

**MINUTES OF THE REGULAR MEETING**  
**OF THE**  
**BUFFALO SEWER AUTHORITY**  
**April 14, 2004**

49924.....50039



# **BUFFALO SEWER AUTHORITY**

**April 14, 2004**

**REGULAR MEETING**

**9:00 A.M.**

**1038 CITY HALL**

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## CALL OF THE ROLL

[illegible][illegible]

The meeting was called to order at 9:00A.M. A quorum was present.

## ITEM NO. 1

Motion to Adopt the Minutes of the Meeting of March 17, 2004

MOTION TO	<u>ADOPT</u>		
MADE BY	<u>MR. KENNEDY</u>		
2 <sup>ND</sup> BY	<u>MR. ROOSEVELT</u>		
AYES	4	NOES	0

Board Meeting of April 14, 2004

			ITEM NO. 2			
INFORMATIVE: TEMPORARY INVESTMENTS (CERTIFICATES OF DEPOSIT AND TREASURY BILLS)						
March 31, 2004						
ISSUE DATE	MATURITY DATE	TOTAL DAYS	AMOUNT	BANK	RATE	
<b>CAPITAL IMPROVEMENT FUND</b>						
#####	MONEY MARKET		\$ 378,578.12	CHASE	1.21%	Cc
<b>CONSTRUCTION FUND</b>						
#####	MONEY MARKET		\$ 13,396,219.11	CHASE	1.21%	Cc
<b>LIABILITY AND CASUALTY RESERVE FUND</b>						
#####	MONEY MARKET		\$ 1,136,968.29	CHASE	1.21%	Cc
<b>OPERATING FUND</b>						
#####	MONEY MARKET		\$ 3,149,930.46	CHASE	1.21%	Cc
<b>TRUST &amp; AGENCY FUND</b>						
#####	MONEY MARKET		\$ 16,218.53	CHASE	1.21%	Cc
<b>SURPLUS FUND</b>						
			\$ 420.01	MTB Funds		
#####	02-Jun-04	117	\$ 3,719,871.00	MTB Securities	1.00%	\$
			\$ 3,720,291.01			
<b>NET REVENUE FUND</b>						
			\$ 437.14	MTB Funds		
#####	26-Apr-04	126	\$ 1,428,830.43	MTB Securities	1.03%	\$
#####	25-May-04	61	\$ 1,002,383.84	MTB Securities	0.95%	\$
#####	23-Jun-04	119	\$ 2,649,477.42	MTB Securities	0.97%	\$
#####	01-Jul-04	210	\$ 7,620,435.32	MTB Securities	1.13%	\$
			\$ 12,701,564.15			
<b>DEBT RESERVE FUND</b>						
				SERIES F		
#####	30-Jun-04	366	\$ 1,179,697.42	U.S. TREAS. NOTE	0.90%	\$
			(1,157,000.00 par)			
				SERIES I		
#####	15-Aug-08	####	\$ 7,350,000.00	MTB Securities	3.25%	\$
				SERIES H		
#####	15-Apr-32		\$ 2,825,593.00	SLG	4.35%	
				SERIES J		
#####	15-Nov-33		\$ 774,061.00	SLG	3.85%	
			\$ 12,129,351.42			
<b>CONSTRUCTION FUND</b>						
				SERIES H		
			\$ 694.12	MTB Funds		
#####	01-Apr-04	35	\$ 1,928,217.43	MTB Securities	0.95%	\$
#####	08-Apr-04	35	\$ 2,005,126.80	MTB Securities	0.96%	\$
#####	15-Apr-04	35	\$ 458,571.60	MTB Securities	0.96%	\$
#####	15-Apr-04	29	\$ 799,381.33	MTB Securities	0.96%	\$
#####	22-Apr-04	36	\$ 1,356,696.32	MTB Securities	0.96%	\$
#####	29-Apr-04	35	\$ 1,201,888.90	MTB Securities	0.95%	\$
			\$ 7,750,576.50			
<b>CONSTRUCTION FUND</b>						
				SERIES J		
			\$ 978.91	MTB Funds		
#####	08-Apr-04	14	\$ 226,917.02	MTB Securities	0.95%	\$
			\$ 227,895.93			REC



## ITEM NO. 3

**CONSIDERATION OF THE OPERATING FUND BUDGET FOR FISCAL YEAR 2004 - 2005**

BE IT RESOLVED: That the Board of the Buffalo Sewer Authority does hereby adopt the attached Operating Fund Budget and Five-Year Capital Plan for the fiscal year commencing July 1, 2004.

MOTION TO	_____	APPROVE	_____
MADE BY	_____	MR. KENNEDY	_____
2 <sup>ND</sup> BY	_____	MR. ROOSEVELT	_____
AYES	_____	4	NOES _____ 0

Board Meeting of April 14, 2004

## ITEM NO. 4

**PROPOSED AMENDED "SCHEDULE OF SEWER RENTS AND OTHER CHARGES"**

WHEREAS: The Buffalo Sewer Authority has hereto adopted a "Schedule of Sewer Rents and Other Charges" pursuant to Section 1180 of Title 8, Article 5 of Chapter 870 of the Laws of 1939 of the State of New York; and

WHEREAS: Such "Schedule of Sewer Rents and Other Charges" now requires adjustments to provide the required revenue to finance our Operating Fund Budget for the fiscal year July 1, 2004 to June 30, 2005.

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority does hereby adopt the attached proposed amended "Schedule of Sewer Rents and Other Charges".

MOTION TO	<u>APPROVE</u>		
MADE BY	<u>MR. KENNEDY</u>		
2 <sup>ND</sup> BY	<u>MR. ROOSEVELT</u>		
AYES	<u>4</u>	NOES	<u>0</u>

Board Meeting of April 14, 2004

**PROPOSED AMENDED SCHEDULE OF SEWER RENTS**  
**AND OTHER CHARGES**  
**FOR 2004-2005**

TO PROVIDE FUNDS FOR THE FIXED CHARGES AND FOR THE OPERATION AND MAINTENANCE OF THE ENTIRE SEWER SYSTEM IN THE CITY OF BUFFALO AND ALL OF THE BUFFALO SEWER AUTHORITY FACILITIES FOR THE CONVEYANCE, TREATMENT AND DISPOSAL OF SEWAGE AND STORM WATER OPERATED BY THE BUFFALO SEWER AUTHORITY.

I. SEWER RENTS FOR PREMISES SITUATED WITHIN THE LIMITS OF THE CITY OF BUFFALO

(a) \$12,050,000 shall be collected from all real property in the City of Buffalo by apportioning the said amount upon such property within the City of Buffalo as the same is set down on the last completed annual assessment rolls of the City, except that no ad valorem sewer rent shall be assessed against real property exempt from real property taxes pursuant to subdivision one of section four hundred, sections four hundred four, four hundred six, four hundred twelve, four hundred eighteen, subdivision one section four hundred twenty, section four hundred forty-six, four hundred fifty-two, four hundred sixty-two and four hundred seventy-seven of the real property tax law.

(b) In the event a lot, parcel of land, building or premises, other than a city department discharging sewage, water or other liquids into the sewer system, either directly or indirectly, is a user of water supplied by the Buffalo Water Board or from any other source, and the quantity of water used is measured by a water meter acceptable to the Buffalo Sewer Authority, then in each such case, the quantity of water used, as measured by said meter, shall be used to determine the sewer charge or rental, and the charge for such use shall be as follows: the first four thousand (4,000) cubic feet of water used per quarter year shall bear a sewer charge or rental of \$48.30, and any water used in excess thereof shall bear a sewer charge or rental of \$11.09 per thousand cubic feet (\$.0111 per cubic foot);

Provided that the minimum charge shall be \$16.10 per month if the meter is read monthly and \$48.30 per quarter year if the meter is read quarterly.

II. SEWER RENTS FOR PREMISES SITUATED OUTSIDE THE LIMITS OF THE CITY OF BUFFALO

(c) An annual service charge for the privilege of connecting with the facilities of the Authority, using for each \$1,000 of assessed valuation as determined on the last completed annual assessment, the same rate of \$2.71239 per \$1,000 of assessed valuation for 2004-2005.

(d) In the event a lot, parcel of land, building or premises, other than a city department discharging sewage, water or other liquids into the sewer system, either directly or indirectly, is a user of water supplied by the Buffalo Water Board or from any other source, and the quantity of water used is measured by a water meter acceptable to the Buffalo Sewer Authority, then in each such case, the quantity of water used, as measured by said meter, shall be used to determine the sewer charge or rental, and the charge for such use shall be as follows: the first four thousand (4,000) cubic feet of water used per quarter year shall bear a sewer charge or rental of \$48.30, and any water used in excess thereof shall bear a sewer charge or rental of \$11.09 per thousand cubic feet (\$.0111 per cubic foot);

Provided that the minimum charge shall be \$16.10 per month if the meter is read monthly and \$48.30 per quarter year if the meter is read quarterly.

III. GENERAL PROVISIONS

(e) In the event a lot, parcel of land, building or premises discharging sewage, water or other liquids into the sewage system, either directly or indirectly, is a user of water supplied by the Buffalo Water Board, and the quantity of water used is not measured by a water meter acceptable to the Buffalo Sewer Authority, then in each such case, the sewer charge or rental shall be 91.28 percent of the water bill for regular accounts and shall be 142.30 percent of the water bill for qualified senior citizen accounts.

(f) In the event a lot, parcel of land, building or premises discharging sewage, water or other liquids into the sewerage system, with directly or indirectly, uses water obtained from a source other than the Buffalo Water Board, and the water so obtained is not measured by a water meter acceptable to the Buffalo Sewer Authority, then, in each such case, the owner or other interested party shall, at his own expense, furnish, install, and maintain a water meter or other water or sewage measuring device acceptable to the Buffalo Sewer Authority and the quantity of water used, as measured by said meter, or as otherwise determined, shall be used to determine the sewer charge or rental and there shall be charged an amount determined as set forth in paragraphs (c) and (e) as the case may be.

(g) In the event a lot, parcel of land, building or premises discharging sewage, water or other liquids into the sewerage system, either directly or indirectly, uses water in excess of 4,000 cubic feet per quarter year and it can be shown to the satisfaction of the Buffalo Sewer Authority, that a portion of the water as measured by the water meter does not and cannot enter the sewerage

system, then the Buffalo Sewer Authority may determine in such manner as may be found practicable the percentage of metered water entering the sewerage system and the quantity of water used to determine the sewer charge or rental shall be that percentage, so determined, of the quantity of water measured by the water meter, or the Buffalo Sewer Authority may require or permit the installation of additional meters or measuring devices in such a manner as to determine the quantity of water or sewage actually entering the sewerage system, in which case the quantity of water used to determine the sewer charge or rental shall be the quantity of water actually entering the sewerage system and so determined.

(h) In the event a lot, parcel of land, building or premises discharges into the sewerage system sewage or other wastes which, in the opinion of the Buffalo Sewer Authority, contain unduly high concentrations or any substances which add to the operating costs of the sewage disposal works, then the Authority may elect to establish special rates of charge, based on the quantity of these substances, which rate of charge may be established in such manner as the Authority may elect, or it may elect to exclude such sewage or other wastes from its facilities.

(i) As a condition of a Buffalo Discharge Elimination System Permit (BPDES), as defined in the Sewer Regulations of the Buffalo Sewer Authority, a user may be required to pay an industrial waste surcharge for discharging a waste stream exhibiting a strength of waste greater than normal domestic sewage. The Industrial Waste Surcharge Formula reflecting the Treatment Plant unit costs for treatment of Biochemical Oxygen Demand (BOD<sub>5</sub>) Total Suspended Solids (TSS) and Total Phosphate (TPO<sub>4</sub>) is as follows:

$$\text{Surcharge} = 8.34 \text{ QMGY} (0.095 (\text{BOD}_5\text{-250}) + 0.124 (\text{TSS-250}) + 0.015 (\text{TPO}_4\text{-15.35}))$$

\$0.095 Cost/lb. for treatment of BOD<sub>5</sub>

\$0.124 Cost/lb. for treatment of TSS

\$0.015 Cost/lb. for treatment of TPO<sub>4</sub>

QMGY - Annual total industrial and sanitary discharge - water retention

BOD<sub>5</sub> - Average concentration of BOD<sub>5</sub> in waste stream discharged to the Buffalo Sewer Authority

TSS - Average concentration of TSS in waste stream discharged to the Buffalo Sewer Authority

TPO<sub>4</sub> - Average concentration of TPO<sub>4</sub> in waste stream discharged to the Buffalo Sewer Authority

Surchargeable concentrations are as follows:

BOD<sub>5</sub> - Over 250 mg/L; TSS - Over 250 mg/L; TPO<sub>4</sub> - Over 15.35 mg/L

This Formula shall be applied in computing the Buffalo Industrial Waste Surcharge subsequent to July 1, 2003 and ending June 30, 2004 for all users that discharge a waste stream exhibiting a strength of waste greater than normal domestic sewage. In addition, this Formula with the above rates will be used to calculate all monthly, quarterly, semiannual, and annual accounts subsequent to July 1, 2004.

(j) Any user who violates the Sewer Regulations of the Buffalo Sewer Authority or the conditions of the permits issued there under shall be subject to fines as specified in said regulations.

(k) Whenever sewage or other wastes result in conditions in the sewerage system as to cause blockage or a substantial reduction in the flow, charges for the work necessary to eliminate such blockage or reduction in flow may be made, based upon costs of labor, materials, equipment hire, insurances, and other overhead, against the property or premises that caused the discharge of such sewage or other wastes into the sewerage system.

(l) Where sewer facilities have been installed to serve improved and unimproved property and have been paid for in whole or in part by the Buffalo Sewer Authority, a charge shall be made based on a proportionate share of the original cost, determined by the foot frontage of the parcel served, or by the area of such parcels, or by such other method the Authority determines more equitable, as a condition to a permit for a connection to said sewer facilities.

(m) An application and inspection fee of \$100.00 for a residential sewer permit, a \$200.00 fee for a commercial sewer permit, and a \$300.00 fee for an industrial sewer permit shall be paid at the time said application is filed.

(n) All persons owning or operating a pump truck or other transport vehicle and desiring to discharge wastes, directly or indirectly, into sewerage facilities of the Authority shall first secure a valid Truckers Discharge Permit after paying an annual permit fee of \$100.00. In addition to said permit fee, a separate charge shall be billed based upon the quantity and character of the waste discharged and, if applicable, the point of discharge.

The following Surcharge Rates are for such waste haulers who are located outside the City of Buffalo:

DISCHARGE LOCATION	TOTAL SUSPENDED SOLIDS	BOD <sub>5</sub>	TOTAL PHOSPHATE
Inlet/South Buffalo Pump	\$0.1994/lb	\$0.1516/lb.	\$0.0238/lb.
Mixing Tank	\$0.1851/lb	\$0.0961/lb.	\$0.0238/lb.
Thickener/Digester	\$0.1930/lb	\$0.1000/lb.	\$0.0238/lb.

The above surcharge rates, along with costs incurred when handling, testing, conveying, and administering each Waste hauler, will be used to determine the cost per gallon of each wastestream. The Waste hauler User Charges for various wastestreams are as follows:

1. Septage and portable toilet wastes - The rate of \$0.030 per gallon discharged will be assigned to all permitted septage and portable toilet waste haulers.
2. Grease trap wastes - The rate of \$0.10 per gallon discharged will be assigned to all permitted grease trap waste haulers.
3. Sludge wastes - This rate will vary dependent on strength and volume. Sludge rates will be calculated using the parameter costs for the mixing tank location.
4. Miscellaneous Wastes - This rate will vary dependent on strength of waste, volume and discharge location.

These rates will be used for all permits effective July 1, 2004.

(o) In the event a lot, parcel of land, building, structure, premises or person threatens to discharge or discharges sewage or waste into or near the Buffalo Sewer Authority's publicly owned treatment works, either directly or indirectly, which in the opinion of the Buffalo Sewer Authority will or is likely to bypass, upset, harm or endanger the facilities of the Buffalo Sewer Authority, then such person or the owner or operator of such lot, parcel of land, building, structure or premises shall pay to the Buffalo Sewer Authority charges for any and all clean up and removal costs actually incurred by the Buffalo Sewer Authority, including but not limited to labor, materials, equipment, insurances or laboratory services for the (i) containment or attempted containment of such discharge or threatened discharge, (ii) sampling and analysis of such discharge or threatened discharge, (iii) removal or attempted removal of such discharge or threatened discharge, (iv) taking of reasonable measures to prevent or mitigate damage to property, public health, safety or welfare, or (v) treatment, storage or disposal of such discharge or threatened discharge.

(p) All industrial users shall pay to the Buffalo Sewer Authority a charge for the actual costs of analysis incurred by the Buffalo Sewer Authority for the annual monitoring of any an all discharges of such industrial users

(q) Any person who is granted a temporary permit to discharge into the facilities of the Buffalo Sewer Authority shall pay a permit fee of \$300.00 to the Buffalo Sewer Authority as a condition of the issuance of such permit.

(r) Except as otherwise defined herein, all terms and phrases used or contained in this schedule of sewer rents shall bear the same meaning and definition as set forth in the Buffalo Sewer Authority's Sewer Use Regulations 21 N.Y.C.R.R. Part 10075.

(s) Sewer rents as herein provided shall be payable at the office of the Director of the Treasury for the City of Buffalo and shall become due as follows:

1. So much of the Sewer rents as are based upon water use shall become payable from the first day of July 1938, and shall be billed and shall become payable at the same time that water bills covering the respective premises become due and payable;
2. So much of the charge as is based upon the assessed valuation of chargeable real estate shall become payable from the first day of July 1938, and each year thereafter, and may be paid without interest on or before September 30th next succeeding, and if not paid by such date shall be charged at a rate of 18% per annum.

Except as provided in III (s) (2), interest will continue to be charged at the rate of 18 percent per annum, or at the same rate as unpaid City taxes, as may be determined by the Board of the Buffalo Sewer Authority upon Buffalo Sewer Authority billings based upon water use (i) if issued quarterly which remain unpaid 30 days after the billing date (ii) if issued monthly which remain unpaid 30 days after the billing date and (iii) all other Buffalo Sewer Authority billings which remain unpaid 45 days after billing date.

(t) All users shall be subject to paying reasonable costs and expenses, including attorney fees incurred in the collection of sewer rents that remain unpaid, as may be determined by the Board of the Buffalo Sewer Authority. In addition to any other remedy or provision hereof, the Buffalo Sewer Authority reserves the right to engage in such collection activities, as it deems appropriate, for all accounts that remain unpaid after 30 days of the billing date. In consideration of such collection activities and to defray the cost thereof, the user shall pay an additional charge of 21% of the amount of each such account, together with interest as provided herein, that remains unpaid for more that (i) one hundred twenty (120) days from the due date for metered accounts, and (ii) two hundred ten (210) days from the due date for the flat rate accounts. Due date, as used herein, means the date that the Buffalo Sewer Authority's sewer rent and charges are due and payable pursuant to III (s) (1) and III (s) (2), herein, respectively.



IV. LIEN OF SEWER RENT

From and after the due date thereof, such sewer rents shall constitute a lien upon the real property served by the facilities. Such lien shall have the same priority and superiority as the lien of the general tax of the City.

V. EFFECTIVE DATE OF THIS AMENDED SCHEDULE

This amended schedule of sewer rents shall become effective July 1, 2004.

Provided, however, that the sewer rents herein set forth, applicable to water use, shall become effective on all billings on and after August 1, 2004, excepting only monthly metered accounts for July 2004, and Section "W" of the quarterly metered accounts for the period May, June, and July 2004, which shall be billed at the rents in effect prior to July 1, 2004.

## ITEM NO. 5

**AUTHORIZATION TO PUBLISH NOTICE OF PROPOSED AMENDED "SCHEDULE OF SEWER RENTS AND OTHER CHARGES"**

WHEREAS: The Buffalo Sewer Authority requires an amendment to the "Schedule of Sewer Rents and Other Charges."

NOW THEREFORE  
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby authorizes and directs that the proposed amended "Schedule of Sewer Rents and Other Charges" be published as a notice once a week for three (3) successive weeks, in *The Buffalo News* and the City Record on Friday, April 23, April 30, and May 7, 2004. This notice shall state that the proposed amended "Schedule of Sewer Rents and Other Charges" will remain open for inspection in the office of the Authority for thirty (30) days from the date of said notice, and that objections thereto may be filed during said period with said Authority by any person conceiving himself or herself aggrieved thereby, and that the Authority shall hear and examine such complaints and may modify the proposed Schedule and shall adopt the final amended "Schedule of Sewer Rents and Other Charges" within sixty (60) days of such notice.

MOTION TO	<u>APPROVE</u>		
MADE BY	<u>MR. ROOSEVELT</u>		
2 <sup>ND</sup> BY	<u>MR. KENNEDY</u>		
AYES	<u>4</u>	NOES	<u>0</u>

Board Meeting of April 14, 2004

ITEM NO. 6

**THE ELEVENTH SUPPLEMENTAL SEWER SYSTEM REVENUE BOND RESOLUTION**  
**SEWER SYSTEM REVENUE BONDS, SERIES K**

**EXTRACT OF MINUTES**  
**Meeting of the Buffalo Sewer Authority**  
**of the City of Buffalo, County of Erie, New York**  
**April 14, 2004**

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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 April 14, 2004, at 9:00 o'clock A.M. (Prevailing Time)

There were present:

Members: 4

There were absent: 1

Also present:

Member Mr. Kennedy offered the following resolution and offered its adoption:

2 <sup>ND</sup> BY	_____	MR. ROOSEVELT	_____
AYES	_____ 4 _____	NOES	_____ 0 _____

Board Meeting of April 14, 2004

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**BUFFALO SEWER AUTHORITY**

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**Eleventh Supplemental Sewer System Revenue Bond Resolution  
Authorizing Up To \$6,500,000  
Sewer System Revenue Bond, Series K**

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**Adopted: April 14, 2004**

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## BUFFALO SEWER AUTHORITY

Eleventh Supplemental Sewer System Revenue Bond Resolution  
Authorizing Up To \$6,500,000  
Sewer System Revenue Bond, Series K

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BE IT RESOLVED by the Board of the Buffalo Sewer Authority (the “Authority”) as follows:

## ARTICLE I

## DEFINITIONS AND AUTHORITY

Section 101. Short Title. This resolution may hereafter be cited by the Authority and is herein referred to as the Eleventh Supplemental Resolution.

