

MINUTES OF THE REGULAR MEETING
OF THE
BUFFALO SEWER AUTHORITY
May 5, 2021

5752357639

BUFFALO SEWER AUTHORITY

May 5, 2021

REGULAR MEETING **9:00 A.M.** **VIA TELECONFERENCE**
+ 1 929-229-5044 United States, New York City
Phone Conference ID: 931 042 063#

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ATTACHMENT: Settlement Agreement

ATTACHMENT: Common Council Agenda Item 21-388

CALL OF THE ROLL

Present:	<u>Herbert L. Bellamy, Jr</u>	<u>Chairman</u>
	<u>Christopher Roosevelt</u>	<u>Vice Chairman</u>
	<u>Eleanor Petrucci</u>	<u>Secretary</u>
	<u>Oluwole A. McFoy, P.E.</u>	<u>General Manager</u>
	<u>Ronald Brown</u>	<u>Executive Secretary</u>
	<u>Thomas Smith</u>	<u>Secretary to the General Manager</u>
	<u>Gelea James</u>	<u>Director of Employee Relations</u>
	<u>LaToya Cunningham</u>	<u>Special Assistant</u>
	<u>Roberta Gaiek, P.E.</u>	<u>Treatment Plant Administrator</u>
	<u>Alexander Emmerson</u>	<u>Acting Treatment Plant</u>
	<u>Paul Harris</u>	<u>Superintendent</u>
	<u>Sydney Collins</u>	<u>Superintendent Mechanical</u>
	<u>Barbara Miller Williams</u>	<u>Maintenance</u>
	<u>Laura Surdej</u>	<u>Community Engagement VISTA</u>
	<u>Carol Burns</u>	<u>(AmeriCorps)</u>
Absent:		<u>City of Buffalo Comptroller</u>
		<u>Erie County Department of</u>
		<u>Sewerage</u>
		<u>Executive Secretary to Comptroller</u>

The meeting was called to order at 9:01 A.M. A quorum was present.

ITEM NO. 1**Motion to Adopt the Minutes of the Meeting of April 7, 2021**

MOTION TO	<u>ADOPT</u>
MADE BY	<u>MR. ROOSEVELT</u>
2 ND BY	<u>MS. PETRUCCI</u>
AYES	<u>3</u> NOES <u>0</u>

Board Meeting of May 5, 2021

ITEM NO. 2

INFORMATIVE: TEMPORARY INVESTMENTS (CERTIFICATES OF DEPOSIT AND TREASURY BILLS)
MARKET VALUE

As of April 30, 2021

ISSUE DATE	MATURITY DATE	TOTAL DAYS	AMOUNT	BANK	RATE	INTEREST AMOUNT
CONSTRUCTION/CAPITAL IMPROVEMENT FUND						
31-Jul-12	<i>Money Market</i>		\$599,091.88	Key	0.01%	Public NOW
01-Nov-19	<i>Money Market</i>		\$8,183,848.99	Bank on Buffalo	0.15%	
03-Nov-20	03-May-21	181	\$10,119,949.40	Key Banc Capital	0.41%	\$20,861.26
20-Nov-20	20-May-21	181	\$6,399,786.62	Key Banc Capital	0.35%	\$11,262.22
18-Feb-21	01-Jun-21	103	\$1,799,903.99	Key Banc Capital	0.12%	\$618.00
29-Mar-21	26-May-21	58	\$7,499,674.97	Key Banc Capital	0.11%	\$1,329.17
30-Mar-21	26-May-21	57	\$5,699,752.94	Key Banc Capital	0.11%	\$992.75
14-Apr-21	05-Oct-21	174	\$4,099,938.71	M&T Securities	0.12%	\$2,379.74
			<u>\$44,401,947.50</u>			
LIABILITY AND CASUALTY RESERVE FUND						
31-Jul-12	<i>Money Market</i>		\$100,333.04	Key	0.01%	Public NOW
11-Dec-19	<i>Money Market</i>		<u>\$916,716.22</u>	Bank on Buffalo	0.15%	
			\$1,017,049.26			
OPERATING FUND						
31-Jul-12	<i>Super NOW</i>		\$2,917,933.94	Key	0.01%	Public NOW
TRUST & AGENCY FUND						
31-Jul-12	<i>Super NOW</i>		\$6,574.17	Key	0.01%	Public NOW
SURPLUS FUND						
			\$234.86	Wilmington US Treasury		
14-Dec-20	14-Jun-21	182	\$10,004,367.41	Key Banc Capital	0.21%	\$10,632.59
			<u>\$8,062.07</u>	Accrued Income		
			\$10,012,664.34			
NET REVENUE FUND						
			\$0.00	Wilmington US Treasury		
03-Nov-20	03-May-21	181	\$4,996,678.63	Key Banc Capital	0.41%	\$10,321.37
08-Dec-20	26-May-21	169	\$1,998,497.78	Key Banc Capital	0.16%	\$1,502.22
27-Jan-21	25-May-21	118	\$1,799,351.00	Key Banc Capital	0.11%	\$649.00
26-Feb-21	28-Jun-21	122	\$4,995,000.00	Key Banc Capital	0.20%	\$5,000.00
30-Mar-21	26-May-21	57	\$4,199,268.50	Key Banc Capital	0.11%	\$731.50
26-Apr-21	2-Aug-21	98	\$3,499,047.22	Key Banc Capital	0.10%	\$952.78
			<u>\$14,241.38</u>	Accrued Income		
			\$21,502,084.51			

DEBT RESERVE FUND

				Series J			
02-Jul-14	13-Nov-33	7076	\$515,879.00	UST State/Local Govt	2.70%		
			\$6,425.69	Accrued Income			
			<u>\$522,304.69</u>				
				Series K			
02-Jul-14	15-Feb-33	5803	\$361,415.00	UST State/Local Govt	2.70%		
			\$2,021.73	Accrued Income			
			<u>\$363,436.73</u>				
				Series L			
12-Nov-15	01-Oct-35	7263	\$689,547.00	UST State/Local Govt	2.44%		
			\$1,379.09	Accrued Income			
			<u>\$690,926.09</u>				
				Series M			
27-Jun-14	01-May-44	10901	\$595,613.00	UST State/Local Govt	2.70%		
			\$8,040.78	Accrued Income			
			<u>\$603,653.78</u>				
				Series N			
15-Nov-12	15-Apr-32	7091	\$2,167,157.00	UST State/Local Govt	2.42%		
			\$2,292.69	Accrued Income			
			<u>\$2,169,449.69</u>				
				EFC 2021			
			\$566.46	Wilmington Fund			
8-Apr-21	22-Jul-21	105	\$316,907.54	Key Banc Capital	0.10%		\$92.46
			\$20.25	Accrued Income			
			<u>\$317,494.25</u>				
				DSF PRIN &INT			
			\$0.01	Wilmington Fund			

RECEIVE & FILE

Board Meeting of May 5, 2021

ITEM NO. 3

INFORMATIVE: REALLOCATION OF FUNDS

The following budgetary transfers have been made to cover unforeseen shortages. These transfers do not change the total amount of the Buffalo Sewer Authority's operating budget.

Wastewater Treatment Plant

3/29/2021	00230106 GRIT Repairs to Equipment	\$14.00	00420106 AMHE Repairs to Equipment	-\$14.00
3/29/2021	00230105 GRIT Equipment Maintenance	\$15,394.85	00300105 AMHE Equipment Maintenance	-\$15,394.85
4/5/2021	00380107 INCIN Machinery and Equipment	\$50,000.00	00380106 INCIN Repairs to Equipment	-\$50,000.00
4/8/2021	00200105 Plant Misc	\$1,900.00	00550105 IWS Spill Hazard Supplies	-\$1,900.00
4/19/2021	00520106 Main Building Repairs	\$12,000.00	00110106 ADMIN Non -Professional	-\$12,000.00

Sewer Maintenance

4/09/2021	00660105 SWRR Road and Highway	\$5,000.00	00690106 SWRR Operating Equipment	-\$5,000.00
4/19/2021	00650103 SWRM Gas	\$5,000.00	00670106 AUTO Automotive Repairs	-\$5,000.00

General Financial Charges

4/8/2021	00800183 FIN Contingency	\$3,502.52	00200108 PLAN Insurance	-\$3,502.52
4/15/2021	00800183 FIN Contingency	\$9,400.00	00820102 Education, Licenses & Training	-\$9,400.00

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Board Meeting of May 5, 2021

ITEM NO.4

INFORMATIVE: PUBLIC NOTICE - MS4 ANNUAL REPORT (MARCH 2020 - MARCH 2021) AND STORMWATER MANAGEMENT PLAN (SWMP)

New York State's Municipal Separate Storm Sewer System (MS4) SPDES Permit, Section 2e: Public Involvement/Participation requires that the Buffalo Sewer Authority present the Draft Annual Report and the Stormwater Management Program (SWMP) Plan in a format that is open to the public, where the public can ask questions about and make comments on the report(s).

The Buffalo Sewer Authority (BSA) will make the Draft MS4 Annual Report and the SWMP available on the BSA's website: www.buffalosewer.org/transparency from May 14, 2021 to May 28, 2021 for public review and comment.

The MS4 Annual Report for March 10, 2020 – March 9, 2021 will be completed and submitted to the NYS Department of Environmental Conservation (NYSDEC) after the public review and comment period. The final MS4 Annual report and the SWMP will also be available on the BSA's website: www.buffalosewer.org/about/transparency.

This item is presented to the Board for their information to be acknowledged and received and filed.

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Board Meeting of May 5, 2021

ITEM NO. 5

AMENDMENT TO CALL OF THE ROLL FOR THE BUFFALO SEWER AUTHORITY BOARD MEETING MINUTES OF SEPTEMBER 30, 2020; OCTOBER 28, 2020; DECEMBER 2, 2020; DECEMBER 16, 2020; JANUARY 13, 2021; FEBRUARY 18, 2021 AND MARCH 10, 2021

WHEREAS: On July 1, 2020, the Election of the Officers of the Board of the Buffalo Sewer Authority was approved as follows: Chairman – Herbert L. Bellamy; Vice Chairman – Christopher Roosevelt; Secretary – Eleanor Petrucci; and

WHEREAS: At the September 30, 2020, October 28, 2020, December 2, 2020, December 16, 2020, January 13, 2021, February 18, 2021 and March 10, 2021 Board Meetings the Call of the Roll in the Meeting Minutes incorrectly identified Eleanor Petrucci as the Assistant Vice Chairman of the Buffalo Sewer Authority Board; and

WHEREAS: Eleanor Petrucci should have been identified in the Minutes as **Secretary of the Buffalo Sewer Authority** in the above-mentioned Meetings.

NOW THEREFORE
BE IT RESOLVED: The Board of the Buffalo Sewer Authority hereby approves amending the Call of the Roll Meeting Minutes to reflect **Eleanor Petrucci as the Secretary of the Board of the Buffalo Sewer Authority** for September 30, 2020, October 28, 2020, December 2, 2020, December 16, 2020, January 13, 2021, February 18, 2021 and March 10, 2021.

MOTION TO APPROVE

MADE BY MS. PETRUCCI

2ND BY MR. ROOSEVELT

AYES 3 NOES 0

Board Meeting of May 5, 2021

ITEM NO. 6

AMENDED AND RESTATED SEWER SYSTEM REVENUE BOND RESOLUTION

**EXTRACT OF MINUTES
Meeting of the Buffalo Sewer Authority
of the City of Buffalo, County of Erie, New York
May 5, 2021**

A regular meeting of the Buffalo Sewer Authority of the City of Buffalo, in the County of Erie, New York, was held at City Hall, Buffalo, New York, on May 5, 2021, at 9:00 o'clock A.M. (Prevailing Time)

There were present: 13

Members: 3

There were absent: 0

Also present:

Member Petrucci offered the following resolution and offered its adoption:

2 ND BY	_____	MR. ROOSEVELT	_____
AYES	_____	3	NOES _____ 0

Board Meeting of May 5, 2021

BUFFALO SEWER AUTHORITY

SEWER SYSTEM REVENUE BONDS

AMENDED AND RESTATED

SEWER SYSTEM REVENUE BOND RESOLUTION

Adopted: May 5, 2021

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AMENDED AND RESTATED

SEWER SYSTEM REVENUE BOND RESOLUTION

WHEREAS, the Buffalo Sewer Authority (the "Authority"), a body corporate and politic constituting a public benefit corporation organized and existing under the laws of the State of New York, owns and operates sewerage and stormwater drainage facilities within the corporate limits of the City of Buffalo, New York (the "City"); and

WHEREAS, in order to meet the present and continuing needs of the Authority and the Authority's regional service area it is and will be necessary to acquire and construct additional facilities from time to time and to reconstruct, rehabilitate, extend and improve the sewerage and stormwater drainage facilities of the Authority; and

WHEREAS, in order to evaluate the present and future needs of the Authority and to evaluate the capabilities and environmental suitability of the Authority's present and future facilities, engineering studies have been and are being made and such studies have indicated that secondary wastewater treatment facilities should be constructed and that other substantial extensions and improvements need to be made to the Authority's existing facilities in order to comply with state and federal water pollution control laws and to meet the sewage collection and treatment and stormwater drainage needs of the Authority's service area; and

WHEREAS, the Authority adopted that certain Sewer System Revenue Bond Resolution on June 29, 1977 (as heretofore supplemented and amended from time to time, the "Existing Resolution"); and

WHEREAS, the Authority, pursuant to the Existing Resolution, has heretofore issued its Revenue Bonds, Series J, K, L, M, N and 2021 (EFC) (collectively, the "Existing Bonds"), which will be outstanding after May 5, 2021, in the aggregate principal amount of \$41,597,544; and

WHEREAS, the Authority has requested the consent of the New York State Environmental Facilities Corporation, as the sole holder of the Existing Bonds, and of Manufacturers and Traders Trust Company, as the Trustee for the Existing Bonds, to the further amendment and restatement of the Existing Resolution as set forth herein (as so amended and restated, this "Resolution"); and

WHEREAS, the Authority wishes to make provision for the financing of additional and improved facilities and otherwise provide for the capital requirements of the Authority in connection with the provision of safe, sanitary and environmentally sound sewerage and stormwater drainage services on the terms and conditions herein provided; and

WHEREAS, the Authority proposes to issue bonds hereunder pursuant to the Buffalo Sewer Authority Act, Title 8 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (the "Act"), to provide the funds required for the financing of additional and improved sewerage facilities; and

WHEREAS, the Authority is authorized by the Act to borrow money and issue bonds, to provide for the rights of the holders thereof, and to refund any bonds by the issuance of new bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE BUFFALO SEWER AUTHORITY AS FOLLOWS:

ARTICLE I DEFINITIONS AND INTERPRETATION

SECTION 101. *Short Title.* This Resolution may hereafter be cited by the Authority as the "Sewer System Revenue Bond Resolution."

SECTION 102. *Definitions.* In this Resolution the following terms shall have the following meanings unless the context otherwise requires:

"Account" means one of the special accounts created and established pursuant to this Resolution.

"Accountant" means a reputable, experienced and independent certified public accountant (or a firm thereof), selected by the Authority and satisfactory to the Trustee and may be the accountant regularly auditing the books of the Authority.

"Accreted Value" means, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Bond plus the interest accrued on such Bond from the date of original issuance of such Bond to the periodic date specified in the Supplemental Resolution authorizing such Capital Appreciation Bond on which interest on such Bond is to be compounded (a "Periodic Compounding Date") next preceding the date of computation, or the date of computation if it is a Periodic Compounding Date, such interest to accrue at the interest rate per annum of the Capital Appreciation Bonds set forth in the Supplemental Resolution authorizing such Bonds, compounded periodically on each Periodic Compounding Date, plus, if such date of computation is not a Periodic Compounding Date, a portion of the difference between the Accreted Value as of the immediately preceding Periodic Compounding Date (or the date of original issuance if the date of computation is prior to the first Periodic Compounding Date succeeding the date of original issuance) and the Accreted Value as of the immediately succeeding Periodic Compounding Date, calculated based upon an assumption that, unless otherwise provided in the Supplemental Resolution authorizing such Capital Appreciation Bonds, Accreted Value accrues in equal daily amounts on the basis of a year consisting of twelve 30-day months.

"Act" means the Buffalo Sewer Authority Act, Title 8 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended from time to time.

"Aggregate Debt Service" means for any period, as of any date of calculation, the sum of the individual amounts of Debt Service for each Series during such period.

"Annual Budget" means the budget or amended budget adopted or in effect as provided in Section 707.

"Arbitrage and Use of Proceeds Certificate" means the Arbitrage and Use of Proceeds Certificate of the Authority executed and delivered on original issuance of any Series of Bonds.

"Authority" means the Buffalo Sewer Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, and any body, board, authority, agency or political subdivision or instrumentality of the State that shall hereafter succeed to the powers, duties and functions thereof.

"Authorized Newspaper" means a newspaper that is customarily published (except in the case of legal holidays) at least once a day for at least five days in each calendar week, printed in the English language, containing financial news, and of general circulation in the Borough of Manhattan, City and State of New York.

"Authorized Officer" means the Chairman, the Vice-Chairman, the Assistant Vice-Chairman, the Treasurer, the Comptroller, the Secretary, the Assistant Secretary, or the General Manager or other chief administrative officer of the Authority, and when used with reference to any act or certificate or other document, also means any person duly authorized to perform such act or sign such document.

"Balloon Date" means any date of a Principal Installment on Balloon Obligations in a Balloon Year or any date on which a Bondholder may elect to have Balloon Obligations redeemed, prepaid, purchased directly or indirectly by the Authority, or otherwise paid, in a Balloon Year.

"Balloon Obligations" means any Series of Bonds 25% or more of the Principal Installments of which is due or may be required to be paid in any 12-month period; provided that, in calculating the principal amount of such Bonds due or required to be redeemed, prepaid, purchased or otherwise paid in any 12-month period, such principal amount shall be reduced to the extent that all or any portion of such amount is required to be redeemed or amortized prior to such 12-month period.

"Balloon Year" means any Fiscal Year in which more than 25% of the original principal amount of related Balloon Obligations mature or are subject to mandatory redemption or could, at the option of the holders thereof, be required to be redeemed, prepaid, purchased directly or indirectly by the Authority, or otherwise paid.

"Bond" means any bond authenticated and delivered pursuant to this Resolution.

"Bond Anticipation Notes" means obligations issued pursuant to Section 208.

"Bondholder", or the term holder or words of similar import, shall mean, when used with reference to a Bond, any person who shall be the bearer of any Bond that is not registered or that is registered to bearer, or the registered owner of any Bond registered otherwise than to bearer.

"Capital Appreciation Bonds" mean any Bonds issued under this Resolution as to which interest is (a) compounded periodically on dates that are specified in the Supplemental Resolution authorizing such Capital Appreciation Bonds and (b) payable only at the maturity, earlier redemption or other payment thereof pursuant to the Supplemental Resolution authorizing such Capital Appreciation Bonds.

"Capital Costs" means all costs of acquisition, construction or completion of any part of the Sewer System, including Costs of Issuance of any Bonds issued to provide funds to pay the

cost thereof, the costs of any demolitions or relocations necessary in connection therewith and any extensions, renewals, replacements, equipment, alterations, improvements, additions, machinery and equipment, betterments, paving, grading, excavation, blasting or removals and of all or any property, rights, easements and franchises deemed by the Authority to be necessary or useful or convenient therefor and may include, to the extent properly attributable to such acquisition, construction and completion:

- (a) obligations incurred for labor and materials and payments made to contractors, builders and materialmen in connection with construction or acquisition of any part of the Sewer System, and for the restoration of property damaged or destroyed in connection with such construction;
- (b) fees and expenses of the Trustee during construction, the cost of surety bonds to secure moneys in the Capital Improvement Fund, payments, taxes or other governmental charges lawfully levied or assessed during construction or on any property acquired, and premiums on insurance (if any) during such construction or acquisition;
- (c) fees and expenses for studies, surveys and reports, engineering, borings, testings, estimates of costs and revenues, preparation of plans and specifications and inspecting or supervising construction or acquisition, as well as for the performance of all other duties of engineers or architects in connection with the acquisition, construction, extension, renewal or improvement of the Sewer System or required by this Resolution;
- (d) expenses of administration properly chargeable to the acquisition, construction, reconstruction, renewal, extension, or improvement of the Sewer System, including legal expenses and fees, financing charges, costs of audits and fiscal advice and all other items of expense not elsewhere in this definition specified, incident to the acquisition, construction, reconstruction, renewal, extension or improvement of the Sewer System, including the acquisition of real estate, franchises, easements and rights-of-way therefor, including abstracts of title and title insurance, and including interest accruing on any Series of Bonds to and including a date six months following the completion of any improvement of the Sewer System financed by such Series of Bonds, if so provided in the Supplemental Resolution authorizing such Series, and any charges of the Trustee and Paying Agents with respect to the payment of such interest;
- (e) the cost and expense of acquiring by purchase or condemnation or by leasing such property, lands, rights-of-way, franchises, easements, and other interest in land as may be deemed necessary or convenient for the acquisition, construction or completion of any part of the Sewer System and options and partial payments thereon, and the amount of any damages incident to or consequent upon the same; and

- (f) any obligation or expense heretofore or hereafter expended or incurred by the Authority and any amounts heretofore or hereafter advanced by the Authority for any of the foregoing purposes.

“Capital Improvement Fund” means the Capital Improvement Fund that is established pursuant to Section 502.

“Certificate” means, as the context indicates, either (a) a signed document attesting to or acknowledging the matters therein stated or setting forth matters to be determined pursuant to this Resolution, (b) the report of an Accountant as to an audit or compliance called for by this Resolution, or (c) the report of the Consulting Engineer as to any matter called for by this Resolution and containing a statement to the effect that such Consulting Engineer has made an investigation sufficient to allow an informed opinion on the subject matter.

“Certified Interest Rate” means, a rate determined by a Financial Advisor as of any date of determination:

- (a) with respect to Bonds that were or will be, at the date of the original issuance thereof, the subject of a Counsel’s Opinion to the effect that the interest thereon is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code, a rate of interest equal to the average of the Variable Rate Tax-Exempt Index for the five (5) years preceding such date of determination; and
- (b) with respect to Bonds that were not and will not be, at the date of the original issuance thereof, the subject of a Counsel’s Opinion to the effect that the interest thereon is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code, a rate of interest equal to the average of the Variable Rate Taxable Index for the five (5) years preceding such date of determination.

“City” means the City of Buffalo, New York.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commitment” means, when used with respect to Balloon Obligations, a binding written commitment from a financial institution, surety or insurance company to refinance such Balloon Obligations on or prior to any Balloon Date thereof, including without limitation any Credit Facility for such Balloon Obligations.

“Common Debt Reserve Requirement” means, for all Common Debt Reserve Secured Bonds, the least of: (a) 10% of the aggregate original stated principal amount of all Common Debt Reserve Secured Bonds (provided that if any Common Debt Reserve Secured Bonds have more than a *de minimis* (2%) amount of original issue discount or premium, the issue price of such Common Debt Reserve Secured Bonds (net of pre-issuance accrued interest) is used to measure the 10% limitation in lieu of its stated principal amount); (b) the maximum amount of aggregate principal and interest on all Common Debt Reserve Secured Bonds coming due in any Fiscal Year; or (c) 125% of the average annual aggregate principal and interest on all Common Debt Reserve Secured Bonds.

“Common Debt Reserve Secured Bonds” means any Series of Bonds for which the Supplement Resolution authorizing such Bonds provides for such Bonds to be secured by the Common Debt Reserve Requirement.

“Construction Fund” means the Construction Fund established pursuant to Section 502.

“Consulting Engineer” means a reputable and experienced engineer or firm of engineers, selected by the Authority and, except with respect to duties to be performed pursuant to Section 714, may include a registered professional engineer who is an employee of the Authority.

“Costs of Issuance” means all items of expense, directly or indirectly payable or reimbursable and related to the authorization, sale and issuance of Bonds, including but not limited to printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of any Fiduciary, legal fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, fees and charges for preparation, execution, transportation and safekeeping of Bonds, costs and expenses of refunding, premiums for the insurance of the payment of the Bonds and any other cost, charge or fee in connection with the original issuance of Bonds.

“Counsel’s Opinion” means an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to revenue bonds of municipalities and public agencies, selected by the Authority and satisfactory to the Trustee.

“Credit Facility” means any letter of credit, insurance policy, guaranty, surety bond, standby bond purchase agreement, line of credit, revolving credit agreement or similar obligation, arrangement or instrument issued by a bank, insurance company or any entity that is used by the Authority to perform one or more of the following tasks: (a) enhancing the Authority’s credit by assuring owners of any of the Bonds that principal of and interest on such Bonds will be paid promptly when due; (b) providing liquidity for the owners of Bonds through undertaking to cause Bonds to be bought from the owners thereof when submitted pursuant to an arrangement prescribed by a Supplemental Resolution; or (c) remarketing any Bonds so submitted to the Credit Issuer (whether or not the same Credit Issuer is remarketing the Bonds).

“Credit Facility Agreement” means an agreement between the Authority and a Credit Issuer pursuant to which the Credit Issuer issues a Credit Facility.

“Credit Issuer” means any issuer of a Credit Facility then in effect for all or part of the Bonds.

“Debt Reserve Fund” means the Debt Reserve Fund established pursuant to Section 502.

“Debt Reserve Requirement” means, with respect to any Series of Bonds, at the election of the Authority as set forth in the Supplemental Resolution authorizing such Series, either the Common Debt Reserve Requirement or a Separate Series Debt Reserve Requirement.

“Debt Service” for any period means, as of any date of calculation and with respect to any Series, an amount equal to the sum of (i) interest accruing during such period on Bonds of such Series and (ii) that portion of the principal of and Sinking Fund Payments on such Bonds that

would accrue during such period if such principal and Sinking Fund Payments were deemed to accrue on the same basis as interest; calculated on the assumption that no Bonds Outstanding at the date of calculation will cease to be Outstanding except by reason of payment on the due date thereof or redemption from Sinking Fund Payments; provided that:

- (a) With respect to any Bonds that bear interest at a Variable Rate and any Bonds secured by a Credit Facility if the interest thereon calculated as set forth below is expected to vary, the interest coming due in any specified future period shall be determined as if the Variable Rate in effect at all times during such future period equaled, at the option of the Authority, either (i) the average of the actual Variable Rates that were in effect (weighted according to the length of the period during which each such Variable Rate was in effect) for the most recent 12-month period immediately preceding the date of calculation for which such information is available (or shorter period if such information is not available for a 12-month period), or (ii) the Certified Interest Rate.
- (b) With respect to any Bonds that bear interest at a rate that may increase or decrease based upon the satisfaction of or failure to satisfy certain specified criteria, the interest coming due in any future period shall be determined as if the rate of interest in effect at all times during such future period equaled the highest rate to which such Bonds could be subject during such future period.
- (c) For the purpose of calculating Debt Service on Balloon Obligations that: (i) are subject to a Commitment; or (ii) do not have a Balloon Year commencing within 12 months from the date of calculation; or (iii) are issued in anticipation of the issuance of Bonds that are not Balloon Obligations; or (iv) are issued pursuant to a Supplemental Resolution that contemplates that the principal of Bonds tendered for payment at the option of the holder thereof prior to the stated maturity of such Bonds will be paid from the proceeds of the remarketing of such tendered Bonds (or from the issuance of new Bonds authorized by such Supplemental Resolution), at the option of the Authority, the actual principal and interest on such Balloon Obligations shall be included in Debt Service, subject to the other assumptions contained herein, or such Balloon Obligations shall be assumed to be amortized in substantially equal annual amounts to be paid for principal and interest over an assumed amortization period of 30 years at an assumed interest rate (which shall be the interest rate certified by a Financial Adviser to be the interest rate at which the Authority could reasonably expect to borrow the same amount by issuing Bonds with the same priority of lien as such Balloon Obligations and with a 30-year term). For the purpose of calculating Debt Service on Balloon Obligations not described in the preceding sentence, the principal payable on such Bonds during the Balloon Year shall be calculated as if paid on the Balloon Date.
- (d) For purposes of determining the annual amount payable in respect of any Series of Bonds designated by the Authority as a Refundable Principal Installment (including Bond Anticipation Notes), such indebtedness that is or would be a Refundable Principal Installment shall be treated on the date of calculation as if (i) from the date of issuance thereof the principal amount of such indebtedness had been

payable as a part of equal annual installments of principal and interest over a period extending from the due date thereof through the 30th anniversary of the issue date of such Series, and (ii) interest accrues at a rate equal to the actual fixed rate of interest on such indebtedness or if such indebtedness is Variable Rate indebtedness, interest payable during such Fiscal Year shall be calculated in accordance with subsection (a) above.

- (e) Interest on Bonds shall be excluded from the determination of Debt Service to the extent amounts on deposit in the Capitalized Interest Account of the Construction Fund are scheduled to be applied thereto during such period.
- (f) Scheduled interest payments on EFC Bonds during any period shall be reduced to reflect the amount of any interest subsidy or corpus allocation percentage reasonably anticipated by the Authority to be available under any project financing and/or loan agreement entered into by the Authority and EFC or any successor thereof, or any similar state agency or instrumentality.
- (g) Scheduled interest payments on Tax Credit Bonds during any period shall be reduced to reflect Tax Credit Payments attributable to such scheduled interest payments.
- (h) For purposes of calculating the accrual of Principal Installments and interest on the Bonds, (i) Principal Installments of a Series will be deemed to accrue daily in equal amounts from the preceding Principal Installment date for such Series (but in no event shall any accrual be made for any Principal Installment more than one year prior to the due date of such Principal Installment or from the Date of Issuance of Bonds of such Series, whichever date is later); (ii) each fixed payment obligation (other than Principal Installments) will be deemed to accrue daily in equal amounts from the preceding relevant payment obligation date (but in no event more than one year prior to such payment obligation date or the initial incurrence of the payment obligation, whichever is later); and (iii) principal and interest portions of the Accreted Value of Capital Appreciation Bonds shall accrue in the manner provided in Section 210(B).

“Debt Service Fund” means the Debt Service Fund established pursuant to Section 502.

“Depository” means any bank or trust company selected by the Authority as a depository of moneys to be held under the provisions of this Resolution, and may include the Trustee.

“EFC” means the New York State Environmental Facilities Corporation.

“EFC Bonds” means any Series of Bonds issued by the Authority pursuant to the Resolution and delivered to EFC as evidence of a loan by EFC to the Authority pursuant to Chapter 565 of the Laws of New York of 1989, as amended.

“Event of Default” means any event specified in Section 1002.

“Fiduciary” means the Trustee or any Paying Agent or Depository.

“Financial Adviser” means an investment banking or financial advisory firm, commercial bank or any other person who or which is retained by the Authority for the purpose of passing on questions relating to the availability and terms of specified types of bonds or the financial condition or operation of the Sewer System and is actively engaged in and, in the good faith opinion of the Authority, has a favorable reputation for skill and experience in providing financial advisory services of the type with respect to which the Financial Adviser has been retained.

“Fiscal Year” means a twelve month period commencing on the first day of July.

“Fund” means any fund established pursuant to Section 502.

“Interest Payment Date” means any date upon which interest on the Bonds is due and payable in accordance with their terms.

