date of delivery of the Notes, to the effect that there is no controversy or litigation of any nature pending or threatened to restrain or enjoin the issuance, sale, execution, or delivery of the Notes, or in any way contesting or affecting the validity of the Notes or any of the proceedings taken with respect to the issuance and sale thereof or the application of moneys to the payment of the Notes. An additional certificate will state that there is no controversy or litigation of any nature now pending or threatened by or against the Town wherein an adverse judgment or ruling could have a material adverse impact on the financial condition of the Town or adversely affect the power of the Town to levy, collect, and enforce the collection of taxes or other revenues for the payment of the Notes, which has not been disclosed in this Official Statement.

### **Legal Matters**

The legality of the authorization and issuance of the Notes will be covered by the legal opinion of Hodgson Russ LLP, Bond Counsel, of Buffalo, New York. Such legal opinion will state that in the opinion of Bond Counsel (i) the Notes have been authorized and issued in accordance with the Constitution and statutes of the State of New York and constitute valid and legally binding general obligations of the Town, are payable as to principal and interest from *ad valorem* taxes levied upon all the taxable real property within the Town, without limitation as to rate or amount (subject to certain statutory limitations imposed by the Tax Levy Limit Law); provided, however, that the enforceability (but not the validity) of the Notes may be limited or otherwise affected by (a) any applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar statute, rule, regulation or other law affecting the enforcement of creditors' rights and remedies heretofore or hereafter enacted or (b) by the unavailability of equitable remedies or the application thereto of equitable principles, (ii) assuming that the Town complies with certain requirements of the Code, interest on the Notes (a) is excluded from gross income for federal income tax purposes and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations and (iii) assuming that the Town complies with certain requirements of the Code, interest on the Notes is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof, including the City of New York. Bond Counsel will express no opinion regarding other federal income tax consequences arising with respect to the Notes.

Such legal opinion also will state that (i) in rendering the opinions expressed therein, Bond Counsel has assumed, without inquiry or other investigation, (a) the legal capacity of each natural person, (b) the full power and authority of each person other than the Town to execute and deliver certain documents and to perform certain acts, (c) no modification of any provision of any document, no waiver of any right or remedy and no exercise of any right or remedy other than in a commercially reasonable and conscionable manner and in good faith, (d) the genuineness of each signature, the completeness of each document submitted to Bond Counsel, the authenticity of each document submitted to Bond Counsel as an original, the conformity to the original of each document submitted to Bond Counsel as a copy and the authenticity of the original of each document submitted to Bond Counsel as a copy, (e) the accuracy on the date

of this letter of certain reviewed documents, (f) the truthfulness of each statement as to any factual matter contained in such reviewed documents, and (g) the due and timely filing of certain filed documents; (ii) the scope of Bond Counsel's engagement in relation to the issuance of the Notes has extended solely to rendering the opinions expressed therein, (iii) the opinions expressed therein are not intended and should not be construed to express or imply any conclusion that the amount of real property subject to taxation within the boundaries of the Town, together with other legally available sources of revenue, if any, will be sufficient to enable the Town to pay the principal of and interest on the Notes as the same respectively become due and payable, and (iv) no opinion is expressed by Bond Counsel as to whether the Town, in connection with the sale of the Notes, has made any untrue statement of a material fact, or omitted to state a material fact necessary in order to make any statements made, in the light of the circumstances under which they were made, not misleading.

### **DISCLOSURE UNDERTAKING**

In accordance with the provisions of Rule 15c2-12, as the same may be amended or officially interpreted from time to time (the "Rule"), promulgated by the Securities and Exchange Commission (the "Commission") pursuant to the Securities Exchange Act of 1934, the Town has agreed to provide or cause to be provided, in a timely manner not in excess of ten (10) business days after the occurrence of the event, during the period in which the Notes are outstanding, to the Electronic Municipal Market Access ("EMMA") system of the Municipal Securities Rulemaking Board ("MSRB") or any other entity designated or authorized by the Commission to receive reports pursuant to the Rule, notice of the occurrence of any of the following events with respect to the Notes:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults, if material;
- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) in the case of credit enhancement, if any, provided in connection with the issuance of the Notes, unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) 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 or determinations with respect to the tax status of the Notes, or other material events affecting the tax status of the Notes;
- (g) modifications to rights of Noteholders, if material;
- (h) note calls, if material and tender offers;
- (i) defeasances;
- (j) release, substitution, or sale of property securing repayment of the Notes;
- (k) rating changes;
- (l) bankruptcy, insolvency, receivership or similar event of the Town;
- (m) the consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of the assets of the Town, 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;
- (n) appointment of a successor or additional trustee or the change of name of a trustee, if material.