Section 102. Definitions.

(A) All terms which are defined in Section 102 of the resolution adopted by the Authority on June 29, 1977 and entitled “Sewer System Revenue Bond Resolution” (the “Resolution”), as heretofore amended, shall have the same meanings, respectively, in this Eleventh Supplemental Resolution as such terms are given in said Section of the Resolution.

(B) In this Eleventh Supplemental Resolution:

“Corporation” 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.

“Project Finance Agreement” or “PFA” shall mean the project finance agreement to be entered into between the Authority and the Corporation relating to the Series K Bond, in substantially the form presented to this meeting, as the same may be amended and supplemented from time to time.

“Series K Bond” means the Sewer System Revenue Bond, Series K, authorized by, and the terms, conditions and other details of issuance of which are to be determined as set forth in, this Eleventh Supplemental Resolution.

“Eleventh Supplemental Resolution” shall mean this Eleventh Supplemental Sewer System Revenue Bond Resolution.

Section 103. Authority for This Eleventh Supplemental Resolution. This Eleventh Supplemental Resolution is adopted pursuant to the provisions of the Act and the Resolution.

Section 104. Resolution to Constitute Contract. In consideration of the purchase and acceptance of the Series K Bond by the Corporation, the provisions of this Eleventh Supplemental Resolution shall be a part of the Project Finance Agreement and shall be deemed to be and shall constitute a contract among the Authority, the Trustee and the Corporation.

## ARTICLE II

AUTHORIZATION OF THE SERIES K BOND AND  
DETERMINATION OF CERTAIN TERMS OF THE SERIES K BOND

Section 201. Eleventh Supplemental Resolution. This Eleventh Supplemental Resolution is supplemental to, and is adopted in accordance with, Article II and Article VIII of the Resolution.

Section 202. Principal Amount, Designation and Series. Pursuant to the provisions of the Resolution, a Series of Bonds (the "Series K Bond") entitled to the equal benefit, protection and security thereof, is hereby authorized, and shall be issued in an aggregate principal amount not to exceed \$6,500,000, as set forth in the Project Finance Agreement. The Series K Bond shall be designated as, and shall be distinguished from the Bonds of all other Series, by the title "Sewer System Revenue Bond, Series K".

Section 203. Purposes. The Series K Bond is issued to provide moneys for the making of deposits in the amounts, if any, required by the Project Finance Agreement or by the Resolution or this Eleventh Supplemental Resolution into the Construction Fund and any other Funds and Accounts established pursuant to Article V of the Resolution, this Eleventh Supplemental Resolution or the Project Finance Agreement. The proceeds of the Series K Bond shall provide permanent long-term financing for the Bird Island Wastewater Treatment Plant Primary Digester Cleaning, Inspection, and Repair Project (EFC Project No. C9-6602-06); and will also fund required debt service reserve funds and costs of issuance in connection with such financing.

Section 204. Date, Maturities and Interest Rates. The Series K Bond shall be dated and shall mature and accrue interest in accordance with the Project Finance Agreement. The Series K Bond will be payable as to principal and interest at the principal office of the Paying Agent to the registered owner thereof at its address set forth on the books of the Authority maintained by the Trustee for registration of the Series K Bond. For so long as the Corporation is the registered owner of the Series K Bond, the Corporation may, by written instruction to the Paying Agent, direct the Paying Agent to pay any principal of or interest on the Series K Bond to any bank acting as custodian of the Corporation. The principal of and interest on the Series K Bond shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Section 205. Form, Denominations, Numbers and Letters. The Series K Bond maturing in any particular year shall be issued in the form of fully registered bonds, in the denomination of \$5,000 or any multiple thereof not exceeding the aggregate principal amount of the Series K Bond maturing in such year. The Series K Bond shall be lettered KR, and numbered from one consecutively upward. Alternatively, at the request of the Corporation, the Series K Bond may be issued as one or more installment bonds providing for payments of principal and interest identical to those which would be required if a separate bond or bonds were issued for each stated maturity, or as one or more term bonds with mandatory sinking fund installments.

Section 206. Sinking Fund Installments. Sinking Fund Installments are hereby established for the Series K Bond to the extent, if any, required by the Project Finance Agreement.

Section 207. Redemption. The Series K Bond shall be subject to mandatory and optional redemption to the extent, if any, provided in the Project Finance Agreement.

Section 208. Registration and Transfer of the Series K Bond. The Series K Bond shall be initially issued in the form of a separate single authenticated fully registered bond in the amount of each separate stated maturity of the Series K Bond registered in the name of the Corporation. Alternatively, at the request of the Corporation, the Series K Bond may be issued as one or more installment bonds providing for payments of principal and interest identical to those which would be required if a separate bond or bonds were issued for each stated maturity, or as one or more term bonds with mandatory sinking fund installments.



## ARTICLE III

## SALE AND DISPOSITION OF PROCEEDS AND OTHER AMOUNTS

Section 301. Determination as to Private Sale. The Authority being of the opinion that it is in the best interests of the Authority to finance the purposes for which the Series K Bond are to be issued through the Clean Water State Revolving Fund administered by the Corporation, due to the favorable financing terms available thereunder, and upon the favorable recommendation of the Authority's independent financial advisor, the Authority hereby determines pursuant to Section 1187 of the Act (subject to the approval of the New York State Comptroller pursuant to said Section 1187) that the private sale of the Series K Bond is in the best interests of the Authority.

Section 302. Sale of the Series K Bond.

(A) The Project Finance Agreement relating to the Series K Bond by and between the Authority and the Corporation, substantially in the form presented at this meeting and hereby made a part of this Eleventh Supplemental Resolution as though set forth in full herein, is hereby approved; provided that any changes, insertions and omissions thereto, including a change in the principal amount of the Series K Bond, may be made and approved by the Chairman, the Vice-Chairman or the General Manager of the Authority. The Chairman, the Vice-Chairman or the General Manager of the Authority are hereby authorized to execute and deliver the PFA with such changes, insertions and omissions 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 subsection 302(A). The Series K Bond is hereby authorized to be sold to the Corporation on the terms and conditions as set forth in the PFA and the Notice of Terms to be delivered thereunder and approved by the Chairman, Vice-Chairman or General Manager. The authority to make any and all determinations as to the terms, conditions and details of issuance of the Series K Bond is hereby delegated to the Chairman, Vice-Chairman, or General Manager.

(B) The Chairman, Vice-Chairman, General Manager, Comptroller, Chief Fiscal Officer, Secretary, Assistant Secretary, if any, Executive Secretary and General Counsel (the "Authorized Representatives") 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 the Resolution, this Eleventh Supplemental Resolution, the PFA and the issuance, sale and delivery of the Series K Bond.

Section 303. Disposition of Proceeds of the Series K Bond. The proceeds of sale of the Series K Bond shall be applied in accordance with applicable provisions of the Resolution and the Project Finance Agreement. To the extent any proceeds are required to be deposited into the Construction Fund, such proceeds will be disbursed as provided in the Resolution and in the Project Finance Agreement, including Section 3.5 thereof. Disbursements of proceeds of the Series K Bond held in the Construction Fund will be disbursed by the Trustee only upon submission by the Authority of a requisition to the Trustee for such proceeds for Project Costs (as defined in the PFA) substantially in the form attached as Appendix One to Exhibit K of the PFA. Further, the Trustee shall not make any disbursement unless the requisition for such disbursement shall have been approved by the Corporation; provided, however, that if the Corporation shall not expressly approve or deny such requisition within ten (10) Business Days (as defined in the PFA) of its receipt, then the Corporation shall be deemed to

have approved such requisition at 9:00 a.m. on the eleventh Business Day next succeeding actual receipt of the request by the Corporation.

Section 304. Tax Covenants. (A) The Authority shall not permit at any time or times any of the proceeds of the Series K Bond 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 Series K Bond to be an “arbitrage bond” as defined in Section 148 of the Internal Revenue Code of 1986, as amended (herein in this Section called the “Code”).

(B) The Authority shall not permit at any time or times any proceeds of the Series K Bond or any other funds of the Authority to be used, directly or indirectly, in a manner which would result in the exclusion of any Series K Bond from the treatment afforded by Section 103(a) of the Code, as from time to time amended, or result in the classification of any Series K Bond as a “private activity bond” within the meaning of Section 141 of the Code.

(C) The Authority will comply with the provisions and procedures of the Arbitrage and Use of Proceeds Certificate to be delivered concurrently with the delivery of the Series K Bond, and it will do and perform all acts and things necessary or desirable to assure that interest paid on the Series K Bond is excludable from gross income under Section 103 of the Code.

ARTICLE IV  
FORM AND EXECUTION

Section 401. Form of the Series K Bond. Subject to the provisions of the Resolution, the Series K Bond shall be executed in substantially the following form:

REGISTERED

REGISTERED

No. KR-

\$ \_\_\_\_\_

BUFFALO SEWER AUTHORITY  
SEWER SYSTEM REVENUE BOND, SERIES K

MATURITY  
DATE

INTEREST  
RATE

DATE OF  
ORIGINAL ISSUE

REGISTERED OWNER:

PRINCIPAL SUM:

DOLLARS AND NO CENTS

BUFFALO SEWER AUTHORITY (the "Recipient") in the County of Erie, constituting a public benefit corporation organized and existing under the laws of the State of New York, hereby acknowledges itself indebted to, and for value received, hereby promises to pay, as hereinafter provided solely from the revenues pledged under and pursuant to the Resolution hereinafter mentioned to the Registered Owner named above, or registered assigns, the Principal Sum stated hereon on the Maturity Date hereof, unless redeemed prior thereto as hereinafter provided, upon the presentation and surrender hereof (i) for so long as this Bond is held by or for the benefit of New York State Environmental Facilities Corporation (the "Corporation") or of holders of its bonds, at either of the principal corporate trust office in Buffalo, New York or at the paying agency office in New York, New York, of Manufacturers and Traders Trust Company, as Paying Agent (the "Paying Agent"), or (ii) at any time thereafter, at the corporate trust office in Buffalo, New York, of Manufacturers and Traders Trust Company, as Trustee (the "Trustee"), or at the principal corporate trust office of any successor thereto, and to pay to the Registered Owner hereof by check or draft mailed to the Registered Owner at his address as it shall appear on the \_\_\_\_\_ day of the month preceding the interest payment date on the bond registry kept by the Trustee, interest on such Principal Sum from the Bond Date to the date of maturity or earlier redemption of this Bond at the Interest Rate per annum, payable semi-annually on the \_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_ day of \_\_\_\_\_ of each year, commencing \_\_\_\_\_, 200\_. Principal of, redemption premium, if any, and interest on this Bond are payable in any coin or currency of

the United States of America which on the respective dates of payment hereof, shall be legal tender for the payment of public and private debts.

This Bond is a duly authorized bond (the "Bond") of the Buffalo Sewer Authority (the "Recipient") designated "Sewer System Revenue Bond, Series K" in the aggregate principal amount of \$ \_\_\_\_\_ which is issued to provide moneys for the making of deposits in the amounts, if any, required by the Resolution (as defined below) and to finance improvements to the municipal sewer system of the City of Buffalo. The Bond is issued pursuant to the provisions of 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"), a Sewer System Revenue Bond Resolution (as amended, the "General Resolution") duly adopted by the Recipient on June 29, 1977, and an Eleventh Supplemental Resolution (the "Eleventh Supplemental Resolution") duly adopted by the Authority on April 14, 2004 (the General Resolution and the Eleventh Supplemental Resolution being collectively referred to herein as the "Resolution"). A copy of the Resolution is on file at the office of the Recipient in the City of Buffalo, New York and at the corporate trust office in Buffalo, New York, of the Trustee. Reference to the Resolution and any and all supplements thereto and modifications and amendments thereof and to the Act is made for a description of the pledges and covenants securing the bonds, the nature, extent and manner of enforcement of such pledges, the rights and remedies of the registered owners of the bonds with respect thereto and the terms and conditions upon which the bonds are issued and additional bonds may be issued in additional series for the purpose of providing sufficient funds for the capital costs of the Authority's sewer system or for the purpose of refunding Outstanding Bonds.

This Bond and the issue of which it forms a part are special obligations of the Recipient payable solely from revenues and other moneys pledged for such payment pursuant to the Act and the Resolution. This Bond and the issue of which it forms a part shall not in any respect be a general obligation of the Recipient to which the full faith and credit of the Recipient is pledged and shall not in any manner or to any extent constitute or be a charge upon any moneys or property of the Recipient not specifically pledged thereto by the Resolution. The Recipient has no taxing power. This Bond is not a debt of the State of New York or the City of Buffalo within the meaning of any statutory or constitutional provisions, nor of any political subdivision of the State of New York, other than the Recipient, or the United States of America. Neither the State of New York, any political subdivision of the State of New York, other than the Recipient, nor the United States of America shall be liable on this Bond. This Bond will not constitute a pledge of the faith and credit of the State of New York, the City of Buffalo, or of any political subdivision of the State of New York, other than the Recipient, nor shall this Bond be payable out of funds or properties other than those of the Recipient set forth in the Resolution. The issuance of this Bond will not obligate the State of New York or any of its political subdivisions or the United States of America to levy or pledge the receipts from any form of taxation for the payment of this Bond.

Neither the officers of the Recipient nor any person executing this Bond shall be liable personally or be subject to any personal liability or accountability by reason of the issuance hereof.

This Bond is transferable or exchangeable, as provided in the Resolution, only upon the books of the Recipient kept for that purpose at the corporate trust office in Buffalo, New York of the Trustee by the Registered Owner hereof in person, or by his duly authorized attorney, upon surrender of this Bond (together with a written instrument of transfer satisfactory to the Trustee duly executed by the Registered Owner or his duly authorized attorney), and thereupon a new registered Bond or Bonds, without coupons, in the same aggregate principal amount and of the same maturity, shall be issued to the transferee or the Registered Owner in exchange therefor in the manner, subject to the conditions and upon payment of the charges, if any, provided in the Resolution. The Recipient and the Trustee (or

other fiduciary) may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes whatsoever.

The Bonds are issuable in the form of registered Bonds without coupons in the denomination of \$5,000 or any integral multiple thereof, not exceeding the aggregate principal amount of Bonds stated to mature in the year of stated maturity of the Bond for which the denomination of the Bond is to be specified.

On or after \_\_\_\_\_, 20\_\_ at the option of the Recipient, the Bonds maturing after \_\_\_\_\_, 20\_\_, shall be subject to redemption prior to maturity, in whole at any time or in part in principal amounts of \$5,000 or integral multiples thereof on any interest payment date, from any moneys available therefor, in such order of maturities as shall be determined by the Recipient, at a redemption price, in either case, equal to the principal amount of such Bonds to be redeemed, together with (i) the Applicable Redemption Premium and (ii) the accrued and unpaid interest on the principal amount to be redeemed to the date fixed for redemption. As used herein "Applicable Redemption Premium" with respect to any maturity of the Bonds to be redeemed means \_\_\_\_\_ percent (\_\_\_\_%) of the principal amount of the Bonds to be redeemed or such lesser redemption premium as is specified in the Notice of Terms (as defined in the Project Finance Agreement dated as of \_\_\_\_\_, 20\_\_ between the Corporation and the Recipient) for such maturity and redemption date.

Notwithstanding the foregoing, no Bond or portion of this Bond that is not in an amount which is an integral multiple of \$5,000 shall be subject to such redemption at the option of the Recipient without the express written consent of the Corporation.

Any such redemption, either as a whole or in part, shall be made upon at least sixty (60) days and no more than seventy-five (75) days prior written notice to (i) the Corporation and to the trustee for the Corporation's State Clean Water and Drinking Water Revolving Funds Revenue Bonds, Series \_\_\_\_ (the "Corporation Bonds"), during any period when the bonds are held by or for the benefit of the Corporation or of holders of the Corporation Bonds, or (ii) any successor holder of this Bond at any time thereafter. The failure to give any such notice, or any defect therein, will not affect the validity of any proceeding for the redemption of any bond with respect to which no such failure to give notice, or defect therein, has occurred.

The moneys necessary for any redemption of Bonds shall be paid to or deposited with (i) the Paying Agent during any period when the Bonds are held for the benefit of the holders of the Corporation Bonds, and (ii) the Trustee during any period when the Bonds are otherwise held, in either case on or prior to the redemption date. All Bonds called for redemption will cease to bear interest on the specified redemption date, provided funds sufficient for the redemption of such Bonds are on deposit with the Trustee or Paying Agent, as appropriate. If such moneys are not available on the redemption date, the Bonds or portions thereof will continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

The General Resolution permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Recipient and the rights of the holders of the bonds at any time by the Recipient with the consent of the holders of not less than two-thirds in aggregate principal amount of the bonds at the time outstanding thereunder. Any such consent shall be conclusive and binding upon each such holder and upon all future holders of each bond and of any such bond issued upon the transfer or exchange thereof, whether or not notation of such consent is made thereon. The General Resolution also contains certain provisions permitting the Trustee

to waive certain past defaults and their consequences. The holder of this Bond shall have no right to enforce the provisions of the Resolution, to institute action to enforce the provisions and covenants thereof or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Resolution.

It is hereby certified, recited and declared that all acts, conditions and things required by the Constitution and statutes of the State of New York and the Resolution to have happened, to exist and to have been performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed in regular and due time, form and manner as required by said Constitution, statutes and Resolution; that the series of Bonds of which this Bond is a part does not exceed any constitutional, statutory or charter limitation of indebtedness; and that provision has been made for the payment of the principal of and interest, if any, on this Bond as provided in the Resolution.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the certificate of authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, THE BUFFALO SEWER AUTHORITY has caused this Bond to be executed in its name by its Chairman, Vice-Chairman or General Manager by his manual signature or a facsimile of his signature, to bear a facsimile of its corporate seal attested by the Secretary or Executive Secretary of the Recipient by his manual signature or a facsimile of his signature, and this Bond to be dated as of the date set forth above.

BUFFALO SEWER AUTHORITY

(SEAL)

By: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

[FORM OF ASSIGNMENT]

For value received, the undersigned hereby sells, assigns and transfer unto

PLEASE INSERT SOCIAL  
SECURITY OR OTHER TAX  
IDENTIFYING NUMBER OF  
ASSIGNEE:

--

the within-mentioned Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney-in-fact, to transfer the same on the books of registry in the office of the within-mentioned Registrar with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Registered Owner

NOTE: The signature on this assignment must correspond with the name as written on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_

Section 402. Certificate of Authentication. The Certificate of Authentication to be printed on the Series K Bond shall be in the following form:

[CERTIFICATE OF AUTHENTICATION]

This Bond is the Series K Bond described in the within-mentioned Resolution.

MANUFACTURERS AND TRADERS  
TRUST COMPANY, as Trustee

By: \_\_\_\_\_  
Authorized Officer

Section 403. No Recourse on Series K Bond. All covenants, stipulations, promises, agreements and obligations of the Authority contained in this Eleventh Supplemental Resolution shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any officer or employee of the Authority in his individual capacity, and no recourse shall be had for the payment of the principal of or interest on the Series K Bond or for any claim based thereon or on this Eleventh Supplemental Resolution, either jointly or severally against any officer or employee of the Authority or any person executing said Bond.



## ARTICLE V

## FINDINGS AND DETERMINATIONS AND OTHER MATTERS

Section 501. Findings and Determinations. The Authority hereby finds and determines that the PFA is fair and reasonable and in the best interests of the Authority and that, on the basis of such finding and determination, the Series K Bond shall be sold to the Corporation. The Authority further finds and determines that all conditions precedent to and concurrent with the acceptance of the PFA by the Authority have been met. The Authority hereby authorizes the Chairman, Vice-Chairman or General Manager of the Authority to execute and deliver, or cause to be delivered, the PFA for and on behalf of the Authority, on such 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 principal amount of the Series K Bond sold thereunder. The execution of the PFA and delivery thereof to the Corporation 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 502. Appointment of Paying Agent. Manufacturers and Traders Trust Company, Buffalo, New York, is hereby appointed Paying Agent for the Series K Bond pursuant to Section 1102 of the Resolution.

Section 503. Additional Findings and Determinations. The Authority hereby finds, determines and declares: (a) that the Series K Bond is issued under and secured by the Resolution and this Eleventh Supplemental Resolution; (b) that the terms of sale of the Series K Bond do not contemplate an underwriting of the Series K Bond; (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 Series K Bond to the Corporation as provided in the PFA; and (d) that all provisions and conditions of the Resolution and of other applicable law have been complied with in the issuance of the Series K Bond under the Resolution and this Eleventh Supplemental Resolution.

Section 504. Laws Governing; Severability. This Eleventh Supplemental Resolution shall be construed and enforced in accordance with the Constitution and laws of the State of New York.

