

Council of the City of York, Pa.  
Session 2013  
Resolution No. \_\_\_\_\_

INTRODUCED BY: Michael Ray Helfrich

DATE: February 5, 2013

**A RESOLUTION AUTHORIZING A BORROWING IN ANTICIPATION OF CURRENT TAXES AND REVENUES, BY THE ISSUANCE OF A \$5,700,000 AGGREGATE PRINCIPAL AMOUNT TAX AND REVENUE ANTICIPATION NOTE, SERIES OF 2013; DETERMINING TO SELL THE NOTE AT A PRIVATE, NEGOTIATED SALE; APPROVING A CERTIFICATE AS TO TAXES AND REVENUES TO BE COLLECTED; APPROVING THE NUMBER, DATE, MATURITY AND INTEREST PAYABLE ON THE NOTE AND THE FORM OF THE NOTE; APPOINTING A PAYING AGENT AND SINKING FUND DEPOSITARY AND ESTABLISHING A SINKING FUND; ACCEPTING A PROPOSAL OF FULTON BANK, NATIONAL ASSOCIATION, TO PURCHASE THE NOTE AND AUTHORIZING THE SALE THEREOF TO FULTON BANK, NATIONAL ASSOCIATION, PROVIDING SECURITY FOR THE NOTE; AND AUTHORIZING EXECUTION, SALE AND DELIVERY OF THE NOTE AND OTHER NECESSARY ACTION.**

WHEREAS, the City of York (the "City"), York County, Pennsylvania, anticipates taxes and revenues for fiscal year 2013 as yet uncollected; and

WHEREAS, the City anticipates having inadequate funds with which to meet current expenses at various times during the 2013 fiscal year and has determined that it will be necessary to borrow, for the purposes of having sufficient funds available to meet current expenses, by issuance of a Tax and Revenue Anticipation Note to be repaid from said anticipated taxes and other current revenues; and

WHEREAS, the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, 53 Pennsylvania Consolidated Statutes, Section 8001 et seq. (the “Act”), empowers and authorizes a local government unit to borrow money from time to time in any fiscal year in anticipation of the receipt of current taxes and revenues and to evidence said indebtedness by a Tax and Revenue Anticipation Note; and

WHEREAS, after discussing the issue, the Council of the City has determined that a private negotiated sale of the Note is in the best interests of the City; and

WHEREAS, Fulton Bank, National Association, with offices in York, Pennsylvania (the “Purchaser”), has submitted to the City a Note Purchase Proposal (the “Proposal”) and the City desires, by adoption of this Resolution by the affirmative vote of a majority of the members of the Council of the City now holding office, to accept the Proposal and authorize the issuance and sale of the Tax and Revenue Anticipation Note, Series of 2013, as hereinafter set forth; and

WHEREAS, the Note is and will be a short-term obligation, and the principal amount of the Note amount is not greater than the estimated maximum anticipated cumulative cash flow deficit of the City, with reasonable working capital reserve provided for, during the period in which the Note will be outstanding, as determined pursuant to the United States Internal Revenue Code of 1986, as amended (the “Code”), and applicable United States Treasury Regulations (the “Regulations”) relating thereto.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of York, and it is hereby resolved by the authority of said Council, as follows:

1. The City authorizes the incurrence of short term indebtedness in the principal amount of \$5,700,000 in anticipation of the receipt of current taxes and revenues for the 2013

fiscal year, which authorization shall become effective immediately. This authorization is contingent upon the receipt by the City of such approvals, certifications or opinions as are required by law or by the Purchaser. In order to evidence the indebtedness authorized by this Resolution, the City shall issue, pursuant to the Act and this Resolution, a \$5,700,000 aggregate principal amount Tax and Revenue Anticipation Note, Series of 2013 (the "Note"). The Proposal, in the form presented at this meeting, is hereby accepted and approved, and the Note is hereby awarded to the Purchaser at the purchase price named therein, and a true and correct copy of the Proposal is attached hereto as Exhibit "A." The Mayor, the Controller, the Treasurer, the City Clerk, or any one of them acting alone, or other appropriate officers of the City are authorized and directed to execute an endorsement to the Proposal, indicating the City's acceptance thereof, and to deliver the same to the Purchaser. The Note shall be issued in the amount of \$5,700,000, shall bear interest at the interest rate of 0.95% per annum until June 30, 2013 and thereafter at a variable rate equal to LIBOR plus .75% per annum, shall mature on December 31, 2013, and otherwise shall be in accordance with the Proposal, the terms of which are incorporated herein. The variable interest rate shall not exceed 6.0% per annum.