“Investment Securities” means and includes any of the following securities, if and to the extent the same are at the time legal investments by the Authority of the funds to be invested therein:

- (a) Direct obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America; *provided*, that the full faith and credit of the United States of America must be pledged to any such direct obligation or guarantee (“Direct Obligations”);
- (b) Direct obligations and fully guaranteed certificates of beneficial interest of the Export-Import Bank of the United States; consolidated debt obligations and letter of credit-backed issues of the Federal Home Banks; participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation (“FHLMCs”); debentures of the Federal Housing Administration; mortgage-backed securities (except stripped mortgage securities that are valued greater than par on the portion of unpaid principal) and senior debt obligations of the Federal National Mortgage Association (“FNMA”); participation certificates of the General Services Administration; guaranteed mortgage-backed securities and guaranteed participation certificates and guaranteed pool certificates of the Small Business Administration; debt obligations and letter of credit-backed issues of the Student Loan Marketing Association; local authority bonds of the U.S. Department of Housing & Urban Development; guaranteed Title XI financings of the U.S. Maritime Administration; guaranteed transit bonds of the Washington Metropolitan Area Transit Authority; and Resolution Funding Corporation securities;
- (c) Direct obligations of any state of the United States of America or any subdivision or agency thereof whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, “A” or better by Moody’s Investors Service and “A” or better by Standard & Poor’s Corporation, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of

purchase, "A" or better by Moody's Investor Service and "A" or better by Standard & Poor's Corporation;

- (d) Commercial paper (having original maturities of not more than 270 days) rated, at the time of purchase, "P-1" or better by Moody's Investors Service and "A-1" or better by Standard & Poor's Corporation;
- (e) Federal funds, unsecured certificates of deposit, time deposits or bankers acceptances (in each case having maturities of not more than 365 days) of any domestic bank including a branch office of a foreign bank which branch office is located in the United States, provided legal opinions are received to the effect that full and timely payment of such deposit or similar obligation is enforceable against the principal office or any branch of such bank, which, at the time of purchase, has a short-term "Bank Deposit" rating of "P-1" or better by Moody's and a "Short-Term CD" rating of "A-1" or better by Standard & Poor's Corporation;
- (f) Deposits of any bank or savings and loan association that has combined capital, surplus and undivided profits of not less than \$3,000,000, provided such deposits are continuously and fully insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation;
- (g) Investments in money-market funds rated "AAAm" or "AAAm-G" by Standard & Poor's Corporation;
- (h) Repurchase agreements collateralized by Direct Obligations, GNMMAs, FNMMAs or FHLMMCs with any registered broker/dealer subject to the Securities Investors' Protection Corporation jurisdiction or any commercial bank insured by the Federal Deposit Insurance Corporation, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed obligation rated "P-1" or "A3" or better by Moody's Investors Service, and "A-1" or "A-" or better by Standard & Poor's Corporation; provided:
 - (i) A master repurchase agreement or specific written repurchase agreement governs the transaction;
 - (ii) The securities are held free and clear of any lien by the Trustee or an independent third party acting solely as agent ("Agent") for the Trustee, and such third party is: (A) a Federal Reserve Bank; (B) a bank that is a member of the Federal Deposit Insurance Corporation and that has combined capital, surplus and undivided profits of not less than \$50,000,000; or (C) a bank approved in writing for such purpose by Financial Guaranty Insurance Company, and the Trustee shall have received written confirmation from such third party that it holds such securities, free and clear of any lien, as agent for the Trustee;
 - (iii) A perfected first security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 C.F.R. Part 306, in such securities, is created for the benefit of the Trustee;

- (iv) The repurchase agreement has a term of 10 years or less, and the Trustee or the Agent will value the collateral securities no less frequently than weekly and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two business days of such valuation; and
- (v) The fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 103%.

“Net Revenue Fund” means the Net Revenue Fund established pursuant to Section 502.

“Operating Expenses” means all reasonable or necessary current expenses of maintaining, repairing, operating and managing the Sewer System, including all salaries, administrative, general, commercial, architectural, engineering, advertising, auditing and legal expenses, insurance and surety bond premiums, consultants’ fees and charges, current payments to pension, retirement, health and hospitalization funds or in connection with any other employee benefit program, any taxes that may lawfully be imposed on the Sewer System or the income or operation thereof, payments by the Authority in lieu of taxes, costs of public hearings, ordinary and current rentals of equipment or other property, ordinary lease payments for real property or interest therein, usual expenses of maintenance and repair (including replacements), expenses, liabilities and compensation of any Fiduciary or of any trustee, paying agent or fiduciary for any obligation issued by the Authority other than under this Resolution, reasonable reserves for maintenance and repair, and all other expenses necessary, incidental or convenient for the efficient operation of the Sewer System, but only to the extent properly attributable to the Sewer System. Operating Expenses shall not include any allowance for depreciation or amortization.

“Operating Fund” means the Operating Fund established pursuant to Section 502.

“Operating Reserve Requirement” means an amount equal to 60 days of Operating Expenses based on the Operating Expenses set forth in the Annual Budget for the Fiscal Year during which such Operating Reserve Requirement is calculated.

“Outstanding”, when used with reference to Bonds, means, as of any date, all Bonds theretofore or thereupon being authenticated and delivered under this Resolution except:

- (a) any Bonds cancelled by the Trustee at or prior to such date;
- (b) any Bond (or portion thereof) for the payment or redemption of which there shall be set aside and held in trust hereunder either:
 - (i) moneys in an amount sufficient to pay when due the principal or applicable Redemption Price thereof, together with all accrued interest,
 - (ii) Investment Securities, as described in Section 1201(B), or obligations secured by such Investment Securities, in such principal amounts, of such maturities, bearing such interest and otherwise having such terms and qualifications, as are necessary to provide moneys (whether as principal or

interest), in an amount sufficient to pay when due the principal or applicable Redemption Price, together with all accrued interest, or

(iii) any combination of (b)(i) and (b)(ii) above,

and, if such Bond or portion thereof is to be redeemed, for which notice of redemption has been given as provided in Article VI or provision satisfactory to the Trustee has been made for the giving of such notice;

(c) any Bond in lieu of or in substitution for which other Bonds have been authenticated and delivered; and

(d) any Bond deemed to have been paid as provided in Section 1201(B).

“Paying Agent” means any paying agent for the Bonds of any Series, and its successor or successors and any other person that may at any time be substituted in its place pursuant to this Resolution.

“Principal Installment” means, as of any date of calculation and with respect to any Series, so long as any Bonds thereof are Outstanding, the principal amount of Bonds of such Series due on a certain future date, whether at stated maturity or as a result of mandatory redemption requirements, or which may, at the option of the holders thereof, be required to be redeemed, prepaid, purchased or otherwise paid, as set forth in the Supplemental Resolution authorizing such Series.

“Project” means the facilities, improvements and extensions to the Sewer System to be constructed with the proceeds of a Series of Bonds as specified in the Supplemental Resolution authorizing the issuance of such Bonds.

“Rate Consultant” means any nationally recognized independent accountant or firm of independent accountants, or management consultant or firm of management consultants, or independent engineer or firm of independent engineers (which must not be the firm then serving as the Accountant) selected by the Authority.

“Rate Stabilization Fund” means the Rate Stabilization Fund established pursuant to Section 502.

“Rebate Fund” means the Rebate Fund established pursuant to Section 502.

“Redemption Fund” means the Redemption Fund established pursuant to Section 502.

“Redemption Price” means, when used with respect to a Bond or portion thereof, the principal amount thereof plus the applicable premium, if any, payable upon redemption thereof pursuant to this Resolution.

“Refundable Principal Installment” means the Bond Anticipation Notes or any Series of Bonds, the principal of which the Authority intends to pay with monies that are not Revenues, provided that such intent shall have been expressed in the Supplemental Resolution authorizing

such Series and provided further that such indebtedness shall be a Refundable Principal Installment only through the date that is thirty (30) days prior to the date on which such indebtedness comes due or such earlier time as the Board has determined to pay such indebtedness with moneys that are not Revenues.

"Refunding Bond" means any Bond authenticated and delivered on original issuance pursuant to Section 207 or thereafter authenticated and delivered in lieu of or substitution for such Bond pursuant to this Resolution.

"Reimbursement Obligation" means the obligation of the Authority to directly reimburse any Credit Issuer for amounts paid by such Credit Issuer under a Credit Facility, whether or not such obligation to so reimburse is evidenced by a promissory note or other similar instrument. The term Reimbursement Obligation includes obligations pursuant to a Credit Facility Agreement either to make payments for interest based on levels of, or changes or differences in, interest rates, currency exchange rates, or stock or other indices, in return for the Credit Issuer's fixed obligations under the Credit Facility or to make fixed payments for interest in return for the Credit Issuer's payments based on such variables.

"Renewal and Extension Requirement" means the amount set forth in the Annual Budget as necessary as a reserve for extraordinary repairs or replacements in connection with the Sewer System and to pay Capital Costs expected to be incurred in the extension, improvement or renewal of the Sewer System, but for which Bonds or other obligations of the Authority are not expected to be issued.

"Revenues" means all rates, charges, rents, sewer rents, fees, assessments and other realized income derived or to be derived by or for the account of the Authority from or for the ownership, operation, use or services of the Sewer System and any amounts paid into and credited to the Net Revenue Fund pursuant to this Resolution, but shall not include (a) any refundable customer deposit, (b) any grant proceeds, (c) any amount received or receivable from the United States or the State (or any agency of either thereof) or from any other source as or on account of a contribution for or with respect to (i) the construction, acquisition, improvement, extension, renewal or other development of any part of the Sewer System, or (ii) the financing or repayment of financing of any of the foregoing, (d) sanitation or other charges that the Authority collects not for services of the Sewer System but solely as a fiscal agent or in another such agency capacity, other than the net revenues of such sanitation or other charges retained by the Authority to the extent allocated to the Sewer System, or (e) any amount received by or paid to the Authority that is required to be charged or collected by or paid to the Authority under the terms of any grant agreement with the United States of America or any agency thereof or the State or any agency thereof and which is received by or paid to the Authority in an agency capacity under such grant agreement. For purposes of determining compliance with the coverage test set forth in Section 709(C), the computation of Revenues with respect to any period of time shall be increased (to the extent set forth in Section 709(C)) by the amount of transfers during such period from the Rate Stabilization Fund to the Revenue Fund pursuant to Section 509, and decreased by the amount of transfers during such period from the Revenue Fund to the Rate Stabilization Fund pursuant to Section 509.

“Senior Bonds” means all Bonds of the Authority other than Bonds constituting Subordinated Indebtedness.

“Separate Series Debt Reserve Requirement” means, for any Series of Bonds for which the Supplemental Resolution authorizes a Separate Series Debt Reserve Requirement, the amount, if any, specified in such Supplemental Resolution as the Separate Series Debt Reserve Requirement; provided, however, that such amount shall not exceed the least of: (a) 10% of the aggregate original stated principal amount of the Bonds of such Series (provided that if such Bonds have more than a *de minimis* (2%) amount of original issue discount or premium, the issue price of such Bonds (net of pre-issuance accrued interest) is used to measure the 10% limitation in lieu of their stated principal amount); (b) the maximum amount of principal and interest on such Bonds coming due in any Fiscal Year; or (c) 125% of the average annual principal and interest on such Bonds.

“Separate Series Debt Reserve Secured Bonds” means any Series of Bonds for which the Supplemental Resolution authorizes said Bonds to be secured by a Separate Series Debt Reserve Requirement. The Existing Bonds are deemed to be Separate Series Debt Reserve Secured Bonds.

“Series” means all of the Bonds authenticated and delivered on original issuance in a simultaneous transaction and any Bonds thereafter authenticated and delivered in lieu of or in substitution therefor pursuant to this Resolution regardless of variations in maturity, interest rate or other provisions.

“Series Debt Reserve Account” means each account in the Debt Reserve Fund related to a particular Series of Bonds that is required to be funded as provided in a Supplemental Resolution.

“Series Debt Reserve Requirement” for any Series of Bonds means the Common Debt Reserve Requirement or the Separate Series Debt Reserve Requirement set forth in the Supplemental Resolution authorizing such Series of Bonds.

“Sewer System” means the plants, structures and other real and personal property (including rights or easements therein) acquired, constructed, reconstructed, improved, maintained or operated or to be acquired, constructed, reconstructed, improved, maintained or operated by the Authority or the City for the purposes of the Authority, including sewers, conduits, pipelines, mains, pumping and ventilating stations, sewage treatment or disposal systems, plants and works, connections, outfalls, compensating reservoirs, lateral and outlet sewers, storm water drains, and other plants, structures, boats, conveyances, and other real and personal property, and rights and easements therein, and appurtenances necessary or useful and convenient for the collection, treatment, purification or disposal in a sanitary manner of any sewage, liquid or solid wastes, night soil or industrial wastes, and for relieving the City from inadequate sanitary and storm water drainage, and also including any Project.

“Sinking Fund Payment” means, as of any particular date of calculation, the amount of money required to be paid at all events by the Authority on a single future date for the retirement of Outstanding Bonds that are expressed to mature after said future date, but does not include any amount payable by the Authority by reason only of the maturity of a Bond.

“State” means the State of New York.

“Subordinated Indebtedness” means any Bond payable from the Subordinated Indebtedness Fund.

“Subordinated Indebtedness Fund” means the Subordinated Indebtedness Fund established pursuant to Section 502 hereof.

“Supplemental Resolution” means any resolution supplemental to or amendatory of this Resolution, adopted by the Authority in accordance with Article VIII.

“Surplus Fund” means the Surplus Fund established pursuant to Section 502 hereof.

“Tax Credit Bonds” means any Bonds with respect to which the Authority has received a Counsel’s Opinion to the effect that the Authority is entitled to receive payments by the United States Department of the Treasury or other agency of the United States government in offset of the debt service on such Bonds.

“Tax Credit Payments” means any amounts payable to the Authority by the United States Department of the Treasury or other agency of the United States government with respect to Tax Credit Bonds.

“Trustee” means Manufacturers and Traders Trust Company, Buffalo, New York, and its successor or successors and any other person that may at any time be substituted in its place pursuant to this Resolution.

“Variable Rate” means a rate of interest applicable to the Bonds, other than a fixed rate of interest that applies to a particular maturity of the Bonds so long as that maturity of the Bonds remains Outstanding or a rate of interest that may increase or decrease based upon the satisfaction of or failure to satisfy certain specified criteria.

“Variable Rate Taxable Index” means such index as, at the time, is in general use as a proxy for short-term interest rates on debt obligations of state and local governments the interest on which is not excluded from gross income for federal income tax purposes, as determined by an Authorized Officer.

“Variable Rate Tax-Exempt Index” means such index as, at the time, is in general use as a proxy for short-term interest rates on debt obligations of state and local governments the interest on which is excluded from gross income for federal income tax purposes, as determined by an Authorized Officer.

SECTION 103. *Interpretation.* (A) In this Resolution, unless the context otherwise requires:

- (1) Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Resolution.
- (2) The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms, as used in this Resolution, refer to this Resolution, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this Resolution.

- (3) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.
- (4) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- (5) Words importing the redemption or redeeming or calling of a Bond for redemption do not include or connote the payment of such Bond at its stated maturity or the purchase of such Bond.
- (6) Any headings preceding the texts of the several Articles and Sections of this Resolution, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference, and shall not constitute a part of this Resolution, nor shall they affect its meaning, construction or effect.
- (7) Wherever in this Resolution the consent of the Trustee shall be required, such consent shall include the consent of any person who shall at the time be the holder of all the Outstanding Bonds, but only if there be such a person and if such person shall have consented within a reasonable period of time.
- (8) This Resolution shall be deemed to be executed in the State and shall be governed by and construed in accordance with the applicable laws of the State.
- (9) Any publication to be made under the provisions of this Resolution in successive weeks or on successive dates may be made in each instance upon any business day of the week and need not be made in the same Authorized Newspaper for any or all of the successive publications but may be made in different Authorized Newspapers. If, because of the temporary or permanent suspension of the publication or general circulation of any of the Authorized Newspapers or for any other reason, it is impossible or impractical to publish any notice pursuant to this Resolution in the manner herein provided, then such publication in lieu thereof as shall be made by or with the approval of the Trustee shall constitute a sufficient publication of such notice.
- (10) The date upon which any Sinking Fund Payment is required to be made pursuant to this Resolution or a Supplemental Resolution authorizing the issuance and delivery of Bonds shall be deemed to be the date upon which such Sinking Fund Payment is payable, and the Outstanding Bonds to be retired by application of such Sinking Fund Payment shall be deemed to be the Bonds entitled to such Sinking Fund Payment.
- (11) Any moneys, documents, securities, obligations or other items received by the Trustee pursuant to the terms of this Resolution shall be deemed to have been received by the Authority.

- (12) Any reference to the payment of a Bond shall be a reference to the payment of the principal or Redemption Price, if any, thereof and interest thereon.

(B) Whenever the Authority is named or referred to, it shall and shall be deemed to include its successors and assigns whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of, and other provisions for the benefit of, the Authority contained in this Resolution shall bind and inure to the benefit of such successors and assigns and shall bind and inure to the benefit of any officer, board, commission, authority, agency or instrumentality to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the Authority, or of its successors or assigns; the possession of which is necessary or appropriate in order to comply with any such covenant, stipulation, obligation, agreement or other provision hereof.

(C) Nothing in this Resolution expressed or implied is intended or shall be construed to confer upon, or to give to, any person, other than the Authority, the Fiduciaries and the holders of the Bonds (and of the coupons, if any, thereunto appertaining), any right, remedy or claim under or by reason of this Resolution of any covenant, condition or stipulation thereof. All of the covenants, stipulations, promises and agreements herein contained by and on behalf of the Authority, shall be for the sole and exclusive benefit of the Authority, the Fiduciaries and the holders of the Bonds and the coupons thereunto appertaining, if any.

(D) If any one or more of the covenants or agreements provided herein on the part of the Authority or any Fiduciary to be performed should be contrary to law, then such covenant or covenants or agreement or agreements, shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Resolution or of the Bonds.

ARTICLE II AUTHORIZATION AND ISSUANCE OF BONDS

SECTION 201. *Authorization for Resolution.* This Resolution is adopted by virtue of the Act and pursuant to its provisions. The Authority has ascertained and hereby determines and declares that adoption of this Resolution is necessary to carry out its purposes under the Act, that each and every act, matter, thing or course of conduct as to which provision is made herein is necessary in order to carry out and effectuate the corporate purposes of the Authority in accordance with the Act and to exercise the powers given thereby and that each and every covenant or agreement herein contained and made is necessary, useful or convenient in order to better secure the Bonds and are contracts or agreements necessary, useful and convenient to carry out and effectuate its purposes under the Act.

SECTION 202. *Resolution to Constitute Contract.* In consideration of the purchase and acceptance of the Bonds by those who shall hold the same from time to time, the provisions of this Resolution shall be a part of the contract of the Authority with the holders of Bonds and shall be deemed to be and shall constitute a contract between the Authority, the Trustee and the holders from time to time of the Bonds and the coupons, if any, appertaining thereto. The pledge hereof and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Authority shall be for the equal benefit, protection and security of the holders of any and all of such Bonds and coupons, each of which, regardless of the time or times of its issue or maturity,

shall be of equal rank without preference, priority or distinction over any other thereof except as expressly provided in this Resolution.

SECTION 203. *Authorization of Bonds.* In order to provide sufficient funds for the Capital Costs of the Sewer System or for the purpose of refunding any of its Bonds, Bonds of the Authority are hereby authorized to be issued from time to time without limitation as to amount except as herein provided or as may be limited by law and such Bonds shall be issued subject to the terms, conditions and limitations established in this Resolution and in one or more Series as hereinafter provided. ***Obligation of Bonds.*** This Resolution creates an issue of Bonds of the Authority and creates a continuing pledge and lien to secure the full and final payment of the principal or Redemption Price of and interest on all Bonds. It is hereby expressly provided that the Bonds shall be general obligations of the Authority to which the full faith and credit of the Authority is pledged. The Bonds shall not be a debt of the State or the City, and neither the State nor the City shall be liable thereon, nor shall the Bonds be payable out of any funds other than those of the Authority provided hereunder and under the Act.

SECTION 205. *Execution and Authentication.* (A) After their authorization by a Supplemental Resolution, Bonds of a Series may be executed by or on behalf of the Authority and delivered to the Trustee for authentication. The Bonds shall be executed in the name and on behalf of the Authority by the manual or facsimile signature of the Chairman and the corporate seal of the Authority (or a facsimile thereof) shall be thereunto affixed, imprinted, engraved or otherwise reproduced thereon, and attested by the manual or facsimile signature of the Secretary of the Authority, or in such other manner as may be required by law. In case any one or more of the officers or employees who shall have signed or sealed any of the Bonds shall cease to be such officer or employee before the Bonds so signed and sealed shall have been actually delivered, such Bonds may, nevertheless, be delivered as herein provided, and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such offices or be so employed. Any Bond of a Series may be signed and on behalf of the Authority by such persons as at the actual time of the execution of such Bond shall be duly authorized or hold the proper office in or employment by the Authority, although at the date of the Bonds of such Series such person may not have been so authorized to have held such office or employment. The coupons to be attached to the coupon Bonds and to Bonds registered as to principal only of each Series shall be authenticated by the facsimile signature of the present or any future Authorized Officer, or in such other manner as may be required by law, and the Authority may adopt and use for that purpose the facsimile signature of any person or persons who shall have been such officer at any time on or after the date of such Bond, notwithstanding that at the date of such Bond such person may not have held such office or that at the time when such Bond shall be authenticated and delivered or such coupons shall be attached such person may have ceased to hold such office.

(B) The Bonds of each Series shall bear thereon a certificate of authentication, in the form set forth in the Supplemental Resolution authorizing such Bonds, executed manually by the Trustee. No Bond and no coupon thereunto appertaining shall be entitled to any right or benefit under this Resolution or shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Trustee. Such certificate of the Trustee upon any Bond executed on behalf of the Authority shall be conclusive evidence that the Bond so authenticated and delivered under this Resolution and that the holder thereof is entitled to the benefits hereof.

(C) Except as otherwise provided herein, the Trustee, before authenticating and delivering any Bonds with coupons appertaining thereto, shall cut off, cancel and destroy all matured coupons thereto attached, except matured coupons for which payment in full has not been provided. However, when, as permitted by law, such Bonds or Bonds registered as to principal only are issued in exchange for Bonds registered as to both principal and interest of any Series upon which interest is in default, as shown by the records of the Trustee, such Bonds shall have attached thereto all coupons maturing after the date to which interest has been paid in full, as shown by the records of the Trustee, and in case any interest installments shall have been paid in part, appropriate notation shall be made on the coupons to evidence such fact.

SECTION 206. *Conditions Precedent to Delivery of a Series of Bonds.* All (but not less than all) the Bonds of a Series other than Refunding Bonds shall be executed by the Authority for issuance and delivered to the Trustee and thereupon shall be authenticated by the Trustee and delivered to the Authority or upon its order, but only upon the receipt by the Trustee of:

(A) a Counsel's Opinion to the effect that (1) the Authority has the right and power to adopt this Resolution under the Act as amended to the date of such Opinion; (2) this Resolution has been duly and lawfully adopted by the Authority, is in full force and effect, is valid and binding upon the Authority and is enforceable against the Authority except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally; (3) this Resolution creates the valid pledge that it purports to create, of all Revenues and proceeds of Bonds on deposit in any of the Funds and Accounts created hereunder, subject to the application thereof to the purposes and on the conditions permitted by this Resolution; (4) the Bonds of such Series are valid and binding revenue obligations of the Authority, enforceable in accordance with their terms and the terms of this Resolution except as limited by bankruptcy, insolvency or other laws affecting creditors' rights generally; and (5) upon the execution, authentication and delivery thereof, the Bonds of such Series will have been duly and validly authorized and issued in accordance with the Constitution and statutes of the State, including the Act as amended to the date of such Opinion, and in accordance with this Resolution;

(B) a written order as to the delivery of such Bonds, signed by an Authorized Officer;

(C) a copy of the Supplemental Resolution authorizing such Series, certified by an Authorized Officer, which shall specify:

- (1) the authorized principal amount and Series designation of such Bonds;
- (2) the purposes for which such Series is being issued, which shall be one or more of the following: (i) the making of deposits into the Construction Fund, (ii) the making of deposits in the amounts, if any, required by this Resolution or such Supplemental Resolution into the Net Revenue Fund or the Debt Reserve Fund, or both, or (iii) the refunding of any Bonds;
- (3) the date, and the maturity date or dates, of the Bonds of such Series, each of which maturity dates shall fall upon an Interest Payment Date;
- (4) the interest rate or rates of the Bonds of such Series, or the manner of determining such rate or rates, and the Interest Payment Dates therefor;

- (5) the denominations of, and the manner of dating, numbering and lettering, the Bonds of such Series, but such Bonds (other than EFC Bonds) shall be in the denomination of \$1,000 each or in denominations of such multiple or multiples (including \$1,000) thereof as may be authorized by such Supplemental Resolution;
 - (6) if the Bonds of such Series are to constitute Subordinated Indebtedness, a statement to such effect;
 - (7) the Paying Agent and the place or places of payment of the Bonds of such Series or the manner of appointing and designating the same;
 - (8) the Redemption Prices, if any, and, subject to the provisions of Article VI, the redemption terms for the Bonds of such Series;
 - (9) the amount and due date of each Sinking Fund Payment, if any, for Bonds of like maturity of such Series, but the due date of any Sinking Fund Payment shall fall upon an Interest Payment Date;
 - (10) if so determined by the Authority, provisions for the sale of the Bonds of such Series;
 - (11) the forms of the Bonds of such Series, of the coupons to be attached to the coupon Bonds of such Series and of the Trustee's certificate of authentication; and
 - (12) any other provisions deemed advisable by the Authority as shall not conflict with the provisions hereof;
- (D) a Certificate of an Authorized Officer, dated as of the date of such delivery, stating that the Authority has met the requirements of Section 714 with respect to such Series;
- (E) the amount of the proceeds of such Series to be deposited pursuant to Section 401 in any Fund or Account held by the Trustee;
- (F) a Certificate of an Authorized Officer, dated as of the date of such delivery, stating that the Authority is not in default in the performance of any of the covenants, conditions, agreements or provisions contained in this Resolution; and
- (G) such further documents and moneys as are required by the provisions of Article VIII or any Supplemental Resolution adopted pursuant to Article VIII.

SECTION 207. *Conditions Precedent to Delivery of a Series of Refunding Bonds.*

(A) All Refunding Bonds of a Series shall be executed by the Authority for issuance and delivered to the Trustee and thereupon shall be authenticated by the Trustee and delivered to the Authority or upon its order, but only upon the receipt by the Trustee of:

- (1) the documents and moneys, if any, referred to in Paragraphs (A), (B), (C) and (F) of Section 206;

- (2) irrevocable instructions to the Trustee, satisfactory to it, to give due notice of redemption of all the Bonds to be refunded on a redemption date specified in such instructions;
- (3) if the Bonds to be refunded are not to be redeemed within the next succeeding forty-five days, irrevocable instructions to the Trustee, satisfactory to it, to publish as provided in Article VI notice of redemption of such Bonds on a specified date prior to their maturity;
- (4) either (a) moneys (which may include all or a portion of the proceeds of the Refunding Bonds to be issued) in an amount sufficient to effect payment at the applicable Redemption Price of the Bonds to be refunded, together with accrued interest on such Bonds to the redemption date, or (b) Investment Securities, as described in clause (a) or (b) of the definition thereof in Section 102 (or obligations secured by such Investment Securities as to the payment of both principal and interest), the principal of and interest on which when due, together with the moneys (which may include all or a portion of the proceeds of the Refunding Bonds to be issued), if any, contemporaneously deposited with the Trustee, will be sufficient to pay when due the applicable Redemption Price of the Bonds to be refunded, together with accrued interest on such Bonds to the redemption date, which moneys or Investment Securities shall be held by the Trustee or any one or more of the Paying Agents in a separate account for the Bonds to be refunded irrevocably in trust hereunder; and
- (5) Such further documents and moneys as are required by the provisions of Article VIII or any Supplemental Resolution adopted pursuant to Article VIII.

(B) Neither Investment Securities nor moneys deposited with the Trustee pursuant to Section 207(A)(4) nor principal or interest payments on any such Investment Securities shall be withdrawn or used for any purpose other than, but shall be held in trust for, the payment of the applicable Redemption Price of the Bonds to be refunded, together with accrued interest on such Bonds to the redemption date, and any cash received from such principal or interest payments, if not needed for such purpose, may be applied to the payment of any obligations issued to provide funds for the acquisition of such Investment Securities, but otherwise shall, to the extent practicable, be reinvested in such Investment Securities as are described in clause (b) of Section 207(A)(4) maturing at times and in an amount sufficient to pay when due the applicable principal or Redemption Price of such Bonds, together with such accrued interest.

SECTION 208. *Bond Anticipation Notes.* Whenever the Authority shall authorize the issuance of a Series of Bonds, the Authority may, by resolution, authorize the issuance of notes (and renewals thereof) in anticipation of such Series. The principal of and interest on such notes and renewals thereof shall be payable from the proceeds of such notes or from the proceeds of the sale of the Series of Bonds in anticipation of which such notes are issued. The proceeds of such Bonds may be pledged for the payment of the principal of and interest on such notes and any such pledge shall have a priority over any other pledge of such proceeds created by this Resolution. The Authority may also pledge the Revenues to the payment of the interest on the principal of such notes. A copy of the resolution of the Authority authorizing such notes, certified by an Authorized

Officer of the Authority, shall be delivered to the Trustee following its adoption, together with such other information concerning such notes as the Trustee may reasonably request.

SECTION 209. *Subordinate Lien Obligations.* Nothing contained in this Resolution shall prohibit or prevent, or be deemed or construed to prohibit or prevent, the Authority from authorizing and issuing bonds, notes, certificates, warrants or other evidences or indebtedness for any corporate use or purpose relating to the Sewer System payable as to principal and interest from the Revenues subject and subordinate to the deposits and credits required to be made to the Operating Fund and to the payment of Debt Service on any Senior Bonds, or from securing such bonds, notes, certificates, warrants or other evidences of indebtedness the payment thereof by a lien and pledge on the Revenues junior and inferior to the lien and pledge on Revenues herein created for the payment and security of the Senior Bonds and to the lien and pledge on Revenues herein created for the payment of the Trustee's reasonable fee and reimbursement for reasonable expenses.

SECTION 210. *Capital Appreciation Bonds.* (A) A Supplemental Resolution providing for the issuance of a Series of Bonds may provide that the payment of interest on any specified Bonds of the Series shall be made only (1) at maturity, (2) at a specified time or times prior to maturity or upon earlier redemption, by Sinking Fund Installment or otherwise, (3) at a specified time or times and thereafter on each interest payment date until maturity, or (4) on each interest payment date until a specified time and thereafter at specified time or times prior to maturity or upon earlier redemption, by Sinking Fund Installment or otherwise. Any such Supplemental Resolution shall specify the Accreted Value on such Bonds as of each interest payment date on the Bonds from the date of issue to maturity. The principal amount of any such Bonds shall be deemed to be their Compounded Amount for all purposes of this Resolution.

(B) The principal and interest portions of the Accreted Value of Capital Appreciation Bonds becoming due at maturity or by virtue of mandatory redemption requirements shall be included in the calculations of accrued and unpaid and accruing interest or Principal Installments made under the definition of Debt Service only from and after the date (the "Calculation Date") that is one year prior to the date on which such Accreted Value becomes so due, and the principal and interest portions of such Accreted Value shall be deemed to accrue in equal daily installments from the Calculation Date to such due date.

(C) For the purposes of: (1) receiving payment of the Redemption Price if a Capital Appreciation Bond is redeemed prior to maturity; or (2) receiving payment of a Capital Appreciation Bond if the principal of all Bonds is declared immediately due and payable following an Event of Default; or (3) computing the principal amount of Bonds held by the Bondholder of a Capital Appreciation Bond in giving to the Authority any notice, consent, request or demand pursuant to the Resolution for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its then-current Accreted Value.

SECTION 211. *Put Bonds.* A Supplemental Resolution providing for the issuance of a Series of Bonds may provide for the repurchase or redemption of such Bonds, at the option of the holders of such Bonds, by the Authority or its designee on a date or dates and with such notice as specified in the applicable Supplemental Resolution. A repurchase or redemption pursuant to such provision shall not cause any Bond so repurchased or redeemed to lose the benefit of any security

hereunder. The repurchase or redemption price shall be financed by the proceeds of resale of the repurchased Bonds, by the issuance of refunding Bonds in accordance with this Article II, by using moneys available therefor in the Redemption Fund in accordance with Section 507, or by any other lawful means, or by a combination of the foregoing. If Bonds of a Series are made subject to repurchase or redemption pursuant to this Section 211, Debt Service shall be calculated hereunder by using the schedule of Debt Service that would apply if the option were not exercised except to the extent the option has been exercised and the option price has been paid (or provision for payment has been made pursuant to Section 1201). Nothing in this Section 211 shall be deemed to preclude any repurchase or redemption of Bonds otherwise required or permitted by the terms of this Resolution.