If any provision of this Eleventh Supplemental Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provisions or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections in this Eleventh Supplemental Resolution shall not affect the remaining portions of this Eleventh Supplemental Resolution or any part thereof or of the Series K Bond issued hereunder.

Section 505. Section Headings; Table of Contents. The headings or titles of the several sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning or construction, interpretation or effect of this Eleventh Supplemental Resolution.

Section 506. Effective Date of This Eleventh Supplemental Resolution. This Eleventh Supplemental Resolution shall become effective immediately.

**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 April 14, 2004, 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  
 April, 2004.

(SEAL)

\_\_\_\_\_  
 Secretary

STATE WATER POLLUTION CONTROL REVOLVING FUND

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BUFFALO SEWER AUTHORITY

and

NEW YORK STATE ENVIRONMENTAL  
FACILITIES CORPORATION

PROJECT FINANCE AGREEMENT

(LEVERAGED FINANCING PROGRAM)

STATE CLEAN WATER REVOLVING FUND PROJECT NO. C9-6602-06-00

Dated as of \_\_\_\_\_, 2004

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Exhibit G	Form of Recipient Bonds
Exhibit H	Form of Opinion of Nationally Recognized Bond Counsel
Exhibit I	Form of Opinion of Local Counsel
Exhibit J	Form of Recipient Closing Certificate
Exhibit K	Requisition Procedures
Exhibit L	Form of Notice of Terms

This PROJECT FINANCE AGREEMENT dated as of the date set forth on the cover page hereof, between the public benefit corporation set forth on the cover page of this Project Finance Agreement, a public benefit corporation duly organized and existing under the laws of the State of New York (the "Recipient"), and the New York State Environmental Facilities Corporation, a body corporate and politic, constituting a public benefit corporation, duly organized and existing under the laws of the State of New York (the "Corporation"),

WITNESSETH:

WHEREAS, the United States of America, pursuant to the federal Water Pollution Control Act (as such has been and may be amended from time to time, the "Clean Water Act") requires each State to establish a water pollution control revolving fund to be administered by an instrumentality of the State as a condition to receipt of capitalization grants under the Clean Water Act; and

WHEREAS, the State of New York (the "State") has, pursuant to Chapter 565 of the Laws of New York of 1989, as amended (the "State Act"), established a water pollution control revolving fund (the "Revolving Fund") to be used for purposes of the Clean Water Act; and

WHEREAS, the Corporation has the responsibility, together with the New York State Department of Environmental Conservation ("DEC"), to administer the Revolving Fund and to provide financial assistance from the Revolving Fund to municipalities (including, among other entities, certain public benefit corporations and public authorities) for the construction of eligible projects, as provided in the State Act; and

WHEREAS, the Corporation and DEC are responsible under the Clean Water Act and the State Act for determining the eligibility of projects for financial assistance from the Revolving Fund, determining a reasonable schedule for financing and construction of projects, and for ensuring compliance with the Clean Water Act and the terms and conditions of an applicable project financing agreement; and

WHEREAS, the Recipient has submitted to the Corporation an application for financial assistance from the Revolving Fund, for the purpose of financing or refinancing the Project described below, and the Corporation has reviewed and approved said application; and

WHEREAS, on the basis of such application and the representations and warranties set forth herein, the Corporation proposes to [finance through the purchase of a local obligation](#) pursuant to Article III hereof (as hereinafter defined, the "[Recipient Bonds](#)") from the Recipient to finance, or to reimburse the Recipient for costs incurred in connection with, the planning, design, acquisition, construction and installation of the project described in **Exhibit A** hereto (such project being herein collectively referred to as the "Project", and/or to refund outstanding bonds or notes of the Recipient, if any, issued to finance the Project (such outstanding bonds or notes, if any, being described in **Exhibit B** hereto and hereinafter referred to as the "Existing Indebtedness"), and the Recipient desires to sell such Recipient Bonds upon the terms and conditions hereinafter set forth in this Project Finance Agreement; and

WHEREAS, any approval of engineering or facilities plans or reports required as of this date with respect to the Project has been obtained by the Recipient from DEC, or from the Corporation on its behalf, subject to the provisions of applicable State environmental standards set forth in law, rules and regulations; and



WHEREAS, the Corporation has authorized the issuance of its bonds pursuant to the Indenture (as hereinafter defined), a portion of the proceeds of which are to be applied for purposes of purchasing the Recipient Bonds from the Recipient; and

WHEREAS, such bonds shall be special obligations of the Corporation payable solely from the revenues or other receipts, funds or moneys to be derived by the Corporation under or pursuant to this Project Finance Agreement and from other revenues pledged and available therefor under the Indenture and under the Master Trust Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth (including but not limited to the Corporation's agreement, subject to the conditions herein set forth, to purchase the Recipient Bonds), the Corporation and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. Unless another meaning is specified in **Exhibit E** hereto, the following capitalized terms as used in this Project Finance Agreement (including the Exhibits hereto) shall have the following meanings:

"Act" means the New York State Environmental Facilities Corporation Act, constituting Title 12 of Article 5 of the Public Authorities Law and Chapter 43-A of the Consolidated Laws of the State of New York, as it may be from time to time amended and supplemented.

"Application" means the respective applications for financing assistance for the Project from the Revolving Fund submitted by the Recipient to the Corporation, as such may be amended from time to time.

"Arbitrage and Use of Proceeds Certificate" means the certificate of the Recipient to be delivered pursuant to Section 3.8(b)(ii) hereof and to be dated the date of delivery of the Corporation Bonds.

"Board" means the Buffalo Sewer Authority [Board](#), a body corporate and politic constituting a public benefit corporation of the State created and existing under the [Recipient Act](#) (as defined in the General Resolution).

"Business Day" means any day on which State offices are open to conduct business.

"Clean Water Act" means the federal Water Pollution Control Act, as amended.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

"Commencement of Construction" shall mean with respect to the Project, the date that: (i) a notice to proceed is issued by the Recipient to the contractor following the execution of the

construction contract between the contracting parties, or (ii), in the event that the Project will be built by municipal employees (force account) in lieu of a contractor, the first day that a work crew occupies the Project, or (iii), in the event that the Project is a contract to purchase supplies, material or equipment, a binding purchase agreement is executed between the contracting parties; provided, however, that the Recipient shall have provided evidence satisfactory to the Corporation of such Commencement of Construction.

"Commissioner" means the Commissioner of DEC.

"Corporation" means the New York State Environmental Facilities Corporation established under the Act, and any entity which may succeed to its rights and duties respecting the Revolving Fund.

"Corporation Bonds" means the series of bonds of the Corporation issued to finance the purchase of Recipient Bonds made hereunder together with any bonds of the Corporation issued to refinance such bonds.

"DEC" means the New York State Department of Environmental Conservation and any entity which may succeed to its rights and duties respecting the Revolving Fund.

"Earnings on Reserve Allocation" means net earnings derived from investment of the Reserve Allocation on deposit in the Debt Service Reserve Fund established pursuant to the Indenture or, in the Enhanced Subsidy Fund (to the extent applicable) relating to the Recipient Bonds, as and when such earnings are received. If an investment is purchased at a premium above par, net earnings on such investment shall be deemed to be reduced by the straight-line amortization of such premium over the remaining term of such investment. If an investment is purchased at a discount, net earnings are deemed to include the amount paid in excess of the discounted purchase price upon maturity or redemption of such investment at the time such principal amount is received. The term "net earnings" means aggregate earnings less aggregate losses from investments during the applicable period, less any transaction fees incurred in purchasing or selling investments.

"Eligible Project" means a Water Pollution Control Project including (i) any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature, or any devices and systems necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or used for ultimate disposal of residues resulting from such treatment; (ii) any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems; or (iii) any device, system, program, facility, equipment or method constructed or installed in connection with a landfill closure program for the purpose of controlling pollution from nonpoint sources to the navigable waters within the State or for the purpose of protecting the quality of groundwater within the State.

"Enhanced Subsidy Fund" means with respect to the purchase of the Recipient Bonds (as applicable), the fund designated as such and established within the related Subaccount pursuant to Section 401-B of the Master Trust Agreement in order to hold, on or prior to Commencement of

Construction of the Project, any Reserve Allocation in excess of 1/3 of the outstanding principal amount of the Recipient Bonds.

"EPA" means the United States Environmental Protection Agency or any entity which may succeed to the administration of the program established by Section 212 of the Water Quality Act.

"EPA-ASAP" shall mean the Automated Standard Application for Payments system established by EPA to make capitalization grant payments to the State under the Water Quality Act, which payments are allocated by the Corporation as a source of Reserve Allocation for any financing made from the proceeds of the Corporation Bonds.

"Estimated Project Costs" means the Recipient's projected costs that are eligible for financing by the Corporation under the State Act, that are allowable costs under the Regulations and that are reasonable, necessary and allocable by the Recipient to the Project under generally accepted government accounting standards, as set forth in the Application, which projected costs are set forth in **Exhibit C** hereto. Such Estimated Project costs may include costs of refunding outstanding bonds or notes issued by the Recipient to finance Project Costs, which Project Costs meet the requirements of the preceding sentence; provided, however, that in no event shall the principal amount of any Recipient Bonds exceed the total Project Costs financed by the sale of the Recipient Bonds or by the outstanding bonds or notes refunded by such sale as applicable.

"Existing Indebtedness" means the bonds or notes of the Recipient, if any, described in **Exhibit B** hereto, which bonds or notes have financed the Project and which are to be refinanced with proceeds of the sale of the Recipient Bonds.

"General Resolution" means the [Sewer System Revenue Bond Resolution adopted by the Recipient as of June 29, 1977](#), as amended and supplemented.

"General Resolution Trustee" means [Manufacturers and Traders Trust Company](#), in its capacity as trustee under the General Resolution, and any successor trustee in such capacity.

"Indenture" means the Financing Indenture of Trust between the Corporation and the Trustee pursuant to which the Corporation Bonds are to be issued, as the same may be amended and supplemented from time to time.

"Intended Use Plan" shall have the meaning set forth in the Regulations.

"Leveraged Financing" means a financing made [pursuant to this agreement](#) from monies deposited in the New York State Water Pollution Control Revolving Fund created by the State Act that is made available through the issuance of bonds or notes of the Corporation.

"Master Trust Agreement" means a Master Trust Agreement between the Corporation and a trustee and a custodian there under, relating to establishment of certain funds and accounts and procedures relating to administration of the Revolving Fund with respect to a series of bonds, as such agreement has been and may be amended and supplemented from time to time.

"Maximum Rate" means the interest rate per annum identified as such in **Exhibit E** hereto.

"Notice of Terms" means a document substantially in the form of **Exhibit L** hereto, setting forth and confirming the definitive principal amounts, maturity dates and interest rates of the Recipient Bonds and certain other terms of the Leveraged Financing which, to the extent such terms shall be inconsistent with the parameters set forth in this Project Finance Agreement shall be subject to the approval of the Recipient.

"Paying Agent" means the same institution as the Trustee, which has been appointed to act as Paying Agent by the Recipient pursuant to Section 3.9 hereof.

"Principal Amount" means the original aggregate principal amount of the Leveraged Financing and of the Recipient Bonds which shall be an amount equal to the total principal amount shown as payable in **Exhibit F** hereto; provided that, in the case of any Leveraged Financing made for the purpose of refunding outstanding bonds of the Recipient, such **Leveraged Financing** amount may be revised to an amount not greater than the maximum amount shown in **Exhibit F** by the Corporation delivering a Notice of Terms to the Recipient to reflect the final sizing of the escrow to be established to provide for the payment of the bonds to be refunded.

"Project" means the Project being financed with the Corporation Bonds and described in **Exhibit A** hereto as such exhibit may be amended in accordance herewith.

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance from the Revolving Fund under the State Act, which are allowable costs as defined under the Regulations and which are reasonable, necessary and allocable by the Recipient to the Project under generally accepted government accounting standards. Such Project Costs may include costs of refunding Existing Indebtedness, if any, provided that such costs meet the requirements of the preceding sentence; provided, however, that in no event shall the principal amount of the Leveraged Financing exceed the total Project Costs financed hereunder or by the outstanding bonds or notes refunded with such Recipient Bonds, as applicable.

"Project Finance Agreement" means this Project Finance Agreement.

"Proportionate Share" means the proportion that the outstanding principal amount of the Recipient Bonds bears to the outstanding principal amount **of all recipient bonds financed with the Corporation Bonds**.

"Recipient" means the public benefit corporation identified on the cover page of this Project Finance Agreement.

"Recipient Act" means the State legislation establishing the Recipient or pursuant to which it has been established, **Article 5, Title 8 of the Public Authorities Law Sections 1175 through 1195, inclusive**, as amended and supplemented.

"Recipient Bonds" mean the bonds or notes issued and delivered by the Recipient in a principal amount equal to the Principal Amount, and purchased by the Corporation, the form of which is set forth as **Exhibit G** hereto.

"Refunded Bonds" means bonds previously issued by the Recipient and described in **Exhibit B** which are to be refunded out of the proceeds of the Corporation Bonds.

"Regulations" means the regulations of DEC and the Corporation, promulgated pursuant to the State Act, as either of such may be amended from time to time.

"Reserve Allocation" means the amount from the Revolving Fund allocated to provide financial assistance to reduce a Recipient's total financing costs for one or more eligible projects.

"Reserve Allocation Certificate" means the certificate of the Corporation delivered pursuant to the Master Trust Agreement with respect to the Recipient Bonds.

"Resolution" means, collectively, the following resolutions of the Recipient: (a) the General Resolution, and (b) the resolution authorizing (i) the execution and delivery of this Project Finance Agreement, (ii) the sale of the Recipient Bonds, and (iii) the issuance and delivery to the Corporation of the Recipient Bonds.

"Revolving Fund" or "CWSRF" means the New York State Water Pollution Control Revolving Fund established pursuant to the State Act.

"State" means the State of New York.

"State Act" means Chapter 565 of the Laws of New York of 1989, as amended.

"State Approvals" means the approvals (i) by the State Public Authorities Control Board of the issuance of Corporation Bonds and the execution of this Project Finance Agreement and (ii) by the State Comptroller of the terms of sale of Corporation Bonds, [if required](#).

"State Matching Share" means State funds in an amount equal to twenty percent (20%) of amounts appropriated and allotted to the State by the federal government for deposit in the Revolving Fund.

"Trustee" means Manufacturers and Traders Trust Company, in its capacity as Trustee under the Indenture, and any successor trustee in such capacity.

"Water Quality Act" means the federal Water Quality Act of 1987, as amended.

Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Regulations.

Section 1.2. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of the Project Finance Agreement:

(a) Number. Words importing the singular number shall include the plural number and vice versa.

(b) Gender. Words importing the feminine, masculine and neuter genders shall each include correlative words of the other genders.

(c) Approvals and Consents. All approvals, consents and acceptances required to be given or made by any person or party hereunder shall be at the sole discretion of the person or party whose approval, consent or acceptance is required.

(d) References. All references herein to particular articles, sections or exhibits without reference to a specific document are references to articles or sections of or exhibits to this Project Finance Agreement.

(e) Headings. The captions and headings and table of contents herein are solely for convenience of reference and shall not constitute part of the Project Finance Agreement, nor shall they affect its meaning, construction or effect.

(f) Terms. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Project Finance Agreement, refer to the Project Finance Agreement in its entirety and not the particular article or section of the Project Finance Agreement in which they appear, and the term "hereafter" means after, and the term "heretofore" means before, the date set forth on the cover page of the Project Finance Agreement.

Section 1.3. Exhibits and Appendices Incorporated. All exhibits and appendices to this Project Finance Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Project Finance Agreement.

## ARTICLE II

### REPRESENTATIONS

Section 2.1. Representations of the Recipient. The Recipient represents and warrants as follows:

(a) Existence and Authority, Legal Power. The Recipient is a public benefit corporation duly created and existing under the laws of the State and has full legal right, power and authority (i) to conduct its business and own its properties, (ii) to enter into this Project Finance Agreement, (iii) to adopt the Resolution, (iv) to issue and deliver the Recipient Bonds to the Corporation as provided herein, and (v) to carry out and consummate all other transactions contemplated by each of the aforesaid documents.

(b) Compliance. With respect to the issuance of the Recipient Bonds, the Recipient has complied and will comply with the Resolution and with all applicable laws of the State, including, but not limited to, the Recipient Act.

(c) Authorization. The Recipient has, or will have at the time of closing, duly approved the execution and delivery of this Project Finance Agreement, the Arbitrage and Use of Proceeds Certificate and the issuance and delivery of the Recipient Bonds in the Principal Amount and has authorized the taking of any and all action as may be required on the part of the Recipient to carry out, give effect to and consummate the transactions contemplated by each of the foregoing.

(d) Binding Obligation. This Project Finance Agreement has been duly authorized, executed and delivered by the Recipient and, assuming due authorization and execution by the Corporation, constitutes a legal, valid and binding obligation of the Recipient enforceable in accordance with its terms, and, upon issuance and delivery thereof, the Recipient Bonds each will have been duly executed and delivered and will constitute legal, valid and binding obligations of the Recipient. The Recipient acknowledges and agrees that the defense of sovereign immunity is not available to the Recipient in any proceedings by the Corporation or the Trustee to enforce any of the obligations of the Recipient.

ipient under this Project Finance Agreement or the Recipient Bonds or the Recipient Act and, to the fullest extent permitted by law, the Recipient consents to the initiation of any such proceedings in any court of competent jurisdiction and agrees not to assert the defense of sovereign immunity in any such proceedings. The enforceability (but not the validity) of rights or remedies with respect to the Project Finance Agreement, the Recipient Bonds or the Recipient Act may be limited by bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted.

(e) No Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Recipient, threatened against the Recipient, nor, to the knowledge of the Recipient, is there any basis therefor, (i) affecting the creation, organization or existence of the Recipient or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution of this Project Finance Agreement, the Arbitrage and Use of Proceeds Certificate or the issuance or delivery of the Recipient Bonds, (iii) in any way contesting or affecting the validity or enforceability of the Resolution, the Recipient Bonds, this Project Finance Agreement, the Recipient Act or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by any of the foregoing.

(f) No Violation. The Recipient is not in any material respect in breach of or in default under any applicable law or administrative regulation of the State or The United States of America or any applicable judgment or decree or any agreement or other instrument to which the Recipient is a party or by which it or any of its properties is bound, and no event has occurred which with the passage of time, the giving of notice or both would constitute such a breach or default; and the execution and delivery of this Project Finance Agreement and the issuance and delivery of the Recipient Bonds and the adoption of the Resolution and compliance with the respective provisions thereof will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State or The United States of America or any applicable judgment or decree or any agreement or other instrument to which the Recipient is a party or by which it or any of its property is bound.

(g) Recipient Bonds. When issued and delivered, the Recipient Bonds will constitute validly issued, legally binding [special obligations](#) of the Recipient payable from the sources and secured in the manner provided in such Recipient Bonds and in the General Resolution; provided, however, that the enforceability (but not the validity) of the Recipient Bonds may be limited by bankruptcy, insolvency, or other laws affecting creditors' rights or remedies heretofore or hereafter enacted.

(h) Resolution. The Resolution has been duly adopted by the Recipient and remains in full force and effect as of the date of execution hereof.

(i) Authority to Act. The Recipient has full legal right and authority and all necessary licenses and permits required as of the date hereof to own the Project, to carry on its activities relating thereto, to undertake and complete the Project, to refund the Existing Indebtedness, if any, and to carry out and consummate all transactions contemplated by this Project Finance Agreement.

(j) Project. The description of the Project set forth in **Exhibit A** is an accurate description of the Project. Each of the facilities comprising a part of the Project constitutes an Eligible Project. The Recipient intends to continue to use the Project as an Eligible Project during the term of this Project Finance Agreement.



(k) Project Costs. The estimated or actual costs of the Project as shown in **Exhibit C** are equal to or in excess of the amount of the Leveraged Financing and represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Project or Existing Indebtedness.

(l) Project Compliance and Completion. The Project is in compliance with all applicable federal, State and local laws and ordinances (including rules and regulations) relating without limitation to zoning, building, safety and environmental quality. To the extent that the Project is not yet complete, the Recipient intends to proceed with due diligence to complete the Project pursuant to Section 4.1 hereof. The Recipient has complied with and completed all requirements of the State Environmental Quality Review Act and of the State Environmental Review Process approved by EPA for Revolving Fund projects necessary to commence construction of the Project.

(m) Project Use. The Recipient does not intend to lease the Project or enter into a contract for operation of the Project except as previously disclosed to the Corporation.

(n) Proceeds Compliance. The Recipient will not take or omit to take any action which action or omission will in any way cause the proceeds of the Corporation Bonds advanced to it to be applied in a manner contrary to that provided in the Indenture and the Arbitrage and Use of Proceeds Certificate as each are in force from time to time.

(o) Tax Compliance. The Recipient has not taken and will not take any action, and knows of no action that any other person, firm or corporation has taken or intends to take, which would cause interest on the Recipient Bonds or the Corporation Bonds to be includable in the gross income of owners thereof for federal income tax purposes.

(p) No Default. The Recipient is not in default under any finance agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness.

(q) Refunding. Except as specified at **Exhibit B** hereto, the Existing Indebtedness, if any, may be refunded without payment of any premium or penalty.

(r) Refunding Approvals. All consents, authorizations and approvals of any third party with respect to the refunding of the Existing Indebtedness, if any, have been duly obtained.

(s) Existing Indebtedness. Except as otherwise provided in **Exhibit E** hereto, as of the date of delivery of this Project Finance Agreement to the Corporation, the Recipient has applied the full amount of the proceeds of Existing Indebtedness, if any, to the costs of the Project, as reflected in **Exhibit C** hereto.