2. It is hereby stated that the Council of the City has discussed the merits of alternative methods of selling the Note and has determined that a private, negotiated sale of the Note is in the best interests of the City; provided, however, the Purchaser was also the successful bidder in response to the City's Request for Proposals dated January 11, 2013 in respect of its proposed issuance of a tax and revenue anticipation note for 2013.

3. The Certificate as to Taxes and Revenues To Be Collected during the 2013 fiscal year, dated as of the date of hereof, is hereby approved in substantially the form attached hereto

as Exhibit "B." It has been determined that no other tax or revenue anticipation borrowing shall be outstanding as of its date of issuance and that \$5,700,000 does not exceed 85% of the sum of the taxes levied and revenues expected for the 2013 fiscal year, not yet received, certified in Exhibit "B" as remaining to be collected or received in the 2013 fiscal year during the period when the Note will be outstanding. At the time of delivery of the Note, the Mayor, the Controller, the Treasurer, the City Clerk, or any one of them acting alone, or other appropriate officers, are authorized and directed to certify to the Purchaser, consistent with Exhibit "B" that the amount of all tax and revenue anticipation notes to remain outstanding will not exceed the limitations of Section 8122 of the Act calculated, however, from the date of such certificate to the respective maturity dates of all such notes to remain outstanding.

4. The City is expected to initially issue the Note, in one instrument in the denomination of \$5,700,000. The principal of and interest on the Note shall be payable in lawful money of the United States of America at the principal office of Fulton Bank, National Association, hereinafter designated Paying Agent, in York, Pennsylvania, or such other place designated in writing by said Paying Agent. The Note shall be in fully registered form; shall be dated the date of delivery thereof; shall be stated to mature no later than on December 31, 2013; shall bear interest, payable at the variable rate set forth in paragraph 1 and calculated on the basis of a 360 day year. The Note shall be in substantially the form attached hereto as Exhibit "C," and may be executed and delivered in substantially such form with such appropriate changes as may be approved by the officer or officers of the City manually executing the same; and such execution shall constitute approval of such changes of such officer or officers on behalf of the Council of the City.

5. Fulton Bank, National Association, York, Pennsylvania, is hereby appointed Paying Agent, Registrar and Sinking Fund Depositary and is herein sometimes referred to as “the Paying Agent.”

6. The City hereby establishes and covenants that it shall hereafter maintain a Sinking Fund for the Note. The Sinking Fund shall be held by the Paying Agent (or such substitute or successor paying agent, which shall hereafter be appointed in accordance with the provisions of the Act) in the name of the City, but funds in the Sinking Fund shall be subject to withdrawal only by the Paying Agent. The Sinking Fund shall be known as the “Sinking Fund, City of York, Tax and Revenue Anticipation Note, Series of 2013.” The City covenants and agrees to deposit in the Sinking Fund not later than the maturity date of the Note the full principal amount of the Note, together with interest payable thereon. The City shall not be obligated to make any payment into the Sinking Fund prior to the maturity date of the Note and shall not be obligated to segregate or apply taxes or other revenues in any way except as required to fulfill the covenant to deposit the appropriate amount in the Sinking Fund as stated in this paragraph. The Paying Agent is hereby authorized and directed to pay from the Sinking Fund the principal of and interest on the Note as the same becomes due and payable.

7. The Note shall be secured by the pledge of, a security interest in, and a lien and charge on, the taxes and revenues of the City to be received during the period when the Note will be outstanding. The City hereby warrants to the Purchaser, its successors and assigns, that it has not encumbered or pledged its income, revenues and receipts for the fiscal year 2013 to be pledged as provided herein, except for the payment of debt service on its outstanding bonds and except for outstanding current operating expenses incurred for the said fiscal year for the

payment of which the Note is to be issued and sold, and further covenants that it will not, so long as the principal of or interest on the Note shall remain unpaid, incur any further obligations against such income, revenues or receipts ranking prior to or on a parity with the Note without the consent of the holder of the Note. The City shall cause financing statements to be prepared and filed as may be necessary under the Uniform Commercial Code as enacted in Pennsylvania and Section 8125 of the Act to fully protect and preserve the security interests of the owner of the Note. This Resolution and the Act shall constitute a security agreement between the City and the Purchaser or such other owner from time to time of the Note.