SECTION 212. *Variable Rate Bonds.* A Supplemental Resolution providing for the issuance of a Series of Bonds may provide for the Bonds to bear interest at a variable, adjustable, convertible or other similar rate or rates of interest. Any such Supplemental Resolution shall specify: (1) the manner of determining the interest rate or rates and the frequency of change thereof; and (2) the maximum rate or rates, if any, with respect to the conversion of such Bonds to Bonds bearing a fixed rate of interest and the reconversion of such Bonds to bear interest at a variable rate. The method or methods for determining the interest rate on Bonds bearing interest at a variable or similar rate of interest may include the selection of such rate by a rate determination agent as provided in an agreement between the Authority and such agent, the utilization of an index or indices as described in the applicable Supplemental Resolution, or such other standard or combination of standards set forth in the Supplemental Resolution.

SECTION 213. *Credit Facilities.* (A) In connection with the issuance of any Series of Bonds hereunder, the Authority may obtain or cause to be obtained one or more Credit Facilities providing for or securing payment of all or a portion of the principal installments or redemption price or premium, if any, or interest due or to become due on such Bonds, providing for the purchase of such Bonds by the Credit Issuer of such Credit Facility or providing funds for the purchase of such Bonds by the Authority. In connection therewith, the Authority may enter into a Credit Facility Agreement with the Credit Issuer of any such Credit Facility providing for, *inter alia*: (1) the payment of fees and expenses to such Credit Issuer for the issuance of such Credit Facility; (2) the terms and conditions of such Credit Facility and the Series of Bonds affected thereby; and (3) the security, if any, to be provided for the issuance of such Credit Facility.

(B) The Authority may secure such Credit Facility by a Credit Facility Agreement providing for the purchase of the Series of Bonds secured thereby with such adjustments to the rate of interest, method of determining interest, maturity or redemption provisions as specified by the Authority in the applicable Supplemental Resolution. The Authority may also provide for a Reimbursement Obligation in a Credit Facility Agreement.

(C) Any such Credit Facility shall be for the benefit of and secure such Series of Bonds or portion thereof as specified in the applicable Supplemental Resolution.

SECTION 214. *Separate Systems.* Nothing contained in this Resolution shall prevent the Authority from authorizing and issuing bonds, notes, warrants, certificates or other obligations or evidences of indebtedness, other than Bonds, to acquire, construct, develop, compile or otherwise obtain any separate or other system as permitted by the Act, and any incidental properties to be

constructed, developed, compiled or otherwise acquired in connection therewith, which system shall be a separate system and which bonds or other obligations or evidences of indebtedness shall be payable solely from the revenues or other income derived from the ownership or operation of such system; provided, however, that the Authority will not issue bonds, notes, warrants, certificates or other obligations or evidences of indebtedness for the purpose of acquiring or constructing such a separate system unless and until a report of a Rate Consultant shall be delivered to the Trustee to the effect that in the opinion of such Rate Consultant, the acquisition, construction or operation of such separate system will not result in a reduction of the Revenues below the amounts covenanted by Section 709 to be maintained.

ARTICLE III GENERAL TERMS AND PROVISIONS OF BONDS

SECTION 301. *Title and Date of Bonds.* Subject to the provisions of Section 303, each Bond shall be entitled "Sewer System Revenue Bond" and shall bear such additional letter or number and Series designation as shall be determined in the Supplemental Resolution authorizing the Bonds of the Series of which such Bond is one. The Bonds of each Series shall be dated as of and bear interest from the first day of any month contemporaneous with or prior to or after its issuance, except, as permitted by law, in the case of Bonds registered as to both principal and interest issued on or subsequent to the first Interest Payment Date of such Series, which shall be dated and bear interest from the first day of a month designated in such Supplemental Resolution, next preceding the Interest Payment Date next following the date of delivery thereof, unless, as shown by the records of the Trustee, interest on such Bond shall be in default, in which case such Bond registered as to both principal and interest may be dated as of the date to which interest has been paid in full on the Bonds surrendered in exchange for such Bond and such Bond shall bear interest from such date, except to the extent that interest on such Bond after such date shall have been paid in part.

SECTION 302. *Principal Installment and Interest Payment Dates.* The date upon which any principal installment with respect to a Series of Bonds is payable shall be the first day of any month or months designated in the Supplemental Resolution authorizing such Series. Interest on each Bond shall be payable beginning not more than twenty-four months after its date and monthly or semiannually thereafter as designated in such Supplemental Resolution.

SECTION 303. *Legends.* The Bonds of each Series shall contain or have endorsed thereon a statement to the effect that such Bond is not a debt of the State or the City and neither the State nor the City is liable thereon, nor is such Bond payable out of any funds other than those of the Authority provided under the Resolution and the Act, and may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Resolution as may be necessary or desirable to comply with custom or otherwise as may be determined by the Authority prior to delivery thereof.

SECTION 304. *Place and Medium of Payment.* Each Bond shall be payable at the principal or corporate trust office of each Paying Agent appointed or provided for such Bond in any coin or currency of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

SECTION 305. *Form and Denomination; Payment of Interest.* The Bonds of each Series may be issued in the form of coupon Bonds in denominations of \$1,000 or any multiple thereof, registrable as to principal only and may also be issuable in the form of fully registered Bonds without coupons, in denominations of \$1,000 or any multiple thereof. Coupon Bonds shall be in form initially payable to bearer with one or more coupons attached for each installment of interest thereon, but may be made registrable as to principal only in the manner provided in Section 307. Coupon Bonds shall be payable as to interest only according to the tenor and upon presentation and surrender of the coupons appertaining thereto as they severally become due. Interest on fully registered Bonds shall be payable to the registered owner as shown on the registry books of the Authority kept for such purpose at the office of the Trustee.

SECTION 306. *Interchangeability of Bonds.* (A) Coupon Bonds, upon surrender thereof at the principal or corporate trust office of the Trustee with all unmatured coupons attached, may, at the option of the holder thereof, and upon payment by such holder of any charges that the Authority or the Trustee may make as provided in Section 308, be exchanged for an equal aggregate principal amount of fully registered Bonds of the same Series and maturity of any authorized denominations.

(B) Fully registered Bonds, upon surrender thereof at the principal or corporate trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the registered owner or his duly authorized attorney, may at the option of the registered owner thereof, and upon payment by such registered owner of any charges that the Trustee may make as provided in Section 308, be exchanged for an equal aggregate principal amount of coupon Bonds of the same Series and maturity with appropriate coupons attached, or of fully registered Bonds of the same Series and maturity, of any of the authorized denominations.

SECTION 307. *Negotiability, Transfer and Registry.* (A) Title to any coupon Bond, except when it is registered as to principal otherwise than to bearer, and to any coupons appertaining thereto, shall pass by delivery as negotiable instruments payable to bearer. Any coupon Bond may be registered as to principal only on the books of the Authority at the principal or corporate trust office of the Trustee, upon presentation thereof at said office and the payment of a charge sufficient to reimburse the Authority or the Trustee for any tax, fee or other governmental charge required to be paid with respect to such registration, and such registration shall be noted on such Bond. After said registration, no transfer thereof shall be valid unless made on said books at the request of the registered owner in person or by his attorney duly authorized in writing and similarly noted on such Bond, but such Bond and coupons appertaining thereto, if any, may be discharged from registration by being in like manner transferred to bearer, after which it shall again be transferable by delivery, and from time to time, be registered or discharged from registration in the same manner. Registration of any coupon Bond as to principal only, however, shall not affect the negotiability by delivery of the coupons appertaining to such Bond, but every such coupon shall continue to pass by delivery and shall remain payable to bearer.

(B) Each fully registered Bond shall be transferable only upon the books of the Authority, which shall be kept for the purpose at the principal office of the Trustee, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any such registered Bond

and the payment by the registered owner of a fee sufficient to pay the cost of such transfer, the Authority shall issue in the name of the transferee a new fully registered Bond or Bonds, or, at the option of the transferee, coupon Bonds with appropriate coupons attached, of the same aggregate principal amount and Series and maturity as the surrendered Bond.

(C) As to any coupon Bond registered as to principal only or as to any fully registered Bond, the person in whose name the same shall be registered upon the books of the Authority may be deemed and treated as the absolute owner thereof, whether such Bond shall be overdue or not, for all purposes, except for the purpose of receiving payment of coupons and payment of, or on account of, the principal or Redemption Price, if any, of such Bond shall be made only to, or upon the order of, such registered owner thereof, but such registration may be changed as above provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid. The Authority and any Fiduciary may deem and treat the bearer of any coupon as the absolute owner thereof, whether such coupon shall be overdue or not, for the purpose of receiving payment thereof and for all other purposes whatsoever, and may deem and treat the bearer of any coupon Bond or the person in whose name any such Bond for the time being shall be registered upon the books of the Authority, as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of the principal or Redemption Price, if any, thereof and for all other purposes whatsoever except for the purpose of receiving payment of coupons, and neither the Authority, nor the Trustee nor any Paying Agent shall be affected by any notice to the contrary. The Authority and each Fiduciary may deem and treat the person in whose name any Bond shall be registered upon the books of the Authority as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal and Redemption Price, if any, of and interest on such Bonds and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Authority nor any Fiduciary shall be affected by any notice to the contrary. The Authority agrees to indemnify and save each Fiduciary harmless from and against any and all loss, cost, charge, expense, judgment or liability incurred by it, acting in good faith and without negligence under this Resolution, in so treating any such bearer or registered owner.

SECTION 308. *Regulations With Respect to Exchanges and Transfers.* (A) In all cases in which the privilege of exchanging Bonds or transferring registered Bonds is exercised, the Authority shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Resolution. All fully registered Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Trustee. All Bonds and the coupons appertaining to such Bonds, if any, surrendered in any such exchanges or transfers may, in the Trustee's discretion, be retained in the possession of the Trustee for the purpose of reissuance upon subsequent exchanges, and the Trustee, prior to the reissuance of any such Bonds, shall detach therefrom and cancel all matured coupons.

(B) For every such exchange or transfer of Bonds whether temporary or definitive, the Authority or the Trustee may, as a condition precedent to the privilege of making such exchange or transfer, make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and, except (i) with respect to the delivery of definitive Bonds in exchange for temporary Bonds, (ii) in the case of a Bond issued

upon the first exchange or transfer of a Bond or Bonds hereunder, or (iii) as otherwise provided herein, may charge the person requesting such exchange or transfer a sum sufficient to pay the cost of preparing each new Bond issued upon such exchange or transfer. Neither the Authority nor the Trustee shall be required to transfer or exchange Bonds of any Series for a period of forty-five days next preceding an Interest Payment Date on the Bonds of such Series or next preceding the first publication or mailing of any notice of redemption or to transfer or exchange any Bonds previously called for redemption.

SECTION 309. *Bonds Mutilated, Destroyed, Stolen or Lost.* In case any Bond shall become mutilated or be destroyed, stolen or lost, the Authority shall execute, and thereupon the Trustee shall authenticate and deliver, a new Bond (with appropriate coupons attached in the case of coupon Bonds) of like Series, maturity and principal amount as the Bond and attached coupons, if any, so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond and attached coupons, if any, or in lieu of and substitution for the Bond and coupons, if any, destroyed, stolen or lost, upon filing with the Trustee evidence satisfactory to the Authority and the Trustee that such Bond and attached coupons, if any, have been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Authority and the Trustee with indemnity satisfactory to them and complying with such other reasonable regulations as the Authority and the Trustee may prescribe and paying such expenses as the Authority and Trustee may incur. All Bonds and coupons so surrendered to the Trustee shall be cancelled by it. Any such new Bonds or coupons issued pursuant to this Section 309 in substitution for Bonds or coupons alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the Authority, whether or not the Bonds or coupons so alleged to be destroyed, stolen or lost be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Bonds and coupons issued under this Resolution, in any moneys or securities held by the Authority or the Fiduciaries for the benefit of the Bondholders.

SECTION 310. *Preparation of Definitive Bonds, Temporary Bonds.* (A) Until the definitive Bonds of any Series are prepared, the Authority may execute, in the same manner as is provided in Section 301, and, upon the request of the Authority, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds except as to the denominations thereof and as to interchangeability and registration of Bonds, as permitted by law, one or more temporary Bonds (which may be registrable as to principal and interest) substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, but with or without coupons, in such denominations as may be authorized by the Authority, and with such omissions, insertions and variations as may be appropriate to temporary Bonds. The installments of interest payable on such temporary Bonds in coupon form shall be payable only upon the presentation and surrender of the coupons therefor attached thereto or upon presentation of such temporary Bonds for notation thereon of the payment of such interest. The Authority at its own expense shall prepare and execute and, upon the surrender therefor of such temporary Bonds (with all unmatured coupons, and all matured coupons for which no payment or only partial payment has been provided, attached) the Trustee shall authenticate and, without charge to the holder thereof, deliver in exchange therefor, definitive coupon Bonds, with appropriate coupons attached, or at the option of the holder, as permitted by law, or definitive registered Bonds as to both principal and interest, of the same aggregate principal amount, Series and maturity as the temporary Bonds surrendered. Until so

exchanged the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds authenticated and issued pursuant to this Resolution.

(B) If the Authority shall authorize the issuance of temporary Bonds in more than one denomination, the holder of any temporary Bond or Bonds may, at his option, surrender the same to the Trustee in exchange for another temporary Bond or Bonds of like aggregate principal amount, Series and maturity of any other authorized denomination or denominations, and thereupon the Authority shall execute and the Trustee shall authenticate and, in exchange for the temporary Bond or Bonds so surrendered and upon payment of the taxes, fees and charges provided for in Section 308, shall deliver a temporary Bond or Bonds of like aggregate principal amount, Series and maturity in such other authorized denomination or denominations as shall be requested by such holder.

(C) All temporary Bonds surrendered in exchange either for another temporary Bond or Bonds or for a definitive Bond or Bonds shall be forthwith cancelled by the Trustee.

SECTION 311. *Cancellation and Destruction of Bonds or Coupons.* All Bonds paid or redeemed either at or before maturity, together with all unmatured coupons, if any, appertaining thereto, shall be delivered to the Trustee or any Paying Agent when such payment or redemption is made, and such Bonds and coupons, together with all Bonds purchased by the Trustee, shall thereupon be promptly cancelled. All interest coupons shall be promptly cancelled upon their payment by the Trustee or any Paying Agent. Bonds and coupons that have been cancelled by the Authority or any Paying Agent shall be promptly delivered to the Trustee. Bonds and coupons so cancelled may, at any time be cremated or otherwise destroyed by the Trustee, which shall execute a certificate of cremation or destruction in duplicate by the signature of one of its authorized officers describing the Bonds and coupons so cremated or otherwise destroyed, and one executed Certificate shall be filed with the Authority and the other executed Certificate shall be retained by the Trustee.

ARTICLE IV APPLICATION OF BOND PROCEEDS AND OTHER AMOUNTS

SECTION 401. *Application of Bond Proceeds, Accrued Interest and Premium.* (A) The proceeds of sale of any Series of Bonds other than Refunding Bonds shall, as soon as practicable upon the delivery thereof by the Trustee pursuant to Section 206, be applied as follows:

- (1) the amount, if any, necessary to cause the amount on deposit in any Series Debt Reserve Account in the Debt Reserve Fund securing such Bonds to equal the Series Debt Reserve Requirement with respect to such Bonds at the time of such delivery shall be deposited in the Debt Reserve Fund and allocated to such Series Debt Reserve Account; and
- (2) the balance remaining after such deposit has been made shall be deposited in the separate account of the Construction Fund established for the Project to be financed with the proceeds of such Bonds or shall be deposited in any Fund or Account or applied in any other manner as shall be determined in the Supplemental Resolution authorizing the issuance of such Bonds.

(B) Upon the delivery of the Bonds by the Trustee, the amount, if any, received at such time as a premium above the aggregate principal amount of such Bonds shall be deposited in the Operating Fund or in an Account of the Construction Fund, as specified in the Certificate of an Authorized Officer, and the amount, if any, received as accrued interest shall be deposited in the Capitalized Interest Account of the Construction Fund established for such Bonds.

SECTION 402. *Application of Proceeds or Refunding Bonds.* The proceeds of the sale of the Bonds of a series of Refunding Bonds shall be deposited in the Redemption Fund or shall be applied as otherwise provided in the Supplemental Resolution authorizing the issuance of such Bonds.

ARTICLE V FUNDS AND ACCOUNTS

SECTION 501. *The Pledge Effected by this Resolution.* There are hereby pledged for the payment of the Bonds, in accordance with their terms and the provisions of this Resolution, subject only to the provisions of this Resolution permitting the application thereof for or to the purposes and on the terms and conditions herein set forth: (A) all Revenues (except any investment earnings on any Funds or accounts of the Authority that are on deposit in the Rebate Fund or that are required to be deposited therein for rebate to the United States of America pursuant the provisions of the Code in order to comply with the Authority's covenants in any Supplemental Resolution for such Series of Bonds so as to ensure that interest on any Bonds that are issued as tax exempt obligations continues to be excludable from gross income under the Code), (B) all Funds and any Accounts (except amounts in the Rebate Fund), and (C) all other moneys, securities and other funds to be received, held or set aside by the Authority or by any Fiduciary pursuant to this Resolution. This pledge shall be valid and binding from the time when it is made, and the Revenues, moneys, securities and other funds so pledged and then or thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery or further act. The lien of such pledge and the obligation to perform the contractual provisions herein contained shall have priority over any or all other obligations and liabilities of the Authority and shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

SECTION 502. *Establishment of Funds and Accounts.* (A) The Authority hereby establishes and creates the following special trust funds:

- (1) Construction Fund;
- (2) Net Revenue Fund;
- (3) Debt Service Fund;
- (4) Debt Reserve Fund, in which there shall be established: (a) a Series Debt Reserve Account for all Series of Common Debt Reserve Secured Bonds; and (b) as applicable, a Series Debt Reserve Account for each Series of Bonds that has a Separate Series Debt Reserve Requirement;
- (5) Redemption Fund;

- (6) Subordinated Indebtedness Fund;
- (7) Surplus Fund; and
- (8) Rebate Fund.

(B) All of said Funds shall be held by the Trustee; provided, however, that EFC may hold any Account of the Construction Fund related to a particular Series of EFC Bonds to the extent set forth in the Supplemental Resolution authorizing such Series of EFC Bonds. All moneys or securities deposited with the Trustee or any Depositary pursuant to this Resolution or with EFC pursuant to this Section 502(B) shall be held in trust and applied only in accordance with the provisions hereof and shall be considered trust funds for the purposes of this Resolution.

(C) The Trustee shall, at the request of the Authority, establish within any Fund such Accounts as shall be designated in a Supplemental Resolution or the written instructions of an Authorized Officer and shall in like manner establish within any Account such sub-accounts for the purposes of such Accounts as shall be so designated.

(D) In addition to the Funds held by the Trustee, the Authority shall establish a Capital Improvement Fund, an Operating Fund and a Rate Stabilization Fund, which shall be held by one or more Depositaries designated by and under the supervision of the Authority. The Capital Improvement Fund shall be used for the payment of Capital Costs of the Sewer System. The Operating Fund shall be used for the collection of Revenues and the payment of Operating Expenses and shall provide amounts for deposit in the Net Revenue Fund as provided in Section 504. The Rate Stabilization Fund shall be used to manage the receipt of Revenues and payment of expenses by the Authority. The Authority may at any time transfer amounts on deposit in the Capital Improvement Fund, the Operating Fund and the Rate Stabilization Fund to the Net Revenue Fund for application in accordance with Sections 504(B), 504(D) and 504(E).

SECTION 503. *Construction Fund.* (A) The Authority shall establish within the Construction Fund a separate Account for each Project for which a Series of Bonds is issued. There shall be deposited from time to time in the applicable Account of the Construction Fund any amount required to be deposited therein pursuant to this Resolution and any Supplemental Resolution and any other amounts received and determined to be deposited therein from time to time that are not otherwise required to be applied in accordance with this Resolution.

(B) Amounts in each separate Account of the Construction Fund shall be expended only: (1) to pay Capital Costs of the Project for which such account was established; (2) if the Supplemental Resolution authorizing a Series of Bonds provides for a Capitalized Interest Account for such Bonds, to pay interest on such Bonds from such Capitalized Interest Account; and (3) to the extent that the amounts in any other Fund or Account are insufficient or unavailable therefor, to pay the principal of and interest on the Bonds of such Series when due, but in the case of (3) above only in the event that there shall have been filed with the Trustee: (a) a Certificate of an Authorized Officer in form and substance satisfactory to the Trustee stating that the Revenues expected to be received thereafter together with such other specified amounts as are expected to be made available therefor by the Authority will be insufficient to pay in full all Outstanding Bonds when and as the same shall become due in accordance with their terms and in reasonable detail,

the basis for such certification; and (b) a Counsel's Opinion that such payment will not result in a violation of any existing law.

(C) The Authority shall submit to the Trustee or EFC, as applicable, monthly a requisition setting forth the amount and, in reasonable detail, itemizing the Capital Costs of any Project and interest expected to be paid in the following month from the Account, including the Capitalized Interest Account, in the Construction Fund established for such Project, together with a Certificate of an Authorized Officer identifying such requisition and stating that the amount to be withdrawn from such Account pursuant to such requisition is a proper charge thereon. The Trustee or EFC, as applicable, shall thereafter advance to the Authority at the beginning of each month the amount shown in such requisition. The Authority may at any time or from time to time as necessary submit to the Trustee or EFC, as applicable, a supplemental requisition and Certificate of an Authorized Officer in conformity with the foregoing requirements, and upon receipt thereof the Trustee or EFC, as applicable, shall promptly advance to the Authority the amount specified in such supplemental requisition. All moneys so received by the Authority from each Account shall be applied to the payment of the Capital Costs of the Project for which such Account was established.

(D) The Trustee or EFC, as applicable, shall, upon written instruction of an Authorized Officer, transfer any amount of the proceeds of Bonds remaining in any Account of the Construction Fund to the Capital Improvement Fund or the Debt Reserve Fund, but only upon receipt of the Certificate of an Authorized Officer stating that all Capital Costs theretofore incurred in connection with the Project for which such Account was established and interest payable from any Capitalized Interest Account established for such Project have been paid or duly provided for. In lieu of making such transfer the Authority may, by delivering to the Trustee written instructions of an Authorized Officer, direct the Trustee or EFC, as applicable, to apply such amounts to the redemption of Bonds in accordance with the provisions of Article VI.

SECTION 504. *Net Revenue Fund.* (A) The Authority shall cause all Revenues to be deposited promptly in the Operating Fund, except as otherwise expressly provided herein. As soon as practicable after the twenty-fifth day of each month, after reserving therein any amount deemed necessary to provide a reserve for the payment of the following month's Operating Expenses, the balance remaining in the Operating Fund shall be paid to the Trustee for deposit in the Net Revenue Fund.

(B) The Trustee shall transfer from the Net Revenue Fund to the Debt Service Fund, no later than the last day of the month in which the Authority makes a payment to the Trustee in accordance with Section 504(A), an amount for each Series of Outstanding Senior Bonds equal to the sum of: (1) an amount equal to $\frac{1}{6}$ of the amount of interest falling due on the Bonds of such Series on the next Interest Payment Date, or such other proportionate amount as shall be necessary to ensure monthly deposits for the payment in full of interest on the next Interest Payment Date, as set forth in the Supplemental Resolution authorizing such Series; and (2) an amount equal to $\frac{1}{12}$ of the amount of principal falling due on the next date upon which an installment of principal (including a Sinking Fund Installment) falls due on the Bonds of such Series, or such other proportionate amount as shall be necessary to ensure monthly deposits for the payment in full of principal (including a Sinking Fund Installment) on such date, as set forth in the Supplemental Resolution authorizing such Series. In making the credits required by this Section 504(B), any

amounts required to be credited to the Debt Service Fund or otherwise paid to a Paying Agent representing accrued interest received on the sale of Bonds, interest capitalized from the proceeds of the Bonds of the Series, any earnings on moneys in the Debt Service Fund and any other transfers and credits otherwise made or required to be made to the Debt Service Fund or otherwise paid to a Paying Agent shall be taken into consideration and allowed for.

(C) The Trustee shall pay out of the Net Revenue Fund to the Authority for deposit in the Operating Fund at any time or from time to time the amount specified in a Certificate of an Authorized Officer of the Authority as necessary for the payment of Operating Expenses due to the insufficiency of amounts available for such purpose in the Operating Fund.

(D) On or before the last day of each month, the Trustee shall apply amounts then on deposit in the Net Revenue Fund to the making of the following payments or transfers, but only to the extent available and in the order specified below:

- (1) There shall be transferred to the Debt Reserve Fund the amount, if any, required pursuant to Section 506(A).
- (2) If the Trustee receives a written direction from an Authorized Officer, there shall be transferred to the Operating Fund the amount, if any, specified in such written direction as necessary to cause the amount on deposit in the Operating Fund to equal the Operating Reserve Requirement.
- (3) There shall be transferred to the Subordinated Indebtedness Fund an amount for each Series of Outstanding Subordinated Indebtedness equal to the sum of: (a) an amount equal to $\frac{1}{6}$ of the amount of interest falling due on the Bonds of such Series on the next Interest Payment Date, or such other proportionate amount as shall be necessary to ensure monthly deposits for the payment in full of interest on the next Interest Payment Date, as set forth in the Supplemental Resolution authorizing such Series; and (b) an amount equal to $\frac{1}{12}$ of the amount of principal falling due on the next date upon which an installment of principal (including a Sinking Fund Installment) falls due on the Bonds of such Series, or such other proportionate amount as shall be necessary to ensure monthly deposits for the payment in full of principal (including a Sinking Fund Installment) on such date, as set forth in the Supplemental Resolution authorizing such Series. In making the credits required by this Section 504(D)(3), any amounts required to be credited to the Subordinated Indebtedness Fund or otherwise paid to a Paying Agent representing accrued interest received on the sale of Bonds, interest capitalized from the proceeds of the Bonds of the Series, any earnings on moneys in the Subordinated Indebtedness Fund and any other transfers and credits otherwise made or required to be made to the Subordinated Indebtedness Fund or otherwise paid to a Paying Agent shall be taken into consideration and allowed for.

(E) On or before the last day of each Fiscal Year, after making all of the payments and transfers described in Sections 504(B), (C) and (D) above, the Trustee shall apply amounts then on deposit in the Net Revenue Fund to the making of the following payments or transfers, but only to the extent available and in the order specified below:

- (1) There shall be transferred to the Capital Improvement Fund an amount equal to the Renewal and Extension Requirement for such Fiscal Year.
 - (2) There shall be transferred to the Rate Stabilization Fund the amount, if any, designated in a Certificate of an Authorized Officer.
 - (3) Any amount remaining after the above payments or transfers have been made shall be deposited in the Surplus Fund.
- (F) No amounts shall be withdrawn from the Net Revenue Fund except as provided in this Section 504.

SECTION 505. *Debt Service Fund.* (A) The Trustee shall pay out of the Debt Service Fund to the respective Paying Agents for any of the Bonds (1) on or before each Interest Payment Date, the amounts required for the payment of principal, if any, and interest due on the Outstanding Bonds on such date and (2) on or before the day preceding the redemption date or date of purchase, the amounts required for the payment of accrued interest on Bonds redeemed or purchased for retirement unless the payment of such accrued interest shall be otherwise provided for, and in each such case, such amounts shall be applied by such Paying Agents to such payments.

(B) The amounts accumulated in the Debt Service Fund for each Sinking Fund Payment may, and if so directed by an Authorized Officer shall, be applied (together with amounts with respect to interest on the Bonds for which such Sinking Fund Payment was established) by the Trustee prior to the forty-fifth day preceding the due date of such Sinking Fund Payment as follows:

- (1) to the purchase of Bonds of the Series and maturity for which such Sinking Fund Payment was established, at prices (including any brokerage and other charges) not exceeding the Redemption Price payable for such Bonds when such Bonds are redeemable by application of such Sinking Fund Payment plus unpaid interest accrued to the date of purchase, such purchases to be made in such manner as the Trustee shall determine; or
- (2) to the redemption of such Bonds pursuant to Article VI, if then redeemable by their terms, at or below the Redemption Price referred to in clause (1) hereof.

(C) Upon the purchase or redemption of any Bond pursuant to Section 505(B), an amount equal to the principal amount of the Bond so purchased or redeemed shall be credited toward the next Sinking Fund Payment thereafter to become due with respect to Bonds of the same Series and maturity and the amount of any excess of the amounts so credited over the amount of such Sinking Fund Payment shall be credited against future Sinking Fund Payments in direct chronological order. The portion of any Sinking Fund Payment remaining after the crediting thereto of any such amounts and of any amounts to be credited thereto as provided in Section 507(B) (or the original amount of any such Sinking Fund Payment if no such amount shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Payment for the purpose of calculation of Sinking Fund Payments due on a future date.

(D) As soon as practicable after the forty-fifth day preceding the due date of any such Sinking Fund Payment, the Trustee shall proceed to call for redemption, pursuant to Section 603, on such due date, Bonds of the Series and maturity for which such Sinking Fund Payment was established in such amount as shall be necessary to complete the retirement of the principal amount specified for such Sinking Fund Payment of the Bonds of such Series and maturity. The Trustee shall so call such Bonds for redemption whether or not it then has moneys in the Debt Service Fund sufficient to pay the applicable Redemption Price thereof on the Redemption Date. The Trustee shall pay out of the Debt Service Fund (and, to the extent it does not have moneys in the Debt Service Fund sufficient to pay the applicable Redemption Price, out of the Net Revenue Fund) to the appropriate Paying Agents on or before each such Redemption Date, the amount required for the redemption of the Bonds so called for redemption and such amount shall be applied by such Paying Agents to such redemption.

SECTION 506. *Debt Reserve Fund.* (A) There shall be deposited in the Debt Reserve Fund all amounts required to be deposited therein pursuant to this Resolution and any other amounts received and determined to be deposited therein by the Authority. The Series Debt Reserve Account maintained for all Common Debt Reserve Secured Bonds shall be funded at all times to the Common Debt Reserve Requirement, and all other Series Debt Reserve Accounts shall be funded at all times to the applicable Separate Series Debt Reserve Requirement as set forth in the applicable Supplemental Resolution.

(B) Amounts on deposit in each Series Debt Reserve Account shall be applied, to the extent other funds are not available therefor in the Net Revenue Fund, to pay the principal of and Sinking Fund Payments and interest on Senior Bonds when due, whether by call for redemption or otherwise. Whenever on any valuation date as provided in Section 514(A) the amount in the Debt Reserve Fund exceeds the Series Debt Reserve Requirement with respect to any Senior Bonds, the Trustee may, if directed by the Certificate of an Authorized Officer of the Authority, withdraw from the Debt Reserve Fund the amount of any excess therein over the Series Debt Reserve Requirement for any Senior Bonds as of the date of such withdrawal and deposit the moneys so withdrawn into the Operating Fund.

(C) If at any time it shall be necessary to use moneys in any Series Debt Reserve Account for the purpose of paying principal or interest on Bonds as to which there would otherwise be a default, then the moneys so used shall be replaced within twenty-four (24) months by depositing in such Series Debt Reserve Account twenty-four (24) substantially equal consecutive monthly deposits, commencing not later than the month following the occurrence of such deficiency.

SECTION 507. *Redemption Fund.* (A) There shall be deposited in the Redemption Fund any amounts that are required to be deposited therein pursuant to this Resolution and any other amounts available therefor and determined by the Authority to be deposited therein. Subject to the provisions of this Resolution or any Supplemental Resolution, the Trustee shall apply all amounts so deposited to the redemption of Bonds at the times and in the manner provided in Section 602.

(B) At least forty-five days prior to any day upon which Bonds are to be redeemed from amounts in the Redemption Fund, the Trustee may apply amounts in the Redemption Fund to the purchase of any such Bonds if the purchase price paid for such Bonds does not exceed the principal

amount of such Bonds unless such Bonds may be redeemed within six months after such purchase in which event such price shall not exceed the applicable Redemption Price. Upon the purchase or redemption of Bonds for which Sinking Fund Payments have been established from amounts in the Redemption Fund, there shall be credited toward each such Sinking Fund Payment thereafter to become due with respect to Bonds of the same Series and maturity as the Bonds so purchased or redeemed an amount as nearly as may be practicable in whole multiples of \$1,000 bearing the same ratio to such Sinking Fund Payments as the total payment amount of such Bonds so purchased or redeemed bears to the total amount of all such Sinking Fund Payments to be credited. If, however, there shall be filed with the Trustee written instructions of an Authorized Officer specifying a different method for crediting Sinking Fund Payments upon any such purchase or redemption of Bonds and the Trustee shall consent to such method, then such Sinking Fund Payments shall be credited as shall be provided in such instructions.