(t) External Financing. Except for any Existing Indebtedness and for any grants described in **Exhibit E** hereto, no grants or other source of external financing of the Project Costs expected to be financed with the Leveraged Financing have been applied for or are expected to be received by the Recipient.

(u) Representations Complete. Except as the Recipient otherwise notifies the Corporation in writing, all representations made herein by the Recipient are true, complete and accurate upon **execution** of this Project Finance Agreement and will be true, complete and accurate as of the date of the making of any Leveraged Financing hereunder.



(v) Procurement and Suspension Debarment. The Recipient shall ensure that no subaward, contract or agreement for purchases of goods or services shall be made with any debarred or suspended party under Executive Order 12549 pursuant to the requirements of the Office of Management and Budget compliance supplement number A-133 as revised from time to time.

Section 2.2. Representations of the Corporation. The Corporation represents and warrants as follows:

(a) Existence and Authority. The Corporation is a body corporate and politic, constituting a public benefit corporation, established and existing under the laws of the State, including the Act. The Corporation is authorized to issue the Corporation Bonds in accordance with the Act and to use the proceeds thereof to provide funds for the purchase of Recipient Bonds the proceeds of which are to be used to undertake and complete the Project and/or to refund the Existing Indebtedness.

(b) Legal Power. The Corporation has complied with the provisions of the Act and has full power and authority to execute and deliver this Project Finance Agreement and, subject to the receipt of the State Approvals, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(c) No Default. The Corporation is not in default under any of the provisions of the laws of the State which would affect its existence or its powers referred to in the preceding paragraph (b).

(d) Approvals. By resolution duly adopted by the Corporation and still in full force and effect, the Corporation has authorized the execution, delivery and due performance of the Project Finance Agreement, the Corporation Bonds, and the Indenture, and the taking of any and all action as may be required on the part of the Corporation to carry out, give effect to and consummate the transactions contemplated by each of the foregoing, and the Corporation will take all actions within its reasonable control to obtain all approvals necessary in connection with the foregoing that have not been obtained as of the date hereof.

(e) Binding Obligations. This Project Finance Agreement has been duly authorized, executed and delivered by the Corporation and, assuming due authorization, execution and delivery by the Recipient, constitutes a legal, valid and binding special obligation of the Corporation. The Corporation Bonds, when duly executed, issued and delivered, will constitute legal, valid and binding special obligations of the Corporation and will be payable solely from revenues or other receipts, funds or moneys pledged therefor under the Indenture and under the Master Trust Agreement and from any amounts otherwise available under the Indenture, and will be entitled to the benefit of the Indenture and the Master Trust Agreement. The State is not obligated to pay the Corporation Bonds or the interest thereon. Neither the faith and credit nor the taxing power of the State is pledged for the payment of the principal and premium, if any, of and interest on the Corporation Bonds.

(f) No Violation. The execution and delivery by the Corporation of this Project Finance Agreement, the Corporation Bonds, and the Indenture and the consummation of the transactions contemplated in each of the foregoing will not violate any indenture, mortgage, deed of trust, note, financing agreement or other contract or instrument to which the Corporation is a party or by which it is bound or, to the best of the Corporation's knowledge, any judgment, decree, order, statute, rule or regulation applicable to the Corporation, and the Corporation will take all actions within its reasonable control to obtain all consents, approvals, authorizations and orders of governmental or regulatory

authorities which are required for the consummation of the transactions contemplated thereby that have not been obtained as of the date hereof.

(g) Application of Proceeds. The Corporation will apply the proceeds of the Corporation Bonds in accordance with the Indenture and the Project Finance Agreement.

(h) No Litigation. There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the Corporation, or to the best knowledge of the Corporation, any basis therefor, wherein an unfavorable decision, ruling, or finding would adversely affect the transactions contemplated hereby or by the Indenture or the Corporation Bonds or which, in any way, would adversely affect the validity of this Project Finance Agreement, the Corporation Bonds, the Indenture or any agreement or instrument to which the Corporation is a party and which is used or contemplated for use in consummation of the transactions contemplated by each of the foregoing.

(i) Eligibility. The Project is included in the Intended Use Plan and DEC has determined that the Project, subject to final review of the Project plans and specifications by DEC or by the Corporation on its behalf, and subject to any special conditions included in **Exhibit E**, is eligible for financial assistance from the Revolving Fund in an amount equal to the Principal Amount.

(j) Investment. Notwithstanding the provisions of any other general law, special law or local law, inconsistent with the provisions of this Project Finance Agreement, the Corporation shall invest proceeds of the Corporation's Bonds, including proceeds of bonds of the Recipient as provided in the State Act and Act. Such right shall include the right to invest such moneys together with any other moneys held by the Corporation pursuant to the provisions of the Public Authorities Law of the State.

### ARTICLE III

#### PURCHASE OF RECIPIENT BONDS

##### Section 3.1. Purchase of Recipient Bonds.

(a) Purchase of Recipient Bonds. Subject to the conditions and in accordance with the terms of this Project Finance Agreement, the Corporation hereby agrees to purchase the Recipient Bonds in the Principal Amount from the Recipient and the Recipient hereby agrees to sell such Recipient Bonds and accept the proceeds of such purchase and pay the principal of and interest on the Recipient Bonds, such interest or rate of return on such principal amount not to exceed the Maximum Rate (such stated Maximum Rate is exclusive of any financial assistance in the form of an interest subsidy provided to the Recipient). Pursuant to Section 3.8, the Recipient hereby agrees to sell to or upon the order of the Corporation, and to deliver to or upon the order of the Corporation, its Recipient Bonds in an aggregate principal amount of up to the Principal Amount, bearing interest at rates not exceeding the Maximum Rate and expected to mature at the times and in the amounts set forth in **Exhibit F** hereto. The purchase price of the Recipient Bonds shall be the Principal Amount as set forth in **Exhibit C**. Subject to the provisions of Article II, the definitive terms of the purchase contemplated hereby and the Recipient Bonds shall be as set forth in the Notice of Terms (a form of which is attached hereto as **Exhibit L**) [delivered by the Corporation to the Recipient](#).

(b) Payment with Paying Agent. The Recipient on or before the fifteenth (15th) day next preceding each payment date for the Recipient Bonds shall deposit [or cause to be deposited](#) the full

amount of the payment due on such payment date with the Trustee, [in its capacity as Paying Agent pursuant to Section 3.9 hereof](#). The Recipient hereby irrevocably instructs the Trustee, as [Paying Agent](#) to hold such amounts on behalf of the Recipient as part of the Debt Service Fund established under the Indenture until the respective payment dates of the Recipient Bonds and on such payment dates the amounts so held shall be applied to the payment of the amount due on the Recipient Bonds on such payment dates. Thereupon, such amounts shall be applied by the Trustee in accordance with the Indenture. Amounts so deposited by the Recipient prior to the payment date for the Recipient Bonds shall be invested by the Trustee, as [Paying Agent](#) at the direction of the Corporation. Investment earnings on such amounts shall accrue to the benefit of the Recipient and shall be credited against future debt service payments at the direction of the Corporation in accordance with the Indenture.

(c) Reserve Allocation. The Corporation shall establish a Reserve Allocation for the Recipient Bonds in an amount equal to the applicable portion of the principal amount of the Recipient Bonds outstanding at any time, which portion shall be determined by the Corporation and set forth as the applicable Reserve Allocation in **Exhibit C** hereto, to the extent reasonably practicable and subject to such deviation as may be necessary in connection with the administration and investment of moneys in the Revolving Fund. The Reserve Allocation for the Recipient Bonds shall be, from time to time, funded in the amounts and from the sources more fully set forth in the Reserve Allocation Certificate of the Corporation delivered to the Trustee upon original issuance of the Corporation Bonds. As funds represented by the EPA-ASAP and allocable as Reserve Allocation for the Recipient Bonds become available to be drawn on for the benefit of the Revolving Fund, the Corporation shall cause DEC to request the State to draw on the EPA-ASAP and deposit such funds allocable to the Recipient Bonds in an account designated as being for the benefit of the Recipient Bonds at the times and in the amounts specified in the Reserve Allocation Certificate relating to the Corporation Bonds until the total amounts of such funds so drawn and deposited equals the amounts [allocated to the purchase of the](#) Recipient Bonds by the Corporation as set forth in **Exhibit C** hereto. As the State Matching Share allocable as Reserve Allocation becomes available for deposit in the Revolving Fund and allocation to the Recipient Bonds, the Corporation shall take all action within its reasonable control as may be required to cause DEC to request the State to deposit such funds in an account designated as being for the benefit of the Recipient Bonds until the total amount of such funds so deposited equals the amounts [allocated to the Recipient Bonds](#) by the Corporation as set forth in **Exhibit C** hereto. The Recipient acknowledges that the Reserve Allocation established for the Recipient Bonds will be reduced by any unreimbursed portion of Reserve Allocation used to pay debt service on Corporation Bonds due to a Recipient payment default and that the Corporation has no obligation to replenish the Reserve Allocation in such event. The Recipient further acknowledges that the Corporation shall not be liable or responsible for any loss, direct or indirect, resulting from any investment of such Reserve Allocation made in accordance with the Indenture.

(d) Investment and Payment. Any portions of the Reserve Allocation for the Recipient Bonds on deposit in the account relating to the Recipient Bonds in the Debt Service Reserve Fund established under the Indenture and in the Enhanced Subsidy Fund shall be invested at the direction of the Corporation and, subject to applicable tax law, this paragraph and Section 3.6 hereof, Earnings on Reserve Allocation so deposited and invested shall be applied as a credit against interest payments due or to become due on the Recipient Bonds, as and when such Earnings on Reserve Allocation are received. In the event the Recipient fails to pay when due any sum owing to the Corporation pursuant to Section 3.2 hereof, the Corporation may, in addition to all rights and remedies provided in or permitted by Section 6.1 hereof, deduct such sum from any Earnings on Reserve Allocation otherwise payable to the Recipient pursuant to [this](#) Section 3.1, until such sum has been paid in full to the Corporation. In the event that the Recipient fails to make any payment on the Recipient Bonds when due but thereafter the Recipient pays in full all amounts then due or past due and the Corporation waives such payment

default, then Earnings on Reserve Allocation shall be credited to the Recipient on the Business Day next succeeding such payment-in-full or as soon thereafter as shall be practicable; provided, however, that such Earnings on Reserve Allocation shall be reduced in the amount of any Corporation expenses (including but not limited to any investment losses and the reasonable fees and expenses of the Corporation, the Trustee, the owners of Corporation Bonds and attorneys representing any of the foregoing) incurred as a result of the Recipient's failure to make any payment on the Recipient Bonds when due.

(e) No Obligation of the State. The Corporation Bonds and any other obligation of the Corporation herein contained shall not be an obligation, debt or liability of the State and the State shall not be liable on the Corporation Bonds or on any other obligation of the Corporation herein contained, but any such obligation shall be payable solely out of the revenues or other receipts, funds or moneys to be derived by the Corporation under or pursuant to this Project Finance Agreement, and from other revenues pledged and available therefor under the Indenture and under the Master Trust Agreement.

### Section 3.2. Other Amounts Payable.

(a) The Recipient hereby expressly further agrees to pay to the Corporation:

(i) Upon the issuance and sale of the Corporation Bonds, (i) the Corporation's initial financing fee and (ii) the Recipient's Proportionate Share of the State Bond Issuance charge, as specified in the Notice of Terms. The initial financing fee shall include: (a) the Recipient's Proportionate Share of the direct costs and expenses of the Corporation and (b) the program administrative expenses of the Corporation and DEC, in the preparation, sale and delivery of the Corporation Bonds, the preparation and delivery of any legal instruments and documents necessary in connection herewith and therewith and their filing and recording, if required, and all taxes and charges payable in connection with any of the foregoing. Such costs shall be payable from the sources identified in **Exhibit E** hereto and shall be in the amount specified in the Notice of Terms subject to the limit set forth in **Exhibit E**;

(ii) The Corporation's annual administrative fee in the amount and on the dates specified in the Notice of Terms and in **Exhibit E** hereto; and

(iii) As such expenses are incurred, the amount of any Corporation expenses (including but not limited to investment losses and the reasonable fees and expenses of the Corporation, the Trustee, the owners of Corporation Bonds, and attorneys representing any of the foregoing) incurred as a result of the Recipient's failure to make any payment on the Recipient Bonds when due or failure to otherwise comply with the terms of this Project Finance Agreement or the Recipient Bonds.

(b) Payment of Corporation Bonds. The Recipient acknowledges that payment of the Corporation Bonds by the Corporation, including but not limited to payment from moneys drawn under the EPA-ASAP, from State Matching Share or from the related Leveraged Financing subaccount, the deficiency reserve subaccount, the general reserve fund or the related account of the debt service Reserve fund (as such terms are defined in the Indenture), does not constitute payment of the amounts due under this Project Finance Agreement or the Recipient Bonds.

(c) Indemnification. To the extent permitted by law, the Recipient agrees to indemnify, defend and hold harmless the Corporation against any loss or liability arising out of any claim or action brought against the Corporation for death, injury or damage to persons or property occurring in connection with the construction, operation or maintenance of the Project. Such obligation of the

Recipient shall in each case be conditioned upon (i) prompt written notice, by the Corporation to the Recipient, of the institution of any such claim or action, and (ii) the assignment, by the Corporation to the Recipient, of the right to conduct the defense of any such claim or action, provided that such defense shall be undertaken by counsel reasonably satisfactory to the Corporation, and provided further that no settlement, compromise or other voluntary resolution may be entered into, which would impose any liability or obligation on the Corporation, without the Corporation's prior written consent. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against the Corporation with respect to any such claim or action, and any settlement, compromise or other voluntary resolution.

### Section 3.3. Redemption of Recipient Bonds.

(a) Redemption Provisions. The Recipient Bonds sold to the Corporation shall be subject to redemption prior to maturity in accordance with **Exhibit E** hereto and the Notice of Terms. The Recipient shall not, without the prior written consent of the Corporation, redeem prior to maturity any of the Recipient Bonds prior to the date on which any corresponding outstanding Corporation Bonds are redeemable.

The Recipient shall give notice of redemption of any Recipient Bonds to the Corporation and the Trustee at least sixty (60) days and not more than seventy-five (75) days prior to the date fixed for redemption of the Recipient Bonds.

(b) Application of Excess Proceeds. If the amount of the Leveraged Financing exceeds the actual Project Costs, excess proceeds shall be applied to the payment or prepayment of the principal amount of, and/or interest due the Corporation on, the Recipient Bonds, in accordance with the instructions of the Corporation. Within six (6) months following the scheduled completion date of the Project (as set forth in the estimated construction schedule most recently provided by the Recipient and approved by the Corporation), the Recipient shall apply Leveraged Financing proceeds not actually required for Project Costs to a payment or prepayment of principal of the Recipient Bonds, in accordance with the instructions of the Corporation. (Such construction schedule as of the date of this Project Finance Agreement is appended hereto as **Exhibit D**). This Project Finance Agreement may be amended with the written consent of the Corporation in accordance with the terms hereof to permit application of excess Leveraged Financing proceeds to finance additional projects of the Recipient included in an Intended Use Plan or to finance other portions of the Project.

(c) Costs. The Recipient shall pay all costs and expenses of the Corporation in effecting the redemption of any Corporation Bonds prior to maturity that are so redeemed due to the redemption prior to maturity of any Recipient Bonds.

Section 3.4. Deposit of Proceeds From the Sale of Recipient Bonds. The Corporation shall deposit the proceeds of the Corporation Bonds in the manner provided in the Indenture. The Corporation shall direct the Trustee to pay the Net Proceeds of the Recipient Bonds to the General Resolution Trustee for deposit in a State Revolving Fund account or accounts (such account or accounts hereinafter referred to as the "CW SRF Construction Account") to be established in the Construction Fund established under the General Resolution; provided, however, that in connection with a refunding of Existing Indebtedness, the portion of Net Proceeds to be used to effect the refunding may be deposited directly into an escrow or other account pledged to the payment of such Existing Indebtedness. To the extent that the Recipient has not applied the full amount of the proceeds of any Existing Indebtedness to the costs of the Project, the portions of the Net Proceeds to be used to effect the refunding and to be deposited in the CW SRF Construction Account shall be determined in accordance wi

th **Exhibit E**. The Recipient shall provide in a supplement to the General Resolution that disbursements from such CW SRF Construction Account shall be made in a manner consistent with the provisions of Section 3.5. "Net Proceeds" shall mean the net proceeds of the Recipient Bonds remaining after deducting the initial financing fee and costs of issuance (including, but not limited to, underwriters discount or fees) payable in accordance with Sections 3.2(a) and 3.2(b)(1) hereof, initial issue discount, capitalized interest, and accrued interest paid by underwriters, all of which amounts shall be deemed to have been paid to the Recipient and applied by the Recipient to such purposes.

Section 3.5. Disbursement of Proceeds From the Sale of Recipient Bonds.

(a) Disbursements from the proceeds of the leveraged Financing shall be used to finance, or to reimburse the Recipient for Project Costs incurred in connection with, the acquisition, construction, and installation of a portion of the Project, other than in connection with a refunding of Existing Indebtedness, and shall be made pursuant to requisitions submitted by the Recipient to, and approved by, the Corporation pursuant to the provisions of **Exhibit K** to this Project Finance Agreement. Notwithstanding the foregoing, the **Trustee** is hereby authorized and directed to pay amounts payable to the Corporation pursuant to this Project Finance Agreement upon requisition by the Corporation.

(i) In addition to any requirements imposed by the General Resolution, the General Resolution Trustee will be directed in the supplement to the General Resolution referred to above to make proceeds financed with the Corporation Bonds available to the Recipient only upon submission by the Recipient of a requisition to the General Resolution Trustee for such Leveraged Financing proceeds for Project Costs substantially in the form attached hereto as Appendix One to **Exhibit K**. The General Resolution Trustee will be irrevocably directed **in such supplement** not to make any disbursement unless the requisition for such disbursement shall have been approved by the Corporation; provided, however, that if the Corporation shall not expressly approve or deny such requisition within ten (10) Business Days of its receipt, then the Corporation shall be deemed to have approved such requisition at 9 A.M. on the eleventh Business Day next succeeding actual receipt of the request by the Corporation. Any supplement or amendment to the General Resolution or letter of instructions delivered to implement the foregoing shall be in form and substance satisfactory to the Corporation.

(b) Disbursements of Leveraged Financing proceeds to refund Existing Indebtedness shall be made as follows:

(i) In any instance where the Existing Indebtedness is being legally defeased, such proceeds will be disbursed by the escrow holder to refund such Existing Indebtedness at the times and in the manner specified in an escrow agreement between the Recipient and the escrow holder, such escrow agreement to be executed on or prior to the issuance of the Corporation's Bonds and to be in form and substance satisfactory to the Corporation. Without limiting the generality of the foregoing, such escrow agreement shall provide that all disbursements by the escrow holder for the purpose of paying expenses shall require the approval of the Corporation.

(ii) In any other instance, such proceeds will be disbursed by the Trustee to refund such Existing Indebtedness in accordance with the instructions of the Corporation.

(iii) Except as otherwise provided in **Exhibit E** hereto, with respect to any refunding of Existing Indebtedness, the Recipient expressly acknowledges and agrees



that (a) the Corporation will not disburse Leveraged Financing proceeds to refund Existing Indebtedness in excess of the amount of Existing Indebtedness identified in **Exhibit B** hereto, or such lesser amount as has been reviewed and approved by DEC, or by the Corporation on its behalf, as eligible costs of an Eligible Project; (b) if, on the maturity or prepayment date of Existing Indebtedness, the amount of Leveraged Financing proceeds to be disbursed by the Corporation, pursuant to clause (a), is less than the full principal and interest payment necessary to pay off and discharge on such date any series of bonds or notes of which the Existing Indebtedness constitutes a part, the Recipient shall be obligated to (and hereby agrees) to pay the difference in its own funds on such date so as to fully pay off and discharge such bonds or notes to the extent that the difference is due on such date; and (c) any Leveraged Financing proceeds remaining after all transfers to pay off and discharge Existing Indebtedness shall remain on deposit in the related Construction Fund for disbursement pursuant to Section 3.5(a) hereof.

(iv) The Recipient expressly acknowledges and agrees that with respect to any refunding of Existing Indebtedness, it will, prior to closing, on or before the date specified by the Corporation, transfer the remaining unspent proceeds of such Existing Indebtedness for deposit into the Recipient's Construction Fund established at the [Paying Agent](#).

Section 3.6. Reimbursement of Revolving Fund. If the Corporation determines that funds disbursed pursuant to this Project Finance Agreement have been expended by the Recipient for costs that are not permissible Project Costs, the Recipient shall promptly reimburse the account from which such amounts were disbursed in an amount equal to the amount of those funds improperly applied together with interest on such amounts for the period during which such amounts were improperly applied at a rate equal to the interest rate of the Leveraged Financing. The Corporation shall apply the credit granted to the Recipient pursuant to Section 3.1(c) hereof to reimburse the Revolving Fund or shall reduce such credit until the Revolving Fund is reimbursed for amounts misapplied as set forth in this paragraph.

Section 3.7. Effective Date and Term. The date of this Project Finance Agreement is for reference purposes only, and this Project Finance Agreement shall become effective upon the date of execution and delivery hereof by the parties hereto, shall remain in full force and effect from such date and shall expire on such date as all Corporation Bonds shall be discharged and satisfied in accordance with the provisions thereof and all obligations of the Recipient to the Corporation hereunder are satisfied.

Section 3.8. Execution and Delivery of Recipient Bonds and Other Documents.