8. The Mayor, the Controller, the Treasurer, the City Clerk or other appropriate officers of the City, are authorized and directed to:

A. Cause to be filed with the Department of Community and Economic Development a certified copy of this Resolution, the Certificate as to Taxes and Revenues To Be Collected, and a true copy of the accepted Proposal;

B. Prepare and verify a non-arbitrage certificate and other certificates, as appropriate, indicating, among other things, that the Note is a “qualified tax-exempt obligation” under Section 265(b)(3)(B) of the Code, the proceeds of which will be used for the City’s governmental activities, that no part of the Note is a private activity bond as defined in Section 141 of the Internal Revenue Code of 1986, and that the aggregate amount of all tax exempt obligations issued by the City and its subordinate entities during the calendar year 2013 is not reasonably expected to exceed \$10,000,000;

C. Designate the entire \$5,700,000 principal amount of the Note as a “qualified tax exempt obligation” within the meaning of Section 265(b)(3)(B) of the Code and prepare and execute such documents as may be necessary to accomplish such designation;

D. Execute and deliver the Note to the Purchaser upon tender to the City of the aggregate principal amount of the Note; and

E. To take all such other actions and execute all such other documents as may be necessary or appropriate to effect the issuance and sale of the Note in accordance with the Proposal, this Resolution, the Code and Regulations and the Act.

9. It is hereby covenanted that the City will make no use of the proceeds of the Note at any time which, if such use had been reasonably expected at the date of the issuance of the Note, would have caused the Note to be an arbitrage bond within the meaning of Section 148 of the Code and all applicable Regulations, with the effect that the interest on the Note would be no longer exempt from federal income taxes. The City further covenants that it will comply with the requirements of all applicable sections of the Code and Regulations relating to the Note at all pertinent times, including any provisions relating to the rebate of arbitrage earnings on proceeds of the Note, in order that the Note shall not be caused to be an arbitrage bond thereunder.

10. The City hereby designates the Note as a qualified tax-exempt obligation within the meaning of Section 265(b)(3) of the Code. The City reasonably anticipates that it and all of its subordinate entities will not issue in excess of \$10,000,000 of tax-exempt obligations within the calendar year of 2013 as calculated for purposes of Section 265(b)(3) of the Code.

11. This Resolution is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act, and all mandatory provisions of the Act shall apply whether or not explicitly stated in this Resolution.

12. In case any one or more of the provisions contained in this Resolution or in the Note issued pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this regulation or of said Note, and this Resolution or said Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

13. All Resolutions and parts of Resolutions heretofore adopted to the extent that the same are inconsistent herewith are hereby repealed.

14. This Resolution shall take effect on the earliest date permitted by the Act.

ATTEST:

CITY OF YORK

BY \_\_\_\_\_

BY \_\_\_\_\_

City Clerk

President Of Council

PASSED FINALLY: \_\_\_\_\_, 2013

BY THE FOLLOWING VOTE:

YEAS: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

NAYS: \_\_\_\_\_

ATTEST:



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City Clerk

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Mayor

EXHIBIT “A”

EXHIBIT “B”

**CITY OF YORK**  
**CERTIFICATE OF TAXES AND REVENUES TO BE COLLECTED**

(Fiscal Year Ending December 31, 2013)

The undersigned officers of the CITY OF YORK, York County, Pennsylvania, (the “City”), pursuant to Sections 8122 and 8126 of the Local Government Unit Debt Act, 53 Pennsylvania Consolidated Statutes, Section 8001 et seq. (the “Act”), do hereby certify in connection with the proposed authorization and issuance by the City within thirty (30) days after the date of this Certificate of a Tax and Revenue Anticipation Note, Series of 2013 (the “Note”) as follows:

1. The City has no tax and revenue anticipation notes or other borrowing in anticipation of taxes or other current revenues outstanding for the 2013 fiscal year.
2. The undersigned have made a monthly estimate of the monies to be received by the City in each of the months of the fiscal year ending December 31, 2013, from taxes presently levied and assessed, and other revenues to be received (including subsidies or reimbursements). Such estimate of revenues has taken due account of the past and anticipated collection experience of the City and current economic conditions. Such estimated revenues are as follows:

<u>Month, Year</u>	<u>Receipts</u>
January, 2013	\$ 2,456,959
February, 2013	\$ 3,330,359
March, 2013	\$ 3,428,396
April, 2013	\$14,319,173
May, 2013	\$ 3,067,449
June, 2013	\$ 4,698,390
July, 2013	\$ 2,751,062
August, 2013	\$ 2,804,536
September, 2013	\$ 2,042,538
October, 2013	\$ 3,672,420
November, 2013	\$ 2,149,485
December, 2013	\$ 3,227,869

3. The total estimated revenues to be collected or received in said fiscal year during the period between January 1, 2013 through December 31, 2013, when the Note is expected to be outstanding, are \$47,948,635, and eighty-five (85%) percent of such revenues is \$40,756,340.

4. The aforesaid estimates do not include receipt of the proceeds of, or expenditures for the repayment of, borrowings in anticipation of taxes and other current revenues.

IN WITNESS WHEREOF, the undersigned have set their hands and caused the seal of the City to be affixed hereto as of the date of the vote on the Resolution authorizing the issue and sale of the Tax and Revenue Anticipation Note, being the \_\_\_\_ day of February, 2013.

CITY OF YORK

BY \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

BY \_\_\_\_\_  
City Controller

EXHIBIT "C"

CITY OF YORK

YORK COUNTY, PENNSYLVANIA

TAX AND REVENUE ANTICIPATION NOTE, SERIES OF 2013

\$5,700,000

For value received, CITY OF YORK, York County, Pennsylvania (the "**Maker**"), intending to be legally bound, promises to pay to the order of FULTON BANK, NATIONAL ASSOCIATION (the "**Holder**"), or registered assigns, on or before December 31, 2013, unless this Tax and Revenue Anticipation Note, Series of 2013 (the "Note") duly shall have been called for previous redemption and payment of the redemption price shall have been made or provided for, the maximum principal sum of FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$5,700,000) or such lesser particular sum as shall represent the unpaid balance of such maximum principal sum with interest on the principal balance which, from time to time, shall be outstanding and shall remain unpaid, from the date of this Note at the interest rate specified below.

Interest shall accrue on the outstanding principal balance at the initial annual rate of ninety-five hundredths (0.95%) percent (the "Fixed Rate") for a period beginning on the date of the Note and ending on June 30, 2013 (the "Fixed Rate Period"). Following the Fixed Rate Period, interest shall accrue on the outstanding principal balance at a variable rate calculated by the Holder, from time to time, equal to LIBOR plus seventy-five (75) basis points (0.75%) (the "Variable Rate") for a period ending December 31, 2013 (the "Variable Rate Period"). Interest shall be calculated on a 360 day year comprised of twelve (12) thirty (30) day months.

"LIBOR" shall mean, the London Interbank Offered Rate of interest for an interest period of one (1) month, which appears on Bloomberg page BBAM under the column heading "USD" on the day that is two London Business Days preceding each Interest Rate Change Date (the "Reset Date"). If the LIBOR Rate as defined above is not available or is not published for any Reset Date, then Holder shall, at its sole discretion, choose a substitute source for the LIBOR Rate, which LIBOR Rate shall become effective on the next Interest Rate Change Date. "London Business Day" shall mean any day on which commercial banks in London, England are open for general business. "Interest Rate Change Date" shall mean the 1st day of each calendar month.

The maximum rate of interest to be paid during the Variable Rate Period shall be 6.00% per annum.

This Note is authorized to be issued in the aggregate principal amount of \$5,700,000 pursuant to a Resolution adopted by the governing body of the Maker (the "Resolution") authorizing the issuance of the Note in the aggregate principal amount of \$5,700,000 during the fiscal year ending December 31, 2013.