(C) The Trustee shall sell or redeem Investment Securities to the extent necessary to provide money to make any required payment pursuant to this Section 507 and, at the direction of the Authority, shall sell or redeem Investment Securities to make any deposit, purchase payment or redemption as permitted pursuant to this Section 507.

SECTION 508. *Subordinated Indebtedness Fund.* (A) Amounts on deposit in the Subordinated Indebtedness Fund shall be applied by the Trustee solely to the maintenance of reserves for, or the payment of, Subordinated Indebtedness, or as otherwise provided by the resolution of the Authority authorizing each issue of Subordinated Indebtedness.

(B) If at any time the amount in any Series Debt Reserve Account in the Debt Reserve Fund with respect to any Senior Bonds shall be less than the Series Debt Reserve Requirement with respect to such Senior Bonds, the Trustee shall withdraw from the Subordinated Indebtedness Fund and deposit in the Debt Reserve Fund, for allocation to such Series Debt Reserve Account, the amount necessary (or all the moneys in said Fund, if less than the amount necessary) to make up such deficiency.

(C) If, upon the payment in full of all Subordinated Indebtedness, any amount remains on deposit in the Subordinated Indebtedness Fund, such amount shall be transferred to the Net Revenue Fund.

SECTION 509. *Rate Stabilization Fund.* The Rate Stabilization Fund authorized by Section 502 shall be held by the Authority in an Account separate and apart from all other funds and Accounts of the Authority and payments therefrom shall be made as hereinafter provided. Moneys may be transferred by the Authority to the Rate Stabilization Fund from the Net Revenue Fund as provided in Section 504 as determined by an Authorized Officer. At any time, the Authority shall transfer from the Rate Stabilization Fund to the Net Revenue Fund an amount determined by an Authorized Officer.

SECTION 510. *Surplus Fund.* (A) There shall be deposited in the Surplus Fund all amounts required to be deposited therein pursuant to this Resolution and any other amounts received and determined to be deposited therein by the Authority.

(B) Amounts in the Surplus Fund may at any time, as directed by the Certificate of an Authorized Officer, be transferred to the Capital Improvement Fund, the Redemption Fund or the Operating Fund or be paid to the Authority for any lawful purpose of the Authority in connection with the Sewer System.

(C) To the extent that moneys on deposit in the Net Revenue Fund are insufficient to make the required interest and principal payments on Senior Bonds, moneys in the Surplus Fund shall be transferred to the Net Revenue Fund, and then there shall be withdrawals from the Rate Stabilization Fund, Capital Improvement Fund, Construction Fund, Debt Reserve Fund, Subordinated Indebtedness Fund and Operating Fund, in that order, to cure any such deficiencies.

SECTION 511. Deposits. (A) In lieu of Investment Securities (except as provided in Section 1201), the Trustee shall at the written direction of an Authorized Officer deposit amounts or cause amounts to be deposited from any Fund held by the Trustee or under its control pursuant to the terms of this Resolution in interest bearing time deposits or certificates of deposit, or shall make other similar banking arrangements with itself or a member bank or banks of the Federal Reserve System or a bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor. Each such interest bearing time deposit or certificate of deposit or other similar banking arrangement shall permit the moneys so placed to be available at the times at which moneys are needed to be expended and, except to the extent that any such deposit shall be less than \$5,000 or be insured by the United States of America or the Federal Deposit Insurance Corporation or its successor, all moneys in each such interest bearing time deposit or certificate of deposit or other similar banking arrangement shall be continuously and fully secured by Investment Securities having a market value equal at all times to the amount of the deposit, certificate or other similar banking arrangement.

(B) In order to permit such amounts to be available for use at the time when needed, any amounts held under this Resolution by any Fiduciary, as such, may, if and as directed by an Authorized Officer, be deposited in the commercial banking department of such Fiduciary that may honor checks and drafts on such deposit with the same force and effect as if it were not such Fiduciary. Any such Fiduciary shall allow and credit on such amounts at least such interest, if any, as it customarily allows upon similar funds of similar size and under similar conditions or as required by law.

(C) All amounts of more than \$5,000 deposited by any Fiduciary pursuant to Section 511(B) above shall be continuously and fully secured by lodging with the Trustee as custodian, as collateral security, Investment Securities having a market value (exclusive of accrued interest) not less than the amount of such deposit. It shall not be necessary, unless required by applicable law, for any Fiduciary to give security under this Section 511 for the deposit of any amounts to the extent that such deposit is insured by the Federal Deposit Insurance Corporation or its successor, or that are held in trust and set aside by them for the payment of the principal or Redemption Price or interest on any Bonds, or for the Trustee or any Depositary to give security for any moneys that shall be represented by obligations or certificates of deposit purchased as an investment of such moneys.

(D) All amounts so deposited by any Fiduciary shall be credited to the particular Fund or Account from which such amounts were derived, but any income derived in connection with

such deposits shall be credited to, and shall be deposited as received in, the Operating Fund; except that any income derived in connection with deposits in the Debt Reserve Fund shall be credited to, and deposited as received in, the Debt Reserve Fund.

SECTION 512. *Investment of Certain Funds.* (A) Subject to the right of the Authority to direct the investment or deposit of funds hereunder, moneys in any Fund or Account held by the Trustee shall be invested and reinvested or deposited and redeposited by the Trustee, whenever it shall be requested in writing by an Authorized Officer to do so, on terms that in the judgment of the Authority provide reasonable liquidity, with a view toward maximizing yield (with proper preservation of principal) and minimizing the instances of uninvested funds. The Authority through an Authorized Officer may direct the Trustee to invest and reinvest the moneys in any such Fund or Account in Investment Securities so that the maturity date or dates of redemption at the option of the holder thereof shall coincide as nearly as practicable with the times at which moneys are needed to be so expended. The Investment Securities purchased shall be held by the Trustee and shall be deemed at all times to be part of such Fund or Account, and the Trustee shall keep the Authority advised as to the details of all such investments. Whenever it shall be requested in writing by an Authorized Officer to do so, the Trustee shall sell at the best price reasonably obtainable per industry standard practices, or present for redemption, any Investment Securities held by the Trustee in such Fund or Account.

(B) Investment Securities purchased as an investment of moneys in any Fund or Account held by the Trustee under the provisions of this Resolution shall be deemed at all times to be a part of such Fund or Account but the income or interest earned and gains realized in excess of losses suffered by a Fund or Account due to the investment thereof shall be deposited in the Operating Fund as Revenues or shall be reinvested and credited to the Operating Fund; except that any such excess amount in the Debt Reserve Fund shall be deposited in or credited to the Debt Reserve Fund.

(C) Whenever it shall be requested in writing by an Authorized Officer to do so, the Trustee shall sell at the best price reasonably obtainable per industry standard practices, or present for redemption or exchange, any Investment Security purchased by it pursuant to this Resolution whenever it shall be necessary in order to provide moneys to meet any payment or transfer from the Fund or Account for which such investment was made. The Trustee shall advise the Authority in writing, on or before the fifteenth day of each July and January, of all investments held for the credit of each Fund and Account in its custody under the provisions of this Resolution as of the end of the preceding month.

(D) Any moneys that are held in any Fund or Account created and established by, or maintained pursuant to, this Resolution may be invested in common with the moneys held in any other such Fund or Account.

SECTION 513. *Rebate Fund.* (A) Notwithstanding any other provision of this Article V, an Authorized Officer of the Authority shall instruct the Trustee in writing to deposit into the Rebate Fund any investment earnings on any Funds or Accounts thereof established hereunder to the extent required pursuant to Arbitrage and Use of Proceeds Certificate executed by the Authority in connection with the delivery of any Series of Bonds.

(B) The Authority shall determine the amounts (as well as the dates of payment) that are subject to rebate to the United States government pursuant to the provisions of the Code (in order to ensure that interest on any Bonds that are issued as tax exempt obligations continues to be excludable from federal income taxation) in accordance with the terms of the Arbitrage and Use of Proceeds Certificate executed by the Authority in connection with delivery of any Series of Bonds. The amounts that are required to be rebated to the United States government shall be withdrawn from the Rebate Fund at such times and paid by the Trustee to the United States government whenever it shall be requested in writing by an Authorized Officer to do so.

(C) If there is not a sufficient amount in the Rebate Fund for any required payment to the United States government, the Authority shall promptly pay, from moneys that are on deposit in the Operating Fund, the Net Revenue Fund, the Surplus Fund or such other amounts in any other Fund that are available for such purpose pursuant to this Resolution, the amount that is necessary to make up such deficiency.

SECTION 514. *Valuation and Sale of Investments.* (A) In computing the amount in any Fund or Account, obligations purchased as an investment of moneys therein shall be valued at amortized value unless purchased at a premium above par, in which case such obligation shall be valued at par. Amortized value means par, if the obligation was purchased at par or, when used with respect to an obligation purchased at a discount below par, the value as of any given date obtained by dividing the total amount of the discount at which such obligation was purchased by the number of days remaining to the maturity of such obligation on the date of such purchase and by multiplying the amount thus calculated by the number of days having passed since the date of such purchase and deducting the amount thus calculated from the purchase price. Valuation shall be made on the tenth day prior to each Interest Payment Date, and on any particular date shall not include the amount of interest then earned or accrued to such date on any such moneys or investment.

(B) Except as otherwise provided herein, the Trustee shall sell at the best price reasonably obtainable per industry standard practices, or present for redemption, any obligation purchased as an investment whenever it shall be requested in writing by an Authorized Officer to do so or whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Fund or Account held by it.

ARTICLE VI REDEMPTION OF BONDS

SECTION 601. *Privilege of Redemption and Redemption Price.* Bonds subject to redemption prior to maturity pursuant to a Supplemental Resolution shall be redeemable, upon published notice as provided in this Article VI, at such times, at such Redemption Prices and upon such terms (in addition to and consistent with the terms contained in this Article VI) as may be specified in the Supplemental Resolution.

SECTION 602. *Redemption at the Election of the Authority.* In the case of any redemption of Bonds otherwise than as provided in Section 603, the Authority shall give written notice to the Trustee of the election so to redeem, of the redemption date, of the Series, of the principal amounts of the Bonds of each maturity of such Series to be redeemed (which Series, maturities and principal amounts thereof to be redeemed shall be determined by the Authority in

its sole discretion, subject to any limitations with respect thereto contained in any Supplemental Resolution authorizing a Series of Bonds). Such notice shall be given at least thirty days prior to the redemption date. In the event notice of redemption shall have been given as provided in Section 605, the Trustee shall, at least one day prior to the redemption date, or such earlier date as the Authority may direct, pay out of moneys available therefor to the appropriate Paying Agent or Paying Agents an amount in cash that, in addition to other amounts, if any, available therefor held by such Paying Agent or Paying Agents, will be sufficient to redeem on the redemption date at the Redemption Price thereof together with accrued interest to the redemption date, all of the Bonds to be redeemed.

SECTION 603. *Redemption Otherwise Than at Authority's Election.* Whenever by the terms of this Resolution or a Supplemental Resolution, Bonds are required to be redeemed otherwise than at the election of the Authority, the Trustee shall select the Bonds to be redeemed, give the notice of redemption and pay out of moneys available therefor the Redemption Price, together with accrued interest to the redemption date, to the appropriate Paying Agents in accordance with the terms of this Article VI.

SECTION 604. *Selection of Bonds to be Redeemed.* In the event of redemption of less than all the Outstanding Bonds of like Series and maturity, unless the Supplemental Resolution authorizing such Series provides for such redemption to be pro rata, the Trustee shall select, in such manner in its discretion as it shall deem appropriate and fair, the numbers of the Bonds to be redeemed. For the purposes of this Section 604, Bonds that have theretofore been selected for redemption shall not be deemed Outstanding.

SECTION 605. *Notice of Redemption.* (A) When the Trustee shall receive notice from the Authority of its election to redeem Bonds pursuant to Section 602, and when redemption of Bonds is required pursuant to Section 603, the Trustee shall give notice, in the name of the Authority, of the redemption of such Bonds, which notice shall specify the Series and maturities of the Bonds to be redeemed, the redemption date and the place or places where amounts due upon such redemption will be payable and, if less than all of the Bonds of any like Series and maturity are to be redeemed, the numbers or other distinguishing marks of such Bonds so to be redeemed. Such notice shall further state that on such date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, together with interest accrued to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable. Such notice shall be given by publication once a week for at least two successive weeks in an Authorized Newspaper, the first such publication to be not less than thirty days nor more than sixty days prior to the redemption date. The Trustee shall also mail a copy of such notice, postage prepaid, not less than thirty days before the redemption date, to the registered owners of any Bonds that are to be redeemed, at their last addresses, if any, appearing upon the registry books, but such mailing shall not be a condition precedent to such redemption and failure so to mail any such notice shall not affect the validity of the proceedings for the redemption of Bonds.

(B) In the case of an optional redemption, the notice may state (i) that it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent no later than the redemption date, or (ii) that the Authority retains the right to rescind such notice at any time prior to the scheduled redemption date if the Authority delivers a certificate of an Authorized Officer to the Paying Agent instructing the Paying Agent to rescind

the redemption notice (in either case, a "Conditional Redemption"), and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if the notice is rescinded as described herein. The Paying Agent shall give prompt notice of such rescission to the affected Bondholders. Any Bonds subject to Conditional Redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an Event of Default. Further, in the case of a Conditional Redemption, the failure of the Authority to make funds available in part or in whole on or before the redemption date shall not constitute an Event of Default.

SECTION 606. *Payment of Redeemed Bonds.* Notice having been given by publication in the manner provided in Section 605, the Bonds so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender thereof at the office specified in such notice, together with, in the case of Bonds not registered as to principal or interest, all appurtenant coupons maturing subsequent to the redemption date, such Bonds shall be paid at the Redemption Price plus interest accrued and unpaid to the redemption date not represented by coupons for matured interest installments. All interest installments represented by coupons that shall have matured on or prior to the redemption date shall continue to be payable to the bearers of such coupons. If, on the redemption date, moneys for the redemption of all the Bonds of any like Series and maturity to be redeemed, together with interest to the redemption date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been published as aforesaid, then, from and after the redemption date interest on the Bonds of such Series and maturity so called for redemption shall cease to accrue and become payable, and the coupons for interest appertaining thereto maturing subsequent to the redemption date shall be void. If said moneys shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

ARTICLE VII PARTICULAR COVENANTS

The Authority covenants and agrees with the Trustee and the holders of the Bonds and the coupons, if any, appertaining thereto as follows:

SECTION 701. *Payment of Bonds.* The Authority shall duly and punctually pay or cause to be paid the principal or Redemption Price, if any, of every Bond and the interest thereon, at the dates and places and in the manner stated in the Bonds and in the coupons thereto appertaining, according to the true intent and meaning thereof and shall duly and punctually pay or cause to be paid all Sinking Fund Payments, if any, becoming payable with respect to any Series of Bonds.

SECTION 702. *Extension of Payment of Bonds and Coupons.* The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any of the coupons or claims for interest by the purchase or funding of such Bonds, coupons or claims for interest or by any other arrangement and in case the maturity of any of the Bonds or the time for payment of any such coupons or claims for interest shall be extended, such Bonds, coupons or claims for interest shall not be entitled, in case of any default hereunder, to the benefit of this Resolution or to any payment out of the Funds or Accounts established pursuant to this Resolution, including the investments, if any, thereof, or out of any assets or revenues pledged hereunder (except moneys held in trust for the payment of particular Bonds,

coupons or claims for interest pursuant to this Resolution) prior to benefits accorded to or the payment of the principal of all Bonds Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Bonds as shall not be represented by such extended coupons or claims for interest. Nothing herein shall be deemed to limit the right of the Authority to issue Refunding Bonds and such issuance shall not be deemed to constitute an extension of maturity of Bonds.

SECTION 703. *Offices for Servicing Bonds.* The Authority shall at all times maintain an office or agency where Bonds and coupons may be presented for registration, transfer or exchange, and where notices, presentations and demands upon the Authority in respect of the Bonds and coupons or of this Resolution may be served. The Authority hereby appoints the Trustee as its agent to maintain such office or agency for the registration, transfer or exchange of Bonds and for the service of such notices, presentations and demands upon the Authority.

SECTION 704. *Further Assurance.* At any and all times the Authority shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming all and singular, the rights, assets, revenues and other moneys, securities, funds and property hereby pledged or assigned, or intended so to be, or that the Authority may become bound to pledge or assign.

SECTION 705. *Power to Issue Bonds and Pledge Revenues, Funds and Other Property.* The Authority is duly authorized under all applicable laws to authorize and issue the Bonds and to adopt this Resolution and to pledge the revenues and assets purported to be pledged hereby in the manner and to the extent herein provided. The revenues and assets so pledged are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created hereby, and all corporate or other action on the part of the Authority to that end has been and will be duly and validly taken. The Bonds and the provisions of this Resolution are and will be the valid and legally enforceable obligations of the Authority in accordance with their terms and the terms of this Resolution. The Authority shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Revenues and other assets and revenues, including rights therein pledged under this Resolution and all the rights of the Bondholders under this Resolution against all claims and demands of all persons whomsoever.

SECTION 706. *Operation and Maintenance of the Sewer System.* (A) The Authority shall at all times operate, or cause to be operated, the Sewer System properly and in a sound and economical manner and shall maintain, preserve, and keep the same or cause the same to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make, or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the Sewer System may be properly and advantageously conducted. Nothing contained in this Resolution shall, however, require the Authority to construct, operate, maintain, preserve, repair, replace, renew or reconstruct a part of the Sewer System if there shall have been filed with the Trustee: (1) the Certificate of an Authorized Officer stating that in the opinion of the Authority abandonment of operation of such part is economically justified and is not prejudicial to the interest

of the Authority or the Bondholders, and (2) the Certificate of a Consulting Engineer concurring with said opinion.

(B) The Authority shall establish and enforce reasonable rules and regulations governing the operation, use and services of the Sewer System. All compensation, salaries, fees and wages paid by the Authority in connection with the maintenance, repair and operation of the Sewer System shall be reasonable and shall not, in the judgment of the Authority, exceed the amounts that would be paid for such services by other public and private bodies. The Authority shall observe and perform all of the terms and conditions contained in the Act, and shall comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the Sewer System.

(C) The Authority shall pay all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the Sewer System, or upon any part thereof or upon any revenue therefrom, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to any part of the Sewer System, and shall not create or suffer to be created any lien or charge upon the Sewer System or any part thereof or upon the revenues therefrom, except the pledge and lien created by this Resolution for the payment of the Bonds. The Authority shall pay or cause to be discharged, or will make adequate provisions to satisfy and discharge within ninety days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects that, if unpaid, might by law become a lien upon the Sewer System or any part thereof or on the Revenues. Nothing in this Section 706 shall require the Authority to pay or cause to be discharged, or make provision for, any such lien or charge, so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

(D) The Authority shall employ a Consulting Engineer, whose duties shall be to make any certificates and perform any other acts required or permitted of the Consulting Engineer under this Resolution, to make an inspection of the Sewer System at least once during every consecutive two Fiscal Years, and, not more than sixty or less than forty-five days before the end of the second such Fiscal Year, to submit to the Authority advice and recommendations as to the proper maintenance, repair and operation of the Sewer System during the ensuing Fiscal Year and an estimate of the amount of money necessary for such purposes. Copies of the reports of the Consulting Engineer and of the advices, recommendations and estimates made as hereinabove provided shall be mailed by the Authority to the Trustee.

(E) The Authority shall at all times maintain with responsible insurers all such insurance as is customarily maintained with respect to utility systems of like character against loss of or damage to the Sewer System and against public and other liability to the extent reasonably necessary to protect the interests of the Authority and the Bondholders. If any useful part of the Sewer System shall be damaged or destroyed, the Authority shall, as expeditiously as may be possible, commence and diligently prosecute the repair or replacement of the damaged property so as to restore the same to use. The proceeds of any such insurance shall be payable to the Authority and shall be applied to the necessary costs involved in such repair and replacement and, to the extent not so applied, shall be deposited in the Capital Improvement Fund. In the event that the costs of such repair and replacement of the damaged property exceeds the proceeds of such

insurance available for payment of the same, moneys in the Capital Improvement Fund shall be used to the extent necessary for such purposes.

SECTION 707. *Annual Budget.* (A) The Authority shall not less than forty-five days before the beginning of any Fiscal Year prepare and file with the Trustee a preliminary budget showing for the ensuing Fiscal Year estimated Operating Expenses, Aggregate Debt Service, Revenues, amounts necessary for the payment of Subordinated Indebtedness and amounts expected to be transferred prior to the first day of August from the Surplus Fund to the Operating Fund. Such preliminary budget and any Annual Budget shall set forth a five year capital project plan, including estimates of all Capital Costs and associated Debt Service for each year, and may set forth such additional material as the Authority may determine.

(B) On or before the first day of each Fiscal Year, the Authority shall finally adopt the Annual Budget for such Fiscal Year. Copies of the Annual Budget shall be promptly filed, with the Trustee, and such Annual Budget shall not be effective until it is so filed.

(C) If for any reason the Authority shall not have adopted the Annual Budget before the first day of any Fiscal Year, the preliminary budget for such year, or otherwise the budget for the preceding Fiscal Year, shall be deemed to be in effect for such Fiscal Year until the Annual Budget for such Fiscal Year is adopted. For any purpose of computation under the provisions of Article V, the budget for the preceding Fiscal Year shall be deemed to have been adopted for any Fiscal Year until the Annual Budget for such Fiscal Year shall be adopted and a copy thereof filed with the Trustee.

(D) The Authority may at any time adopt an amended Annual Budget for the then current Fiscal Year, but no such amended Annual Budget shall supersede any prior budget until the Authority shall have filed with the Trustee a copy of said amended Annual Budget.

SECTION 708. *Limitations On Operating Expenses.* The Authority shall not incur Operating Expenses in any year in excess of the reasonable and necessary amount thereof and shall not expend any amount or incur any indebtedness for maintenance, repair and operation in excess of the amounts provided for Operating Expenses in the Annual Budget, if any, then in effect. Nothing in this Section 708 shall limit the amount that the Authority may expend for Operating Expenses in any year provided any amounts expended therefor in excess of the Annual Budget shall be received by the Authority from some source other than the Revenues and the Authority shall not make or receive any reimbursement therefor out of Revenues.

SECTION 709. *Rates and Charges.* (A) With respect to all direct or indirect connection with, and all use and services of, the Sewer System, the Authority shall make, impose, charge and collect service rates, charges, fees and tolls in accordance with the Act. At least annually, the Authority shall cause the Rate Consultant to review and verify the adequacy of the rates and charges then in effect to meet the coverage test set forth in Section 709(C) hereof.

(B) The present schedule of rates and charges for services furnished by the Sewer System both within and outside the territorial limits of the Authority, including the service charges, minimum deposits, connection charges and meter rates, and the rules and regulations of the Authority relating therefor, may be adjusted or revised provided that the resulting Revenues satisfy

the requirements set forth in Section 709(C). All users receiving services from the Sewer System shall pay therefor at the established rates. There shall be no free services rendered by the Sewer System except that the Authority may but is not required to exempt from sewer rent based on assessed valuation property exempted from real property taxes imposed by the City. Free services may be rendered by the Authority to the City for municipal buildings and other customary municipal purposes.

(C) From time to time and as often as it shall appear necessary, the rates, charges, rents, sewer rents, fees and assessments established for the Sewer System will be adjusted whenever necessary or proper so that the Revenues collected in each Fiscal Year will be at least equal to the sum of (1) the amount estimated to be required in the current Fiscal Year to pay Operating Expenses, plus (2) the greater of (a) 120% of Debt Service on Senior Bonds for such Fiscal Year or (b) the sum for such Fiscal Year of (i) 100% of the Debt Service on Senior Bonds and Subordinated Indebtedness, (ii) the amounts estimated to be required to meet Debt Reserve Requirements with respect to any Bonds, (iii) the Renewal and Extension Requirement, and (iv) the Operating Reserve Requirement. In calculating Revenues pursuant to this Section 709(C), the Authority shall include transfers from the Rate Stabilization Fund to the Revenue Fund during such Fiscal Year (as provided in Section 509), but only to the extent of 20% of Debt Service on Senior Bonds for such Fiscal Year, and transfers from the Revenue Fund to the Rate Stabilization Fund during such Fiscal Year (as provided in Sections 504(E)(1) and 509).

(D) If the Authority fails to adjust rates, charges, rents, sewer rents, fees and assessments as provided in Section 709(C), but the Authority in the next Fiscal Year has promptly taken all available measures to adjust such rates, charges, rents, sewer rents, fees and assessments as advised by a Rate Consultant retained by the Authority to review the operations of the System, there shall be no Event of Default as described in Section 1002 until at least the end of such next Fiscal Year and then only if Revenues are less than the amount required by this Section 709.

(E) Copies of every schedule of rates, charges, rents, sewer rents, fees and assessments and revisions thereof, prescribed or adopted by the Authority shall be promptly filed with the Trustee.

SECTION 710. *Accounts and Periodical Reports and Certificates.* (A) The Authority shall keep or cause to be kept proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Sewer System or under this Resolution and which, together with all other books and papers of the Authority including insurance policies, shall at all reasonable times be subject to the inspection of the Trustee or the holder or holders of not less than 5% in principal amount of the Bonds then Outstanding or their attorneys duly authorized in writing.

(B) The Authority shall annually, within one hundred days after the close of each Fiscal Year, file with the Trustee an annual report for said Fiscal Year, accompanied by an Accountant's Certificate as to the examination of the financial statements therein (describing such statements as fairly presenting the information therein in conformity with generally accepted accounting principles and the provisions of this Resolution), relating to the Sewer System and including statements in reasonable detail of: (1) the financial condition as of the end of said Fiscal Year and income and expenses for said Fiscal Year; (2) the number of users of the Sewer System for said

Fiscal Year and of the service charges, annual charges and other revenues collected in such Fiscal Year; (3) Operating Expenses and the rates of service charges for said Fiscal Year; and (4) with respect to each Fund or Account created by this Resolution, the receipts therein and disbursements therefrom during said Fiscal Year and the amounts held therein at the end of said Fiscal Year. Within thirty days after the filing of any such annual report, the Authority shall mail or cause to be mailed copies of said annual report to Bondholders as and to the extent referred to in Section 901.

SECTION 711. *Sale or Encumbrance.* No part of the Sewer System shall be sold, leased, mortgaged, pledged, encumbered or otherwise disposed of, except that the Authority may sell, exchange or lease at any time and from time to time any property or facilities constituting part of the Sewer System and not useful or necessary in the construction, reconstruction or operation thereof or the costs of which have been paid from sources other than the Bonds, but any proceeds of any such sale or exchange received and not used to replace the property so sold or exchanged shall be paid to the Trustee and deposited in the Capital Improvement Account, and any proceeds of any such lease received shall be deposited as Revenues.

SECTION 712. *Indebtedness and Liens.* (A) The Authority shall not issue any bonds, notes or other evidences of indebtedness, other than the Bonds, secured by a pledge of or other lien or charge on the Revenues (including amounts that the Authority may thereafter be entitled to expend for Operating Expenses) and shall not create or cause to be created any lien or charge on such Revenues or on any amounts held by any Fiduciary under this Resolution; but this Section 712 shall not prevent the Authority from issuing bonds or notes or other obligations for the purposes of the Authority payable out of, or secured by a pledge of, Revenues to be derived on and after such date as the pledge of the Revenues provided in this Resolution shall be discharged and satisfied as provided in Section 1201, or from issuing Subordinated Indebtedness.

(B) The Authority shall not hereafter issue any bonds or other evidences of indebtedness under any resolution of the Authority adopted prior to adoption of the Existing Resolution.

SECTION 713. *Jurisdiction, Control, Possession and Supervision of Sewer System.* The Authority shall make no contract requiring payment for labor or to contractors, builders or materialmen on account of the construction or reconstruction of any part of the Sewer System, unless such part is located on lands to which title or over which an easement or jurisdiction, control, possession and supervision, in any case sufficient for the purpose of the Authority, is owned or can be acquired by the Authority or the City or unless such part is lawfully located in a public street or highway or is part of the Sewer System located on land in which a right or interest less than a fee simple interest, easement jurisdiction, control, possession or supervision has been acquired from the United States of America, the State or a political subdivision thereof or a public utility and such lesser right or interest has been approved by an opinion of counsel as sufficient for the purposes of the Authority.

SECTION 714. *Issuance of Bonds.* Except in the case of: (A) Refunding Bonds; or (B) additional Bonds issued to pay the capital cost of completing a Project for which Bonds have previously been issued, the Authority shall not issue additional Bonds unless the Revenues for any twelve (12) consecutive month period within the twenty-four (24) consecutive months

immediately preceding the date of issuance of such additional Bonds (excluding any transfers between the Revenue Fund and the Rate Stabilization Fund during this period) are at least equal to the sum of: (1) the amount required or estimated to be required in any future Fiscal Year described in the following clause (2) to pay Operating Expenses; plus (2) the greater of (a) 120% of the maximum Debt Service on Senior Bonds for any future Fiscal Year (calculated with respect to all Senior Bonds then Outstanding and the additional Bonds); or (b) 100% of the maximum Debt Service on the aggregate of any Senior Bonds and Subordinated Indebtedness for any future Fiscal Year (calculated with respect to all Bonds then Outstanding and the additional Bonds), excluding any amounts provided as capitalized interest from the proceeds of such Bonds but including Debt Service on such Bonds and on additional Bonds estimated by the Certificate of a Consulting Engineer as required to be issued to complete the Project to be financed with the proceeds of such Bonds; provided, however, that Revenues for such twelve (12) month period may be adjusted for purposes of this Section 714: (X) to reflect for such period revisions in the rates, fees, rentals and other charges of the Authority for the services of the System made after the commencement of such period and preceding the date of issuance of the additional Bonds; (Y) to reflect any increase in Revenues due to any new facilities of the Sewer System having been placed into use and operation subsequent to the commencement of such period and preceding the date of issuance of the additional Bonds, as certified by the Consulting Engineer; and (Z) to include an amount equal to the average annual contribution to Revenues for the first three full Fiscal Years commencing after the date of acquisition thereof, estimated to be made by facilities anticipated to be acquired and expected to be placed into use and operation within two years of the date of issuance of such additional Bonds, as certified by the Consulting Engineer.

SECTION 715. *Tax Covenants.* (A) Throughout the term of the Bonds and through the date that the final rebate, if any, must be made to the United States in accordance with Section 148 of the Code, the Authority will comply with the provisions of Section 103 and 141 through 150 of the Code and all regulations proposed and promulgated thereunder that must be satisfied in order that the interest on the Bonds shall be and continue to be excluded from gross income for federal income tax purposes under said Section 103.

(B) The Authority shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Authority to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section 148 of the Code.

(C) The Authority shall not permit at any time or times any proceeds of any Series of Bonds or any other funds of the Authority to be used, directly or indirectly, in a manner would result in the exclusion of any Bond from the treatment afforded by Section 103(a) of the Code.

(D) Anything contained in subsections (A), (B) or (C) above to the contrary notwithstanding, the Authority reserves the right to issue one or more Series of Bonds the interest on which is includable in the gross income of the recipient thereof for Federal income tax purposes, provided that the issuance of such Series does not adversely affect the Federal tax exemption of the interest on any other Series of Bonds.

SECTION 716. General. The Authority shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Authority under the provisions of the Act and this Resolution in accordance with the terms of such provisions.

SECTION 717. Waiver of Laws. The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of any stay or extension of law now or at any time hereafter in force that may affect the covenants and agreements contained in this Resolution or in the Bonds, and all benefit or advantage of any such law is hereby expressly waived by the Authority.