(a) Execution and Delivery of Recipient Bonds to Trustee. Concurrently with the authentication by the Trustee and delivery of Corporation Bonds and in order to evidence the obligation of the Recipient to pay the Corporation for the Recipient Bonds purchased with proceeds of the Corporation Bonds, the Corporation and the Recipient agree that the Recipient will execute and deliver to the Trustee its Recipient Bonds. Such Recipient Bonds shall be substantially in the form of **Exhibit G** hereto, with such changes, deletions and additions as are necessary to conform with the terms of the Corporation Bonds and as have been agreed to by the Corporation, and shall:

(i) provide for payments of principal, premium, if any, and interest sufficient in the aggregate to make all payments of principal of, and premium, if any, and interest on the related portion of the Corporation Bonds due on any date;

(ii) contain redemption provisions, including premium, if any, or provisions with respect to amortization of principal, together with premium, if any, **consistent with the provisions contained in Exhibit E and the Notice of Terms** and **provided that the Recipient Bonds** may contain redemption provisions that are more restrictive than Corporation Bond redemption provisions; and

(iii) require that all payments of principal of or premium, if any, and interest on the Recipient Bond or Bonds be made to the Trustee in such coin or currency of The United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and that each payment be made in funds available on or before the due date for the corresponding payment on the related Corporation Bonds.

(b) Execution and Delivery of Closing Documents. The Recipient further agrees to deliver to the Corporation, concurrently with the sale and purchase of such Recipient Bonds:

- (i) an unqualified opinion of nationally recognized bond counsel to the Recipient, substantially to the effect of **Exhibit H** hereto and addressed as provided in **Exhibit H**, or accompanied by a reliance letter or letters addressed as provided in **Exhibit H** hereto;
- (ii) an Arbitrage and Use of Proceeds Certificate and a tax certificate in a form acceptable to the Corporation and its bond counsel;
- (iii) if the Recipient Bonds are authenticated, a certificate as to authentication of the Recipient Bonds (authenticated Recipient Bonds are not required by the Corporation unless the Resolution or the Recipient Act requires authentication);
- (iv) a closing certificate substantially to the effect of **Exhibit J** hereto as to confirmation of certain matters set forth in this Project Finance Agreement, signatures and incumbency of authorized signatories, delivery and payment of the Recipient Bonds and certain other matters;
- (v) the items constituting conditions precedent to the issuance of the Recipient Bonds under the General Resolution and the Recipient Act;
- (vi) the approval of the State Comptroller of the sale of the Recipient Bonds to the Corporation to the extent required by the Recipient Act; and
- (vii) such additional certificates, documents and opinions as may be reasonably requested by the Corporation.

The obligations of the Corporation to issue, deliver and sell the Corporation Bonds and to make the Leveraged Financing are conditioned upon the delivery of the opinions, certificates and documents required by this Section 3.8, in form and substance satisfactory to the Corporation, concurrently with the Corporation's performance. With respect to such opinions, certificates and documents the forms of which are appended hereto, the Recipient hereby acknowledges that it and its bond counsel have reviewed such forms and the Recipient hereby agrees to deliver or cause to be delivered such items in substantially the forms appended hereto (except for the insertion of the appropriate names and titles).



(c) Corporation's Obligation to Purchase the Recipient Bonds. The Recipient acknowledges that the Corporation's commitment to purchase the Recipient Bonds shall be solely from the proceeds of the Corporation Bonds. In accordance therewith, the obligation of the Corporation to purchase the Recipient Bonds is subject to purchase of the Corporation Bonds (i) in the case of a negotiated sale, by the Underwriters (hereinafter defined) pursuant to a bond purchase agreement between the Corporation and certain underwriters identified therein (the "Underwriters") and (ii) in the case of a competitive sale, pursuant to a notice of sale and the winning bid submitted pursuant thereto by the purchasers identified in such winning bid (also the "Underwriters"). In the event that the Underwriters do not purchase the Corporation Bonds, then upon written notice delivered to the Recipient by the Corporation, the Corporation may terminate its obligation to purchase the Recipient Bonds and the obligation of the Recipient to deliver the Recipient Bonds upon the terms set forth in this Project Finance Agreement; provided that the Recipient's obligation to pay its Proportionate Share of costs and expenses related to preparation of the preliminary and/or final official statement(s) relating to the Corporation Bonds shall survive any such termination.

(d) Execution and Delivery of Documents with Project Finance Agreement. The Corporation and the Recipient hereby acknowledge that the Recipient has delivered or caused to be delivered to the Corporation as of the date of delivery of this Project Finance Agreement a certificate of local counsel to the Recipient, substantially to the effect of **Exhibit I** hereto.

Section 3.9. Paying Agent. In order to facilitate the availability of Recipient Bond payments for the purpose of making timely payments of Corporation Bonds, the Recipient hereby agrees to designate Manufacturers and Traders Trust Company, or any successor as Trustee under the Indenture, as a Paying Agent under the General Resolution with respect to the Recipient Bonds and to arrange for funds to be available to such Paying Agent not later than 15 days before payments are due on the Recipient Bonds in accordance with Section 3.1(b) hereof.

Section 3.10. Commitment to Proceed; Agreement to pay Proportionate Share of Certain Expenses. The Recipient hereby confirms its commitment to participate in the Leveraged Financing and shall receive the proceeds of the sale of such Recipient Bonds to the Corporation, which proceeds shall be raised from the sale of the Corporation Bonds. The terms of the Recipient Bonds issued, sold and delivered to the Corporation by the Recipient are to be as set forth in this Project Finance Agreement and in the Notice of Terms.

In order to induce the Corporation to include the Recipient in the group of recipients expected to sell Recipient Bonds to the Corporation and receive the proceeds of the Corporation Bonds, the Recipient hereby:

(1) represents that (i) it has provided the information concerning the Recipient contained in the Application for financing from the Revolving Fund submitted to the Corporation, including any supplemental information provided to the Corporation on or before the date of this Project Finance Agreement, (ii) such information was true and complete in all material respects as of its date, (iii) there have been no material adverse changes in such information, and (iv) this information may be relied upon by the Corporation and its underwriters in connection with the issuance of the Corporation Bonds.

(2) agrees that it will accept the financing hereunder in accordance with the terms to be specified by the Corporation in the Notice of Terms; provided that such Notice of Terms shall include terms to the following effect:

- (i) except to the extent that the Recipient otherwise agrees (as evidenced by its acceptance of a Notice of Terms containing different maturity dates and principal amounts), maturity dates and principal amounts as set forth in **Exhibit F** to the Project Finance Agreement with only such changes, if any, as are required to attain compliance with amortization provisions of the Recipient Act (and, in the case of any portion of a Leveraged Financing made for the purpose of refunding outstanding obligations as may be required to reflect the final size of any required escrow);
- (ii) a net interest cost not to exceed the Maximum Rate;
- (iii) the amount of the initial financing fee, which shall not exceed the amount set forth in **Exhibit E** hereto;
- (iv) redemption provisions for the Recipient Bonds consistent with the terms described in **Exhibit E** hereto; and
- (v) no term that would require the delivery of Recipient Bonds that are in conflict with the laws of the State.

(3) agrees that, notwithstanding any other circumstance, the Recipient will pay an amount equal to what would have been such Recipient's Proportionate Share (had it delivered the Recipient Bonds) of the costs of preparing the Preliminary Official Statement and the Official Statement and any supplements thereto.

(4) agrees that it will pay an amount equal to the payment that would have been its Proportionate Share (had it delivered the Recipient Bonds) of the costs and expenses incurred by the Corporation in connection with the proposed Corporation Bonds, including without limitation the preparation and delivery of any legal instruments and documents necessary in connection therewith and their filing and recording, if required, and all taxes and charges payable in connection with any of the foregoing; provided, however, that the Recipient shall not be obligated to pay any such amounts other than pursuant to paragraph (3) of this Section if the pricing of the Corporation Bonds does not result in terms of this Leveraged Financing meeting the requirements of paragraph (2) of this Section.

## ARTICLE IV

### GENERAL PROJECT CONDITIONS, COVENANTS AND REPRESENTATIONS

#### Section 4.1. Compliance with Laws and Agreements.

(a) Compliance. The Recipient agrees that the Project will at all times during the term of any financing be in compliance with applicable federal and State laws and regulations. The Recipient will at all times construct and operate (or cause to be constructed and operated) the Project, in compliance with all applicable federal, State and local laws (including, without limitation, the Act, the State Act, the Water Quality Act and Sections 204(d)(2) and 513 of the Clean Water Act), ordinances, rules, regulations, Executive Orders and this Project Finance Agreement, and with all other applicable laws and regulations to the extent necessary to ensure the availability of the Project for its intended purposes and to ensure the safety of the public. The Recipient agrees to ensure that the Project shall effectively protect water quality, employ good management practices and fulfill all federal and State req

uirements, all requirements of the Project Finance Agreement and all applicable instructions issued by the Commissioner to ensure that these requirements are met.

The Recipient further agrees that if its Project is determined to be an equivalency project (a Tier I project under the State Environmental Review Process), then it will comply with the federal audit requirements of the Single Audit Act of 1984 (31 USC 7501 et seq.) and all laws and regulations implementing same including without limitation 40 CFR Part 31, all as amended from time to time.

(b) Capacity. The Recipient certifies that it has the legal, institutional, managerial, technical, contractual and financial capability to ensure adequate and timely construction, operation, and maintenance of the Project.

(c) Enforcement. The Recipient agrees that acceptance by DEC or the Corporation of a certification by the Recipient that a Project requirement has been met shall not prevent DEC or the Corporation from performing any actions necessary to ensure the accuracy of such certification.

(d) SEQRA/SERP. The Recipient certifies with respect to the Project that it has complied, and it agrees to continue to comply, with all requirements of the State Environmental Quality Review Act ("SEQRA") and the State Environmental Review Process ("SERP"), and if the Commissioner determines that, in addition to all such requirements of SEQRA and SERP, there are additional requirements associated with a National Environmental Protection Act ("NEPA") environmental review, to comply with those additional requirements. The Recipient agrees that it will provide or cause to be provided all environmental documents as may be required by DEC and the Corporation, and the Recipient certifies that it has notified, and agrees that it shall continue to notify, DEC of all actions proposed for complying with the environmental review requirements imposed by SERP approved by EPA for Revolving Fund projects.

(e) S/M/WBE/AA. The Recipient agrees that it, its authorized representatives and all contractors and subcontractors providing services for the Project shall comply with all federal and State laws (including Article 15-A of the Executive Law), regulations, and executive orders applicable to the Project regarding affirmative action, equal employment opportunity, and small, minority and women's business enterprises.

(f) Prevailing Wage Requirements. The Recipient agrees to comply, in all applicable respects, with the prevailing wage requirements under Article 8 of the Labor Law.

(g) Clean Water Act. The Recipient certifies that the Project is consistent with any plans developed under Sections 205(j), 208, 303(e), 319 or 320 of the Clean Water Act, to the extent applicable.

(h) Special Project Conditions. The Recipient agrees that it will comply with any special Project conditions set forth in **Exhibit E**.

#### Section 4.2. Plans and Specifications.

(a) Design and Construction. The Recipient has caused or will cause the Project to be designed and constructed in accordance with plans and specifications delivered to the Corporation and DEC and consistent with **Exhibit A** hereto, and has proceeded or will proceed with the acquisition and construction of the Project in conformity with law, with the Project Finance Agreement and with all applicable requirements of governmental authorities having jurisdiction with respect thereto, subject to such modifications of plans and specifications as may be approved by the Corporation and DEC as necessary or advisable to effectuate the purposes of the Act and the State Act.

(b) No Warranty Regarding Condition, Suitability or Cost of Project. Neither the Corporation nor DEC makes any warranty, either express or implied, as to the Project or its condition or that it will be suitable for the Recipient's purposes or needs, or that the proceeds from the purchase of the Recipient Bonds will be sufficient to pay the costs of the Project. Review or approval of engineering reports, facilities plans, design drawings and specifications or other documents or the inspection of Project Construction by DEC or the Corporation does not relieve the Recipient of its responsibility to properly plan, design, build and effectively operate and maintain the Project as required by laws, regulations, permits and good management practices. The Recipient acknowledges and agrees that DEC and the Corporation or their representatives are not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other Project documents. Nothing in this section prohibits the Recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.

(c) Performance Standards. The Recipient agrees that it will take or cause to be taken corrective action necessary to bring the Project into compliance with the Project performance standards contained in the approved Engineering Report or Facilities Plan for the Project. The Corporation agrees to consider additional Revolving Fund assistance to finance the costs of such corrective action.

#### Section 4.3. Construction of Project.

(a) Construction. To the extent, if any, that the Project is not yet complete, the Recipient agrees to ensure that the Project will be constructed expeditiously and in accordance with the construction schedule most recently provided by the Recipient and approved by the Corporation. (Such construction schedule as of the date of this Project Finance Agreement is appended hereto as **Exhibit D**).

(b) Contracts and Security Bonds. The Recipient agrees to the right of DEC and the Corporation to review all contracts for services and construction funded pursuant to the Project Finance Agreement in order to determine eligibility for financing hereunder and to determine compliance with all relevant plans and terms of the Project Finance Agreement. Whenever a security bond is posted by a successful bidder for the faithful performance of a contract funded pursuant hereto, the name and address of the bonding company or person issuing the security bond, the number of such bond, and such other information as may be required by DEC and/or the Corporation, shall be transmitted to the requesting party, where it shall be reviewed to determine its authenticity prior to award of such contract. The original of such bond shall remain in the office of the Recipient.

(c) Inspection. The Recipient agrees that it shall provide competent and adequate inspection of all Project construction under the direction of a professional engineer licensed in the State. Such engineer shall be directed to inspect work necessary for the construction of the Project and to det

ermine whether the construction conforms to the approved plans and specifications. The engineer shall be required to certify to the Recipient, DEC, and the Corporation at the completion of construction that the construction is in accordance with the approved plans and specifications or approved amendments thereto. Any work not in accordance with approved plans and specifications shall be remedied, unless such noncompliance is waived by DEC in writing.

(d) Change Orders. All change orders shall be submitted to the Corporation within thirty (30) days following the date they are ordered. The Recipient shall take such steps as are required to assure that changes that in the opinion of DEC and the Corporation will significantly alter any treatment process incorporated in the Project will not be carried out without prior approval by DEC or the Corporation. The Recipient agrees that, if Revolving Fund assistance is to be requested for such increase, changes which will increase the estimated cost of the Project shown in **Exhibit C** hereto shall require approval by the Corporation and formal amendment to the Project Finance Agreement. Revolving Fund assistance for Project Cost increases is subject to the availability of Revolving Fund moneys in accordance with the Intended Use Plan.

(e) Completion Certificate. To the extent, if any, that the Project is not yet complete, the Recipient shall deliver to the Corporation a certificate of the supervising engineer stating that the Project has been completed in accordance with this Project Finance Agreement **within seven (7) Business Days following such completion.**

(f) Required Approvals and Permits. The Recipient has obtained or shall obtain all necessary approvals from any and all governmental agencies requisite to the completion of the Project and compliance with all federal, State and local laws, ordinances and regulations applicable thereto. Upon completion of the Project, the Recipient has obtained all required permits and authorizations from appropriate authorities, if required, for operation and use of the Project as contemplated by the Project Finance Agreement.

#### Section 4.4. Ownership, Operation and Maintenance.

(a) Notice of Beginning Operation. The Recipient shall notify DEC and the Corporation in writing within thirty (30) days following the actual date of initiation of operation of the Project.

(b) Operation and Maintenance. The Recipient shall take such actions as are required to ensure proper and efficient operation and maintenance of the Project satisfactory to DEC including but not limited to retaining a sufficient number of qualified staff and insuring performance of required tests and requirements. After completion of the Project the Recipient shall at all times cause the Project to be operated properly and in a sound and economical manner and shall cause the Project to be maintained, preserved and kept, 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 Project may be properly conducted in a manner that is consistent with the project performance standards contained in the Engineering Report or Facilities Plan (each as defined in the Regulations) for the Project, with the Project Finance Agreement and with the requirements of any related State Pollutant Discharge Elimination System Permit.

(c) Continued Ownership and Operation. The Recipient agrees to own, operate and maintain the Project unless authorized to cease operation or dispose of the Project according to the provisions of Section 17-1909(4)(g)(ii) and (vii) of the Environmental Conservation Law. The Recipient agrees that it will not abandon, discontinue operation of or sell or otherwise dispose of the Pro

ject, except for portions of the Project sold or otherwise dispose of the Project, except for portions of the Project sold or otherwise disposed of in the course of ordinary repair and replacement of obsolete or worn out parts, without advance written approval of the Commissioner so long as the Leveraged Financing is outstanding.

(d) Access to Project and Work. The Recipient will permit representatives of DEC, the Comptroller of the State and the Corporation to have access to the Project at all reasonable times, and all contracts for construction or operation of all or a portion of the Project will contain provisions that permit such access to the Project or work relating to the Project, wherever it is in preparation or progress, and that the contractor will provide proper facilities for such access and inspection and will permit extracts and copies of Project records to be made by the foregoing persons.

(e) User Fee Covenant. The Recipient will at all times maintain **or cause to be maintained** a dedicated source of revenues with respect to the Project in accordance with the State Act and in amounts such that revenues of the Recipient with respect to the Project shall be sufficient, together with other funds available to the Recipient for such purposes, to pay all costs of operating and maintaining the Project.

(f) Title. The Recipient certifies that it has or will obtain such title, estate or interest in the site of the Project, including necessary easements and rights-of-way, to ensure undisturbed use and possession for the purposes of construction and operation for the estimated life of the Project.

#### Section 4.5. Accounting and Records.

(a) Establishment of Project Accounts. The Recipient agrees that it shall maintain Project accounts in accordance with generally accepted government accounting standards and any instructions issued by the Commissioner or the Corporation.

(b) Production of Monthly Statements. The Recipient shall provide the Corporation with or shall make arrangements to provide the Corporation with monthly statements by the 15th of each month, detailing the activity for the previous month, within any such account, subaccount or fund of the Recipient, containing moneys relating to the Leveraged Financing and/or used for the construction of the Project.

(c) Access to Records. The Recipient agrees that it will: (i) permit DEC, the State Comptroller, or the Corporation, or their authorized representatives to review or audit all records relative to the Project; (ii) produce or cause to be produced all records relating to any work performed under the terms of the Project Finance Agreement for examination at such times as may be designated by any of them or their authorized representatives; (iii) permit extracts and copies of Project records to be made by them or their authorized representatives; and (iv) promptly fulfill information requests by them or their authorized representatives.

(d) Record Retention. The Recipient agrees that it will retain all files and records relating to the construction of the Project for at least six (6) years after Project completion and to retain all other Project files and records until the final payment of debt service on the financing described in the Project Finance Agreement has been made to the Corporation. As-built plans and specifications for the Project will be retained for the useful life of the Project. The Recipient further agrees that it will make available to the Administrator of the United States Environmental Protection Agency or representatives of the Administrator any files or records necessary to determine compliance with the Clean Water Act.

Section 4.6. Payment of Additional Project Costs. In the event that Leveraged Financing proceeds are not sufficient to pay the costs of the Project in full, the Recipient shall nonetheless complete or cause the completion of the Project and pay that portion of the Project Costs as may be in excess of available sale proceeds, and the Recipient shall not be entitled to any reimbursement therefor from the Corporation.

Section 4.7. Remediation. The Recipient agrees that it shall promptly rectify any breach of this Article IV with or without notice from the Corporation.

## ARTICLE V

### COVENANTS

Section 5.1. Application of Proceeds. The Recipient will apply the Leveraged Financing proceeds solely for Project Costs and to refund the Existing Indebtedness, as the case may be.

Section 5.2. Tax Covenant. Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will not take or authorize any action or permit any action within its reasonable control to be taken, or fail to take any action within its reasonable control, with respect to the Project, or the portion of the proceeds of the Corporation Bonds made available to it as part of the financing contemplated hereby including any amounts treated as proceeds of the Corporation Bonds for any purpose of Section 103 of the Code, which will result in the loss of the exclusion of interest on the Corporation Bonds from gross income for federal income tax purposes under Section 103 of the Code. This provision will control in case of conflict or ambiguity with any other provision of this Project Finance Agreement. Without limiting the generality of the foregoing, the Recipient will not take any action or omit to take any action within its reasonable control, which, assuming the Recipient Bonds were issued as bonds the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code, would cause the Recipient Bonds to be "private activity bonds" or "arbitrage bonds" within the meaning of Sections 141(a) or 148 of the Code as in effect upon the issuance of the Recipient Bonds. In furtherance of such covenants and agreements, the Recipient agrees to deliver on or prior to the date of delivery of the Corporation Bonds an Arbitrage and Use of Proceeds Certificate and the Tax Certificate in form and substance satisfactory to bond counsel to the Corporation, and the Recipient hereby agrees to comply with the provisions thereof.

Section 5.3. Payment of Recipient Bonds.

(a) The Recipient covenants and agrees that it will duly and punctually pay or cause to be paid the principal installments or redemption price of its Recipient Bonds that have been sold to the Corporation and the interest thereon, at the dates and places and in the manner stated in such Recipient Bonds and in accordance with Section 3.1(a) hereof and that such obligation will not be subject to any defense (other than payment) or any rights of setoff, recoupment, abatement, counterclaim or deduction and will be without any rights of suspension, deferment, diminution or reduction (including but not limited to any defenses or rights relating to Earnings on Reserve Allocation) it might otherwise have against the Corporation, DEC, the Trustee or the owner of any Corporation Bond.