Event (c) is included pursuant to a letter from the SEC staff to the National Association of Bond Lawyers dated September 19, 1995. However, event (c) is not applicable, since no "debt service reserves" will be established for the Note.

With respect to event (d), the Town does not undertake to provide any notice with respect to credit enhancement added after the primary offering of the Notes.

The Town may from time to time choose to provide notice of the occurrence of certain other events, in addition to those listed above, if the Town determines that any such other event is material with respect to the Notes; but the Town does not undertake to commit to provide any such notice of the occurrence of any material event except those events listed above.

The Town reserves the right to terminate its obligation to provide the aforementioned notices of material events, as set forth above, if and when the Town no longer remains an obligated person with respect to the Notes within the meaning of the Rule.

The Town acknowledges that its undertaking pursuant to the Rule described under this heading is intended to be for the benefit of the holders of the Notes (including holders of beneficial interests in the Notes). The right of holders of the Notes to enforce the provisions of the undertaking will be limited to a right to obtain specific enforcement of the Town's obligations under its material event notices undertaking and any failure by the Town to comply with the provisions of the undertaking will neither be a default with respect to the Notes nor entitle any holder of the Notes to recover monetary damages.

The Town reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the Town; provided that the Town agrees that any such modification will be done in a manner consistent with the Rule.

Annual information and notices of material events can be obtained from the Town Supervisor, 2737 Transit Road, Newfane, New York 14108, telephone 716-778-8531.

An "Undertaking to Provide Notice of Certain Events" to this effect shall be provided to the purchaser(s) at closing.

The Town is in compliance with all prior undertakings pursuant to the Rule.

## **RATING**

The Town has not applied for a rating on the Notes.

## **FINANCIAL ADVISOR**

Municipal Solutions, Inc. has assisted the Town as financial advisor in certain matters with respect to the sale and issuance of the Notes.

## **ADDITIONAL INFORMATION**

Additional information may be obtained upon request from the office of the Town Supervisor, 2737 Transit Road, Newfane, New York 14108, telephone 716-778-8531, or from the office of Municipal Solutions, Inc., 2528 State Route 21, Canandaigua, New York 14424, telephone number 585-394-4090, fax number 585-394-4092, and website at: <http://www.municipalsolution.com>.

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

This Official Statement is submitted only in connection with the sale of the Notes by the Town and may not be reproduced or used in whole or in part for any other purpose.

So far as any statements made in this Official Statement, and the documents included by specific reference, that are not historical facts are forward-looking statements, which are based on the Town’s management’s beliefs as well as assumptions made by, and information available to, the Town 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 Town files with the repositories. When used in Town documents or oral presentations, the words “anticipate,” “estimate,” “expect,” “objective,” “projection,” “forecast,” “goal” or similar words are intended to identify forward-looking statements.

Municipal Solutions, Inc. will place a copy of this Official Statement on its website: <http://www.municipalsolution.com>. Unless the Official Statement specifically indicated otherwise, no statement on such website is included by specific reference or constitutes a part of this Official Statement. Municipal Solutions, 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 Town nor Municipal Solutions, Inc. assumes any liability or responsibility for errors or omissions on such website. Further, Municipal Solutions, Inc., and the Town 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.

Further, Municipal Solutions, Inc., and the Town 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. Municipal Solutions, Inc. and the Town also assume no liability or responsibility for any errors or omissions or for any updates to dated website information.

TOWN OF NEWFANE

November 14, 2011  
Newfane, New York

By: Timothy Horanburg  
Town Supervisor and Chief Fiscal Officer

\*\*\*\*\*  
Additional copies of the Notices of Sale and Official Statement may be obtained upon request  
from the office of Municipal Solutions, Inc., 2528 State Route 21,  
Canandaigua, New York 14424, telephone (585) 394-4090.  
Website: [www.municipalsolution.com](http://www.municipalsolution.com)

**APPENDIX A**

**FINANCIAL INFORMATION**

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

**General Fund Town of Newfane**

Fiscal Year Ending December 31:

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
<b>Revenues:</b>					
Real Property Taxes/Other Tax Items	\$16,564	\$19,858	\$22,299	\$15,248	\$12,443
Non-Property Tax Items	1,038,494	818,783	992,411	1,050,622	1,098,826
Departmental Income	177,279	190,324	183,937	204,796	232,574
Intergovernmental Charges	29,700	0	2,648	28	0
Use of Money & Property	204,086	77,649	42,376	33,351	26,522
Licenses & Permits	6,909	6,529	7,851	6,374	5,170
Fines & Forfeitures	41,609	54,844	44,713	53,195	54,530
Sale of Property/Comp. for Loss	680	2,528	2,123	482	21,900
Miscellaneous	12,840	25,580	106,327	58,416	57,365
State Aid	218,611	213,344	308,783	223,136	183,388
Proceeds of Obligations	0	0	0	0	60,000
<b>Total Revenues</b>	<u>\$1,746,772</u>	<u>\$1,409,439</u>	<u>\$1,713,468</u>	<u>\$1,645,648</u>	<u>\$1,752,718</u>
<b>Expenditures:</b>					
General Governmental Support	\$722,228	\$720,108	\$859,826	\$801,686	\$934,328
Public Safety	82,953	77,530	90,220	82,688	84,847
Health	9,981	12,807	11,186	4,828	8,135
Transportation	90,595	109,612	108,359	114,070	89,579
Economic Assistance/Opportunity	41,560	44,891	50,389	44,145	43,226
Culture & Recreation	340,146	326,709	248,604	297,631	297,416
Home & Community Services	65,817	83,651	78,692	71,004	30,047
Employee Benefits	225,538	233,411	334,069	259,115	359,934
Debt Service	54,419	53,992	53,391	36,761	21,014
<b>Total Expenditures</b>	<u>\$1,633,237</u>	<u>\$1,662,711</u>	<u>\$1,834,736</u>	<u>\$1,711,928</u>	<u>\$1,868,526</u>
<b>Excess (Deficiency) of Revenues Over (Under) Expenditures</b>	\$113,535	(\$253,272)	(\$121,268)	(\$66,280)	(\$115,808)
<b>Other Financing Sources (Uses):</b>					
Operating Transfers In	\$0	\$16,245	\$100,000	\$0	\$9,205
Operating Transfers Out	(92,147)	(236,000)	(100,000)	(188,365)	(107,865)
<b>Total Other Financing Sources (Uses)</b>	<u>(\$92,147)</u>	<u>(\$219,755)</u>	<u>\$0</u>	<u>(\$188,365)</u>	<u>(\$98,660)</u>
<b>Fund Balances Beg. of Fiscal Year</b>	\$1,415,170	\$1,436,558	\$963,533	\$992,315	\$722,669
<b>Net Adjustments to Fund Balances</b>	<u>0</u>	<u>2</u>	<u>150,050</u>	<u>(15,001)</u>	<u>0</u>
<b>Fund Balances End of Fiscal Year</b>	<u>\$1,436,558</u>	<u>\$963,533</u>	<u>\$992,315</u>	<u>\$722,669</u>	<u>\$508,201</u>

Source: Annual Update Documents of the Town, as submitted to the New York State Comptroller's Office.

Note: This table NOT audited

**Statement of Revenues, Expenditures and Fund Balances**  
**Sewer Fund - Town of Newfane**

	Fiscal Year Ending December 31:				
	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
<b>Revenues:</b>					
Real Property Taxes / Other Tax Items	\$582,108	\$583,290	\$582,124	\$581,616	\$609,078
Departmental Income	620,363	488,372	599,663	643,834	630,078
Use of Money & Property	93,132	109,805	43,983	8,402	6,227
Sale of Property and Comp. for Loss	424	1,236	18,373	480	1,295
Miscellaneous	0	0	0	25,114	298,130
Interfund Revenues	0	0	0	0	15,716
State Aid	29,141	0	0	0	0
Total Revenues	<u>\$1,325,168</u>	<u>\$1,182,703</u>	<u>\$1,244,143</u>	<u>\$1,259,446</u>	<u>\$1,560,524</u>
<b>Expenditures:</b>					
Home & Community Services	\$1,056,788	\$743,677	\$1,183,061	\$715,648	\$752,521
Employee Benefits	116,214	111,982	135,280	114,025	151,629
Debt Service	340,541	333,934	278,359	231,713	210,339
Total Expenditures	<u>\$1,513,543</u>	<u>\$1,189,593</u>	<u>\$1,596,700</u>	<u>\$1,061,386</u>	<u>\$1,114,489</u>
Excess (Deficit) Revenues Over Expenditures	(\$188,375)	(\$6,890)	(\$352,557)	\$198,060	\$446,035
<b>Other Financing Sources (Uses):</b>					
Operating Transfers In	\$0	\$0	\$100,000	\$0	\$0
Operating Transfers Out	0	(505,000)	(423,912)	(416,055)	(2,041)
Total Other Financing Sources (Uses)	\$0	(\$505,000)	(\$323,912)	(\$416,055)	(\$2,041)
Net Adjustments to Fund Balances	\$0	\$0	\$218,455	\$83,698	\$0
Fund Balances Beg. of Fiscal Year	<u>2,390,166</u>	<u>2,201,791</u>	<u>1,689,901</u>	<u>1,231,887</u>	<u>1,097,590</u>
Fund Balances End of Fiscal Year	<u>\$2,201,791</u>	<u>\$1,689,901</u>	<u>\$1,231,887</u>	<u>\$1,097,590</u>	<u>\$1,541,584</u>