ARTICLE VIII SUPPLEMENTAL RESOLUTIONS

SECTION 801. Supplemental Resolutions Effective Upon Filing With the Trustee. For any one or more of the following purposes and at any time or from time to time, a Supplemental Resolution may be adopted, which, upon the filing with the Trustee of a copy thereof certified by an Authorized Officer, shall be fully effective in accordance with its terms:

- (1) to close this Resolution against, or provide limitations and restrictions in addition to the limitations and restrictions contained in this Resolution on, the authentication and delivery of Bonds or the issuance of other evidences of indebtedness;
- (2) to add to the covenants and agreements of the Authority in this Resolution other covenants and agreements to be observed by the Authority that are not contrary to or inconsistent with this Resolution as theretofore in effect;
- (3) to add to the limitations and restrictions in this Resolution other limitations and restrictions to be observed by the Authority that are not contrary to or inconsistent with this Resolution as theretofore in effect;
- (4) to surrender any right, power or privilege reserved to or conferred upon the Authority by the terms of this Resolution, but only if the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Authority contained in this Resolution;
- (5) to authorize Bonds of a Series and, in connection therewith specify and determine the matters and things referred to in Section 206, and also any other matters and things relative to such Bonds that are not contrary to or inconsistent with this Resolution as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first authentication and delivery of such Bonds;
- (6) to confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Resolution, of the Revenues or of any other moneys, securities or funds; and
- (7) to modify any of the provisions of this Resolution in any respect whatever, provided that: (a) such modification shall be, and be expressed to be, effective only after all Bonds of any Series Outstanding at the date of the adoption of such Supplemental

Resolution shall cease to be Outstanding; and (b) such Supplemental Resolution shall be specifically referred to in the text of all Bonds of any Series authenticated and delivered after the date of the adoption of such Supplemental Resolution and of Bonds issued in exchange therefor or in place thereof.

SECTION 802. *Supplemental Resolutions Effective Upon Consent of Trustee.* (A) For any one or more of the following purposes and at any time or from time to time, a *Supplemental Resolution* may be adopted, which, upon (i) the filing with the Trustee of a copy thereof certified by an Authorized Officer, and (ii) the filing with the Trustee and the Authority of an instrument in writing made by the Trustee consenting thereto shall be fully effective in accordance with its terms:

- (1) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Resolution; or
- (2) to insert such provisions clarifying matters or questions arising under this Resolution as are necessary or desirable and are not contrary to or inconsistent with this Resolution as theretofore in effect; or
- (3) to provide for additional duties of the Trustee in connection with the Sewer System.

(B) Any such Supplemental Resolution may also contain one or more of the purposes specified in Section 801, and in that event, the consent of the Trustee required by this Section 802 shall be applicable only to those provisions of such Supplemental Resolution as shall contain one or more of the purposes set forth in Section 802(A).

SECTION 803. *Supplemental Resolutions Effective With Consent of Bondholders.* At any time or from time to time, a Supplemental Resolution may be adopted subject to consent by Bondholders in accordance with and subject to the provisions of Article IX, which Supplemental Resolution, upon the filing with the Trustee of a copy thereof certified by an Authorized Officer and upon compliance with the provisions of Article IX, shall become fully effective in accordance with its terms as provided in said Article.

SECTION 804. *General Provisions.* (A) This Resolution shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article VIII and Article IX. Nothing in this Article VIII or Article IX contained shall affect or limit the right or obligation of the Authority to adopt, make, do, execute, acknowledge or deliver any resolution, act or other instrument pursuant to the provisions of Section 704 or the right or obligation of the Authority to execute and deliver to any Fiduciary any instrument which elsewhere in this Resolution it is provided shall be delivered to said Fiduciary.

(B) Any Supplemental Resolution referred to and permitted or authorized by Sections 801 and 802 may be adopted by the Authority without the consent of any of the Bondholders, but shall become effective only on the conditions, to the extent and at the time provided in said Sections, respectively. The copy of every Supplemental Resolution filed with the Trustee shall be accompanied by a Counsel's Opinion stating that such Supplemental Resolution has been duly and lawfully adopted in accordance with the provisions of this Resolution, is authorized or permitted by this Resolution, and is valid and binding upon the Authority.

(C) The Trustee is hereby authorized to accept the delivery of a certified copy of any Supplemental Resolution referred to and permitted or authorized by Section 801, 802 or 803 and to make all further agreements and stipulations that may be therein contained, and the Trustee, in taking such action, shall be fully protected in relying on an opinion of counsel (which may be a Counsel's Opinion) that such Supplemental Resolution is authorized or permitted by the provisions of this Resolution.

(D) No Supplemental Resolution shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto.

ARTICLE IX AMENDMENTS

SECTION 901. *Mailing and Publication of Notice of Amendment.* (A) Any provision in this Article IX for the mailing of a notice or other paper to Bondholders shall be fully complied with if it is mailed postage prepaid only: (1) to each registered owner of Bonds then Outstanding at his address, if any, appearing upon the registry books; (2) to each holder of any coupon Bond who shall have filed with the Trustee within two years preceding such mailing an address for notices; and (3) to the Trustee.

(B) Any provision in this Article IX for publication of a notice or other matter shall require the publication thereof only in the Authorized Newspapers.

SECTION 902. *Powers of Amendment.* Any modification or amendment in this Resolution or of the rights and obligations of the Authority and of the holders of the Bonds and coupons hereunder, in any particular, may be made by a Supplemental Resolution, with the written consent given as provided in Section 903: (1) of the holders of a majority in principal amount of the Bonds Outstanding at the time such consent is given; (2) in case less than all of the several Series of Bonds then Outstanding are affected by the modification or amendment, of the holders of a majority in principal amount of the Bonds of each Series so affected and Outstanding at the time such consent is given; and (3) in case the modification or amendment changes the terms of any Sinking Fund Payment, of the holders of a majority in principal amount of the Bonds of the particular Series and maturity entitled to such Sinking Fund Payment and Outstanding at the time such consent is given; except that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified like Series and maturity remain Outstanding, the consent of the holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section 902. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof or in the rate of interest thereon without the consent of the holder of such Bond, or shall reduce the percentages or otherwise affect the classes of Bonds the consent of the holders of which is required to effect any such modification or amendment, or shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto. For the purposes of this Section 902, a Series shall be deemed to be affected by a modification or amendment of this Resolution if the same adversely affects or diminishes the rights of the holders of Bonds of such Series. The Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment Bonds of any particular Series or

maturity would be affected by any modification or amendment hereof and any such determination shall be binding and conclusive on the Authority and all holders of Bonds.

SECTION 903. *Consent of Bondholders.* (A) The Authority may at any time adopt a Supplemental Resolution making a modification or amendment permitted by the provisions of Section 902, to take effect when and as provided in this Section 903. A copy of such Supplemental Resolution (or brief summary thereof or reference thereto in form approved by the Trustee), together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be mailed by the Authority to Bondholders and shall be published in the Authorized Newspapers at least once a week for two successive weeks (but failure to mail such copy and request shall not affect the validity of the Supplemental Resolution when consented to as provided in this Section 903). Such Supplemental Resolution shall not be effective unless and until: (1) there shall have been filed with the Trustee: (a) the written consents of holders of the percentages of Outstanding Bonds specified in Section 902; and (b) a Counsel's Opinion stating that such Supplemental Resolution has been duly and lawfully adopted and filed in accordance with the provisions of this Resolution, is authorized or permitted hereby and is valid and binding upon the Authority; and (2) a notice shall have been published as hereinafter provided in this Section 903.

(B) The consent of a Bondholder to any modification or amendment shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given, which proof shall be such as is permitted by Section 1114. A Certificate or certificates by the Trustee filed with the Trustee that it has examined such proof and that such proof is sufficient in accordance with Section 1114 shall be conclusive that the consents have been given by the holders of the Bonds described in such certificate or certificates of the Trustee. Any such consent shall be binding upon the holder of the Bonds giving such consent and upon any subsequent holder of such bond or any bonds issued in exchange therefor (whether or not such subsequent holder thereof has notice thereof) unless such consent is revoked in writing by the holder of such Bonds giving such consent or a subsequent holder thereof by filing with the Trustee, prior to the time when the written statement of the Trustee hereinafter provided for in this Section 903 is filed, such revocation and, if such Bonds are transferable by delivery, proof that such Bonds are held by the signer of such revocation in the manner permitted by Section 1114. The fact that a consent has not been revoked may likewise be proved by a certificate of the Trustee filed with the Trustee to the effect that no revocation thereof is on file with the Trustee.

(C) At any time after the holders of the required percentages of Bonds shall have filed their consents to the Supplemental Resolution, the Trustee shall make and file with the Authority and the Trustee a written statement that holders of such required percentages of Bonds have filed such consents. Such written statement shall be conclusive that such consents have been so filed. At any time thereafter notice, stating in substance that the Supplemental Resolution (which may be referred to as a Supplemental Resolution adopted by the Authority on a stated date, a copy of which is on file with the Trustee) has been consented to by the holders of the required percentages of Bonds and will be effective as provided in this Section 903, may be given to Bondholders by the Authority by mailing such notice to Bondholders (but failure to mail such notice shall not prevent such Supplemental Resolution from becoming effective and binding as provided in this Section 903) and by publishing the same in the Authorized Newspapers at least once not more than ninety days after the holders of the required percentages of Bonds shall have filed their consents to the Supplemental Resolution and the written statement of the Trustee hereinabove provided for

is filed. The Authority shall file with the Trustee proof of the publication of such notice and, if the same shall have been mailed to Bondholders, of the mailing thereof. A record, consisting of the papers required or permitted by this Section 903 to be filed with the Trustee, shall be proof of the matters therein stated. Such Supplemental Resolution making such amendment or modification shall be deemed conclusively binding upon the Authority, the Fiduciaries and the holders of all Bonds and coupons at the expiration of forty days after the filing with the Trustee of the proof of the first publication of such last mentioned notice, except in the event of a final decree of a court of competent jurisdiction setting aside such Supplemental Resolution in a legal action or equitable proceeding for such purpose commenced within such forty day period; except that any Fiduciary and the Authority during such forty day period and any such further period during which any such action or proceeding may be pending shall be entitled in their absolute discretion to take such action, or to refrain from taking such action, with respect to such Supplemental Resolution as they may deem expedient.

(D) Notwithstanding the foregoing provisions of this Section 903, the consent of Bondholders of any Series of Bonds to be issued under a Supplemental Resolution to an amendment of this Resolution that requires consent pursuant to the provisions of Section 902 shall be deemed given by such Bondholders if: (1) the nature of the proposed amendment of this Resolution is disclosed in the official statement or other offering document pursuant to which such Series of Bonds is offered and sold to the public; and (2) the underwriters or initial purchasers for resale of such Series of Bonds consent in writing to such Supplemental Resolution and file such written consent with the Trustee, or are deemed by their purchase of Bonds of such Series to have consented to such Supplemental Resolution, which consent will have the same effect as a consent of a Bondholder filed with the Trustee pursuant to Section 903(B).

SECTION 904. *Modifications by Consent.* The terms and provisions of this Resolution and the rights and obligations of the Authority and of the holders of the Bonds and coupons thereunder may be modified or amended in any respect upon the adoption and filing of a Supplemental Resolution and the consent of the holders of a majority in principal amount of the Bonds then Outstanding, such consent to be given as provided in Section 903 except that no notice to Bondholders either by mailing or publication shall be required; but no such modification or amendment shall change or modify any of the rights or obligations of any Fiduciary without the filing with the Trustee of the written assent thereto of such Fiduciary in addition to the consent of the Bondholders.

SECTION 905. *Exclusion of Bonds.* Bonds owned or held by or for the account of the Authority shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article IX, and the Authority shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article IX. At the time of any consent or other action taken under this Article IX, the Authority shall furnish the Trustee a Certificate of an Authorized Officer, upon which the Trustee may rely, describing all Bonds so to be excluded.

SECTION 906. *Notation on Bonds.* Bonds authenticated and delivered after the effective date of any action taken as in Article VIII or this Article IX provided may, and, if the Trustee so determines, shall bear a notation by endorsement or otherwise in form approved by the Authority and the Trustee as to such action, and in that case upon demand of the holder of any Bond

Outstanding at such effective date and presentation of his Bond for the purpose at the principal office of the Trustee or upon any transfer or exchange of any Bond Outstanding at such effective date, suitable notation shall be made on such Bond or upon any Bond issued upon any such transfer or exchange by the Trustee as to any such action. If the Authority or the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee and the Authority to conform to such action shall be prepared, authenticated and delivered, and upon demand of the holder of any Bond then Outstanding shall be exchanged, without cost to such Bondholder, for Bonds of the same Series and maturity then Outstanding, upon surrender of such Bonds with all unpaid coupons, if any, appertaining thereto.

ARTICLE X REMEDIES ON DEFAULT

SECTION 1001. *Trustee to Exercise Powers of Statutory Trustee.* The Trustee shall lie and hereby is vested with all of the rights, powers and duties of a trustee permitted to be appointed by Bondholders pursuant to the Act and the right of Bondholders to appoint a trustee is hereby abrogated in accordance with the provisions of the Act.

SECTION 1002. *Events of Default.* If one or more of the following events (in this Resolution called "Events of Default") shall happen, that is to say,

- (1) if default shall be made in the due and punctual payment of the principal or Redemption Price of any Sinking Fund Payment on any Bond when and as the same shall become due and payable, whether at maturity or upon call for redemption, or otherwise; or
- (2) if default shall be made in the due and punctual payment of any installment of interest on any Bond, when and as such interest installment shall become due and payable, and such default shall continue for a period of five days; or
- (3) if default shall be made by the Authority in the performance or observance of any other of the covenants, agreements or conditions contained in this Resolution, any Supplemental Resolution or in the Bonds, and such default shall continue for a period of forty-five days after written notice thereof to the Authority by the Trustee or to the Authority and to the Trustee by the holders of not less than 5% in principal amount of the Bonds Outstanding; or
- (4) if the Authority shall file a petition or otherwise seek relief under any federal or state bankruptcy or similar law;

then, upon the happening and continuance of any Event of Default specified in clause (1) or (2), the Trustee shall (by notice in writing to the Authority), or, upon the happening and continuance of any Event of Default specified in clause (3) or (4), the Trustee may, and upon the written request of the holders of not less than 25% in principal amount of the Bonds Outstanding the Trustee shall, in any such case unless the principal of all the Bonds then Outstanding shall already have become due and payable, declare the principal of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this Resolution or in any of the Bonds contained to the contrary notwithstanding. The right of the Trustee to make any such declaration as aforesaid,

however, is subject to the condition that if, at any time after such declaration, but before the Bonds shall have matured by their terms, all overdue installments of principal and interest upon the Bonds, together with the reasonable and proper charges, expenses and liabilities of the Trustee, and all other sums then payable by the Authority under this Resolution (except the principal of, and interest accrued since the next preceding interest date on, the Bonds due and payable solely by virtue of such declaration) shall either be paid by or for the account of the Authority or provision satisfactory to the Trustee shall be made for such payment, and all defaults under the Bonds or under this Resolution (other than the payment of principal and interest due and payable solely by reason of such declaration) shall be made good or be secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall be made therefor, then and in every such case the holders of a majority in principal amount of the Bonds Outstanding, by written notice to the Authority and to the Trustee, may rescind such declaration and annul such default in its entirety, or, if the Trustee shall have acted without a direction from the holders of the Bonds as aforesaid at the time of such request, and if there shall not have been theretofore delivered to the Trustee written direction to the contrary by the holders of a majority in principal amount of the Bonds then Outstanding, then any such declaration shall *ipso facto* be deemed to be rescinded and any such default and its consequences shall *ipso facto* be deemed to be annulled, but no such rescission and annulment shall extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

SECTION 1003. *Accounting and Examination of Records after Default.* (A) The Authority covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the Authority relating to the Sewer System and all other records relating to the Sewer System shall at all times be subject to the inspection and use of the Trustee and of its agents and attorneys, including the Consulting Engineers.

(B) The Authority covenants that if an Event of Default shall happen and shall not have been remedied, the Authority, upon demand of the Trustee, will account, as if it were the trustee of an express trust, for all Revenues and other moneys, securities and funds pledged or held under this Resolution for such period as shall be stated in such demand.

SECTION 1004. *Application of Revenues and Other Moneys After Default.* (A) The Authority covenants that if an Event of Default shall happen and shall not have been remedied, the Authority, upon demand of the Trustee, shall pay over or cause to be paid over to the Trustee (i) forthwith, all moneys, securities and funds then held by the Authority or a Depositary in any fund or account under this Resolution, and (ii) as promptly as practicable after receipt thereof, the Revenues.

(B) During the continuance of an Event of Default, the Trustee shall apply such Revenues and the income therefrom as follows and in the following order:

- (1) to the payment of the reasonable and proper charges, and expenses of the Trustee and of the Consulting Engineers;
- (2) to the payment of the amounts required for reasonable and necessary Operating Expenses, including reasonable and necessary reserves and working capital therefor, and for the reasonable repair and replacement of the Sewer System,

necessary to prevent loss of Revenues, as certified to the Trustee by the Consulting Engineers. For this purpose, the books of record and account of the Authority relating to the Sewer System shall at all times be subject to the inspection of Consulting Engineers during the continuance of such Event of Default; and

- (3) to the payment of the interest and principal or Redemption Price then due on the Bonds, subject to the provisions of Section 702, as follows:

- (a) unless the principal of all of the Bonds shall have become or have been declared due and payable:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal or Redemption Price of any Bonds that shall have become due, whether at maturity or by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the amounts of principal or Redemption Price due on such date, to the persons entitled thereto, without any discrimination or preference.

- (b) if the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference.

(C) If and whenever all overdue installments of interest on all Bonds, together with the reasonable and proper charges and expenses of the Trustee, and all other sums payable by the Authority under this Resolution, including the principal and Redemption Price of and accrued unpaid interest on all Bonds that shall then be payable by declaration or otherwise, shall either be paid by or for the account of the Authority, or provision satisfactory to the Trustee shall be made for such payment, and all defaults under this Resolution or the Bonds shall be made good or secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall be made therefor, the Trustee shall pay over to the Authority all such Revenues then remaining unexpended in the hands of the Trustee (except Revenues deposited or pledged, or required by the terms of the Resolution to be deposited or pledged, with the Trustee), and thereupon the Authority and the Trustee shall be restored, respectively, to their former positions and rights under this Resolution, and all Revenues shall thereafter be applied as provided in Article V. No such payment

over to the Authority by the Trustee or resumption of the application of Revenues as provided in Article V shall extend to or affect any subsequent default under this Resolution or impair any right consequent thereon.

SECTION 1005. *Proceedings Brought by Trustee.* (A) If an Event of Default shall happen and shall not have been remedied, then and in every such case, the Trustee, by its agents and attorneys, if the Trustee shall deem it advisable, may proceed to protect and enforce its rights and the rights of the holders of the Bonds under this Resolution forthwith by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the Authority as if the Authority were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the Trustee, being advised by Counsel, shall deem most effectual to enforce any of its rights or to perform any of its duties under this Resolution.

(B) All rights of action under this Resolution may be enforced by the Trustee without the possession of any of the Bonds or coupons or the production thereof on the trial or other proceedings, and any such suit or proceedings instituted by the Trustee shall be brought in its name.

(C) The holders of a majority in principal amount of the Bonds at the time Outstanding, may direct by instrument in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, provided that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken, or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or be unjustly prejudicial to the Bondholders not parties to such direction.

(D) Upon commencing a suit in equity or upon other commencement of judicial proceedings by the Trustee to enforce any right under this Resolution, the Trustee shall be entitled to exercise any and all rights and powers conferred in this Resolution and provided to be exercised by the Trustee upon the occurrence of an Event of Default; and, as a matter of right against the Authority, without notice or demand and without regard to the adequacy of the security for the Bonds, the Trustee shall, to the extent permitted by law, be entitled to the appointment of a receiver of the moneys, securities and funds then held by the Authority in any Fund or Account under this Resolution and of the Revenues, with all such powers as the court or courts making such appointment shall confer; but notwithstanding the appointment of any receiver, the Trustee shall be entitled to retain possession and control of and to collect and receive income from, any moneys, securities and funds deposited or pledged with it under this Resolution or agreed or provided to be delivered to or deposited or pledged with it under this Resolution.

(E) Regardless of the happening of an Event of Default, the Trustee shall have power to, but unless requested in writing by the holders of a majority in principal amount of the Bonds then Outstanding, and furnished with reasonable security and indemnity, shall be under no obligation to, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Resolution by any acts that may be unlawful or in violation of this Resolution, and such suits and proceedings as the

Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders.

SECTION 1006. *Restriction on Bondholders' Action.* (A) No holder of any Bond or coupon shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Resolution or the execution of any trust under this Resolution or for any remedy under this Resolution, unless such holder shall have previously given to the Trustee written notice of the happening of an Event of Default, as provided in this Article X, and the holders of at least 25% in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, and shall have offered it reasonable opportunity, either to exercise the powers granted in this Section 1006 or to institute such action, suit or proceeding in its own name, and unless such holders shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request within a reasonable time; it being understood and intended that no one or more holders of Bonds or coupons shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this Resolution, or to enforce any right under this Resolution, except in the manner therein provided; and that all proceedings at law or in equity to enforce any provision of this Resolution shall be instituted, had and maintained in the manner provided in this Resolution and for the equal benefit of all holders of the Outstanding Bonds and coupons, subject only to the provisions of Section 702.

(B) Nothing in this Resolution or in the Bonds or in the coupons contained shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of and interest on the Bonds to the respective holders thereof, or affect or impair the right of action, which is also absolute and unconditional, of any holder to enforce such payment of his Bond.

SECTION 1007. *Remedies Not Exclusive.* No remedy by the terms of this Resolution conferred upon or reserved to the Trustee or the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Resolution or existing at law or in equity or by statute on or after the date of adoption of this Resolution.

SECTION 1008. *Effect of Waiver and Other Circumstance.* (A) No delay or omission of the Trustee or of any Bondholder to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such default or to be an acquiescence therein; and every power and remedy given by this Article X to the Trustee or to the Bondholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Bondholders.

(B) Prior to the declaration of maturity of the Bonds as provided in Section 1002, the holders of a majority in principal amount of the Bonds at the time Outstanding, or their attorneys-in-fact duly authorized, may on behalf of the holders of all the Bonds waive any past default under this Resolution and its consequences, except a default in the payment of interest or any Sinking Fund Payment on or principal of or premium on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE XI CONCERNING FIDUCIARIES

SECTION 1101. *Trustee; Appointment and Acceptance of Duties.* Manufacturers and Traders Trust Company is hereby appointed Trustee. The Trustee shall signify its acceptance of the duties and obligations imposed upon it by this Resolution by executing the certificate of authentication endorsed upon the Bonds, and, by executing such certificate upon any Bond, the Trustee shall be deemed to have accepted such duties and obligations not only with respect to the Bond so authenticated, but with respect to all the Bonds thereafter to be issued, but only, however, upon the terms and conditions set forth in this Resolution.

SECTION 1102. *Paying Agents; Appointment and Acceptance of Duties.* (A) The Authority shall appoint one or more Paying Agents for the Bonds of any Series in the Supplemental Resolution, and the Authority may at any time or from time to time appoint one or more other Paying Agents in the manner and subject to the conditions set forth in Section 1113 for the appointment of a successor Paying Agent. The Trustee is hereby appointed as a Paying Agent.

(B) Each Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Resolution by executing and delivering to the Authority and to the Trustee a written acceptance thereof.

(C) The principal offices of the Paying Agents are designated as the respective offices or agencies of the Authority for the payment of the interest on and principal or Redemption Price of the Bonds.

SECTION 1103. *Responsibilities of Fiduciaries.* The recitals of fact in this Resolution and in the Bonds contained shall be taken as the statements of the Authority and no Fiduciary assumes any responsibility for the correctness of the same. No Fiduciary makes any representations as to the validity or sufficiency of this Resolution or of any Bonds or coupons issued thereunder or in respect of the security afforded by this Resolution, and no Fiduciary shall incur any liability in respect thereof. The Trustee shall, however, be responsible for its representation contained in its certificate on the Bonds. No Fiduciary shall be under any responsibility or duty with respect to the issuance of the Bonds for value or the application of the proceeds thereof or the application of any moneys paid to the Authority or for any losses incurred upon the sale or redemption of any securities purchased for or held in any Fund or Account under this Resolution. No Fiduciary shall be under any responsibility or duty with respect to the application of any moneys paid to any other Fiduciary. The Trustee shall be under no responsibility or duty with respect to the application of any moneys placed on time deposits, at the direction of the Authority, with any other Depositary or with EFC. No Fiduciary shall be liable in connection with the performance of its duties under this Resolution except for its own willful misconduct, negligence or bad faith.

SECTION 1104. *Evidence on Which Fiduciaries May Act.* (A) Each Fiduciary shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document believed by it to be genuine, and to have been signed or presented by the proper party or parties. Each Fiduciary may consult with counsel, who may or may not be of counsel to the Authority, and the opinion of such counsel shall be full and complete

authorization and protection in respect of any action taken or suffered by such Fiduciary under this Resolution in good faith and in accordance therewith.

(B) Whenever any Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Resolution, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of an Authorized Officer, and such Certificate shall be full warrant for any action taken or suffered in good faith under the provisions of this Resolution upon the faith thereof; but in its discretion the Fiduciary may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

(C) Except as otherwise expressly provided in this Resolution, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision thereof by the Authority to any Fiduciary shall be sufficiently executed if executed in the name of the Authority by an Authorized Officer.

SECTION 1105. *Compensation.* The Authority shall pay to each Fiduciary from time to time reasonable compensation for all services rendered under this Resolution, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Resolution. The Authority further agrees to indemnify and save each Fiduciary harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder and that are not due to its willful misconduct, negligence or bad faith.

SECTION 1106. *Certain Permitted Acts.* Any Fiduciary may become the owner of any Bonds and coupons or any other obligations of the Authority with the same rights it would have if it were not a Fiduciary. To the extent permitted by law, any Fiduciary may act as Depositary for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or the holders of any other obligations of the Authority or to effect or aid in any reorganization growing out of the enforcement of the Bonds or any other obligations of the Authority or this Resolution, whether or not any such committee shall represent the holders of a majority in principal amount of the Bonds then Outstanding.

SECTION 1107. *Resignation of Trustee.* The Trustee may at any time resign and be discharged of the duties and obligations created by this Resolution by giving not less than sixty days' written notice to the Authority, but such resignation shall not take effect until a successor shall have been appointed by the Authority or the Bondholders as provided in Section 1109.

SECTION 1108. *Removal of Trustee.* The Trustee may be removed at any time by an instrument or concurrent instruments in writing, filed with the Trustee, and signed by the holders of a majority in principal amount of the Bonds then Outstanding or their attorneys-in-fact duly authorized, excluding any Bonds held by or for the account of the Authority.

SECTION 1109. *Appointment of Successor Trustee.* (A) In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a

bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, a successor may be appointed by the holders of a majority in principal amount of the Bonds then Outstanding, excluding any Bonds held by or for the account of the Authority, by an instrument or concurrent instruments in writing signed and acknowledged by such Bondholders or by their attorneys-in-fact duly authorized and delivered to such successor Trustee, notification thereof being given to the Authority and the predecessor Trustee; but unless a successor Trustee shall have been appointed by the Bondholders as aforesaid, the Authority by a duly executed written instrument signed by an Authorized Officer of the Authority shall forthwith appoint a Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders as authorized in this Section 1109. The Authority shall publish notice of any such appointment made by it once in each week for two consecutive calendar weeks, in an Authorized Newspaper, the first publication to be made within twenty days after such appointment. Any successor Trustee appointed by the Authority shall, immediately and without further act, be superseded by a Trustee appointed by the Bondholders.

(B) If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section 1109 within forty-five days after the Trustee shall have given to the Authority written notice as provided in Section 1107 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee or the holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

(C) Any Trustee appointed under the provisions of this Section 1109 in succession to the Trustee shall be a bank or trust company organized under the laws of any state or a national banking association, and having a capital and surplus aggregating at least \$25,000,000, if there be such a bank or trust company or national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Resolution.

SECTION 1110. *Transfer of Rights and Property to Successor Trustee.* Any successor Trustee appointed under this Resolution shall execute, acknowledge and deliver to its predecessor Trustee, and also to the Authority, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee; but the Trustee ceasing to act shall nevertheless, on the written request of the Authority, or of the successor Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property held by it under this Resolution, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Authority be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and

so far as may be authorized by law, be executed, acknowledged and delivered by the Authority. Any such successor Trustee shall promptly notify the Paying Agents of its appointment as Trustee.

SECTION 1111. *Merger or Consolidation.* Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank or trust company organized under the laws of any state of the United States or a national banking association and, in the case of any successor Trustee, shall meet the requirements of Section 1109(C), in the case of a successor Paying Agent, shall meet the requirements of Section 1113(A), and shall be authorized by law to perform all the duties imposed upon it by this Resolution, shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

SECTION 1112. *Adoption of Authentication.* In case any of the Bonds contemplated to be issued under this Resolution shall have been authenticated but not delivered, any successor Trustee may adopt the certificate of authentication of any predecessor Trustee so authenticating such Bonds and deliver such Bonds so authenticated; and in case any of the said Bonds shall not have been authenticated, any successor Trustee may authenticate such Bonds in the name of the predecessor Trustee, or in the name of the successor Trustee, and in all such cases such certificate shall have the full force that it is anywhere in said Bonds or in this Resolution provided that the certificate of the Trustee shall have.

SECTION 1113. *Resignation or Removal of Paying Agent and Appointment of Successor.* (A) Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Resolution by giving at least sixty days' written notice to the Authority and the Authority, the Trustee, and the other Paying Agents. Any Paying Agent may be removed at any time by an instrument filed with such Paying Agent and the Trustee and signed by the Authority. Any successor Paying Agent shall be appointed by the Authority, with the approval of the Trustee, and (subject to the requirements of Section 1102) shall be a bank or trust company organized under the laws of any state of the United States or a national banking association, having a capital and surplus aggregating at least \$5,000,000, and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Resolution.

(B) In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.

SECTION 1114. *Evidence of Signatures of Bondholders and Ownership of Bonds.* (A) Any request, consent, revocation of consent or other instrument that this Resolution may require or permit to be signed and executed by the Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys-in-fact appointed in writing. Proof of (i) the execution of any such instrument, or of an instrument appointing any such attorney, or (ii) the holding by any person of the Bonds or coupons appertaining thereto, shall be sufficient for any purpose of this Resolution (except as otherwise

therein expressly provided) if made in the following manner, or in any other manner satisfactory to the Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

- (1) the fact and date of the execution by any Bondholder or his attorney-in-fact of such instrument may be proved by the certificate, which need not be acknowledged or verified, of an officer of a bank or trust company or of any notary public or other officer authorized to take acknowledgments of deeds, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership such certificate or affidavit shall also constitute sufficient proof of his authority.
- (2) the amount of Bonds transferable by delivery held by any person executing any instrument as a Bondholder, the date of his holding such Bonds, and the numbers and other identification thereof, may be proved by a certificate, which need not be acknowledged or verified, in form satisfactory to the Trustee, executed by the Trustee or by a member of a financial firm or by an officer of a bank, trust company, insurance company or financial corporation or other Depository, showing at the date therein mentioned that such person exhibited to such member or officer or had on deposit with such Depository the Bonds described in such certificate. Such certificate may be given by a member of a financial firm or by an officer of any bank, trust company, insurance company or financial corporation or other depository with respect to Bonds owned by it, if acceptable to the Trustee; and
- (3) the ownership of Bonds registered otherwise than to bearer and the amount, numbers and other identification, and date of holding the same shall be proved by the registry books.

(B) Any request or consent by the owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by the Authority or any Fiduciary in accordance therewith.

SECTION 1115. *Preservation and Inspection of Documents.* All documents received by any Fiduciary under the provisions of this Resolution shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Authority, any other Fiduciary, and any Bondholder and their agents and their representatives, any of whom may make copies thereof.

ARTICLE XII MISCELLANEOUS

SECTION 1201. *Defeasance.* (A) If the Authority shall pay or cause to be paid to the holders of all Bonds and coupons then Outstanding, the principal and interest and Redemption Price, if any, to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then, at the option of the Authority, expressed in an instrument in writing signed by an Authorized Officer and delivered to the Trustee, the covenants, agreements and other obligations

of the Authority to the Bondholders shall be discharged and satisfied. In such event, the Trustee shall, upon the request of the Authority, execute and deliver to the Authority all such instruments as may be desirable to evidence such discharge and satisfaction and the Fiduciaries shall pay over or deliver to the Authority all moneys, securities and funds held by them pursuant to this Resolution that are not required for the payment or redemption of Bonds or coupons not theretofore surrendered for such payment or redemption.