(b) Without in any way limiting the general and unconditional obligation of the Recipient to make timely payments of principal, redemption price and interest on the Recipient Bonds as and when due, as provided in paragraph (a) above, the Corporation agrees that the amount of the interest payment required to be made by the Recipient to the Corporation, on each interest payment date



specified in the Recipient Bonds, will be reduced by the amount of Earnings on Reserve Allocation received and available for crediting against such payment pursuant to, and in accordance with, Section 3.1(c) hereof, subject only to use of such Earnings on Reserve Allocation to pay any principal, premium or interest on the Recipient Bonds, or any other sum owing to the Corporation under Section 3.2 hereof, not paid when due, certain related expenses incurred by the Corporation, and reimbursement to the Revolving Fund for Leveraged Financing proceeds improperly applied, all as more fully provided in Section 3.1(c) hereof, Section 5.05 of the Indenture, and Section 3.6 hereof.

Section 5.4. Maintenance of Accounts; Review of Records. The Recipient shall cause the CW SRF Construction Account (as defined in Section 3.4) to be established under the General Resolution and to be maintained in accordance with generally accepted government accounting standards and directions issued by the Corporation.

Section 5.5. Compliance with General Resolution; Enforcement of Certain Agreements.

(a) The Recipient agrees to comply with the provisions of this Project Finance Agreement and of the General Resolution, including but not limited to rate covenants and other covenants set forth therein.

(b) Except to the extent that the Recipient is permitted under the terms of the General Resolution to modify the obligations of customers, the Recipient shall enforce or cause to be enforced the provisions of any documents relating to the Project and duly perform its covenants and agreements thereunder. The Recipient will not consent or agree to or permit any rescission of or amendment to the General Resolution except in accordance with the General Resolution. The Recipient will not consent or agree to or permit any rescission of or amendment to any documents relating to the Project that would materially adversely affect the interests of the Corporation without the consent of the Corporation. The Recipient will not consent or agree to any action or failure to act which would violate any covenant or restriction set forth herein, in the General Resolution or in any document relating to the Project without the consent of the Corporation.

Section 5.6. Recipient Budget. The Recipient covenants and agrees that it shall concurrently file with the Corporation a copy of the Recipient Budget filed with the General Resolution Trustee pursuant to the General Resolution, duly certified by an authorized representative of the Recipient.

Section 5.7. Notice of Certain Events. The Recipient shall notify the Corporation and the Trustee if there is a draw on the debt service reserve fund established under the General Resolution to make any payment on any bonds secured by the General Resolution or if the Recipient at any time expects that such a draw will be necessary to make such a payment or if the Recipient at any time expects that it will be unable to make a timely payment on any bonds secured by the General Resolution.

Section 5.8. Notice of Certain Amendments; Amendments to General Resolution. The Recipient agrees to provide to the Corporation written notice of (i) any amendment, change, modification or termination of the General Resolution or (ii) any amendment, change, modification or termination of any documents relating to the Project that would materially adversely affect the Corporation, in either case at least 30 days prior to the effective date of such amendment, change, modification or termination. The Recipient agrees that no amendment, change or modification of the General Resolution shall be made which would adversely affect any rating (including any so-called "shadow" ratings assigned in connection with insured bonds) assigned by any nationally recognized



rating agency to any outstanding series of Bonds (as defined in the General Resolution) without the prior written consent of the Corporation.

## ARTICLE VI

### REMEDIES

Section 6.1. Remedies. (a) The Corporation shall have the right to reject, correct, adjust or withhold requests for disbursements of the sale proceeds described in this Project Finance Agreement and take such actions in the circumstances and in the manner set forth in **Exhibit K** hereto.

(b) If the Corporation or DEC determines that the Recipient or any authorized representative is not complying with federal or State laws, regulations or requirements or instructions of the Corporation or DEC relating to the Project or terms of the Project Finance Agreement the Corporation may, and at the direction of the Commissioner shall, in addition to exercising any or all of the remedies described herein, exercise any or all the remedies otherwise provided by federal or State Law or regulations executed subsequent hereto, at law or in equity, including but not limited to rights to seek injunctive relief or specific performance with respect to the obligations hereunder.

(c) Nothing in the Project Finance Agreement affects the right of DEC or the Corporation to take remedial action including but not limited to administrative enforcement action and actions for breach of contract if the Recipient fails to carry out its obligations under the Project Finance Agreement or any other violation of this Project Finance Agreement occurs.

(d) Pursuant to Section 1285-j(11) of the Act, if the Recipient fails to make any payment due the Corporation pursuant to the Project Finance Agreement or pursuant to any other undertaking of the Recipient (including without limitation the Recipient Bonds) issued as security for this Leveraged Financing, the Corporation shall certify to the New York State Comptroller, and notify the Chairman of the Assembly Ways & Means Committee, the Chairman of the Senate Finance Committee, the Director of the Division of the Budget and the governing body of the Recipient that the Recipient has failed to make such payment. Such certificate shall specify the exact amount of debt service and surcharge, if applicable, required to satisfy the Recipient's unpaid obligation. Any amounts received by the Corporation from the State Comptroller relating to such unpaid amounts shall be applied promptly by the Corporation to the payment of such unpaid amounts or to reimburse any fund used to make such payments on behalf of the Recipient or, if all such payments and reimbursements have been made, such amounts received from the State Comptroller may be applied to pay any fees then owed to the Corporation by the Recipient.

## ARTICLE VII

### MISCELLANEOUS

Section 7.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given, and shall be deemed given, when delivered in writing to the address or telecopier number (if expressly permitted in the provision requiring such communication) of the identified party or parties set forth below:

- (a) Corporation:  
 New York State Environmental  
 Facilities Corporation  
 625 Broadway  
 Albany, New York 12207-2997  
 Attn.: Chief Financial Officer  
 Telecopier No.: (518) 402-7086

with a copy of such communication being delivered to the attention of the General Counsel at the address set forth above.

- (b) DEC:  
 to the address specified in  
**Exhibit E** hereto.
- (c) Trustee:  
 Manufacturers and Traders Trust Company  
 One M&T Plaza  
 Buffalo, New York 14203  
 Attn.: Corporate Trust Department  
 Telecopier No.: (716) 842-4474
- (d) Recipient:  
 to the address specified  
 in **Exhibit E** hereto.
- (e) General Resolution Trustee:  
 to the address specified  
 in **Exhibit E** hereto.

Any of the foregoing parties may designate any further or different addresses or telecopier numbers to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

Section 7.2. Binding Effect. Upon execution and delivery by the Recipient and the Corporation, this Project Finance Agreement shall inure to the benefit of and shall be binding upon the Corporation and the Recipient and their respective successors and assigns.

Section 7.3. Severability. In the event any provision of this Project Finance Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 7.4. Amendments, Supplements and Modifications. This Project Finance Agreement shall not be amended, supplemented or modified except by a written instrument executed by the Corporation and the Recipient and, if such amendment occurs after the issuance of the Corporation Bonds, upon compliance with the provisions of Sections 4.01 and 4.02 of the Indenture.

Section 7.5. Execution in Counterparts. This Project Finance Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.6. Applicable Law. This Project Finance Agreement shall be governed by and construed in accordance with the laws of the State, including the Act and the State Act.

Section 7.7. Captions. The captions or headings in this Project Finance Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Project Finance Agreement.

Section 7.8. Benefit of Project Finance Agreement. This Project Finance Agreement is executed, among other reasons, to induce the purchase of the Recipient Bonds by the Corporation and, to the extent that the Corporation may so determine from time to time in accordance with Section 7.10 hereof, to secure the Corporation Bonds. Accordingly, those rights of the Corporation to enforce the duties, covenants, obligations and agreements of the Recipient set forth in clause (i) of the first sentence of Section 7.10 hereof may at any time, in whole or in part, be assigned and pledged by the Corporation to the Trustee for the benefit of the owners of the Corporation Bonds and thereafter such duties, covenants, obligations and agreements so assigned and pledged shall be for the benefit of and enforceable by the Trustee and the Corporation, except that beneficial owners of bonds hereafter issued under the Indenture also shall be third-party beneficiaries of Section 7.9(b) of this Agreement.

Section 7.9. Further Assurances; Disclosure of Financial Information, Operating Data and Other Information.

(a) The Recipient shall, at the request of the Corporation, authorize, execute, acknowledge and deliver, such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be deemed necessary or desirable by the Corporation, in its sole discretion, for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Project Finance Agreement and the Recipient Bonds. The Recipient also agrees to furnish to the Corporation such additional information concerning the financial condition of the Recipient as the Corporation may from time to time reasonably request.

(b) Without limiting the generality of the foregoing, as and to the extent that the Corporation shall determine that disclosure of such information is necessary (i) in order to comply with any undertakings made by the Corporation pursuant to Rule 15c2-12 of the Securities and Exchange Commission or with any other applicable legal requirements or (ii) in connection with the offering of its bonds to the public, the Recipient shall timely furnish to the Corporation and to such information repositories or other persons as the Corporation shall specify such financial information, operating data and other information relating to the Recipient (including, but not limited to, audited or unaudited financial statements and notices of material events or other material changes in financial condition) as the Corporation shall determine to be necessary for such purposes. The Corporation presently expects to enter into one or more secondary market disclosure undertakings pursuant to such Rule 15c2-12 which will require disclosure of financial and operating information relating to the Recipient only if the aggregate outstanding principal amount of loans or other financing made by the Corporation to the Recipient with the proceeds of bonds issued under the Indenture equals or exceeds twenty percent (20%) of the aggregate outstanding principal amount of all such recipient bonds purchased or other financing made available to all recipients, including the Recipient. In the event that the Corporation shall determine that disclosure of information relating to the Recipient is required pursuant to this paragraph, the Corporation shall so advise the Recipient in writing and shall specify in reasonable detail the information required to be furnished and the timetable for furnishing such information, as well as the place or places such information is to be furnished.

(c) If and for so long as the primary offering of the Corporation Bonds continues (a) the Recipient will furnish such information with respect to itself and its financial condition as the underwriters of the Corporation Bonds may from time to time reasonably request and (b) if any event relating to the Recipient shall occur as a result of which it is necessary, in the opinion of Bond Counsel to the Corporation, or counsel for such underwriters, to amend or supplement the Official Statement of the Corporation used in connection with the offering of the Corporation Bonds in order to make such information not misleading in light of the circumstances then existing, the Recipient will forthwith prepare and furnish to the Corporation and the underwriters such information relating to the Recipient as may be necessary to permit the preparation of an amendment of or supplement to such Official Statement (in form and substance satisfactory to the Bond Counsel to the Corporation and counsel for the underwriters) which will amend or supplement such Official Statement so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make statements therein, in light of the circumstances then existing, not misleading. Unless the Recipient shall have been notified to the contrary in writing by the Corporation or the Underwriters, the Recipient shall be entitled to presume that the primary offering of the Corporation shall have ceased and that its obligations under this paragraph cease twenty-five (25) days after the date of delivery of the Corporation Bonds.

Section 7.10. Assignment of Project Finance Agreement or Recipient Bonds. The Recipient consents to the pledge and assignment at any time of (i) any portion of the Corporation's estate, right, title and interest and claim in, to and under this Project Finance Agreement and the right to make all related waivers and agreements in the name and on behalf of the Corporation, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Project Finance Agreement, if any, and (ii) the Corporation's estate, right, title and interest and claim in, to and under the Recipient Bonds and payments under Recipient Bonds, to the Trustee. The Indenture shall provide that, except during the continuance of a default hereunder or an Event of Default under the Indenture, the Trustee shall not sell, assign, transfer, convey or otherwise dispose of its interest in this Project Finance Agreement, if any, or in the Recipient Bonds during the term hereof without the express written consent of the Corporation and the Recipient. Except as provided in this Section 7.10, the Corporation shall not sell, assign, transfer, convey or otherwise dispose of its interest in this Project Finance Agreement during the term hereof.

Section 7.11. Covenant Against Discrimination. The Recipient in the performance of this Project Finance Agreement will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religion, national origin, age, sex, marital status, physical handicap, political beliefs, mental retardation or history of mental disorder in any manner prohibited by the laws of the United States of America or of the State.

Section 7.12. Agreements of the Corporation. The Corporation shall make reimbursements for the administrative and management costs of DEC and the Corporation in accordance with subdivisions 5 and 7 of Section 1285-j of the Act.

Section 7.13. Project Finance Agreement Supersedes Prior Agreements. This Project Finance Agreement supersedes any other prior or contemporaneous agreements or understandings, written or oral, between the parties relating to the financing of the Project.

Section 7.14. Conversion of Financing. Notwithstanding anything herein to the contrary, the Corporation reserves the right, and the Recipient agrees that the Corporation may, but shall not be obligated to, alter the source of the funding of the Recipient Bonds from the proceeds of the Corporation Bonds to non-proceeds held within the Fund upon the occurrence, but not limited to, any

situation that might cause the Corporation Bonds to become taxable, or upon a payment default of the Recipient. In such event, unless the Corporation and the Recipient otherwise agree, the principal of the Recipient Bonds shall be due on the same dates as they would otherwise have been due and interest shall be payable at a fixed rate of interest equal to the effective interest rate of the Recipient Bonds taking into account the actual earnings on the Reserve Allocation theretofore set aside. Such effective interest rate shall be specified to the Recipient by a written notice of the Corporation. The Corporation and the Recipient agree to enter into such further agreements and amendments to this agreement as shall be necessary to effectuate the foregoing.

Section 7.15. Signs. In recognition of the financing provided hereunder for the Project, the Recipient agrees that any identifying signs that relate to the Project shall be in a form acceptable to the Corporation and DEC.

IN WITNESS WHEREOF, the Recipient and the Corporation have each caused the Project Finance Agreement to be executed and delivered as of the date first above written.

BUFFALO SEWER AUTHORITY

By: \_\_\_\_\_  
Name: Anthony A. Hazzan  
Title: General Manager

NEW YORK STATE ENVIRONMENTAL  
FACILITIES CORPORATION

By: \_\_\_\_\_  
Name: Thomas J. Kelly  
Title: President

**EXHIBIT A**

**PROJECT DESCRIPTION**

**CW SRF Project No. C9-6602-06-00**  
**Recipient: Buffalo Sewer Authority**  
**County: Erie**

**EXHIBIT B****DESCRIPTION OF PREVIOUSLY ISSUED INDEBTEDNESS  
USED TO FINANCE THE PROJECT; PAYMENT INSTRUCTIONS****CW SRF Project No. C9-6602-06-00****Recipient: Buffalo Sewer Authority****County: Erie**

<u>Type of Obligation</u>	<u>Issue Date</u>	<u>Original Principal Amount</u>	<u>Maturity Date</u>	<u>Redemption Amount and Date (if any)</u>	<u>Amount to be Refinanced</u>
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The Recipient hereby directs the Corporation to transfer the amount to be refinanced as listed above on the date specified above in accordance with the following payment instructions:

Payment Instructions:

Name of Bank: \_\_\_\_\_

Bank Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Account No.: \_\_\_\_\_

ABA No.: \_\_\_\_\_

**EXHIBIT C****ESTIMATED PROJECT COSTS; RESERVE ALLOCATION****CW SRF Project No. C9-6602-06-00****Recipient: Buffalo Sewer Authority****County: Erie**

**EXHIBIT D****ESTIMATED CONSTRUCTION SCHEDULE****CW SRF Project No. C9-6602-06-00****Recipient: Buffalo Sewer Authority****County: Erie****Work Description****Start Construction****Construction Complete**



**EXHIBIT E****SCHEDULE OF ADDITIONAL PROVISIONS****CW SRF Project No. C9-6602-06-00****Recipient: Buffalo Sewer Authority****County: Erie****I. Definitions**

"Maximum Rate" means the maximum interest rate per annum on the Leveraged Financing and the Recipient Bonds agreed to pursuant to Section 3.1(a) of the Project Finance Agreement which shall be \_\_\_% per annum.

**II. Other Amounts Payable**

The Recipient agrees to pay the following additional amounts in connection with the Leveraged Financing:

(A) The initial fee payable by the Recipient to the Corporation pursuant to Section 3.2(b) shall not exceed (i) \_\_\_% of Project Costs, plus (ii) the Recipient's share of the State bond issuance charge calculated pursuant to Section 2976(2) of the Public Authorities Law of the State. Such amounts shall be payable from the proceeds of the Recipient Bonds, or if shown in **Exhibit C** to be paid by the Recipient, by check or wire transfer to the Corporation delivered prior to delivery of the Recipient Bonds; and

(B) The Corporation's annual administrative fee, payable pursuant to Section 3.2(a), shall be \_\_\_% of the outstanding principal amount of the Leveraged Financing and shall be payable [annually as set forth in the Notice of Terms](#). In addition, the annual administration fee shall be pro-rated for periods less than a full year upon reduction in or payment of the then outstanding principal amount.

**III. Notice Addresses**

1. For purposes of Section 7.1(b) of the Project Finance Agreement, the address of the applicable DEC regional office shall be:

New York State Department of Environmental Conservation  
Region 9 Office, 270 Michigan Avenue  
Buffalo, New York 14203

2. For purposes of Section 7.1(d) of the Project Finance Agreement, the address of the Recipient shall be:

Buffalo Sewer Authority  
1038 City Hall  
65 Niagara Square  
Buffalo, New York 14202

3. For purposes of Section 7.1(e) of the Project Finance Agreement, the address of the General Resolution Trustee shall be:

Manufacturers and Traders Trust Company  
One M&T Plaza  
Buffalo, New York 14203

IV. Additional Provisions regarding Grant, Loan or Other Funds

The Recipient hereby (i) acknowledges that it has applied for or intends to apply for, but has not yet received or been awarded, or that it may apply for in the future, a grant, loan or other funds which, if received, would provide financing for all or a portion of the Project being financed by the Corporation, (ii) agrees to keep the Corporation apprised of the status of any such grant, loan or other funds application and to immediately notify the Corporation of any awarding of such a grant, loan or other funds and the expected timing and amount of any such assistance in the event of such an award, (iii) authorizes the grantor to release any information respecting such assistance to the Corporation and (iv) agrees that, except to the extent that the Corporation shall otherwise agree in writing, any such grant, loan or other funds shall upon receipt by the Recipient be paid over to the Corporation immediately upon receipt to be applied to the redemption of the Recipient Bonds in accordance with their terms.

V. Disbursement Requests.

The person or persons from time to time holding the offices or other positions set forth below are each authorized to execute requests for disbursement of proceeds on behalf of the Recipient:

1. TITLE: General Manager
2. TITLE: Chairman

In addition to the foregoing, the Recipient may, by written notice given hereunder, designate any further or different person or persons authorized to execute requests for disbursement of proceeds.

VI. Redemption of Recipient Bonds.

The First Optional Redemption Date shall be no later than 10 years after the first principal payment date following the delivery of the Corporation Bonds.<sup>1</sup> At the option of the Recipient, the Recipient Bonds maturing after the First Optional Redemption Date shall be subject to redemption prior to maturity, in whole at any time and in part in principal amounts of \$5,000 or integral multiples thereof on any interest payment date, from any moneys available therefor, at a redemption price, in either case, equal to the principal amount of such Recipient Bonds to be redeemed, together with (i) the Applicable Redemption Premium and (ii) the accrued and unpaid interest on the principal amount to be redeemed to the date fixed for redemption. In the event that the Corporation refunds the Corporation Bonds and the Recipient Bonds are assigned to such refunding bonds, the Recipient consents to the assignment of the Recipient Bonds and agrees that the First Optional Redemption Date shall then be the redemption date as provided in such refunding bonds. In the event of any partial redemption, the Recipient Bonds shall be redeemed in such order of maturities as shall be determined by the Recipient. As used herein "Applicable Redemption Premium" with respect to any maturity of the Recipient Bonds t

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<sup>1</sup> The actual date of the First Optional Redemption Date shall be as detailed in the Notice of Terms.

o be redeemed means the redemption premium specified in the Notice of Terms for such maturity for such date, provided that such redemption premium shall not exceed \_\_\_\_% of the principal amount of the Recipient Bonds proposed to be redeemed. Pursuant to Section 3.3(c) of the Project Finance Agreement, the Recipient shall also pay all costs and expenses of the Corporation in effecting the redemption or defeasance of any Corporation Bonds that are redeemed due to the redemption of any Recipient Bonds.

Notwithstanding the foregoing, no Recipient Bond or portion of a Recipient Bond that is not in an amount, which is an integral multiple of \$5,000 shall be subject to such redemption at the option of the Recipient without the express written consent of the Corporation.

Any such redemption, either as a whole or in part, shall be made upon at least sixty (60) days and no more than seventy-five (75) days prior written notice to (i) the Corporation and to the Trustee during any period when the Recipient Bonds are held by or for the benefit of the Corporation or of holders of its bonds or (ii) any successor holders of the Recipient Bonds at any time thereafter.

The moneys necessary for any redemption of Recipient Bonds shall be paid to or deposited with (i) the Trustee during any period when the Recipient Bonds are held for the benefit of the holders of the Corporation Bonds and (ii) with any fiscal agent during any period when the Recipient Bonds are otherwise held, in either case on or prior to the redemption date. All Recipient Bonds called for redemption will cease to bear interest on the specified redemption date, provided funds sufficient for the redemption of such Recipient Bonds are on deposit with the Trustee or fiscal agent, as appropriate. If such moneys are not available on the redemption date, the Recipient Bonds or portions thereof will continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

#### VII. Existing Indebtedness Provision. (if applicable)

As of the date hereof, the Recipient has submitted documentation supporting, and the Corporation has approved, the amount as shown in **Exhibit B** as proceeds of Existing Indebtedness expended for eligible costs of the Project. The Recipient may submit additional documentation to the Corporation up to the tenth (10th) day preceding the maturity or prepayment date of any Existing Indebtedness, as appropriate (the "Determination Date"), to support a claim of additional proceeds of such Existing Indebtedness as having been expended for eligible costs of the Project.