The Note is issued under and in accordance with the provisions of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, 53 Pennsylvania Consolidated Statutes, Section 8001 et seq. (the "Act"), for the purpose of providing funds for current expenses and debt service payable in the current fiscal year in anticipation of taxes, state subsidies and reimbursements and other current revenues of the Maker. In order to secure this Note and the prompt payment of the principal of and interest hereon when due, there is hereby granted to the registered owner hereof a security interest in, and lien and charge upon, the taxes and other revenues of the Maker received during the period in which the Note is outstanding. Payment of this Note in full shall be made against surrender hereof at maturity. The Maker and the Holder, if any, may treat the registered owner of this Note as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary.

Reference is hereby made to the Act and the Resolution for a complete statement of the rights and limitation of the holders of this Note, to all of which the holder of this Note consents.

The outstanding principal of this Note or any installment of principal or portion thereof shall be subject to prepayment or redemption prior to maturity at the option of the Maker, as a whole, or from time to time in part, without premium or penalty (ie. at par), upon payment of such principal to be prepaid or redeemed, together with accrued interest to the date fixed for prepayment or redemption, if paid in full.

Any prepayment or redemption of principal, as hereinbefore authorized shall be upon written notice addressed to the registered owner thereof at the time of such prepayment or redemption, as such registered owner and address shall appear on the books of the Maker to be kept by the Holder, as paying agent, for such purpose, by providing such written notice by the United States mail, by telefax or by electronic communication received by the Holder on or before five (5) days prior to the date designated for a partial prepayment or redemption, or on or before the date designated for a prepayment or redemption in full.

On the date designated for such prepayment or redemption, notice, if required, having been given as aforesaid, and money for payment of the principal (and, if applicable, accrued interest) being held by the Holder, as paying agent, interest on the principal of this Note so called for prepayment or redemption or on any part of the principal of this Note selected for prepayment or redemption shall cease to accrue.

If the principal of this Note has been prepaid or redeemed in full, this Note shall cease to be entitled to any benefit or security under the Resolution, and the registered owner of this Note shall have no rights with respect to this Note, except to receive payment of the principal of and accrued interest on this Note to the prepayment or redemption date.

The amount of this Note does not exceed 85% of the sum of the taxes levied for the current fiscal year and the current revenues for such year, not yet received and remaining to be collected or received during the period when the Note will be outstanding.

The Maker certifies that it is not expected that the proceeds of this Note will be used in a manner that would cause such obligation to be an arbitrage bond and further covenants that it will make no use of such proceeds which, if such use had been reasonably expected on the date of issue of such obligations, would have caused such obligation to be an arbitrage bond and that it will comply with Section 148 of the Internal Revenue Code of 1986, as amended and supplemented (the "Code"), any similar statutory provisions or any rule or regulation promulgated thereunder, throughout the term of this Note.

This Note is transferable by the registered owner hereof, but only upon surrender of this Note to the Holder, at the above-identified corporate office, accompanied by a written instrument or instruments in form, with instructions, and with guaranty of signature satisfactory to the Maker and the Holder, duly executed by the registered owner of this Note or his attorney-in-fact or legal representative, for registration of transfer. Upon surrender, the Holder shall enter any transfer of ownership of this Note in the registration books maintained for the purpose and shall reissue this Note to the transferee with notation of such registration written hereon. The Maker and any paying agent designated by the Maker may deem and treat the registered owner hereof as the absolute owner hereof (whether or not this Note shall be overdue) for the purposes of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and the Maker shall not be affected by any notice to the contrary.

All acts, conditions and other requirements to be done or performed precedent to and in the issuance of this obligation or in the creation of the debt of which this obligation is evidenced have been done and performed as required by law. The obligation, together with all other indebtedness of the Maker, is not in excess of any constitutional or statutory limitation.

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IN WITNESS WHEREOF, the City of York has caused this Note to be signed in its name and on its behalf by the Mayor and Controller of the City and attested to by the City Clerk this \_\_\_\_\_ day of February, 2013.

CITY OF YORK

BY \_\_\_\_\_  
Mayor

BY \_\_\_\_\_  
Controller

Attest: \_\_\_\_\_  
City Clerk

(SEAL)



DELIVERY ENDORSEMENT

I, the undersigned, certify that the within Note was delivered to \_\_\_\_\_, this  
\_\_\_\_\_ day of February, 2013.

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Controller of the City of York  
York County, Pennsylvania

## REGISTRATION RECORD

Date of Registration	Name of Registered Owner	Registrar (Authorized Representative)
February __, 2013	Fulton Bank, National Association	