(B) Bonds or coupons or interest installments for the payment or redemption of which moneys shall have been set aside and shall be held in trust by the Paying Agents (through deposit by the Authority of funds for such payment or redemption or otherwise) at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in Section 1201(A). Any Bond and all coupons appertaining to such Bond shall, prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in Section 1201(A) if: (1) in case such Bond is to be redeemed on any date prior to its maturity, the Authority shall have given to the Trustee in form satisfactory to it irrevocable instructions to publish as provided in Article VI of this Resolution notice of redemption on said date of such Bond; (2) there shall have been deposited with the Trustee either moneys in an amount that shall be sufficient, or Investment Securities the principal of and the interest on which when due will provide moneys that, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal or Redemption Price, if any, and Sinking Fund Payments and interest due and to become due on said Bonds on and prior to the Redemption Date or maturity date thereof, as the case may be; and (3) in the event such Bond is not by its terms subject to redemption within the next succeeding sixty days, the Authority shall have given the Trustee in form satisfactory to it irrevocable instructions to publish, as soon as practicable, at least twice, at an interval of not less than seven days between publications, in an Authorized Newspaper a notice to the holders of such Bond and coupons that the deposit required by (2) above has been made with the Trustee and that said Bond and coupons are deemed to have been paid in accordance with this Section 1201 and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal or Redemption Price, if applicable, on said Bond. Neither Investment Securities or moneys deposited with the Trustee pursuant to this Section 1201 nor principal or interest payments on any such Investment Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or Redemption Price, if any, and interest on said Bonds; except that any cash received from such principal or interest payments on such Investment Securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Investment Securities maturing at times and in amounts sufficient to pay when due the principal or Redemption Price, if any, and interest to become due on said Bonds on and prior to such Redemption Date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Authority, as received by the Trustee, free and clear of any trust, lien or pledge. For the purposes of this Section 1201, Investment Securities mean and include only such obligations as are described in clauses (a) or (b) of the definition of Investment Securities in Section 102 (or obligations secured by such Investment Securities as to the payment of both principal and interest).

(C) If, through the deposit of moneys by the Authority or otherwise, the Fiduciaries shall hold, pursuant to this Resolution, moneys sufficient to pay the principal and interest to maturity on all Outstanding Bonds and coupons, or in the case of Bonds in respect of which the

Authority shall have taken all action necessary to redeem prior to maturity, sufficient to pay the Redemption Price and interest to such Redemption Date, then at the request of the Authority all moneys held by any Paying Agent shall be paid over to the Trustee and, together with other moneys held by it hereunder, shall be held by the Trustee for the payment or redemption of Outstanding Bonds and coupons.

(D) Anything in this Resolution to the contrary notwithstanding, any moneys held by a Fiduciary in trust for the payment and discharge of any of the Bonds or coupons that remain unclaimed for six years after the date when all of the Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Fiduciary at such date, or for six years after the date of deposit of such moneys if deposited with the Fiduciary after the said date when all of the Bonds became due and payable, shall, at the written request of the Authority, be repaid by the Fiduciary to the Authority, as its absolute property and free from trust, and the Fiduciary shall thereupon be released and discharged; except that, before being required to make any such payment to the Authority, the Fiduciary shall, at the expense of the Authority, cause to be published at least twice, at an interval of not less than seven days between publications, in the Authorized Newspapers notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than ten nor more than twenty days after the date of the first publication of such notice, the balance of such moneys then unclaimed will be returned to the Authority.

SECTION 1202. *Moneys Held for Particular Bonds and Coupons.* The amounts held by any Fiduciary for the payment due on any date with respect to particular Bonds or coupons shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the holders of the Bonds and coupons entitled thereto.

SECTION 1203. *No Recourse on the Bonds.* No recourse shall be had for the payment of the principal of or interest on the Bonds or for any claim based thereon or on this Resolution against any member or officer of the Authority or any person executing the Bonds.

SECTION 1204. *Security Agreement.* A certified copy of this resolution, delivered to and accepted by the Trustee, shall constitute a security agreement pursuant to and for all purposes of the New York Uniform Commercial Code.

SECTION 1205. *Effective Date.* This Resolution shall take effect upon filing with the Trustee of (1) a Counsel's Opinion stating that this Resolution has been duly and lawfully adopted and filed, is authorized by the Existing Resolution and is valid and binding upon the Authority, (2) a copy of the written consent of EFC, as the sole holder of the Existing Bonds, to the adoption by the Authority of this Resolution, (3) the written consent of the Trustee to the adoption by the Authority of this Resolution, and (4) a copy hereof certified by the secretary of the Authority.

SECRETARY'S CERTIFICATE

I, Eleanor Petrucci, Secretary of the Buffalo Sewer Authority, HEREBY CERTIFY that the foregoing Resolution, entitled "Amended and Restated Sewer System Revenue Bond Resolution" was duly adopted by the Buffalo Sewer Authority and the Members thereof at a meeting thereof duly called and held on May 5, 2021 at which a quorum was present and acting throughout, and that said Resolution has been compared by me with the original thereof recorded in the Minute Book of said Authority and it is a correct transcript therefrom and of the whole of said original and that said Resolution has not been altered, amended or repealed but is in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Authority this ____ day of _____, 2021.

[SEAL]

Eleanor Petrucci, Secretary

ITEM NO. 7

THE NOTE RESOLUTION, SERIES 2021 BOND ANTICIPATION NOTE

**EXTRACT OF MINUTES
Meeting of the Buffalo Sewer Authority
of the City of Buffalo, County of Erie, New York
May 5, 2021**

A regular meeting of the Buffalo Sewer Authority of the City of Buffalo, in the County of Erie, New York, was held at City Hall, Buffalo, New York, on May 5, 2021, at 9:00 o'clock A.M. (Prevailing Time)

There were present: 13

Members: 3

There were absent: 0

Also present:

Member Petrucci offered the following resolution and offered its adoption:

2 ND BY	<u>MR. ROOSEVELT</u>		
AYES	<u>3</u>	NOES	<u>0</u>

Board Meeting of May 5, 2021

BUFFALO SEWER AUTHORITY
SERIES 2021 BOND ANTICIPATION NOTE

NOTE RESOLUTION

Adopted: May 5, 2021

BUFFALO SEWER AUTHORITY
SERIES 2021 BOND ANTICIPATION NOTE
RESOLUTION

WHEREAS, the Buffalo Sewer Authority (the "Authority"), a body corporate and politic constituting a public benefit corporation organized and existing under the laws of the State of New York, owns and operates sewerage and stormwater drainage facilities within the environs of the City of Buffalo, New York (the "City"); and

WHEREAS, the Authority has determined to undertake certain improvements to the sewer system (as more fully defined below, the "Project"), to wit Secondary System Rehabilitation and Upgrade; and

WHEREAS, the Authority proposes to issue notes hereunder pursuant to the Buffalo Sewer Authority Act, Title 8 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (the "Act"), to provide for the temporary financing of the construction of the Project until such time as the Authority issues bonds to provide for the permanent financing of the Project; and

WHEREAS, the Authority is authorized by the Act to borrow money and issue notes, and to provide for the rights of the owners thereof; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE BUFFALO SEWER AUTHORITY AS FOLLOWS:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Short Title. This Note Resolution may hereafter be cited by the Authority as the "Series 2021 Bond Anticipation Note Resolution."

Section 1.2 Definitions. In this Note Resolution the following terms shall have the following meanings unless the context otherwise requires:

"Account" shall mean one of the special accounts created and established pursuant to this Note Resolution.

"Act" shall mean the Buffalo Sewer Authority Act, Title 8 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended from time to time.

"Authority" shall mean the Buffalo Sewer Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, and any body, board, authority, agency, or political subdivision or instrumentality of the State which shall hereafter succeed to the powers, duties and functions thereof.

"Authorized Officer" shall mean the Chairman, the Vice-Chairman, the Assistant Vice-Chairman, the Secretary, the Assistant Secretary, or the General Manager or other chief administrative officer of the

Authority, and when used with reference to any act or certificate or other document, also means any person duly authorized to perform such act or sign such document.

“Capital Costs” shall mean and include all costs of acquisition, construction or completion of any part of the Sewer System, including Costs of Issuance of any Notes issued to provide funds to pay the cost thereof, the costs of any demolitions or relocations necessary in connection therewith and any extensions, renewals, replacements, equipment, alterations, improvements, additions, machinery and equipment, betterments, paving, grading, excavation, blasting or removals and of all or any property, rights, easements and franchises deemed by the Authority to be necessary or useful or convenient therefor and may include, to the extent properly attributable to such acquisition, construction and completion:

(a) obligations incurred for labor and materials and payments made to contractors, builders and materialmen in connection with construction or acquisition of any part of the Sewer System, and for the restoration of property damaged or destroyed in connection with such construction;

(b) fees and expenses of the Paying Agent, payments, taxes or other governmental charges lawfully levied or assessed during construction or on any property acquired, and premiums on insurance (if any) during such construction or acquisition;

(c) fees and expenses for studies, surveys and reports, engineering, borings, testings, estimates of costs and revenues, preparation of plans and specifications and inspecting or supervising construction or acquisition, as well as for the performance of all other duties of engineers or architects in connection with the acquisition, construction, extension, renewal or improvement of the Sewer System or required by this Note Resolution;

(d) expenses of administration properly chargeable to the acquisition, construction, reconstruction, renewal, extension, or improvement of the Sewer System, including legal expenses and fees, financing charges, costs of audits and fiscal advice and all other items of expense not elsewhere in this definition specified, incident to the acquisition, construction, reconstruction, renewal, extension or improvement of the Sewer System, including the acquisition of real estate, franchises and rights-of-way therefor, including abstracts of title insurance;

(e) the cost and expense of acquiring by purchase or condemnation or by leasing such property, lands, rights-of-way, franchises, easements, and other interest in land as may be deemed necessary or convenient for the acquisition, construction or completion of any part of the Sewer System and options and partial payments thereon, and the amount of any damages incident to or consequent upon the same; and

(f) any obligations or expense heretofore or hereafter expended or incurred by the Authority and any amounts heretofore or hereafter advanced by the Authority for any of the foregoing purposes.

“Capital Improvement Fund” shall mean the Capital Improvement Fund established pursuant to Section 502 of the Sewer System Revenue Bond Resolution.

“Certificate” shall mean a signed document attesting to or acknowledging the matters therein stated or setting forth matters to be determined pursuant to this Note Resolution.

"Certificate of Determination" shall mean a Certificate executed by the General Manager of the Authority pursuant to Section 2.8 hereof.

"City" shall mean the City of Buffalo, New York.

"Comptroller" shall mean, respectively, the Comptroller of the City.

"Construction Fund" shall mean the Construction Fund established pursuant to Section 502 of the Sewer System Revenue Bond Resolution.

"Costs of Issuance" shall mean all items of expense, directly or indirectly payable or reimbursable and related to the authorization, sale and issuance of Notes, including but not limited to printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of any Fiduciary, legal fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, fees and charges for preparation, execution, transportation and safekeeping of Notes, costs and expenses of refunding, premiums for the insurance of the payment of the Notes and any other cost, charge or fee in connection with the original issuance of Notes.

"Debt Reserve Fund" shall mean the Debt Reserve Fund established pursuant to Section 502 of the Sewer System Revenue Bond Resolution.

"EFC" shall mean the New York State Environmental Facilities Corporation, a body corporate and politic constituting a public benefit corporation, established and existing under and by virtue of the laws of the State of New York.

"Fiduciary" shall mean the Paying Agent.

"Investment Securities" shall mean and include any of the following securities, if and to the extent the same are at the time legal investments by the Authority of the funds to be invested therein:

(a) direct obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, provided, that the full faith and credit of the United States of America must be pledged to any such direct obligation or guarantee ("Direct Obligations");

(b) direct obligations and fully guaranteed certificates of beneficial interest of the Export-Import Bank of the United States; consolidated debt obligations and letter of credit-backed issues of the Federal Home Loan Banks; participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation ("FHLMCs"); debentures of the Federal Housing Administration; mortgage-backed securities (except stripped mortgage securities which are valued greater than par on the portion of unpaid principal) and senior debt obligations of the Federal National Mortgage Association ("FNMA's"); participation certificates of the General Services Administration; guaranteed mortgage-backed securities and guaranteed participation certificates of the Government National Mortgage Association ("GNMA's"); guaranteed participation certificates and guaranteed pool certificates of the Small Business Administration; debt obligations and letter of credit-backed issues of the Student Loan Marketing Association; local authority bonds of the U.S. Department of Housing & Urban Development; guaranteed Title XI financing of the U.S. Maritime Administration; guaranteed transit bonds of the Washington Metropolitan Area Transit Authority; Resolution Funding Corporation securities;

(c) direct obligations of any state of the United States of America or any subdivision or agency thereof whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, "A" or better by Moody's Investors Service ("Moody's") and "A" or better by Standard & Poor's ("S&P"), or any obligations fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, "A" or better by Moody's and "A" or better by S&P;

(d) commercial paper (having original maturities of not more than 270 days) rated, at the time of purchase, "P-1" by Moody's and "A-1" or better by S&P;

(e) federal funds, unsecured certificates of deposit, time deposits or bankers acceptances (in each case having maturities of not more than 365 days) of any domestic bank including a branch office of a foreign bank which branch office is located in the United States, provided legal opinions are received to the effect that full and timely payment of such deposit or similar obligation is enforceable against the principal office or any branch of such bank, which, at the time of purchase, has a short-term "Bank Deposit" rating of "P-1" by Moody's and a "Short-Term CD" rating of "A-1" or better by S&P;

(f) deposits of any bank or savings and loan association which has combined capital, surplus and undivided profits of not less than \$3 million, provided such deposits are continuously and fully insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation (the "FDIC");

(g) investments in money-market funds rated "AAAm" or "AAAm-G" by S&P;

(h) repurchase agreements collateralized by Direct Obligations, GNMA's, FNMA's or FHLMC's with any registered broker/dealer subject to the Securities Investors' Protection Corporation jurisdiction or any commercial bank insured by the FDIC, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed obligation rated "P-1" or "A3" or better by Moody's, and "A-1" or "A-" or better by S&P, provided:

- (i) a master repurchase agreement or specific written repurchase agreement governs the transaction; and
- (ii) the securities are held free and clear of any lien by the Trustee or an independent third party acting solely as agent ("Agent") for the Trustee, and such third party is (1) a Federal Reserve Bank, or (2) a bank which is a member of the FDIC and which has combined capital, surplus and undivided profits of not less than \$50 million, and the Trustee shall have received written confirmation from such third party that it holds such securities, free and clear of any lien, as agent for the Trustee; and
- (iii) a perfected first security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.0 et seq. in such securities, is created for the benefit of the Trustee; and
- (iv) the repurchase agreement has a term of 10 years or less, and the Trustee or the Agent will value the collateral securities no less frequently than weekly

and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two business days of such valuation; and

- (v) the fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 103%.

“Net Revenue Fund” shall mean the Net Revenue Fund established pursuant to Section 502 of the Sewer System Revenue Bond Resolution.

“Note” shall mean any note executed and delivered pursuant to this Note Resolution.

“Note Payment Account” shall mean the special account so designated which is established pursuant to Section 4.1 of this Note Resolution.

“Note Resolution” shall mean this Series 2021 Bond Anticipation Note Resolution.

“Noteowner” or “Holder” or words of similar import shall mean, when used with reference to a Note, the registered owner of such Note.

“Operating Fund” shall mean the Operating Fund established pursuant to Section 502 of the Sewer System Revenue Bond Resolution.

“Outstanding”, when used with reference to Notes, shall mean, as of any date, all Notes theretofore or thereupon being authenticated and delivered under this Note Resolution except:

- (a) any Notes cancelled by the Paying Agent at or prior to such date;
- (b) any Note in lieu of or in substitution for which other Notes have been executed and delivered; and
- (c) any Note deemed to have been paid as provided in Section 7.4 of this Note Resolution.

“Paying Agent” shall mean Manufacturers and Traders Trust Company, Buffalo, New York and its successor or successor and any other person which may at any time be substituted in its place pursuant to this Note Resolution.

“Project” shall mean Secondary System Rehabilitation and Upgrade (CWSRF Project No. 6602-28-00), and all such roadways, connections, structures, equipment, apparatus and other property necessary or desirable for efficient construction and operation of such sewerage facilities, subject to any modifications and revisions approved by the Authority as necessary or desirable for the purposes of the Authority or the Sewer System under the Act.

“Project Finance Agreement” or “PFA” shall mean the project finance agreement to be entered into between the Authority and the EFC relating to the Notes in accordance with this Resolution, as the same may be amended from time to time.

“Rate Stabilization Fund” shall mean the Rate Stabilization Fund established pursuant to Section 502 of the Sewer System Revenue Bond Resolution.

“Registrar” shall mean the Paying Agent or its successors.

“Sewer System” shall mean the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by the Authority, or the City for the purposes of the Authority, including the Project, and including sewers, conduits, pipelines, mains, pumping and ventilating stations, sewage treatment or disposal systems, plants and works, connections, outfalls, compensating reservoirs, and other plants, structures, boats, conveyances, and other real and personal property, and rights therein, and appurtenances necessary or useful and convenient for the collection, treatment, purification or disposal in a sanitary manner of any sewage, liquid or solid wastes, night soil or industrial wastes.

“Sewer System Revenue Bond Resolution” shall mean the Amended and Restated Sewer System Revenue Bond Resolution adopted by the Authority on May 5, 2021, as amended, supplemented and restated from time to time.

“State” shall mean the State of New York.

“Subordinated Indebtedness Fund” shall mean the Subordinated Indebtedness Fund established pursuant to Section 502 of the Sewer System Revenue Bond Resolution.

“Surplus Fund” shall mean the Surplus Fund established pursuant to Section 502 of the Sewer System Revenue Bond Resolution.

“Trustee” shall mean the Trustee under the Sewer System Revenue Bond Resolution.

Section 1.3 Interpretation. (A) In this Note Resolution, unless the context otherwise requires:

(1) Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Note Resolution.

(2) The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms, as used in this Note Resolution, refer to this Note Resolution, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this Note Resolution.

(3) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(4) Words importing persons shall include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(5) Any headings preceding the texts of the several Articles and Sections of this Note Resolution, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference, and shall not constitute a part of this Note Resolution, nor shall they affect its meaning, construction or effect.

(6) This Note Resolution shall be deemed to be executed in the State and shall be governed by and construed in accordance with the applicable laws of the State.

(7) Any reference to the payment of a Note shall be a reference to the payment of the principal thereof and interest, if any, thereon.

(B) Whenever the Authority is named or referred to, it shall be deemed to include its successors and assigns whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of, and other provisions for the benefit of, the Authority contained in this Note Resolution shall bind and inure to the benefit of any officer, board, commission, authority, agency or instrumentality to whom or to which there shall be transferred by or in accordance with law any rights, power or duty of the Authority, or of its successors or assigns, the possession of which is necessary or appropriate in order to comply with any such covenant, stipulation, obligation, agreement or other provision hereof.

(C) Nothing in this Note Resolution express or implied is intended or shall be construed to confer upon, or to give to, any person, other than the Authority, the Fiduciaries and the owners of the Notes, any right, remedy or claim under or by reason of this Note Resolution or any covenant, condition or stipulation hereof. All of the covenants, stipulations, promises and agreements herein contained by and on behalf of the Authority, shall be for the sole and exclusive benefit of the Authority, the Fiduciaries and the owners of the Notes.

(D) If any one or more of the covenants or agreements provided herein on the part of the Authority or any Fiduciary to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Note Resolution or of the Notes.

ARTICLE II

TERMS OF NOTES

Section 2.1 Authorization for Note Resolution and Notes. This Note Resolution and the issuance of Notes hereunder have been duly authorized by the Authority and the principal amount of Notes that may be issued hereunder is not limited except as provided herein or by law. The Authority has ascertained and it is hereby determined and declared that the adoption of this Note Resolution is necessary to carry out the powers and duties expressly provided by the Act, that each and every act, matter, thing or course of conduct as to which provision is made herein is necessary or convenient in order to carry out and effectuate the purposes of the Authority in accordance with the Act and to carry out powers expressly given in the Act, and that each and every covenant or agreement herein contained and made is necessary, useful or convenient in order to better secure the Notes and are contracts or agreements necessary, useful and convenient to carry out and effectuate the purposes of the Authority under the Act.

Section 2.2 Note Resolution to Constitute Contract. In consideration of the purchase and acceptance of the Notes by the EFC, the provisions of this Note Resolution shall be a part of the PFA between the Authority and the EFC and shall be deemed to be and shall constitute a contract among the Authority, the Trustee and the EFC. The Pledges made hereby and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Authority shall be for the equal benefit, protection and security of the owners of any and all of such Notes, each of which shall be of equal rank without preference, priority or distinction over any other thereof except as expressly provided in this Note Resolution.

Section 2.3 Obligation of Notes. (A) This Note Resolution creates an issue of Notes of the Authority and creates a continuing pledge and lien to secure the full and final payment of the principal of and interest, if any, on such Notes. The Notes shall be general obligations of the Authority payable from the moneys of the Authority available therefor and not otherwise pledged, which pledge shall be in all respects subordinate to the provisions of the Sewer System Revenue Bond Resolution and the lien and pledge of the Revenues (as such term is defined in the Sewer System Revenue Bond Resolution) created by the Sewer System Revenue Bond Resolution. In addition, the Notes may be paid in whole or in part from the proceeds of bonds or other notes issued by the Authority as contemplated by Section 5.1(B) hereof. The Notes shall not be a debt of the State or of the City and neither the State nor the City shall be liable thereon, nor shall the Notes be payable out of any funds other than those of the Authority pledged pursuant to this Note Resolution; and the Notes shall contain on the face thereof a statement to such effect.

(B) All amounts held in any Account, including investments thereof, are hereby pledged to secure the payment of the Notes in accordance with their terms and the provisions of this Note Resolution, subject only to the provisions of this Note Resolution permitting the application or exercise thereof for or to the purposes and on the terms and conditions herein set forth. To the fullest extent provided by the Act and other applicable laws, the money and property hereby pledged shall immediately be subject to the lien of such pledge without physical delivery thereof or further act and such lien shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice hereof.

Section 2.4 Authorization, Principal Amount and Purpose of Notes. There is hereby established and created an issue of Notes of the Authority to be known and designated as "Series 2021 Bond Anticipation Notes." Said Notes shall be issued in an aggregate principal amount to be set forth in the

Certificate of Determination and the Authority covenants and agrees that after the issuance of the Notes, no other Notes shall thereafter be issued pursuant to this Note Resolution. The Notes are being issued for the purpose of providing interim financing of the Project, including the making of deposits in the amounts, if any, required by the PFA and this Note Resolution.

Section 2.5 Terms and Provisions of Notes. The Notes shall be dated the date of delivery and shall mature without interest in accordance with the Project Finance Agreement. Interest shall not accrue on the unpaid principal amount of the Notes prior to the earlier of (a) the maturity date thereof or on such date as may be established pursuant to the Project Finance Agreement or (b) the date of earlier redemption of such unpaid principal amount, but in the event of any default in the payment of such unpaid principal amount on the earlier of the maturity date (or such date established as aforesaid) or the date of earlier redemption, the Authority shall be obligated to pay interest on such unpaid principal amount to the Holders of the Notes at the rate specified in the Project Finance Agreement on and after such maturity date (or such date established as aforesaid) or date of earlier redemption until such unpaid principal amount is paid in full. The Notes will be payable as to principal thereof and interest (in respect of overdue principal), if any, thereon at the principal office of the registrar and paying agent (the "Registrar and Paying Agent") in its capacity as paying agent to the Holder of the Notes at its address set forth on the books of the Authority maintained for registration of the Notes. For so long as the EFC is the Holder of the Notes, the EFC may, by written instruction to the Authority, direct the Authority to pay any principal of or interest (in respect of overdue principal), if any, on the Notes, to any bank acting as custodian of the EFC. Notwithstanding the foregoing, if authorized by the General Manager of the Authority pursuant to Section 2.8 hereof, the Notes may bear interest at such other rate or rates as the General Manager determines to be appropriate.

Section 2.6. Determination as to Private Sale. The Authority being of the opinion it is in the best interests of the Authority to finance the purposes for which the Note is to be issued through the State Revolving Fund administered by the EFC, due to the favorable terms available to the Authority only through such Fund, and upon the favorable recommendation of the New York State Comptroller, if required, the Authority hereby determines pursuant to Section 1187(2) of the Act that the private sale of the Notes is in the best interests of the Authority.

Section 2.7 Sale of Notes. (A) The Chairman, Vice-Chairman or General Manager of the Authority are each hereby authorized to execute and deliver the PFA in such form and with such changes, insertions and omissions, including a change to the aggregate principal amount of the Notes, as may be approved by such Chairman, Vice-Chairman or General Manager, and such execution shall be conclusive evidence of any approval required by this Section 2.7(A). The Notes are hereby authorized to be sold to the EFC on the terms and conditions set forth in the PFA.

(B) The Authorized Officers of the Authority are hereby severally authorized to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done all acts and things necessary, convenient or proper for carrying out this Note Resolution, the PFA and the issuance, sale and delivery of the Notes.

Section 2.8 Delegation to General Manager. There is hereby delegated to the General Manager of the Authority, subject to the limitations contained herein, the power with respect to the Notes to determine and carry out the following terms which shall be set forth in the Certificate of Determination:

(A) the principal amount of the Notes, which shall not exceed \$45,848,600 in the aggregate, the rate or rates of interest to be paid on the Notes, if the General Manager determines that the Notes

should bear interest, and the date and maturity date of the Notes; provided, however, that the maturity date of the Notes shall not be later than the third anniversary of the issuance of the Notes;

B) the disposition of the proceeds of the sale of the Notes for Costs of Issuance, Capital Costs in connection with the Project, deposit to the Construction Fund in accordance with the applicable provisions of the Sewer System Revenue Bond Resolution or such other uses as the General Manager may determine;

(C) the terms and conditions of the PFA and any other agreement, document or certificate reasonably required by the EFC in connection with the sale of the Notes; and

(D) any other provisions which may be required to be inserted in such Certificate of Determination by the provisions of this Note Resolution or any other necessary or desirable provisions not inconsistent or in conflict with the provisions of this Note Resolution; and the taking of any and all action necessary to provide for the issuance of the Notes, including the execution and delivery of the PFA and any required documents, certificates and agreements, closing documents and tax and arbitrage certificates.

ARTICLE III

GENERAL TERMS AND PROVISIONS OF NOTES

Section 3.1 Medium of Payment, Denominations, Maturities, Form and Date. (A) The Notes shall be payable with respect to interest (if any) and principal in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(B) The Notes shall be issued in registered form only. Purchasers will not receive certificates representing their interests in the Notes.

(C) The Notes shall not bear interest except as set forth herein.

(D) The Notes shall be lettered "R" and numbered consecutively from (1) upwards.

Section 3.2 Legends. The Notes may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Note Resolution as may be necessary or desirable to comply with custom or otherwise.

Section 3.3 Notes Mutilated, Destroyed, Stolen or Lost. In case any Note shall become mutilated or be destroyed, stolen or lost, the Authority shall execute a new Note of like interest rate, maturity, principal amount and other terms as the Note so mutilated, destroyed, stolen or lost. In the case of a mutilated Note, such new Note shall be delivered only upon surrender and cancellation of such mutilated Note. In the case of a Note issued in lieu of and substitution for a Note destroyed, stolen or lost, such new Note shall be delivered only upon the filing with the Authority of evidence satisfactory to the Authority that such Note has been destroyed, stolen or lost and proof of ownership thereof and upon furnishing the Authority with indemnity satisfactory to it. The person requesting the execution and delivery of a new Note pursuant to this Section 3.3 shall comply with such other reasonable regulations as the Authority may prescribe and pay such expenses as the Authority may incur in connection therewith. The Authority shall notify the Paying Agent of any Notes issued by it pursuant to this Section 3.3. All Notes so surrendered to the Authority shall be delivered to the Paying Agent and cancelled by it and evidence of such cancellation shall be given to the Authority.

Section 3.4 Cancellation and Destruction of Notes. All Notes paid by the Paying Agent shall be promptly cancelled. Notes so cancelled may at any time be cremated or otherwise destroyed by the Paying Agent, who shall execute a Certificate of cremation or destruction in duplicate by the signature of one of its Authorized Officers describing the Notes so cremated or otherwise destroyed, and one executed Certificate shall be filed with the Authority.

Section 3.5 Execution. The Notes shall be executed in the name of the Authority by the manual or facsimile signature of its Chairman, Vice-Chairman or General Manager, and its corporate seal (or a facsimile thereof) shall be thereunto affixed, imprinted, impressed, engraved or otherwise reproduced thereon and attested by the manual or facsimile signature of the Comptroller, Secretary, Executive Secretary or any Assistant Secretary, or in such other manner as may be required by law. Each Note shall bear thereon a certificate of authentication manually executed by the Paying Agent and Registrar. No Note shall be valid or obligatory for any purpose unless such certificate of authentication upon such Note shall have been duly executed by the Paying Agent and Registrar. In case any one or more of the officers

or employees who shall have signed or sealed any of the Notes shall cease to be such officer or employee before the Notes so signed and sealed shall have been actually delivered, such Notes may, nevertheless, be delivered as herein provided, and may be issued as if the person who signed or sealed such Notes had not ceased to hold such office or be so employed. Any Note may be signed and sealed on behalf of the Authority by such persons as at the actual time of the execution of such Note shall be duly authorized or hold the proper office in or employment by the Authority, although at the date of the Notes such persons may not have been so authorized or have held such office or employment.

Section 3.6 Registration of the Notes. Unless otherwise determined by the General Manager of the Authority, the Notes shall be initially issued in the form of a separate single authenticated fully registered note in a principal amount not to exceed \$45,848,600 registered in the name of the New York State Environmental Facilities Corporation.

Section 3.7 Transfer of Notes. Each Note shall be transferable only upon the books of the Authority, which shall be kept for such purpose at the corporate trust office of the Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney. Upon transfer of any such fully registered Note, the Authority shall issue in the name of the transferee a new fully registered Note or Notes. The Authority and the Registrar may deem and treat the person in whose name any Note shall be registered upon the books of the Authority as the absolute owner of such Note, whether such Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest, if any, on such Note and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid, and neither the Authority nor the Registrar shall be affected by any notice to the contrary.

Section 3.8 Regulations With Respect to the Exchanges and Transfers. In all cases in which the privilege of exchanging or transferring Notes is exercised, the Authority shall execute and the Registrar shall deliver Notes in accordance with the provisions hereof. All Notes surrendered in any such exchanges or transfers shall forthwith be cancelled by the Registrar. For every such exchange or transfer of Notes, the Authority or the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and may charge a sum sufficient to pay the cost of preparing each new Note issued upon such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privileges of making such exchange or transfer.