Notwithstanding anything herein to the contrary, while the Recipient has requested that the Corporation approves the application of the amount shown in **Exhibit B** from the proceeds of the financing to refund the Existing Indebtedness, the Recipient expressly acknowledges and agrees that (a) the Corporation will not advance financing proceeds to refund any Existing Indebtedness in excess of the total amount of proceeds of such Existing Indebtedness approved by the Corporation, as of the Determination Date, as having been expended for eligible costs of the Project; (b) if, on the maturity or prepayment date of such Existing Indebtedness, the amount of financing proceeds to be disbursed by the Corporation, pursuant to clause (a), is less than the full principal and interest payment necessary to pay off and discharge such Existing Indebtedness on such date, the Recipient shall be obligated to (and hereby agrees) to either (i) pay the difference in its own funds on such date so as to fully pay off and discharge such Existing Indebtedness, or (ii) arrange for that portion of the Existing Indebtedness which is in excess of the financing proceeds to be disbursed by the Corporation to refund such Existing Indebtedness, to be renewed or "rolled over"; and (c) the remaining financing proceeds other than (i) those disbursed by the Corporation to refund such Existing Indebtedness, and (ii) the proceeds to be applied towards the Corporation's financing fee and costs of issuance of the Bonds, shall remain on

deposit in the Construction Fund established for the Recipient with the Trustee, under the Indenture (as defined in the Project Finance Agreement), and will be disbursed by the Corporation to the Recipient pursuant to Section 3.5(a) of the Project Finance Agreement, as further expenditures are incurred by this Recipient in connection with the Project (i.e., all such proceeds shall be treated as if they were originally intended to finance the acquisition, construction and installation of portions of the Project not yet completed).

The Recipient shall be responsible for ensuring that it complies with Treasury Regulation Section 1.150-2 in connection with any disbursement of financing proceeds pursuant to clause (c) in the preceding sentence, to the extent required to preserve the tax-exempt status of the Corporation Bonds.

VIII. Transferred Proceeds (if applicable)

The Recipient agrees to transfer the balance of any unspent proceeds of the Existing Indebtedness to the **Paying Agent** no later than the date specified by the Corporation, prior to the delivery of the Corporation Bonds, for deposit in the Recipient's Construction Fund and further agrees to comply with applicable yield restrictions with respect to any unspent proceeds of the Existing Indebtedness as further described in the Arbitrage and Use of Proceeds Certificate.

IX. Project Completion (if applicable)

The Recipient hereby represents that it has completed the Project and that each Project is in operation.

X. Reaffirmation of Representations, Warranties and Covenants. (as applicable)

The Recipient hereby reaffirms the representations and warranties, and hereby agrees to the covenants contained in the prior agreement relating to the acquisition of land, specifically referred to as the [Project Financing and Loan Agreement dated **prior PFLA date**] (including but not limited to those provided in **Exhibit K** of said prior agreement). Such representations and warranties are true, correct and materially accurate as of the date of issuance of the Bonds and are by this reference incorporated in this Project Finance Agreement as though fully set herein.

XI. Special Project Conditions

None. (or pick applicable provisions)

Section 1. Special Condition Regarding the Recipient's Acquisition of Title to Project Site.

The Corporation and the Recipient acknowledge that the Recipient may not, as of the date hereof, have provided the required certification as to title certifying that it has acquired a legal and valid fee simple title or other estate or interest in the site(s) of the Project, including all the necessary easements and rights-of-way, as are necessary to the Recipient's undisturbed use and possession for the construction, operation and maintenance of the Project.

The Recipient agrees that, anything herein to the contrary notwithstanding, proceeds will not be disbursed pursuant to Section 3.5(a) for any cost of construction, other than planning and design, unless and until (1) the Recipient has acquired such title, estate or interest in the Project site(s); and (2) the Recipient has executed and delivered to the Corporation a "Certificate as to Title to Project Site" in a form acceptable to the Corporation. In each requisition submitted for any cost of construction, other

than planning and design, the Recipient shall certify that, as of the date thereof, the Recipient holds, and will retain, a legal and valid fee simple title or other estate or interest in the site(s) of the Project, including all necessary easements and/or rights-of-way, as are or will be necessary for the Recipient's continued undisturbed use and possession of the site(s) of the Project during the construction, operation and maintenance of the Project.

Section 2. Special Condition Regarding Federal/State Permits.

The Recipient, in the Project Finance Agreement, has represented and warranted that it has all necessary licenses, permits or other approvals required to undertake the Project. The Corporation and the Recipient **each** acknowledges that additional licenses, permits and/or other approvals may be required for completion of the Project, as the Project proceeds. The Recipient agrees that, anything herein to the contrary notwithstanding, proceeds of the financing will not be disbursed pursuant to Section 3.5(a) unless and until the Recipient demonstrates, to the satisfaction of the Corporation, that all licenses, permits or other approvals, required as of the date of any such requested disbursement, have been duly obtained. The Recipient shall certify, in each requisition submitted, that the Recipient has obtained all licenses, permits or other approvals required as of the date thereof to undertake the Project.

Section 3. Special Condition Regarding Plans and Specifications to be Approved or Accepted after the Date Hereof in Connection with the Project.

The Corporation and the Recipient acknowledge that the Recipient has not, as of the date hereof, received approval or acceptance, by DEC, or the Corporation on its behalf, of certain plans and specifications, relating to certain element(s) of the Project.

The Recipient agrees that, anything herein to the contrary notwithstanding, proceeds will not be disbursed pursuant to Section 3.5(a) for cost of construction of the Project, other than planning and design, unless and until the plans and specifications have been approved or accepted by DEC or the Corporation on its behalf. The Recipient shall certify, in each requisition submitted, that the disbursement requested does not include any costs of construction (other than costs of planning and design) associated with plans and specifications which have not been accepted by DEC or by the Corporation on its behalf.

Section 4. Special Condition Regarding Professional Services Agreements to be furnished after the Date Hereof in Connection with the Project.

The Corporation and the Recipient acknowledge that the Recipient has not, as of the date hereof, furnished certain professional services agreements relating to certain element(s) of the Project, to the Corporation.

The Recipient agrees that, anything herein to the contrary notwithstanding, proceeds will not be disbursed pursuant to Section 3.5(a) for costs incurred pursuant to such professional services agreements unless and until the Corporation has reviewed such agreements and determined to its satisfaction that such professional services were consistent with the scope of work for the Project. The Recipient shall certify, in each requisition submitted, that the disbursement requested does not include any costs incurred pursuant to any professional services agreements which have not been furnished to and approved by the Corporation.

Section 5A. Special Condition Regarding Engineering Services During Project Planning to be Reviewed and Accepted after the Date Hereof in Connection with the Project.

The Corporation and the Recipient acknowledge that the Recipient has not, as of the date hereof, submitted to the Corporation certain professional services agreements pertaining to Project planning services related to the Project.

The Corporation expressly reserves the right to review professional services agreements pertaining to the planning of the Project. The Recipient understands and agrees that, anything herein to the contrary notwithstanding, proceeds will not be disbursed for costs incurred pursuant to professional services agreements pertaining to planning services unless and until the Corporation has reviewed such professional services agreements and determined to its satisfaction that the services provided thereunder were consistent with the scope of work. The Recipient shall certify, in each requisition submitted, that the disbursement requested does not include any costs incurred pursuant to any professional services agreement pertaining to planning services related to the Project which has not been reviewed and so accepted by the Corporation.

Section 5B. Special Condition Regarding Engineering Services During Project Design to be Reviewed and Accepted after the Date Hereof in Connection with the Project.

The Corporation and the Recipient acknowledge that the Recipient has not, as of the date hereof, submitted to the Corporation certain professional services agreements pertaining to design services related to the Project.

The Corporation expressly reserves the right to review professional services agreements pertaining to the design of the Project. The Recipient understands and agrees that, anything herein to the contrary notwithstanding, proceeds will not be disbursed for costs incurred pursuant to professional services agreements pertaining to design services unless and until the Corporation has reviewed such professional services agreements and determined to its satisfaction that the services provided thereunder were consistent with the scope of work. The Recipient shall certify, in each requisition submitted, that the disbursement requested does not include any costs incurred pursuant to any professional services agreement pertaining to design services related to the Project which has not been reviewed and so accepted by the Corporation.

Section 5C. Special Condition Regarding Engineering Services During Project Construction to be Reviewed and Accepted after the Date Hereof in Connection with the Project.

The Corporation and the Recipient acknowledge that the Recipient has not, as of the date hereof, submitted to the Corporation certain professional services agreements pertaining to inspection and engineering services during construction of the Project.

The Corporation expressly reserves the right to review professional services agreements pertaining to inspection and engineering services during construction to determine whether the services provided thereunder will ensure competent and adequate inspection of project construction. The Recipient understands and agrees that, anything herein to the contrary notwithstanding, proceeds will not be disbursed for costs incurred pursuant to professional services agreements pertaining to inspection and engineering services during construction, or for construction costs of the Project, unless and until the Corporation has reviewed such professional services agreements and determined to its satisfaction that the services provided thereunder were consistent with the scope of work and constituted competent and adequate inspection of project construction. The Recipient shall certify, in each requisition submitted, that the disbursement requested does not include any costs incurred pursuant to any

professional services agreement pertaining to inspection and engineering services during construction of the Project which has not been reviewed and so accepted by the Corporation.

Section 6. Special Condition Regarding the Technical Force Account Proposal to be Approved after the Date Hereof in Connection with the Project.

The Corporation and the Recipient acknowledge that the Recipient has not, as of the date hereof, received Corporation approval of the Technical Force Account Proposal to utilize municipal employees to perform certain element(s) of the Project.

The Recipient agrees that, anything herein to the contrary notwithstanding, proceeds will not be advanced for cost of construction of the Project, other than planning and design, unless and until the Technical Force Account Proposal has been approved by the Corporation. The Recipient shall certify, in each requisition submitted, that the Advance requested does not include any costs of construction (other than costs of planning and design) associated with the Technical Force Account Proposal which have not been approved by the Corporation.

Section 7. Special Condition Regarding Equipment Cost to be Approved or Accepted after the Date Hereof in Connection with the Project.

The Corporation and the Recipient acknowledge that the Recipient has not, as of the date hereof, received approval or acceptance of certain equipment costs relating to the Project.

The Recipient agrees that, notwithstanding anything herein to the contrary, proceeds will not be disbursed pursuant to Section 3.5(a) for costs of such equipment unless and until the equipment purchase has been approved and accepted by the Corporation. The Recipient shall certify, in each requisition submitted, that the disbursement requested does not include any costs of equipment which have not been approved by the Corporation.

Section 8. Special Condition Regarding Change Orders to be Approved or Accepted after the Date Hereof in Connection with the Project.

The Corporation and the Recipient acknowledge that the Recipient has not, as of the date hereof, received approval or acceptance of certain change order costs relating to the Project.

The Recipient agrees that, notwithstanding anything herein to the contrary, proceeds will not be disbursed pursuant to Section 3.5 for costs of such change orders unless and until the change order has been approved and accepted by DEC or the Corporation. The Recipient shall certify, in each requisition submitted, that the disbursement requested does not include any costs for change orders which have not been accepted by DEC or the Corporation.

**EXHIBIT F**

**ANTICIPATED  
PRINCIPAL PAYMENT SCHEDULE<sup>2</sup>**

**CW SRF Project No. C9-6602-06-00  
Recipient: Buffalo Sewer Authority  
County: Erie**

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<sup>2</sup>Final interest rates (excluding subsidy), maturity dates and final principal amounts shall be as set forth in the Notice of Terms (Form of Notice of Terms set forth in **Exhibit L**).



**EXHIBIT G**  
**FORM OF RECIPIENT BONDS\***

**REGISTERED****REGISTERED****No. R-****\$**

UNITED STATES OF AMERICA  
STATE OF NEW YORK  
BUFFALO SEWER AUTHORITY  
[DESIGNATION OF BOND]

MATURITY DATE

INTEREST RATE

DATE OF ORIGINAL ISSUE

REGISTERED OWNER: TICE &amp; CO.

PRINCIPAL SUM: DOLLARS AND NO CENTS

**BUFFALO SEWER AUTHORITY** (hereinafter sometimes called the "Recipient"), a body politic and corporate of the State of New York, acknowledges itself indebted to, and for value received, hereby promises to pay solely from the special funds hereinafter mentioned to the Registered Owner stated hereon, or registered assigns, the Principal Sum stated hereon on the Maturity Date hereof, unless redeemed prior thereto as hereinafter provided, upon the presentation and surrender hereof (i) for so long as this Bond is held by or for the benefit of New York State Environmental Facilities Corporation (the "Corporation") or of holders of its bonds, at either of the principal corporate trust office in Buffalo, New York or at the paying agency office in New York, New York of Manufacturers and Traders Trust Company, as Paying Agent (herein called the "Paying Agent"), or at the principal corporate trust office of any successor thereto, or (ii) at any time thereafter, at the principal corporate trust office in \_\_\_\_\_, New York of \_\_\_\_\_, as Trustee (herein called the "Trustee"), or at the principal corporate trust office of any successor thereto, and to pay to the Registered Owner hereof by check or draft mailed to the Registered Owner at his address as it shall appear on the \_\_\_\_\_ day of the month preceding the interest payment date on the bond registry kept by the Trustee, interest on such Principal Sum from the Bond Date to the date of maturity or earlier redemption of this Bond at the Interest Rate per annum, payable semi-annually on the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ of each year, commencing \_\_\_\_\_. Principal of, redemption premium, if any, and interest on this Bond are payable in any coin or currency of the United States of America which on the respective dates of payment hereof, shall be legal tender for the payment of public and private debts.

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\*Form is for illustration purposes. Exhibit should be provided by Bond Counsel to Borrower.

BUFFALO SEWER AUTHORITY  
REVENUE BOND  
SERIES \_\_\_\_

This Bond is one of a duly authorized issue of bonds (the "Bonds") of the BUFFALO SEWER AUTHORITY issued and to be issued in various series under and pursuant to the New York Public Authorities Law, [Title \[\]](#), and under and pursuant to a certain [Describe Bond Resolution] (such Bond Resolution, being referred to herein as the "Bond Resolution") entered into by and between the Recipient and the Trustee. The aggregate principal amount of Bonds which may be issued under the Bond Resolution is not limited except as provided in said Bond Resolution and all Bonds issued and to be issued under said Bond Resolution are and will be equally secured by the pledges and covenants made therein, except as otherwise expressly provided or permitted in said Bond Resolution.

This Bond is a [special](#) obligation of the Recipient payable solely from the \_\_\_\_\_ (as defined in the Bond Resolution) established by and pledged under the Bond Resolution. Neither the State of New York nor any municipality or public corporation thereof, other than the Recipient, shall be obligated to pay the principal of, redemption premium, if any, or interest on, this Bond and neither the faith and credit nor the taxing power of the State of New York or any political subdivision thereof, including the Recipient, is pledged to such payment of the principal of, redemption premium, if any, or interest on, this Bond.

This Bond is one of a series of Bonds designated "\_\_\_\_\_ Revenue Bonds, Series \_\_\_\_" (hereinafter called the "Series \_\_\_\_ Bonds"), issued in an aggregate principal amount of \$\_\_\_\_\_ under the Bond Resolution and under a \_\_\_\_\_ Supplemental Bond Resolution dated \_\_\_\_\_ (the "\_\_\_\_\_ Supplemental Bond Resolution") (said Bond Resolution and \_\_\_\_\_ Supplemental Bond Resolution being collectively called the "Bond Resolutions"). Copies of the Bond Resolutions are on file at the office of the authority and at the principal corporate trust office in New York, New York of the Trustee, and reference to the Bond Resolutions and any all supplements thereto and modifications and amendments thereof is made for a description of the pledges and covenants securing the Series \_\_\_\_ Bonds, the nature, extent and manner of enforcement of such pledges, the rights and remedies (and limitations thereon) of the registered owners of the Series \_\_\_\_ Bonds with respect thereto and the terms and conditions upon which the Series \_\_\_\_ Bonds are issued and may be issued thereunder.

This Bond is transferable, as provided in the Bond Resolutions, and in accordance with the terms of the Project Finance Agreement dated \_\_\_\_\_, 200\_\_ between the Recipient and the Corporation, only upon the books of the Recipient kept for that purpose at the principal corporate trust office in \_\_\_\_\_, New York of the Trustee by the registered owner hereof in person, or by his attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or his attorney duly authorized in writing, and thereupon a new registered Series \_\_\_\_ Bond or Bonds, without coupons, and in the same aggregate principal amount and of the same maturity, shall be issued to the transferee in exchange therefor in the manner, subject to the conditions and upon the payment of the charges, if any, provided in the Bond Resolutions.

The Series \_\_\_\_ Bonds are issuable in the form of registered Bonds without coupons in the denomination of \$5,000 or any integral multiple thereof, not exceeding the aggregate principal amount of Series \_\_\_\_ Bonds stated to mature in the year of stated maturity of the Bond for which the denomination of the Bond is to be specified.

Registered Series \_\_\_\_ Bonds, upon surrender thereof at the principal corporate trust office in New York, New York of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the registered owner thereof, shall be exchanged for an equal aggregate principal amount of registered Series \_\_\_\_ Bonds without coupons of any other authorized denominations, of the same stated maturity, in the manner, subject to the conditions, and upon the payment of the charges, if any, provided in the Bond Resolutions.

On or after [\_\_\_\_ or \_\_\_\_\_, 20\_\_] (the “First Optional Redemption Date”), at the option of the Recipient, the Bonds maturing after the First Optional Redemption Date shall be subject to redemption prior to maturity, in whole at any time and in part in principal amounts of \$5,000 or integral multiples thereof on any interest payment date, from any moneys available therefor, at a redemption price, in either case, equal to the principal amount of such Bonds to be redeemed, together with (i) the Applicable Redemption Premium and (ii) the accrued and unpaid interest on the principal amount to be redeemed to the date fixed for redemption. **In the event that the Corporation refunds the Corporation Bonds and the Recipient Bonds are assigned to such refunding bonds, the Recipient consents to the assignment of the Recipient Bonds and agrees that the First Optional Redemption Date shall then be the redemption date as provided in such refunding bonds.** In the event of any partial redemption, the Bonds shall be redeemed in such order of maturities as shall be determined by the Recipient. As used herein “Applicable Redemption Premium” with respect to any maturity of the Bonds to be redeemed means four percent (4%) of the principal amount of the Bonds to be redeemed or such lesser redemption premium as is specified in the Notice of Terms (as defined in the Project Finance Agreement) for such maturity and redemption date. Pursuant to Section 3.3(c) of the Project Finance Agreement, the Recipient shall also pay all costs and expenses of the Corporation in effecting the redemption or defeasance of any Corporation Bonds that are redeemed due to the redemption of any Recipient Bonds.

Notwithstanding the foregoing, no Bond or portion of a Bond that is not in an amount, which is an integral multiple of \$5,000 shall be subject to such redemption at the option of the Recipient without the express written consent of the Corporation.

Any such redemption, either as a whole or in part, shall be made upon at least **sixty (60)** days and no more than **seventy-five (75)** days prior written notice to (i) the Corporation and to the **Corporation’s** Trustee for the Corporation’s New York State Environmental Facilities State Clean Water and Drinking Water Revolving Funds Revenue Bonds, Series 200\_\_\_\_ (the “Corporation Bonds”) during any period when the Recipient Bonds are held by or for the benefit of the Corporation or of holders of its bonds or (ii) any successor holders of the Recipient Bonds at any time thereafter.

The moneys necessary for any redemption of Series \_\_\_\_ Bonds shall be paid to or deposited with (i) the Paying Agent during any period when the Series \_\_\_\_ Bonds **are held for the benefit of the holders of the Corporation Bonds** and (ii) the Trustee **during any period when the Series \_\_\_\_ Bonds are otherwise held, in either case on or prior to the redemption date.** All Series \_\_\_\_ Bonds **called for redemption will cease to bear interest on the specified redemption date, provided funds sufficient for the redemption of such Series \_\_\_\_ Bonds are on deposit with the Trustee or fiscal agent, as appropriate.** If such moneys are **not available on the redemption date, the Series \_\_\_\_ Bonds or portions thereof will continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.**

This Bond shall not be entitled to any benefit under the Bond Resolutions or be valid or become obligatory for any purpose until this Bond shall have been registered upon the books of the [NAME OF RECIPIENT] kept for that purpose, which registration shall be evidenced by the execution by the manual signature of a duly authorized signatory of the Trustee of the certificate of authentication hereon.

**IT IS HEREBY CERTIFIED, RECITED AND DECLARED** that all acts, conditions and things required by the Constitution and statutes of the State of New York and the Bond Resolutions to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, exist, have happened and have been performed in **regular and** due time, form and manner as required by law.

**IN WITNESS WHEREOF**, [NAME OF RECIPIENT] has caused this Bond to be executed in its name by the manual or facsimile signature of its [officer #1] and its seal (or facsimile thereof) to be affixed, imprinted, engraved or otherwise reproduced hereon, and attested by the manual or facsimile signature of an authorized officer of the Recipient.

[SEAL]

BUFFALO SEWER AUTHORITY

ATTEST:

\_\_\_\_\_  
Authorized Officer

BY:  
[officer #1]

### TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Series \_\_\_\_ Bonds delivered pursuant to the within mentioned Bond Resolutions.