Source: Annual Update Documents of the Town, as submitted to the New York State Comptroller's Office.

Note: This table NOT audited

**Balance Sheet**  
**Combined Funds - Town of Newfane**  
For Fiscal Year Ending December 31, 2010

	<u>General</u>	<u>Sewer</u>
Assets:		
Cash	\$308,104	\$1,237,345
Accounts Receivables	5,284	207,927
Prepaid Expenses	13,301	7,141
Due from other funds	37,001	48,751
Due from Other Governments	<u>226,236</u>	<u>111,800</u>
Total Assets	<u>\$589,926</u>	<u>\$1,612,964</u>
Liabilities:		
Accounts Payable	\$8,641	\$34,417
Accrued Liabilities	10,602	7,222
Due to Other Governments	<u>62,482</u>	<u>29,738</u>
Total Liabilities	<u>\$81,725</u>	<u>\$71,377</u>
Fund Balance:		
Special Reserves	\$13,301	\$7,141
Unreserved Fund Balance - Appropriated	241,244	0
Unreserved Fund Balance - Unappropriated	<u>253,656</u>	<u>1,534,446</u>
Total Fund Balance	<u>\$508,201</u>	<u>\$1,541,587</u>
Total Liabilities & Fund Balance	<u>\$589,926</u>	<u>\$1,612,964</u>

Source: Annual Update Documents of the Town, as submitted to the New York State Comptroller's Office.

Note: This table NOT audited

**Budget Summaries**  
**Combined Funds - Town of Newfane**  
Fiscal Year Ending December 31, 2011

	<u>General</u>	<u>Sewer</u>
<b>Revenues:</b>		
Real Property Taxes	\$0	\$610,692
Other Tax Items	12,000	0
Non-Property Tax Items	1,253,000	0
Departmental Income	206,009	620,600
Use of Money & Property	21,500	4,000
Licenses and Permits	3,754	0
Fines and Forfeitures	52,008	0
State Aid	183,180	0
Use of Fund Balance	241,244	0
Total Revenues	<u>\$1,972,695</u>	<u>\$1,235,292</u>
<b>Expenditures:</b>		
General Support	\$836,413	\$0
Public Safety	81,235	0
Health	13,279	0
Transportation	110,562	0
Economic Assistance & Opportunity	37,300	0
Culture and Recreation	239,984	0
Home and Community Services	29,595	853,879
Employee Benefits	469,148	160,815
Debt Service	155,179	199,139
Total Expenditures	<u>\$1,972,695</u>	<u>\$1,213,833</u>

Source: Adopted Budgets of the Town

Note: This table NOT audited

**Budget Summaries \***  
**Combined Funds - Town of Newfane**  
Fiscal Year Ending December 31, 2012

	<u>General</u>	<u>Sewer</u>
<b>Revenues:</b>		
Real Property Taxes	\$0	\$597,138
Other Tax Items	13,000	0
Non-Property Tax Items	1,389,463	0
Departmental Income	200,900	620,600
Use of Money & Property	19,500	4,000
Licenses and Permits	10,245	0
Fines and Forfeitures	52,000	0
Sale of Property/Comp. for Loss	8	500
Miscellaneous	19,528	0
State Aid	149,094	0
Use of Fund Balance	120,400	558,430
Total Revenues	<u>\$1,974,138</u>	<u>\$1,780,668</u>
<b>Expenditures:</b>		
General Support	\$835,388	\$0
Public Safety	77,744	0
Health	13,418	0
Transportation	114,501	0
Economic Assistance & Opportunity	28,545	0
Culture and Recreation	263,368	0
Home and Community Services	29,745	1,432,398
Employee Benefits	500,337	153,249
Debt Service	111,092	195,021
Total Expenditures	<u>\$1,974,138</u>	<u>\$1,780,668</u>

Source: \* Proposed Budgets of the Town

Note: This table NOT audited