Section 3.9 Form of Notes. Subject to the provisions of this Note Resolution and the PFA, the Notes shall be in substantially the following form and tenor, with such insertions, variations, omissions and endorsements as may be required by this Note Resolution or the PFA or to comply with any changes made by the Chairman, Vice-Chairman or General Manager of the Authority pursuant to this Note Resolution:

Registered
No. R

Registered
\$

UNITED STATES OF AMERICA
STATE OF NEW YORK
BUFFALO SEWER AUTHORITY

E.F.C. Water Pollution Control Facility Note – 2021
(Bond Anticipation Note)

REGISTERED OWNER: NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION

MAXIMUM PRINCIPAL SUM:

DATED DATE: _____, 2021

MATURITY DATE: _____, 202_

The BUFFALO SEWER AUTHORITY (the “Recipient”), a public benefit corporation of the State of New York, hereby acknowledges itself indebted and for value received promises to pay to the Registered Owner named above, the lesser of (x) the Maximum Principal Sum set forth above and (y) the unpaid principal amount of all advances (the “Advances”) made by or on behalf of New York State Environmental Facilities Corporation (the “Corporation”) to the Recipient pursuant to [Article IV] of the Project Finance Agreement dated as of _____, 2021 (the “Project Finance Agreement”), between the Corporation and the Recipient (the lesser of such amounts being hereinafter referred to as the “Unpaid Principal Sum”), such amount to be paid on the Maturity Date stated above or upon such date as may be established pursuant to the Project Finance Agreement in accordance with [Exhibit E] thereto. All advances made by or on behalf of the Corporation to the Recipient pursuant to the Project Finance Agreement and all prepayments made on account of the Unpaid Principal Sum hereof shall be recorded by or on behalf of the Corporation and endorsed on the grid attached hereto in accordance with the terms of the Project Finance Agreement, which is hereby made a part hereof. Recordation of Advances, confirmed by a certificate of the Recipient given in accordance with the Project Finance Agreement, shall conclusively establish the principal amount outstanding hereunder. Interest shall not accrue on said Unpaid Principal Sum prior to the earlier of the Maturity Date or the date of earlier redemption of said Unpaid Principal Sum, but in the event of any default in the payment of said Unpaid Principal Sum on the earlier of the Maturity Date or the date of earlier redemption, the Recipient promises to pay interest on said Unpaid Principal Sum to the Registered Owner named above at the rate of _____ per centum (___%) per annum on and after said Maturity Date or date of earlier redemption until said Unpaid Principal Sum is paid in full. Principal of and interest (in respect of overdue principal), if any, on this Note shall be payable to the Registered Owner hereof, at its address set forth on the books of the Recipient maintained for registration of this Note. For so long as the Corporation is the Registered Owner of this Note, the Corporation may, by written instruction to the Recipient, direct the Recipient to pay any principal of and interest (in respect of overdue principal), if any,

on this Note to any bank acting as custodian of the Corporation. Both principal of and interest (in respect of overdue principal), if any, on this Note will be paid, without presentment, in funds available on or before the due date and in any lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

This Note shall be transferable or exchangeable, solely in accordance with the terms of the Project Finance Agreement, only upon presentation to the Recipient with a written transfer of title and the Recipient shall thereupon register this Note in the name of the transferee in his books and shall endorse a certificate of such registration hereon. Such transfer shall be dated and signed by the Registered Owner, or his legal representatives, and it shall be duly acknowledged or proved, or in the alternative the signature thereto shall be certified as to its genuineness by an officer of a bank or trust company located and authorized to do business in this State.

This Note may be called for redemption in whole or in part by the Recipient, at a redemption price equal to 100% of the principal amount outstanding, on any date prior to maturity after the giving of at least five (5) days written notice of the date of redemption by delivery of written notice to the Registered Owner.

This Note shall be subject to mandatory redemption prior to the Maturity Date pursuant to, and in accordance with, [Section 4.3(a)] of the Project Finance Agreement upon the date specified in a notice from the Corporation delivered to the Recipient not less than sixty (60) days prior to such redemption date upon the occurrence of either of the following events, as specified in such notice: (i) the Project financed or to be financed by Advances under this Note has been abandoned by the Recipient; or (ii) the Project financed or to be financed by Advances under this Note has been completed.

This Note shall further be subject to mandatory redemption in whole or in part, prior to maturity, pursuant to and in accordance with [Section 4.3(a)] and [Exhibit E] of the Project Finance Agreement, within five Business Days next succeeding the date the Recipient shall have received any proceeds from any Third Party Funding which are intended to pay, in whole or part, any costs of the Project which have been, or were intended to be, financed with the short-term loan made pursuant to the Project Finance Agreement; provided, however, that this Note shall be subject to such mandatory redemption solely to the extent of, and in an amount equal to, the proceeds of such Third Party Funding received by the Recipient on or after the date of the Recipient Note.

This Note is issued pursuant to the provisions of the Public Authorities Law of the State of New York, as amended from time to time, the note resolution adopted by the Recipient on May 5, 2021, authorizing the issuance of its Series 2021 Bond Anticipation Notes, and the Certificate of Determination executed by the Authorized Officer of the Recipient as of _____, 2021, as supplemented from time to time in accordance with the Project Finance Agreement.

This Note and the issue of which it is one are general obligations of the Authority payable from the moneys of the Authority available therefor and not otherwise pledged, which pledge shall be in all respects subordinate to the provisions of the Amended and Restated Sewer System Revenue Bond Resolution adopted by the Authority on May 5, 2021, as amended and restated (the "Bond Resolution"), and the lien and pledge of the Revenues (as such term is defined in said Bond Resolution) created by said Bond Resolution. The Notes are issuable in fully registered form only.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State of New York to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed, and that this Note, together with all

other indebtedness of the Recipient, is within every debt and other limit prescribed by the Constitution and laws of such State.

IN WITNESS WHEREOF, the Recipient has caused this Note to be signed by its Authorized Officer and its corporate seal (or a facsimile thereof) to be affixed, imprinted, engraved, or otherwise reproduced hereon and attested by its Secretary and this Note to be dated as of the Dated Date set forth above.

BUFFALO SEWER AUTHORITY

(SEAL)

By: _____

Name:

Title:

ATTEST:

Name:

Title:

FORM OF STATEMENT)

FOR VALUE RECEIVED, the Undersigned hereby sells, assigns and transfers unto _____ (Please insert Social Security or other identifying number of Assignee(s); _____) the within note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within note on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

Maturity Date:
Latest Extended Maturity Date:
Recipient: Buffalo Sewer Authority
SRF Project No.: 6602-28-00
Notation by:

[illegible]

*This grid may be extended if the number of Advances, payments and extensions so require.

CERTIFICATE OF AUTHENTICATION

It is hereby certified that this Note is one of the duly authorized issue of notes referred to in the Note Resolution and described on the reverse side hereof.

MANUFACTURERS AND TRADERS
TRUST COMPANY,
Paying Agent and Registrar

By: _____
Authorized Signature

ARTICLE IV

ACCOUNTS

Section 4.1 Establishment of Note Payment Account. (A) The Authority hereby establishes a special account, which shall be designated as the Note Payment Account. Said Note Payment Account shall be held by the Fiduciary, separate and apart from all other accounts, moneys and assets of the Authority, and shall be identified by the Authority and the Paying Agent and Registrar according to the designation herein provided in such manner as to distinguish such Note Payment Account from the accounts established by the Authority for any other of its obligations. All moneys or securities held by the Fiduciary pursuant to this Note Resolution shall be held and applied only in accordance with the provisions of this Note Resolution.

(B) Any amounts required to be deposited pursuant to Section 5.9 of this Note Resolution shall be deposited to the credit of the Note Payment Account.

(C) The proceeds of any notes, bonds or other obligations of the Authority issued to redeem the Notes, in whole or in part, as determined by the Authority, shall be deposited to the credit of the Note Payment Account.

(D) The Fiduciary shall, on or before the maturity date of the Notes, withdraw from the Note Payment Account an amount equal to the aggregate principal amount of and accrued interest, if any, on the Outstanding Notes, or, if the amount on deposit to the credit of the Note Payment Account is less than the aggregate principal amount of and accrued interest, if any, on the Outstanding Notes, the balance on deposit to the credit of the Note Payment Account, and shall apply such amount solely to the payment of Outstanding Notes.

Section 4.2 Deposits. (A) In lieu of investing in Investment Securities (except as provided in Section 7.4), the Fiduciary shall, at the written direction of an Authorized Officer, if permitted by law, deposit amounts or cause amounts to be deposited in the Note Payment Account held by the Fiduciary or under its control pursuant to the terms of this Note Resolution in interest-bearing time deposits or certificates of deposit, or shall make other similar banking arrangements with itself or a financial institution the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor. Each such interest-bearing time deposit or certificate of deposit or other similar banking arrangement shall permit the moneys so placed to be available at the times at which moneys are needed by the Authority to be expended and, except to the extent that any such deposits shall be insured by the United States of America or the federal corporations enumerated above on terms which in the judgment of the Authority (as expressed in written instructions to the Fiduciary) provide reasonable liquidity, all moneys in each such interest-bearing time deposit or certificate of deposit or other similar banking arrangement shall be continuously and fully secured under the laws of the State by Investment Securities (or other obligations rated in either of the two highest rating categories by a nationally recognized rating service) having a market value equal at all times to the amount of the deposit, certificate or other similar banking arrangement.

(B) In order to permit such amounts to be available for use at the time when needed, any amounts held under this Note Resolution by any Fiduciary, as such, may, if and as directed by the Authority, be deposited in the commercial banking department of such Fiduciary which may honor checks and drafts on such deposit with the same force and effect as if it were not such Fiduciary. Any such Fiduciary shall allow and credit on such amounts at least such interest, if any, as it customarily allows upon similar funds of similar size and under similar conditions or as required by law.

(C) All amounts deposited by any Fiduciary pursuant to Section 4.2(B) above shall be continuously and fully secured either (a) by lodging with any Federal Reserve Bank as custodian, as collateral security, Investment Securities having a market value (exclusive of accrued interest) not less than the amount of such deposit, or (b) in such other manner as may then be required by applicable federal or state laws and regulations regarding security for the deposit of public funds. It shall not be necessary, unless required by applicable law, for the Fiduciary to give security under this Section 4.3(C) for the deposit of any amounts to the extent that such deposit is insured by the Federal Deposit Insurance Corporation or its successor, or which are held in trust and set aside by the Fiduciary for the payment of the Notes.

(D) All amounts so deposited by the Fiduciary shall be credited to the Note Payment Account.

Section 4.3 Investment of Certain Funds. (A) Subject to the right of the Authority to direct the investment or deposit of funds hereunder, moneys in any Account shall be continuously invested and reinvested or deposited and redeposited by the Fiduciary in Investment Securities with a view toward maximizing yield (with proper preservation of principal) and minimizing the instances of uninvested funds. The Authority shall consult with the Fiduciary from time to time as to the investment of amounts in the Accounts established or confirmed by this Note Resolution. The Authority may direct the Fiduciary to, or in the absence of direction, the Fiduciary shall, invest and reinvest the moneys in any Account in Investment Securities so that the maturity dates shall coincide as nearly as practicable with the times at which moneys are needed to be expended. The Investment Securities purchased shall be held by the Fiduciary, or for its account as Fiduciary, and shall be deemed at all times to be part of such Account, and the Fiduciary shall keep the Authority advised as to the details of all such investments. The Fiduciary shall sell at the best price obtainable, or present for redemption, any Investment Securities purchased by it as an investment whenever it shall be necessary in order to provide moneys to meet any payment from such Account.

(B) Investment Securities purchased as an investment of moneys in any Account by the Fiduciary under the provisions of this Note Resolution shall be deemed at all times to be a part of such Account. Any income or interest earned and gains realized in excess of losses suffered by the Note Payment Account shall be retained therein and used for the purposes of such Account.

(C) The Fiduciary shall sell at the best price obtainable, or present for redemption or exchange, any Investment Security purchased by it pursuant to this Note Resolution whenever it shall be necessary in order to provide moneys to meet any payment or transfer from the Account for which such investment was made. The Fiduciary shall advise the Authority in writing, on or

before the twentieth day of each calendar month, of all investments held for the credit of each Account in its custody under the provisions of this Note Resolution as of the end of the preceding month.

Section 4.4 Valuation and Sale of Investments. (A) In computing the amount in any Account, obligations purchased as an investment of moneys therein shall be valued at the lower of cost or market value (exclusive of accrued interest).

(B) Except as otherwise provided herein, the Fiduciary shall sell at the best price obtainable, or present for redemption, any Investment Security whenever it shall be requested in writing by an Authorized Officer to do so or whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Account held by it.

ARTICLE V

PARTICULAR COVENANTS

The Authority covenants and agrees with the owners of the Notes as follows:

Section 5.1 Payment of Notes. (A) The Authority shall duly and punctually pay or cause to be paid the principal of every Note and the interest, if any, thereon, at the dates and places and in the manner stated in the Notes, according to the true intent and meaning thereof.

(B) The Authority will use its best efforts to issue, sell and deliver notes, bonds or other evidences of indebtedness so as to have available an amount, which when taken together with other moneys that may be available therefor, including moneys held pursuant to this Note Resolution, to pay the principal of and interest, if any, on the Notes as the same become due in accordance with the terms of the Notes.

Section 5.2 Extension of Payment of Notes. The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Notes or the time of the payment of any of the interest by the purchase or funding of such Notes, or claims for interest or by any other arrangement, and in case the maturity of any of the Notes or the time for payment of any such interest shall be extended, such Notes, or claims for interest shall not be entitled, in case of any default hereunder, to the benefit of this Note Resolution or to any payment out of the Account established pursuant to this Note Resolution, including the investments, if any, thereof, or out of any assets or revenues pledged hereunder (except moneys held in trust for the payment of particular Notes, or claims for interest pursuant to this Note Resolution) prior to benefits accorded to or the payment of the principal of all Notes Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Notes as shall not be represented by such extended claims for interest.

Section 5.3 Further Assurance. At any and all times the Authority shall, as far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming all and singular, the rights, assets, revenues and other moneys, securities, funds and property hereby pledged or assigned, or intended so to be, or which the Authority may become bound to pledge or assign.

Section 5.4 Power to Issue Notes and Pledge the Note Payment Account and Other Property. The Authority is duly authorized under all applicable laws to authorize and issue the Notes and to adopt this Note Resolution and to pledge the revenues and assets purported to be pledged hereby in the manner and to the extent herein provided. The revenues and assets so pledged are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created hereby, except for the lien and pledge of the Revenues created by the Sewer System Revenue Bond Resolution, and all corporate or other action on the part of the Authority to that end has been and will be duly and validly taken.

The Notes and the provisions of this Note Resolution are and will be the valid and legally enforceable obligations of the Authority in accordance with their terms and the terms of this Note Resolution. The Authority shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the amounts in the Note Payment Account and other assets and revenues, including rights therein pledged under this Note Resolution and all the rights of the Noteowners under this Note Resolution against all claims and demands of all persons whomsoever.

Section 5.5 Issuance of Additional Obligations. The Authority hereby expressly reserves the right to adopt one or more additional resolutions for its purposes, and reserves the right to issue other obligations for such purposes.

Section 5.6 General. The Authority shall do and perform or cause to be done and performed all acts and things required to be done and performed by or on behalf of the Authority under the provisions of the Act and this Note Resolution in accordance with the terms of such provisions.

Section 5.7 Waiver of Laws. The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of any stay or extension of law now or at any time hereafter in force which may affect the covenants and agreements contained in this Note Resolution or in the Notes, and all benefit or advantage of any such law is hereby expressly waived by the Authority.

Section 5.8 Tax Covenants. (A) The Authority shall at all times do and perform all acts and things necessary or desirable in order to assure any interest paid on the Notes shall, for the purposes of federal income taxation, be excludable from the gross income of the recipients thereof and exempt from such taxation.

(B) The Authority shall not permit at any time or times any of the proceeds of the Notes or any other funds of the Authority to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any Note to be an "arbitrage bond" as defined in Section 148 of the Code.

Section 5.9 Withdrawal from Net Revenue Fund. In the event that the Authority cannot issue notes, bonds or other obligations of the Authority to redeem the Notes at maturity, the Authority shall, at least 15 days prior to the maturity date of the Notes, cause to be transferred to the Paying Agent and Registrar for the credit of the Note Payment Account from the Net Revenue Fund, to the extent that moneys on deposit in the Net Revenue Fund are available therefor, or, to the extent that moneys on deposit in the Net Revenue Fund are insufficient to redeem the Notes, moneys shall be transferred to the Net Revenue Fund from the Surplus Fund, Rate Stabilization Fund, Capital Improvement Fund, Construction Fund, Debt Reserve Fund, Subordinated Indebtedness Fund and Operating Fund, in that order, to cure any such deficiency.

ARTICLE VI
CONCERNING FIDUCIARIES

Section 6.1 Paying Agent and Registrar; Appointment and Acceptance of Duties. (A) Manufacturers and Traders Trust Company, Buffalo, New York, is hereby appointed Paying Agent and Registrar. The Paying Agent and Registrar shall signify its acceptance of the duties and obligations imposed upon it by this Note Resolution by executing and delivering to the Authority a written acceptance thereof.

(B) The principal office of the Paying Agent and Registrar is designated as the office or agency of the Authority for the payment of the interest, if any, on and principal of the Notes.

Section 6.2 Responsibilities of Fiduciaries. The recitals of fact in this Note Resolution and in the Notes contained shall be taken as the statements of the Authority and no Fiduciary assumes any responsibility for the correctness of the same. No Fiduciary makes any representations as to the validity or sufficiency of this Note Resolution or of any Notes or coupons issued thereunder or in respect of the security afforded by this Note Resolution, and no Fiduciary shall incur any liability in respect thereof. No Fiduciary shall be under any responsibility or duty with respect to the issuance of the Notes for value or the application of the proceeds thereof or the application of any moneys paid to the Authority or for any losses incurred upon the sale or redemption of any securities purchased for or held in any Account under this Note Resolution. No Fiduciary shall be under any responsibility to any other Fiduciary. No Fiduciary shall be liable in connection with the performance of its duties under this Note Resolution except for its own willful misconduct, gross negligence or willful default.

Section 6.3 Evidence on Which Fiduciaries May Act. (A) Each Fiduciary shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document believed by it to be genuine, and to have been signed or presented by the proper party or parties. Each Fiduciary may consult with counsel, who may or may not be counsel to the Authority, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by such Fiduciary under this Note Resolution in good faith and in accordance therewith.

(B) Whenever any Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Note Resolution, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of an Authorized Officer, and such Certificate shall be full warrant for any action taken or suffered in good faith under the provisions of this Note Resolution upon the faith thereof; but in its discretion the Fiduciary may in lieu thereof accept other evidence of such fact or matter or acquire such further or additional evidence as to it may seem reasonable.

(C) Except as otherwise expressly provided in this Note Resolution, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision thereof by

the Authority to any Fiduciary shall be sufficiently executed if executed in the name of the Authority by an Authorized Officer.

Section 6.4 Compensation. The Authority shall pay to such Fiduciary from time to time reasonable compensation for all services rendered under this Note Resolution, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Note Resolution. The Authority further agrees to indemnify and save each Fiduciary harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and which are not due to its willful misconduct, gross negligence or bad faith.

Section 6.5 Certain Permitted Acts. Any Fiduciary may become the owner of any Notes or any other obligations of the Authority with the same rights it would have if it were not a Fiduciary. To the extent permitted by law, any Fiduciary may act as Fiduciary for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Noteowners or the owners of any other obligations of the Authority or to effect or aid in any reorganization growing out of the enforcement of the Notes or any other obligations of the Authority or this Note Resolution, whether or not any such committee shall represent the owners of a majority in principal amount of the Notes then outstanding.

Section 6.6 Merger or Consolidation. Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a part or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank or trust company organized under the laws of any state of the United States or a national banking association and in the case of a successor Paying Agent, shall meet the requirements of Section 6.7(A), and shall be authorized by law to perform all the duties imposed upon it by this Note Resolution, shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

Section 6.7 Resignation or Removal of Paying Agent and Registrar and Appointment of Successor. (A) The Paying Agent and Registrar may at any time resign and be discharged of the duties and obligations created by this Note Resolution by giving at least sixty days' written notice to the Authority. The Paying Agent and Registrar may be removed at any time by an instrument filed with the Paying Agent and Registrar and signed by the Authority. Any successor Paying Agent and Registrar shall be appointed by the Authority, and (subject to the requirements of Section 6.1) shall be a bank or trust company organized under the laws of any state of the United States or national banking association, having a capital and surplus aggregating at least \$5,000,000, and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Note Resolution.

(B) In the event of the resignation or removal of any Paying Agent and Registrar, such Paying Agent and Registrar shall pay over, assign and deliver any moneys held by it as Paying Agent and Registrar to its successor, or if there be no successor, to the Authority. In the event that

for any reason there shall be a vacancy in the office of any Paying Agent and Registrar, the Authority shall act as such Paying Agent and Registrar.

Section 6.8 Evidence of Signatures of Noteowners and Ownership of Notes. (A) Any request, consent, revocation of consent or other instrument which this Note Resolution may require or permit to be signed and executed by the Noteowners may be in one or more instruments of similar tenor, and shall be signed or executed by such Noteowners in person or by their attorneys-in-fact appointed in writing. Proof of (i) the execution of any such instrument, or of an instrument appointing any such attorney, or (ii) the holding by any person of the Notes shall be sufficient for any purpose of this Note Resolution (except as otherwise therein expressly provided) if made in the following manner, or in any other manner satisfactory to the Authority, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

(1) the fact and date of the execution by any Noteowner or his attorney-in-fact of such instrument may be proved by the certificate, which need not be acknowledged or verified, of an officer of a bank or trust company or of any notary public or other officer authorized to take acknowledgements of deeds, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority; and

(2) the amount of Notes registered in the name of any person executing any instrument as a Noteowner, the date of registration of such ownership and the numbers and other identification thereof, may be proved by a certificate, which need not be acknowledged or verified, in form satisfactory to the Authority, executed by a member of a financial firm or by an officer of a bank, trust company, insurance company or financial corporation or other fiduciary, showing at the date therein mentioned that such person exhibited to such member or officer or had on deposit with such fiduciary the Notes described in such certificate. Such certificate may be given by a member of a financial firm or by an officer of any bank, trust company, insurance company or financial corporation or other fiduciary with respect to Notes owned by it, if acceptable to the Authority.

(B) Any request or consent by the owner of any Note shall bind all future owners of such Note in respect of anything done or suffered to be done by the Authority or any Fiduciary in accordance therewith.

Section 6.9 Preservation and Inspection of Documents. All documents received by any Fiduciary under the provisions of this Note Resolution shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Authority, any other Fiduciary, and any Noteowners and their agents and their representatives, any of whom may make copies thereof.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Findings and Determinations. The Authority hereby finds and determines that the sale of the Notes to the EFC pursuant to the PFA in accordance with this Resolution is fair and reasonable and in the best interests of the Authority and that, on the basis of such finding and determination, the Notes shall be sold to the EFC. The Authority hereby authorizes the Chairman, Vice-Chairman or General Manager of the Authority to negotiate, execute and deliver to the EFC, or cause to be delivered to the EFC, the PFA for and on behalf of the Authority, on such and terms and conditions as the person executing the same shall determine to be customary and prudent taking into account the best interests of the Authority, including any supplements or amendments thereto, provided that the purchase price shall not be less than one hundred percent (100%) of the aggregate principal amount of the Notes sold thereunder. The execution of the PFA and delivery to the EFC thereof shall constitute conclusive evidence of such determination.

A copy of the PFA as executed and delivered shall be maintained in the records of the Authority.

Section 7.2 Official Intent. The Authority may pay certain expenses incurred in connection with the Project prior to the date the Notes are issued out of the Authority's general operating fund. The Authority intends to reimburse any such original expenditure with the proceeds of the Notes.

Section 7.3 Additional Findings and Determinations. The Authority hereby finds, determines and declares: (a) that the Notes are issued under and secured by this Note Resolution; (b) that the terms of sale do not contemplate an underwriting of the Notes; (c) that it is in the best interest of the Authority to sell, and the interest of the Authority will be best served by a sale of, the Notes to the EFC as provided in the PFA; and (d) that all provisions and conditions of applicable law have been complied with in the issuance of the Notes.

Section 7.4 Defeasance. (A) If the Authority shall pay or cause to be paid to the owners of all Notes then outstanding, the principal and interest, if any, to become due thereon, at the times and in the manner stipulated therein and in this Note Resolution, then the covenants, agreements and other obligations of the Authority to the Noteowners shall be discharged and satisfied.

(B) Notes for the payment of which moneys shall have been set aside and which money shall be held in trust by the Paying Agent (through deposit by the Authority of funds for such payment or otherwise) at the maturity thereof, shall be deemed to have been paid within the meaning and with the effect expressed in Section 7.4(A) above.

Section 7.5 Moneys Held for Particular Notes. The amounts held by any Fiduciary for the payment due on any date with respect to Notes shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the owners of the Notes entitled thereto.

Section 7.6 No Recourse on the Notes. No recourse shall be had for the payment of the principal of or interest, if any, on the Notes or for any claim based thereon or on this Note Resolution against any member or officer of the Authority or any person executing the Note.

Section 7.7 Effective Date. This Note Resolution shall take effect from and after its adoption.

The adoption of the foregoing resolution was moved by Member _____, seconded by Member _____, and duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

CERTIFICATE

I, _____, Secretary of the Buffalo Sewer Authority in the County of Erie, State of New York, HEREBY CERTIFY that the foregoing annexed extract from the Minutes of a meeting of the Board of Directors of said Authority, duly called and held on May 5, 2021, and at which a quorum was present and acting throughout and the resolution contained therein is a true and complete copy of the resolution thereupon adopted and recorded in the Minutes of said Authority and that the foregoing extract has been compared by me with the original minutes as officially recorded in my office in the Minute Book of said Authority and is a true, complete and correct copy thereof and of the whole of said original minutes so far as the same relate to the subject matters referred to in said extract, and that said resolution has not been amended or repealed but is in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Authority this ____ day of _____, 2021.

(SEAL)

Eleanor Petrucci, Secretary

ITEM NO. 8

**BUFFALO SEWER AUTHORITY RESOLUTION APPROVING SETTLEMENT AGREEMENT
WITH HONEYWELL INTERNATIONAL INC. AND CITY OF BUFFALO GENERALLY
REGARDING THE BUFFALO RIVER AND CITY SHIP CANAL REMEDIATION AND
HABITAT RESTORATION**

- WHEREAS: Honeywell International Inc., the Buffalo Sewer Authority and the City of Buffalo have negotiated a Settlement Agreement in connection with alleged discharges by Honeywell International Inc., the City of Buffalo and/or the Buffalo Sewer Authority into the Buffalo River and area waterways over the last many decades, and a copy of the Settlement Agreement is attached hereto for reference; and
- WHEREAS: After due consideration, and upon the advice of the City of Buffalo Corporation Counsel's Office, the Common Council of the City of Buffalo, unanimously approved the Settlement Agreement, along with ancillary documentation, in its session duly held on April 27, 2021, and a copy of the Summary/Main Agenda Item 21-388 is attached hereto for reference; and
- WHEREAS: The General Manager, and upon the advice of counsel, respectfully requests that the Board of the Buffalo Sewer Authority authorize execution and delivery of the Settlement Agreement by the Buffalo Sewer Authority, in accordance with its terms and conditions.
- NOW THEREFORE
- BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to execute and deliver the Settlement Agreement, substantially in form and substance as is attached (together with all Exhibits referenced in the Settlement Agreement), for and on behalf of the Buffalo Sewer Authority.
- BE IT FURTHER
RESOLVED: That the General Manager and any other employee, representative or agent of the Buffalo Sewer Authority is hereby authorized to take any other action necessary or appropriate to implement this resolution.

MOTION TO	APPROVE
MADE BY	MR. ROOSEVELT
2 ND BY	MS. PETRUCCI
AYES	3 NOES 0

Board Meeting of May 5, 2021

STATE OF NEW YORK

)

) SS.:

COUNTY OF ERIE

)

I, the undersigned Secretary of the Buffalo Sewer Authority (the "Authority"), DO HEREBY CERTIFY that I have compared the annexed extract of the minutes of the meeting of the Authority, including the resolution contained therein, held the 5th day of May, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Authority and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY that all members of said Authority Board had due notice of said meeting, said meeting was duly held, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and public notice of the time and place of said meeting was duly given in accordance with such Article 7, and there was a quorum of the members of the Authority Board present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of May, 2021.

Eleanor Petrucci
Secretary of the Board

ITEM NO. 9

PAYMENT FROM JUDGMENT AND CLAIMS

WHEREAS: Board approval is required for charges made against the Buffalo Sewer Authority's current budget for services and/or materials received during a prior fiscal year; and

WHEREAS: The following services were received during a prior fiscal year and charged to the 2020-2021 budget account no. 00800108-480214:

VENDOR	INVOICE	AMOUNT
Mollenberg-Betz	38450	\$1,624.00

; and

WHEREAS: The Executive Secretary and staff recommend the above payment from the Judgment and Claims account.

NOW THEREFORE
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby approves the above payment from the Judgment and Claims account.

MOTION TO APPROVE

MADE BY MS. PETRUCCI

2ND BY MR. ROOSEVELT

AYES 3 NOES 0

Board Meeting of May 5, 2021

ITEM NO. 10

AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT FOR EMISSIONS TESTING ON MULTI-HEARTH INCINERATORS AND AUXILIARY BOILERS AT THE BIRD ISLAND TREATMENT FACILITY

WHEREAS: The Buffalo Sewer Authority solicited a Request for Proposals (RFP) from air testing firms for emissions testing of multi-hearth incinerators and auxiliary boilers located at the Bird Island Treatment Facility; and

WHEREAS: The Authority requires testing of these units periodically to meet regulatory requirements for air emissions; and

WHEREAS: Sealed proposals were received and opened on March 16, 2021, from the following vendors:

Vendor	Bid
Gammie Air Monitoring, LLC	\$ 95,765.00
Civil & Environmental Consultants, Inc.	\$177,800.00
Montrose Air Quality Services	Disqualified Bid

; and

WHEREAS: Gammie Air Monitoring, LLC, the lowest responsible bidder, holds extensive experience in the air monitoring and testing field, specifically for multi-hearth incinerators; and

WHEREAS: Gammie Air Monitoring, LLC has previous experience with emissions testing from Buffalo Sewer Authority's multi-hearth incinerators and auxiliary boilers; and

WHEREAS: The Treatment Plant Administrator and staff have reviewed the scope of the proposals and recommend the lowest responsible bidder, Gammie Air Monitoring, LLC for emissions testing services for the fiscal year of July 1, 2021 through June 30, 2022 with renewal option of four (4) years as outlined in the RFP.

NOW THEREFORE
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to enter and execute a contract with Gammie Air Monitoring, LLC for professional services as outlined for the emissions testing of multi-hearth incinerators and auxiliary boilers at the Bird Island Treatment Facility at a cost not to exceed \$95,765.00. Funds for this contract will be charged to account no. 00380106-432004.

MOTION TO APPROVE

MADE BY MS. PETRUCCI

2ND BY MR. ROOSEVELT

AYES 3 NOES 0

Board Meeting of May 5, 2021

ITEM NO. 11

AUTHORIZATION TO REPLACE THE MAIN BOARD OF THE ENVIROSIGHT CAMERA SYSTEM

- WHEREAS: On February 11, 2015, the Board of the Buffalo Sewer Authority designated EnviroSight Rovver, the original equipment manufacturer, and/or their local representative as a sole source for equipment repairs and supplies for the EnviroSight Rovver televising equipment needed for sewer televising and maintenance; and
- WHEREAS: The Buffalo Sewer Authority Purchasing Department verified and updated the Sole Source information on January 2, 2021; and
- WHEREAS: The Director of Sewer Maintenance and the Assistant Superintendent of Sewer Maintenance have determined there is a need to replace the main board of Rovver X Portable for EnviroSight Rovver televising system. A quote was requested and received from Joe Johnson Equipment LLC, the authorized local representative, in the amount of \$3,659.50 for the equipment and installation; and
- WHEREAS: Monies payable to date to Joe Johnson Equipment LLC, in the fiscal year 2020-2021 are \$28,998.21. This purchase will bring the total monies payable for purchases to \$32,657.71; and
- WHEREAS: The Director of Sewer Maintenance, Assistant Superintendent of Sewer Maintenance and staff reviewed the quote received and recommend the purchase and installation of these parts and further recommend authorization for total monies payable to Joe Johnson Equipment, LLC for the current 12-month aggregate period not to exceed \$32,657.71; and
- WHEREAS: Board approval is required on purchases over \$20,000.00.

NOW THEREFORE
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to purchase the needed main board of the Rovver X Portable for the Envirosight Rovver televising system from Joe Johnson Equipment, LLC, at a total cost of \$3,659.50. Account nos. 00670105-466107 and 00670106-443301 will be charged for this purchase. The Board further authorizes total monies payable to Joe Johnson LLC, for current aggregate 12-month period not to exceed \$32,657.71.

MOTION TO APPROVE

MADE BY MR. ROOSEVELT

2ND BY MS. PETRUCCI

AYES 3 NOES 0

Board Meeting of May 5, 2021

ITEM NO. 12

REPORT ON BIDS RECEIVED - ALBANY STREET OVERFLOW SEWER IMPROVEMENT PROJECT

WHEREAS: Formal bids were advertised and solicited for the Albany Street Overflow Sewer Improvement Project. The following bids were received and publicly opened by the Buffalo Sewer Authority on Wednesday, March 31, 2021 at 11:30 AM:

Contractor	Base Bid
Mark Cerrone, Inc.	\$1,953,644.00
Kandey Company, Inc.	\$2,079,079.00

; and

WHEREAS: The proposals were received and the contract will be awarded on the basis of unit bid and lump sum prices. The bids do not reflect the true amount of the contract; and

WHEREAS: The Buffalo Sewer Authority's Engineering consultant, Wendel, reviewed the packages and recommends awarding this contract to the low bidder, Mark Cerrone, Inc. for the base bid of \$1,953,644.00; and

WHEREAS: The General Manager and Junior Sanitary Engineer have reviewed the consultant's recommendation and concur with the recommendation provided by Wendel to award the contract to the low responsible bidder, Mark Cerrone, Inc.

NOW THEREFORE
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to enter into and execute a contract with Mark Cerrone, Inc. for the Albany Street Overflow Sewer Improvement Project at a cost not to exceed \$1,953,644.00. Expenses for this contract shall be charged to account no. 02000529-490740.

MOTION TO	APPROVE
MADE BY	MR. ROOSEVELT
2 ND BY	MS. PETRUCCI
AYES	3 NOES 0

Board Meeting of May 5, 2021

ITEM NO. 13

CONFIRMATION OF APPOINTMENTS

TYPIST (PROVISIONAL)
CITY HALL ADMINISTRATION
\$40,178 PER ANNUM
EFFECTIVE: APRIL 19, 2021

LEAH ROSSI
660 CRESCENT AVE.
BUFFALO, NY

TYPIST (PROVISIONAL)
CITY HALL ADMINISTRATION
\$40,178 PER ANNUM
EFFECTIVE: MAY 3, 2021

DESIREE BRIGGS
45 ENGLEWOOD AVE.
BUFFALO, NY

WHEREAS: The preceding appointments were made by the General Manager since the last Board Meeting; and

WHEREAS: The General Manager requests confirmation of each appointment.

NOW THEREFORE
BE IT RESOLVED: That the preceding appointments are hereby confirmed by the Board of the Buffalo Sewer Authority.

MOTION TO APPROVE

MADE BY MS. PETRUCCI

2ND BY MR. ROOSEVELT

AYES 3 NOES 0

Board Meeting of May 5, 2021

ITEM NO. 14

ADJOURNMENT OF MEETINGMOTION TO APPROVEMADE BY MS. PETRUCCI2ND BY MR. ROOSEVELTAYES 3 NOES 0

Board Meeting of May 5, 2021

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into between the City of Buffalo (the "City" as defined below), the Buffalo Sewer Authority ("BSA" as defined below), and Honeywell International Inc. ("HON" as defined below or "Honeywell").

WITNESSETH:

WHEREAS, a predecessor(s) to Honeywell previously owned and/or operated, among other things, a dye factory located in Buffalo, New York that is alleged to have been responsible for certain releases into the Buffalo River; and

WHEREAS, the City and/or BSA owned and/or operated, among other things, a sewer system that is alleged to have discharged to the Buffalo River; and

WHEREAS, the Great Lakes Legacy Act ("GLLA"), 33 U.S.C. Sec. 1268 *et seq.*, provides for certain federal funding to perform remediation of contaminated sediments associated with Great Lakes Areas of Concern; and

WHEREAS, Honeywell, together with the Buffalo Niagara Riverkeeper ("Riverkeeper"), has served as a Non-federal Sponsor pursuant to GLLA for purposes of a remedial investigation and feasibility study ("RIFS"), remedial design, and implementation of a sediment remedy for the Buffalo River and the City Ship Canal; and

WHEREAS, the United States Department of Interior ("DOI"), the New York State Department of Environmental Conservation ("NYSDEC") and the Tuscarora Nation have alleged that HON, the City, and BSA are some of the multiple persons and entities potentially responsible under laws of the United States and the State of New York for Remediation and natural resource damages relating to environmental conditions with regard to the Buffalo River; and

WHEREAS, in order to allocate their potential responsibilities, expedite certain actions and thereby minimize the significant cost and expense associated with prolonged and complicated litigation pertaining to the allegations and circumstances set forth in this Agreement, the City, BSA, and HON desire to enter into this Agreement.

NOW, THEREFORE, the Parties, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration the sufficiency of which is hereby acknowledged, agree as follows:

I. DEFINITIONS

Terms Defined Elsewhere: Unless otherwise expressly defined in this Agreement: (i) all terms found in CERCLA shall have the meaning ascribed to them in CERCLA or in the regulations promulgated thereunder, and (ii) all terms not found in CERCLA shall have their usual and customary meaning.

"Buffalo River" shall mean the approximately 6.2 miles of the Buffalo River, from just upstream of the confluence of the Buffalo Creek with Cazenovia Creek to the Buffalo Harbor, including also the entire City Ship Canal, up to their ordinary high water mark, as further depicted in **EXHIBIT 1** hereto.

"BSA" shall mean the Buffalo Sewer Authority.

"City" shall mean the City of Buffalo, New York.

"Effective Date" shall mean the last date on which this Agreement has been executed by each of the City, BSA, and HON as shown on the executed signature pages attached to this Agreement.

"Environmental Laws" shall mean, without limitation: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. Sec. 9601, *et seq.* ("CERCLA"), the Solid Waste Disposal Act 42 U.S.C. Sec. 6901, *et seq.* also known as the Resource Conservation and Recovery Act ("RCRA"), the Oil Pollution Act of 1990, 33 U.S.C. Sec. 2701, *et seq.*, ("OPA"), the Clean Water Act (Federal Water Pollution Act), 33 U.S.C. Sec. 1251, *et seq.* ("FWPCA"), and the New York Environmental Conservation Law 27-1301, *et seq.* (including without limitation Subpart 375-2: Inactive Hazardous Waste Disposal Site Remedial Program); (ii) any rules and regulations promulgated pursuant to any of the above statutes; (iii) any other applicable federal, state or tribal treaty, directive, law, statute, ordinance, rule or

regulation relating to Remediation, Remediation Costs and/or Natural Resource Damages, including any common law cause of action providing for any right or remedy with respect to any Remediation, Remediation Costs or Natural Resource Damages; and (iv) any applicable judicial or administrative decisions, orders, decrees, directives, permits, licenses or judgments, in each case, including any amendment which may be adopted or promulgated after the Effective Date of this Agreement.

"HON" shall mean Honeywell International Inc., together with all of its subsidiaries, affiliates, predecessors (merged, acquired or otherwise), successors (merged, acquired or otherwise), and assigns.

"Natural Resource Damages" or "NRD" shall mean any claims, losses, liabilities, payments, judgments and amounts paid in settlement arising out of, resulting from or attributable to claims by the United States, the State of New York, the Tuscarora Nation or any other governmental entity attributable to any actual or alleged injury to, destruction of, loss of or loss of use of natural resources, and the costs of assessment thereof, under any Environmental Laws.

"Parties" shall mean the City, BSA, and HON. The City, BSA, and HON are each referred to herein as "Party" and collectively as "Parties."

"Person(s)" shall mean any individual, association, joint venture, partnership, corporation, professional corporation, limited liability company, trustee, trust, executor, administrator or any other entity, not otherwise denominated herein.

"Remediation" shall mean, without limitation, dredging, capping, backfilling, cleanup, removal, disposal, reclamation, re-vegetation or other restoration, study, investigation, design, monitoring, reporting, operations, maintenance and any other response or corrective action as those terms are defined under Environmental Laws.

"Remediation Costs" shall mean, without limitation, any and all costs of dredging, capping, backfilling, cleanup, removal, disposal, reclamation, re-vegetation or other restoration, study, investigation, design, monitoring, reporting, operations, maintenance and any other costs of response or corrective action as those terms are defined under Environmental Laws.

"Site" shall mean the Buffalo River. Site shall also include, for NRD purposes only, the Times Beach Confined Disposal Facility. The Times Beach Confined Disposal Facility is not included within the scope of the indemnity or release by HON for Remediation and Remediation Costs pursuant to Section II.F. of this Agreement. The Site does not include any facility or property on which any facility currently or formerly owned, operated or otherwise used by the City or BSA is or was located.

II. OBLIGATIONS OF THE PARTIES

A. EXECUTION AND RECORDATION OF CONSERVATION EASEMENTS BY THE CITY

The City, and to the extent applicable, the BSA, shall execute, in a form acceptable to the NRD Trustees, and Hon shall record upon being provided with necessary documents in recordable form executed by the City (and to the extent applicable the BSA), conservation easements with restrictions that comply with the requirements of New York State Environmental Conservation Law, Article 49, Title 3 with regard to: (i) approximately 22 undeveloped acres of the property known as the Houghton Park property; and (ii) certain Upstream non-park parcels, which are identified on **Exhibit 2** hereto, (collectively the "Conservation Easements"). The City and the BSA shall use reasonable efforts to complete the drafting of the Conservation Easements with restrictions and to obtain all necessary approvals so as to permit the recording of the Conservation Easements within 90 days following the entry of a consent decree between the NRD Trustees, Honeywell and CSX Corporation ("Consent Decree"). In the event that the Consent Decree is not approved by the court or in the event that the Conservation Easements are not executed and duly recorded in the land records of the Erie County Clerk's office on or before December 31, 2022, this Agreement shall be null and void and of no effect.

B. PERFORMANCE OF ANNUAL INSPECTIONS

Beginning in the year 2021 and running through the year 2028, HON, or a consultant hired by HON, shall perform on an annual basis an inspection of the locations listed on **Exhibit 3** hereto so as to enable HON, or a consultant hired by HON, to satisfactorily complete the inspection checklists (as may be amended/adapted for site(s) specific clarification objectives in consultation with the New York State Department of Environmental Conservation as the inspections

get underway and as expectations are established) also attached as part of **Exhibit 3** hereto. City shall receive notice of the timing of the inspections and shall have the right to accompany HON or HON's consultant on each of the eight annual inspections. After performing each of the eight annual inspections, HON shall, each year for a period of each of the same eight years, submit a report to the New York State Department of Environmental Conservation documenting its findings regarding the items on the inspection checklists. Within 10 days of the delivery of such report to the NYSDEC, HON shall also deliver copies of the report to the City and the BSA. HON is only responsible for performing the first eight annual inspections and submitting the reports for the first eight annual inspections. Neither HON nor the City and the BSA shall be liable or responsible for performing any work or paying any costs associated with any maintenance or other activities that are deemed necessary as a result of the findings of the inspections. By performing the inspections and completing the checklists for the first eight annual inspections, HON is not assuming any liability for the locations it inspects. Beginning in the year 2029 and running through the year 2045, the City or the City's consultant shall perform on an annual basis an inspection of the locations listed on Exhibit 3 hereto so as to enable the City or the City's consultant to satisfactorily complete the inspection checklists (as may be amended/adapted for site(s) specific clarification in consultation with the New York State Department of Environmental Conservation) also attached as part of Exhibit 3 hereto. HON shall receive notice of the timing of the inspections and shall have the right to accompany the City or the City's consultant on the annual inspections conducted in the years 2029 through 2045. After performing each of the annual inspections in the years 2029 through the year 2045, the City shall submit a report to the New York State Department of Environmental Conservation documenting its findings regarding the items on the inspection checklists. Within 10 days of the delivery of such report to the NYSDEC, the City shall also deliver a copy of such report to HON and the BSA. The City is only responsible for performing the annual inspections in the year 2029 through the year 2045 and submitting the reports for those years. Neither the City (and/or BSA) or HON shall be liable or responsible for performing any work or paying any costs associated with any maintenance or other activities that are deemed necessary as a result of the findings of the inspections. By performing the inspections and completing the checklists for the annual inspections for the years

2029 through 2045, neither the City nor BSA is assuming any liability for the locations it inspects. The foregoing obligations to perform annual inspections are subject to the possibility that the requirement for annual inspections is terminated by pertinent authority prior to the year 2045.

C. RECORDATION OF DECLARATIONS OF RESTRICTIVE COVENANTS AND CONSENT FOR REMEDIAL DEED RESTRICTIONS

Contemporaneously with the execution of the Conservation Easements referenced herein, the City, and to the extent applicable, the BSA, shall execute the Declarations of Restrictive Covenants and the Consents for Remedial Deed Restrictions attached hereto as **Exhibit 4**. HON shall then record the executed Declarations of Restrictive Covenants.

D. THE CITY'S AND BSA'S OBLIGATION TO COOPERATE

The City and BSA shall reasonably cooperate with HON to enable HON to fulfill its defense and indemnification obligations to the City and BSA, including without limitation by providing access to non-privileged documents within the City or BSA's possession, custody or control that are relevant to the Site and/or this Agreement.

E. HON'S RELEASE OF CLAIMS AND COVENANT NOT TO SUE

Effective upon the recordation of the Conservation Easements and Declarations of Restrictive Covenants and the Consents for Remedial Deed Restrictions pursuant to Sections II.A and II.C of this Agreement, and subject to the City and or the BSA's satisfaction of their obligations pursuant to Section II.B of this Agreement for the annual inspection periods commencing in 2029 and concluding no later than 2045 (and subject to the possibility that the requirement for annual inspection is terminated earlier by pertinent authority), HON hereby releases and covenants not to sue the City and BSA for Remediation, Remediation Costs and NRD for the Site, provided however, that HON does not release or covenant not to sue with regard to those matters expressly excluded from HON's indemnification set forth in Section II.F, as limited below by Section II.G.

F. HON'S INDEMNIFICATION OF THE CITY AND BSA

For purposes of HON's indemnification of the City and BSA, HON shall only mean Honeywell International Inc. and its successors and assigns, and shall not include any of its subsidiaries or affiliates. Effective upon the recordation of the Conservation Easements and the Declarations of Restrictive Covenants and Consents for Remedial Deed Restrictions pursuant to Sections II.A and II.C of this Agreement, and subject to the limitations set forth in Section II.G of this Agreement, and the City and or the BSA's satisfaction of its obligations pursuant Section II.B of this Agreement for the annual inspection periods commencing in 2029 and concluding no later than 2045 (and subject to the possibility that the requirement for annual inspection is terminated earlier by pertinent authority), HON shall defend, indemnify and hold harmless the City and BSA from any and all claims (including, but not limited to, governmental orders), suits, actions, or demands, as well as any resulting judgments and damages, (collectively the "Claims") by any Person or governmental entity against the City or BSA for Remediation, Remediation Costs and NRD for the Site. The indemnification and protections by HON set forth in this Section II F. shall be extended to and apply to the respective members, directors, officers and employees of the City and the BSA. Notwithstanding anything to the contrary in this Agreement, HON's covenants contained in this section of the Agreement shall remain in full force and effect after, and survive the expiration or termination of this Agreement (except in the event the Agreement is null and void pursuant to Section II.A), subject to any applicable statutes of limitations.

G. LIMITATIONS ON HON'S INDEMNITY

HON's obligation to defend, hold harmless and indemnify the City and BSA set forth in Section II.F of this Agreement shall not include Claims arising from or relating to:

- 1) Property damage, personal injury, and criminal claims;
- 2) Remediation of, or NRD for, any facility previously or currently owned, operated, or used by the City or BSA;
- 3) Any releases from any source after the completion of GLLA remediation in 2015.

- 4) Contamination or remediation of releases located anywhere other than in the Site, including without limitation, in Buffalo River tributary streams or other tributary waterbodies, the Niagara River, Great Lakes, uplands (including confined disposal facilities or other disposal facilities used for Buffalo River sediment disposal excepting the Times Beach Confined Disposal Facility for purposes of NRD only). The indemnification provided for the Times Beach Disposal Facility is limited to Claims against the City and BSA for NRD and does not cover Remediation, Remediation Costs, or any other matters arising from the Times Beach Disposal Facility.

H. RESERVATION OF RIGHTS

Except as expressly set forth otherwise in this Agreement, each of the Parties reserves all of its claims and causes of action against the other; provided, however, such reservations do not adversely affect the respective rights and obligations of the Parties hereto.

I. THE CITY'S AND BSA'S RELEASE OF CLAIMS AND COVENANT NOT TO SUE

Upon the Effective Date, in exchange for HON's release of Claims against and indemnification of the City and BSA, and HON's performance of its covenants herein, and subject to the provisions of this Agreement, the City and BSA hereby release and covenant not to sue HON from any and all claims and causes of action for Remediation, Remediation Costs and NRD relating to the Site. The City and BSA further covenant not to sue any other entity or individual with regard to the those matters that are covered by: (i) HON's release of the City and BSA under this Agreement, and (ii) HON's indemnification of the City and BSA under this Agreement. The Times Beach Confined Disposal Facility is excluded from the definition of "Site" for purposes of this section only, except with reference to NRD. Further excluded from the City's and BSA's release and covenant not to sue are claims arising from or related to:

- 1) Property damage, personal injury, and criminal claims;
- 2) Remediation of, or NRD for, any facility previously or currently owned, operated, or used by HON or an indemnitee of HON;
- 3) Any releases from any source after the completion of GLLA remediation in 2015.

- 4) Contamination located anywhere other than in the Site, including without limitation, in Buffalo River tributary streams or other tributary waterbodies, the Niagara River, Great Lakes, uplands (including also confined disposal facilities or other disposal facilities used for Buffalo River sediment disposal excepting the Times Beach Confined Disposal Facility for purposes of NRD only).

J. THE CITY'S AND BSA'S REPRESENTATIONS REGARDING THIRD-PARTY LIABILITY AND NON-SETTLEMENT

The City and BSA represent and warrant that they have not indemnified, or assumed the liability of any other Person with regard to the Site, and that they do not have information, as of the Effective Date of this Agreement that they are otherwise responsible for the Remediation Costs of any other Person, not a Party in connection with the Site.

III. MISCELLANEOUS

A. RESERVATIONS AGAINST THIRD PARTIES

Nothing in this Agreement shall restrict or limit in any way any cause of action or other rights, whether contingent or absolute, matured or inchoate, determined or undetermined or known or unknown as of the Effective Date of this Agreement, that the City, BSA or HON may have against any Person, not a Party to this Agreement in connection with the Site.

B. NO ADMISSIONS

Nothing in this Agreement is intended by the Parties to be, or shall be deemed to constitute, an admission of fact or law by any Party. By entering into this Agreement, the City, BSA, and HON do not admit any liability with respect to the matters addressed in this Agreement or with respect to any other matters relating to the Site and or to the Times Beach Confined Disposal Facility.

C. BINDING EFFECT

The Parties to this Agreement represent that they have read and understand the contents of this Agreement; that the terms of this Agreement, including the preamble, are contractual and

not mere recitals; that they have executed it knowingly, voluntarily and upon the advice of counsel; that they have investigated to their full satisfaction all facts surrounding the claims and controversies resolved by this Agreement; provided, however, that the foregoing shall not prevent or otherwise estop any Party from commencing an action to enforce the terms of this Agreement or from pursuing claims against any third party or Person, otherwise reserved in this Agreement.

D. ASSIGNMENT

The rights and obligations set forth in this Agreement shall be binding on successors and assigns of the Parties hereto. No assignment of any right or obligation hereunder, whether accruing prior to or after such assignment, will release the assigning Party from any liability or obligation under this Agreement, without the prior written consent of the other Party(ies) hereto. No assignment or other transfer by any Party of its rights or obligations hereunder shall be effective, unless and until (i) written notice thereof has been given to the other Party(ies) hereto, and (ii) the transferee or assignee has executed and delivered to the other Party(ies) hereto a binding assumption in writing of all obligations of the assignor hereunder and an agreement to perform such obligations. Such assignment shall also be subject to the consent of the other Party(ies) hereto, which consent shall not be unreasonably conditioned or withheld. Any attempted assignment or transfer of rights or obligations by any Party which fails to comply with the foregoing requirements will be ineffective and void.

E. MODIFICATION

This Agreement, and the rights and the obligations of the Parties hereunder, may not be amended, altered, or modified unless such amendment, alteration, or modification is evidenced by a written instrument executed by all of the Parties hereto.

F. ELECTION OF REMEDIES

In any action by one or more of the Parties to enforce the terms of this Agreement, the prevailing Party shall be entitled to either specific performance of the terms of this Agreement or to actual damages and costs, excluding, however, consequential and punitive damages, but not both.

G. NOTICES

Any notice, request, demand for payment, instruction, or other document to be given hereunder by any Party to any other Party shall be in writing and shall be given and delivered the next business day, by commercial courier delivery, such as UPS or Federal Express or U.S. Postal Service, to the following respective addresses, unless amended by notice in writing to the respective Parties:

If to THE CITY: Corporation Counsel for the City of Buffalo
1100 City Hall
65 Niagara Square
Buffalo, New York 14202

If to BSA Buffalo Sewer Authority
Attention: General Manager
1038 City Hall
65 Niagara Square
Buffalo, New York 14202

If to HONEYWELL: Global Remediation Director
Honeywell International Inc.
115 Tabor Rd, Morris Plains, NJ 07950

and

Chief Environmental Counsel
Honeywell International Inc.
300 S. Tryon Street, Suite 500/600
Charlotte, NC 28202
Attention: Charles Anthony

H. CONFIDENTIALITY

The terms of this Agreement are not deemed to be confidential due to the public nature of the City and the BSA, and are subject to the New York State Freedom of Information Law.

I. ENTIRE AGREEMENT

This Agreement, including all Exhibits attached hereto, represents and expresses the entire agreement of the Parties as to the subject matter addressed herein and may be modified or

changed only by a written instrument signed on behalf of all Parties. No promises or inducements, as to the matters covered by this Agreement, have been offered or made except as set forth in this Agreement. This Agreement is executed without reliance upon any other statement or representation by any Party and is knowingly and voluntarily executed by the Parties.

J. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York without regard to choice of law principles. The Parties shall endeavor to resolve all disputes arising from this Agreement by mediation for a period of 120 days following notice of a dispute, and in the event of litigation, each Party hereby agrees to submit to the jurisdiction of the State of New York Supreme Court, or the United States District Court for the Western District of New York, with venue in Erie County, New York, and to accept service of process in accordance with the New York Civil Practice Laws and Rules, or the Federal Rules of Procedures, as applicable.

K. THIRD-PARTY BENEFICIARIES

Nothing in this Agreement shall be construed as inuring to the benefit of or as giving rise to any rights or causes of action to any Persons who are not Parties (it being understood that, for purposes of this Section III.K., affiliates, successors and/or assigns of the Parties are not third parties).

L. COUNTERPARTS

This Agreement may be executed and delivered in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute the same instrument.

M. INTEGRATION OF RECITALS

All of the recitals to this Agreement are incorporated by this reference in their entirety as terms and conditions of this Agreement.

N. NO WAIVER

No waiver by any Party, whether express or implied, of any of the provisions of this Agreement or of any breach or default of any Party shall constitute a continuing waiver or a

waiver of any other provisions of this Agreement or of any breach or default of any Party, and no such waiver by any Party shall prevent such Party from enforcing any and all provisions of this Agreement or from acting upon the same or any subsequent breach or default of any Party.

O. MUTUALLY DRAFTED AGREEMENT

This Agreement has been negotiated at arm's length between the Parties and each has been represented by counsel. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that drafted the applicable provision is not applicable and is waived. All headings of any part or section of this Agreement is for convenience only, and shall not be determinative of the meaning or interpretation of any text in this Agreement.

P. AUTHORIZATION TO SIGN

The undersigned representative of each Party certifies that he or she is fully authorized to execute this Agreement on behalf of their respective party thereby, intending to be bound by its terms.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the dates set forth below.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

THE CITY OF BUFFALO

By: _____

DATE _____

NAME: _____

ITS: _____

STATE OF New York)
) ss:
COUNTY OF Erie)

On the _____ day of _____ in the year 20____, before me, the undersigned, to personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledges to me that he executed the same and that by his signature on the instrument, he, or the person upon behalf of whom he acted, executed the instrument.

Notary Public, State of New York

BUFFALO SEWER AUTHORITY

BY: _____

DATE _____

NAME: _____

ITS: _____

STATE OF New York)
) ss:
COUNTY OF Erie)

On the _____ day of _____ in the year 20____, before me, the undersigned, to personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledges to me that he executed the same and that by his signature on the instrument, he, or the person upon behalf of whom he acted, executed the instrument.

Notary Public, State of New York

HONEYWELL INTERNATIONAL INC.
A Delaware Corporation

By: _____

DATE _____

NAME: _____

ITS: _____

State of _____)
County of _____) ss.

Before me, a notary public, in and for said county and state, personally appeared _____ a duly authorized representative of Honeywell International Inc., a Delaware Corporation, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Honeywell International Inc.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____, 20__.

Notary Public

EXHIBIT 1



The City of Buffalo Common Council

1413 City Hall
Buffalo, NY 14202

SCHEDULED

AGENDA ITEM 21-388

Meeting: 04/27/21 02:00 PM

Department: Law

Category: Permission Request

Prepared By: Janet Poydock

Initiator: Janet Poydock

Sponsors:

DOC ID: 13855 P

Buffalo River/City Ship Canal - Resolving Potential City of Buffalo and Buffalo Sewer Authority Liabilities for Environmental Remediation and Habitat Restoration and Related Matters Associated with Various Cleanup/Remediation/Restoration Projects/Related Objectives

Re: Buffalo River/City Ship Canal - Resolving Potential City of Buffalo and Buffalo Sewer Authority Liabilities for Environmental Remediation and Habitat Restoration and Related Matters Associated With Various Cleanup/Remediation/Restoration Projects/Related Objectives

The City of Buffalo, along with Buffalo Sewer Authority, is positioned to resolve potential liabilities associated with Environmental Remediation and Habitat Restoration at the Buffalo River and City Ship Canal.

INFORMATIONAL BACKGROUND: The informational background associated with this suggested path forward for resolving potential City of Buffalo and Buffalo Sewer Authority liabilities associated with alleged historic activities having adverse impacts upon the Buffalo River and the City Ship Canal emerges primarily from two components as follows:

(1.) The approximately \$43,000,000 Buffalo River and City Ship Canal remediation, dredging, and habitat restoration Great Lakes Legacy Act ("GLLA") project that was undertaken by the United States Environmental Protection Agency, United States Army Corp of Engineers, Buffalo-Niagara Riverkeeper and Honeywell International beginning in the Buffalo River and City Ship Canal around the year 2011 and continuing through first stages of completion in the year 2015 with post-completion field review, monitoring and follow-up in the years 2017 and 2020, and

(2.) Claims made by the United States of America on behalf of the United States Department of Interior ("DOI"), the State of New York and the Commissioner of the New York State Department of Environmental Conservation (the "State") and the Tuscarora Nation relating to damages for injury to, destruction of, or loss of natural resources resulting from the alleged past release of hazardous substances and oil into the Buffalo River, the City Ship Canal and peripherally and incidentally to the Times Beach Confined Disposal Facility. The DOI, the State and the Tuscarora Nation are referred to collectively as the "Natural Resource Damages Trustees" or as the "NRD Trustees" or as the "Trustees".

Resolving City of Buffalo and Buffalo Sewer Authority potential liabilities broadly related to the GLLA project and to the claims of the NRD Trustees is generally set forth in a Settlement Agreement (copy attached for your review) between City/BSA and Honeywell International which said Settlement Agreement is dependent upon and premised upon a Consent Decree

expected to be entered into in the United States District Court Western District of New York by Honeywell, CSX Transportation, Inc., United States of America, State of New York and the Tuscarora Nation. The City and BSA are in the category of "Other Settling Parties" under the Consent Decree and are being conferred the standard release and covenants under the Consent Decree as well as the benefits set forth in the Settlement Agreement by way of specified release and or indemnity provisions from Honeywell.

City of Buffalo obligations under the Settlement Agreement and as an Other Settling Party are in three primary components:

(A.) City to provide one Conservation Easement on approximately 24 acres of unimproved parkland property in Houghton Park and a second Conservation Easement on approximately 3.5 acres of non-parkland property situate along the north bank of the Buffalo River between the easterly boundary line of Houghton Park and the West Seneca town line with a break for one parcel along that trajectory which is not owned by the City and another break at South Ogden Street (copies of the proposed Conservation Easements and copies of the associated Grantee's Work Plans and copies of the Baseline Documentation Reports are attached for your review, along with a Community Fact Sheet summary with points of contact information being made available to the members of the public, it being noted generally that the restoration, still in formulation, is expected to be in the nature of habitat restoration and management of invasive species), and

(B.) City jointly by the City Engineer and the Director of Environmental Affairs (or their respective designees) will conduct annual monitoring from the year 2029 through the year 2045 at up to 12 specific locations along or in the Buffalo River and City Ship Canal with the agreement being that Honeywell will perform the annual monitoring for the years 2021 through 2028 (a copy of the locations list and the monitoring checklists are attached as Exhibit 3 to the Settlement Agreement for your review), and

(C.) City to execute for recordation Declarations of Restrictive Covenants and Consents for Remedial Deed Restrictions at up to 6 locations within the Buffalo River or on City-owned land near the riverbank to protect remediated, capped and or restored habitat from purposeful intrusive disruption or disturbance (copies of the proposed Declarations of Restrictive Covenants and Consents for Remedial Deed Restrictions are attached as Exhibit 4 to the Settlement Agreement for your review).

Because the Conservation Easement for the non-park parcels situate along the north bank of the Buffalo River would include certain portions of certain dead-ended streets or rights of way running to and or through wooded areas at the north bank of the Buffalo River, public streets/rights of way abandonment procedures will need to be followed and observed for the following dead-ended street "nubs" and public rights of way: Cable Street (being 50 feet wide and described as attached hereto), Barnard Street (being 50 feet wide and described as attached hereto), Fenton Street (being 50 feet wide and described as attached hereto), Holly Street (being 50 feet wide and described as attached hereto), Willett Street (being 50 Feet wide and described

as attached hereto), S. Pontiac Street (being 50 feet wide and described as attached hereto) and S. Pierce Street and adjoining unlisted parcel right of way being described as attached hereto) and as shown on the surveys attached to the Conservation Easement. In addition, the abandonment and closing of public streets/rights of way is a matter that Your Honorable Body is hereby respectfully requested to refer to the City of Buffalo Planning Board for their review and recommendation.

We are respectfully hereby requesting and recommending that Your Honorable Body approve the proposed abandonment of the foregoing described dead-ended street “nubs” and public rights of way in order to facilitate the granting of the Conservation Easement along the north bank of the Buffalo River, provided that the City of Buffalo Planning Board recommends the discontinuance of the public streets/rights of way and further provided that no significant objections are raised at a public hearing to be scheduled as follows:

1. In accordance with standard public streets/rights of way abandonment procedures, it is also hereby respectfully requested that Your Honorable Body set a date for a public hearing and to direct the publication of a ten (10) day notice of said hearing to be marked “Notice of Hearing” and that said hearing shall be conducted at 2:00 P.M. on April 13, 2021 in the Council Chambers or virtually.

In the interest of timing and anticipating that Your Honorable Body is willing to facilitate and approve this matter, I have taken the liberty to prepare a Resolution together with a Notice of Public Hearing for your action.

Forwarded separately but attached are the following documents:

- a. Resolution setting Public Hearing
- b. Notice of Public Hearing

In the event that no significant objection is raised at the April 13, 2021 public hearing with respect to the dead-ended streets being included in the Conservation Easement, we are respectfully requesting that Your Honorable Body authorize the Conservation Easement over the aforementioned public rights of way, in addition to the rest of the non-park parcels and the Conservation Easement for the unimproved portion of Houghton Park.

Also in connection with these overall actions and related documentation and settlements described in this communication, we are hereby also requesting that your Honorable Body authorize the City’s Law Department, the Office of Strategic Planning and the Department of Public Works, Parks and Streets to follow through with the foregoing objectives and agreements and to authorize the City to: (i) enter into and execute the Settlement Agreement, (ii) execute the Conservation Easements, (iii) execute the Baseline Documentation Reports, (iv) execute the Declarations of Restrictive Covenants and Covenants for Remedial Deed Restrictions, (v) enter into, negotiate, and take all steps and also prepare and or enter into any/all agreements and or related documents deemed necessary to facilitate the objectives set forth above; and (vi)

authorize the Mayor and or pertinent City staff as applicable to execute the same.

HISTORY:

03/30/21	Common Council	REFERRED TO CD	
Referred to CD & CPBD			
04/06/21	Community Development Committee		W/O REC
04/13/21	Common Council	REFERRED TO CD	
Recommitted			
04/19/21	Planning Board	RECOMMENDED APP	
04/20/21	Community Development Committee		W/O REC