\_\_\_\_\_, as Trustee

BY:  
Authorized Officer

Date of Authentication: \_\_\_\_\_

**ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned hereby sells, assigns and transfers unto:

(PLEASE PRINT OR TYPEWRITE NAME, SOCIAL SECURITY NUMBER AND ADDRESS OF TRANSFEREE)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

(ATTORNEY)

to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated:

NOTICE: The signature(s) on this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

**FORM OF INSTALLMENT BOND**

REGISTERED  
No. R-1

REGISTERED  
\$[principal]

UNITED STATES OF AMERICA  
STATE OF NEW YORK  
COUNTY OF NEW YORK  
**BUFFALO SEWER AUTHORITY**  
**[DESIGNATION OF BOND]**

FINAL  
MATURITY DATE

INTEREST RATE

DATE OF  
ORIGINAL ISSUE

[month day, year final]

[ ]%

[closing date]

REGISTERED OWNER: TICE & CO.

PRINCIPAL SUM: [amount of principal caps] DOLLARS AND NO CENTS (\$[principal])

The BUFFALO SEWER AUTHORITY (the "Recipient"), in the County of [County], a public benefit corporation organized and existing under the laws of the State of New York, hereby acknowledges itself indebted and for value received promises to pay to the REGISTERED OWNER named above, or registered assigns, on or before the FINAL MATURITY DATE (stated above) the PRINCIPAL SUM in annual installments and to pay interest on the unpaid balance on each such annual installment at the various rates of interest provided below per annum, semi-annually on the [first interest date] and [second interest date] in each year from the date of this bond until it matures.

Date	Interest Rate	Principal	Interest
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[ Insert Amortization Schedule ]

Interest will not be paid on any installment of principal, or interest, after the due date thereof if said installment is paid in full by the due date. Both the installments of principal of and interest on this bond will be paid to the REGISTERED OWNER of this bond in any coin or currency of the United States of America which on the respective dates of payment shall be legal tender for the payment of public and private debts, (i) for so long as this Bond is held by or for the benefit of New York State Environmental Facilities Corporation (the "Corporation) or of holders of its bonds at either of the principal corporate trust office in Buffalo, New York, or at the paying agency office in New York, New York, of Manufacturers and Traders Trust, as Paying Agent (herein called the "Paying Agent"), or at the principal corporate trust office of any successor thereto; or (ii) at any time thereafter, at the principal

corporate trust office in [New York, New York] of [Trustee Name], as Trustee (herein called the "Trustee"), or at the principal corporate trust office of any successor thereto.

This bond is a duly authorized installment bond (the "Bond") of the Buffalo Sewer Authority (the "Recipient") designated [name of issue] pursuant to a resolution, duly adopted by the Buffalo Sewer Authority on the [date of resolution], authorizing the issuance of not to exceed \$[resolution amount] bonds of the Recipient to provide funds required by the Recipient to [resolution purpose] (the "Resolution"). This bond may not be converted into a coupon bond.

This Bond is a [special or general] obligation of the Recipient payable solely from revenues and other moneys pledged for such payment pursuant to the Act and the Resolution. [This Bond shall not in any respect be a general obligation of the Recipient to which the full faith and credit of the Recipient is pledged and shall not in any manner or to any extent constitute or be a charge upon any moneys or property of the Recipient not specifically pledged thereto by the Resolution.] The Recipient has no taxing power. The issuance of this Bond will not obligate the State of New York or any of its political subdivisions or the United States of America to levy or pledge the receipts from any form of taxation for the payment of this Bond.

Neither the officers of the Recipient nor any person executing this Bond shall be liable personally or be subject to any personal liability or accountability by reason of the issuance hereof.

This Bond is transferable or exchangeable, as provided in the Resolution, and in accordance with the terms of the Project Finance Agreement dated \_\_\_\_\_, 200\_\_ between the Recipient and the Corporation, only upon the books of the Recipient kept for that purpose at the corporate trust office in [New York, New York] of the Trustee by the Registered Owner hereof in person, or by his duly authorized attorney, upon surrender of this Bond (together with a written instrument of transfer satisfactory to the Trustee duly executed by the Registered Owner or his duly authorized attorney), and thereupon a new registered Bond or Bonds, without coupons, in the same aggregate principal amount and of the same maturity, shall be issued to the transferee or the Registered Owner in exchange therefor in the manner, subject to the conditions and upon payment of the charges, if any, provided in the Resolution. The Recipient and the Trustee (or other fiduciary) may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal, prepayment or redemption price hereof and interest due hereon and for all other purposes whatsoever.

On or after [\_\_\_\_\_] or \_\_\_\_\_, 20\_\_] (the "First Optional Redemption Date"), at the option of the Recipient, the Bonds maturing after the First Optional Redemption Date shall be subject to redemption prior to maturity, in whole at any time and in part in principal amounts of \$5,000 or integral multiples thereof on any interest payment date, from any moneys available therefor, at a redemption price, in either case, equal to the principal amount of such Bonds to be redeemed, together with (i) the Applicable Redemption Premium and (ii) the accrued and unpaid interest on the principal amount to be redeemed to the date fixed for redemption. In the event that the Corporation refunds the Corporation Bonds and the Recipient Bonds are assigned to such refunding bonds, the Recipient consents to the assignment of the Recipient Bonds and agrees that the First Optional Redemption Date shall then be the redemption date as provided in such refunding bonds. In the event of any partial redemption, the Bonds shall be redeemed in such order of maturities as shall be determined by the Recipient. As used herein "Applicable Redemption Premium" with respect to any maturity of the Bonds to be redeemed means four percent (4%) of the principal amount of the Bonds to be redeemed or such lesser redemption premium as is specified in the Notice of Terms (as defined in the Project Finance Agreement) for such maturity and redemption date. Pursuant to Section 3.3 (c) of the Project Finance Agreement, the Recipient

shall also pay all costs and expenses of the Corporation in effecting the redemption or defeasance of any Corporation Bonds that are redeemed due to the redemption of any Recipient Bonds.

Notwithstanding the foregoing, no Bond or portion of a Bond that is not in an amount, which is an integral multiple of \$5,000 shall be subject to such redemption at the option of the Recipient without the express written consent of the Corporation.

Any such redemption, either as a whole or in part, shall be made upon at least sixty (60) days and no more than seventy-five (75) days prior written notice to (i) the Corporation and to the Corporation's Trustee for the Corporation's New York State Environmental Facilities Corporation State Clean Water and Drinking Water Revolving Funds Revenue Bonds, [Series 200](#) (Pooled Financing Program) (the "Corporation Bonds") during any period when the Recipient Bonds are held by or for the benefit of the Corporation or of holders of its bonds or (ii) any successor holder of this Recipient Bond at any time thereafter.

The moneys necessary for any prepayment of Bonds shall be paid to or deposited with (i) the Paying Agent during any period when the Bonds are held for the benefit of the holders of Corporation Bonds and (ii) with the Trustee or any fiscal agent designated by the Recipient during any period when the Bonds are otherwise held, in either case on or prior to the redemption date. All installments of Bonds called for prepayment will cease to bear interest on the specified prepayment date, provided funds sufficient for the prepayment of such installments are on deposit with the Trustee or fiscal agent, as appropriate. If such moneys are not available on the prepayment date, the installments or portions thereof will continue to bear interest until paid at the same rate as they would have borne had they not been called for prepayment.

It is hereby certified, recited and declared that all acts, conditions and things required by the Constitution and statutes of the State of New York and the Resolution to have happened, to exist and to have been performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed in regular and due time, form and manner as required by said Constitution, statutes and Resolution; that this Bond does not exceed any constitutional, statutory or charter limitation of indebtedness; and that provision has been made for the payment of the principal of and interest, if any, on this Bond as provided in the Resolution.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the certificate of authentication hereon shall have been signed by the Trustee.



50006

IN WITNESS WHEREOF, the Recipient has caused this Bond to be executed in its name by the manual or facsimile signature of its [cfo Title] and its corporate seal (or a facsimile thereof) to be affixed, imprinted, engraved, or otherwise reproduced hereon, and attested by the manual or facsimile signature of the Secretary of the Recipient.

BUFFALO SEWER AUTHORITY

By: \_\_\_\_\_  
[cfo]  
[cfo Title]

SEAL

\_\_\_\_\_  
[Secretary]  
[Secretary Title]

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This Bond is the Series [designation] Bond delivered pursuant to the within mentioned Resolution.

[MLR Trustee], as Trustee

BY: \_\_\_\_\_  
Authorized Officer

Date of Authentication: \_\_\_\_\_

**(FORM OF ASSIGNMENT)**

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 bond 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 bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

\_\_\_\_\_

\*PRINCIPAL PAYMENTS

Amount	Date Received	Received by
\$ _____	_____, 20__	_____ (Signature of person receiving payment)
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____
\$ _____	_____, 20__	_____

INTEREST PAYMENTS

Amount

Interest to

Received by

\$\_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

(Signature of person  
receiving payment)

\$\_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

\$\_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

\$\_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

\$\_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

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\_\_\_\_\_, 20\_\_\_\_

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\_\_\_\_\_, 20\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

\$\_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

\$\_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

\$\_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

**EXHIBIT H**

**[FORM OF OPINION OF NATIONALLY RECOGNIZED BOND COUNSEL]**

[Letterhead of Bond Counsel to  
Recipient]

[Date of delivery of  
Corporation Bonds]

Buffalo Sewer Authority  
1038 City Hall  
65 Niagara Square  
Buffalo, New York 14202

New York State Environmental  
Facilities Corporation  
625 Broadway  
Albany, New York 12207-2997

Hawkins, Delafield & Wood  
67 Wall Street  
New York, New York 10005

Manufacturers and Traders  
Trust Company  
One M&T Plaza  
Buffalo, New York 14203

[underwriter]  
acting on behalf of themselves  
and the other underwriters named  
in the Bond Purchase Agreement,  
relating to the Corporation Bonds  
(as defined herein), between the  
New York State Environmental  
Facilities Corporation and such  
Underwriters

Ladies and Gentlemen:

We have examined a record of proceedings relating to the sale and issuance of [\$ identify the Bonds] (the "Recipient Bonds") of the [Name of Recipient] (the "Recipient").

The Recipient Bonds are issued pursuant to the provisions of \_\_\_\_\_, and a bond resolution duly adopted by the [Recipient's governing body]. The Recipient Bonds are delivered to evidence the obligation of the Recipient with regards to the purchase and sale made pursuant to a project finance agreement, dated as of \_\_\_\_\_, 200\_\_\_\_ (the "Project Finance Agreement"), between the New York State Environmental Facilities Corporation (the "Corporation") and the Recipient. Terms used but

not otherwise defined herein shall have the respective meanings set forth in the Project Finance Agreement.

The Recipient Bonds are dated \_\_\_\_\_, mature on [\_\_ and/or \_\_\_\_\_] in the principal amounts, in each of the following dates, and bear interest at the rates per annum payable on \_\_\_\_\_ and semi-annually thereafter on \_\_\_\_\_ and \_\_\_\_\_ in each year to maturity, as set forth in the Notice of Terms relating to the Project Finance Agreement delivered to the Recipient by the Corporation, a copy of which is attached hereto.

The Recipient Bonds are issued only in fully registered form without interest coupons, not exceeding the aggregate principal amount of Recipient Bonds maturing in any year. The Recipient Bonds are lettered R and numbered from one consecutively upward.

The Recipient Bonds are subject to redemption prior to maturity upon the terms set forth in the Notice of Terms.

In our opinion, the Project Finance Agreement has been duly authorized, executed and delivered by the Recipient and, assuming the due authorization, execution and delivery thereof by the Corporation, the Project Finance Agreement together with the Notice of Terms constitute a legal, valid and binding obligation of the Recipient, enforceable in accordance with the terms thereof.

In our opinion, the Recipient Bonds (i) conform to the descriptions thereof in the Project Finance Agreement and (ii) are valid and legally binding special obligations of the Recipient [describe nature of security and revenues pledged under Resolution]. The enforceability of rights or remedies with respect to the Project Finance Agreement or the Bonds may be limited by bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted.

The financial assistance being made available to the Recipient under the terms of the Project Finance Agreement are being made with a portion of the proceeds of State Clean Water and Drinking Water Revolving Funds Revenue Bonds, Series 200\_\_ \_\_ being issued by the Corporation (the "Corporation Bonds") the interest on which is intended to be and remain excluded from gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). In connection with the delivery of the Recipient Bonds, the Recipient has executed and delivered an Arbitrage and Use of Proceeds Certificate. Pursuant to such Arbitrage and Use of Proceeds Certificate and the Project Finance Agreement the Recipient has certified and agreed that the Recipient will comply with the provisions and procedures set forth in the Arbitrage and Use of Proceeds Certificate and that it will not take any action or omit any action within its reasonable control, which assuming the Recipient Bonds were issued as bonds the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code, would cause the Recipient Bonds to be "private activity bonds" or "arbitrage bonds" within the meaning of Sections 141(a) or 148 of the Code. Based on the foregoing and assuming compliance with the Tax Certificate and with the covenants contained in Section 5.2 of the Project Finance Agreement, we are of the opinion that the application of the proceeds of the Recipient Bonds to the purposes contemplated by the Project Finance Agreement will not cause the Recipient Bonds (a) to meet either (i) the "private business" tests of Section 141(b) of the Code or (ii) the "private loan financing" test of Section 141(c) of the Code or (b) to be "arbitrage bonds" within the meaning of Section 148 of the Code.

Further, in our opinion, under existing statutes, interest on the Recipient Bonds is exempt from personal income taxes of New York State and its political subdivisions, including The City of New York.

We have examined the executed first numbered Recipient Bond of said issue and, in our opinion, the form of said Recipient Bond and its execution are regular and proper.

Very truly yours,

[Bond Counsel to Recipient]

**EXHIBIT I****[FORM OF OPINION OF LOCAL COUNSEL]****OPINION OF LOCAL COUNSEL  
BUFFALO SEWER AUTHORITY**

dated \_\_\_\_\_, 2004.

I am an attorney admitted to practice in the State of New York and have acted as counsel to the Buffalo Sewer Authority, a public benefit corporation of the State of New York referred to above (the "Recipient"), which has entered into a Project Finance Agreement (as hereinafter defined) with the New York State Environmental Facilities Corporation (the "Corporation"). Terms used but not otherwise defined herein shall have the respective meanings set forth in such Project Finance Agreement.

I have examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

(a) the Project Finance Agreement, dated as of \_\_\_\_\_, 2004, (the "Project Finance Agreement") by and between the Corporation and the Recipient, in the form executed by the Recipient; and

(b) proceedings of the governing members of the Recipient relating to the approval of the Project Finance Agreement and the execution, issuance and delivery thereof and of the Recipient Bonds on behalf of the Recipient and the authorization of the undertaking and completion of the Project (as defined in the Project Finance Agreement).

I have also examined and relied upon originals, or copies certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in my judgment I have deemed necessary or appropriate to enable me to deliver this opinion.

Based upon the foregoing, I hereby certify as follows:

1. There is no litigation of any nature against the Recipient pending or threatened to restrain or enjoin the issuance, sale, execution or delivery of the Project Finance Agreement, the Recipient Bonds or any of the proceedings taken with respect to the issuance and sale of the Recipient Bonds, the application of moneys to the payment of the Recipient Bonds or in any manner questioning the proceedings and authority under which the Recipient Bonds were authorized or affecting the validity of the Recipient Bonds, the existence of the Recipient or the title of officials of the Recipient who have acted with respect to the proceedings for the issuance and sale of the Recipient Bonds to their respective offices, and no authority or proceedings for the issuance and sale of the Recipient Bonds have been repealed, revoked or rescinded.

2. The execution and delivery by the Recipient of the Project Finance Agreement, the issuance, sale and delivery of the Recipient Bonds, the adoption of the Resolution by the Recipient and compliance with the provisions thereof will not conflict with or constitute a breach of or a default under any local law or administrative regulation, or any judgment, decree or any agreement or other instrument known to me to which the Recipient is a party or otherwise subject.



50014

IN WITNESS WHEREOF, I have hereunto set my hand as of the date first set forth above.

Name:

## EXHIBIT J

## [FORM OF RECIPIENT CLOSING CERTIFICATE]

BUFFALO SEWER AUTHORITY  
CLOSING CERTIFICATE

dated \_\_\_\_\_, 2004

as to (i) Confirmation of Certain Matters set forth  
in the Project Finance Agreement, (ii) Signatures  
and Incumbency of Authorized Signatories, (iii) Delivery and Payment of Recipient Bonds and  
(iv) Certain Other Matters

I, the officer identified below of the municipality or other government body named above (the "Recipient"), hereby certify that:

1. This Certificate has been executed in connection with the issuance and sale by the New York State Environmental Facilities Corporation (the "Corporation") of its \$\_\_\_\_\_ principal amount of [Insert designation of Corporation Bonds] (the "Corporation Bonds"). A portion of the proceeds of said Corporation Bonds has been provided to the Recipient for the purchase of the Recipient's bonds, which has issued its [special obligation](#) bonds (the "Recipient Bonds") to the Corporation.

2. The representations and warranties relating to the Recipient set forth in the Project Finance Agreement between the Corporation and the Recipient dated as of \_\_\_\_\_, 2004 are true and correct as of the date hereof as if made on and as of the date hereof, the Project Finance Agreement remains in full force and effect as of the date hereof and the Recipient has complied with and performed and will continue to comply with and perform all of its covenants and agreements in the Project Finance Agreement.

3. The Recipient Bonds conform to the description thereof in the related [Project Finance Agreement and the Notice of Terms delivered to the Recipient, receipt of which is hereby acknowledged](#), and constitute validly issued and legally binding [special obligations](#) of the Recipient.

4. On the date hereof, the Recipient delivered or caused to be delivered to the Corporation, the purchaser thereof, \$[Financed Amount] principal amount of Recipient Bonds, each duly and completely executed by or on behalf of the Recipient and all as described in the Project Finance Agreement and as set forth in **Schedule A** of the Notice of Terms, delivered by the Corporation to the Recipient in connection with the Project Finance Agreement, and by this reference made a part hereof, and that at or before the time of such delivery of said bonds, I received from said purchaser the amount of \$\_\_\_\_\_ being full payment for said bonds in accordance with the Project Finance Agreement and the Notice of Terms.

5. The Recipient Bonds were duly and completely executed in the name and on behalf of the Recipient by the imprinting thereon of the manual or facsimile signature of the undersigned officer of the Recipient, who did and does hereby adopt such signature, and the impressing or imprinting thereon of the official seal of the Recipient, and that on the date hereof, I am the duly chosen, qualified and acting officer of the Recipient holding the office indicated by the official title set opposite my signature hereto, for a term expiring on the date set opposite such title.

4. No litigation of any nature is now pending or, to our knowledge, threatened (a) to restrain or enjoin the issuance or delivery of the Recipient Bonds or the levy and collection of fees, assessments or other amounts to pay the same, (b) in any manner questioning or affecting, directly or indirectly, the validity of the Recipient Bonds or the proceedings or authority for the issuance thereof, or (c) contesting the corporate existence of the Recipient or the title of the undersigned officers to their respective offices.

5. No authority or proceedings for the issuance of the Recipient Bonds has been repealed, revoked or rescinded, and compliance with the covenants contained in the arbitrage and use of proceeds certificate of the Recipient executed the date hereof with respect to the Recipient Bonds is not prohibited by or violative of any provision of local or special law, regulation or resolution applicable to the Recipient.

6. The seal (or facsimile thereof) which is impressed or imprinted upon each of the Recipient Bonds is the legally adopted, proper and only official corporate seal of the Recipient.

IN WITNESS WHEREOF, I have hereunto set my hand as of the date first written above.

<u>SIGNATURE</u>	<u>NAME OF OFFICER</u>	<u>OFFICIAL TITLE</u>	<u>TERM OF OFFICE</u> <u>EXPIRES</u>
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(Print)

**[PLEASE HAVE THE SIGNATURE ABOVE EITHER NOTARIZED OR GUARANTEED BY A BANK OFFICER (BOTH FORMS ARE BELOW)]**

I HEREBY CERTIFY that the signature of the officer of the above named Recipient which appears above, is true and genuine and that I know said officer and know said officer to hold the office set opposite his or her signature.

_____	_____	of	_____
(Signature)	(Title)		(Name of Bank)

OR

STATE OF NEW YORK    )  
                                  : ss.:  
COUNTY OF                    )

Before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he or she is \_\_\_\_\_ of the Recipient described in and which executed the above instrument; and that he or she signed his or her name thereto by authority of the duly constituted governing body of said Recipient.

Notary Public

**EXHIBIT K****REQUISITION PROCEDURES****PART A****DISBURSEMENT REQUEST PROCEDURES  
FOR RECIPIENTS**

Part A of this **Exhibit K** sets out the procedures which the Recipient agrees to follow in submitting disbursement requests (requisitions) for the disbursement of proceeds to finance the acquisition, construction and installation of any portion of the Project not yet completed. Section 1 sets out the manner in which disbursement requests are to be submitted and reviewed. Section 2 sets out the documentation that must be submitted in support of the costs claimed in such requests.

**Section 1. General Requirements.**

All requests by the Recipient for the disbursement of proceeds shall be made by submission to the Corporation (Attention: **Finance Loan Servicing** Unit) of a State Revolving Fund Requisition together with a State Revolving Fund Disbursement Request, in form and substance satisfactory to the Corporation and in each case completed and executed by a duly authorized representative of the Recipient, and accompanied by the documentation required pursuant to Section 2 of this Part A captioned "Documentation Submission." The Recipient shall use the form of requisition attached as Appendix One to Exhibit K to the Project Finance Agreement unless another form is required or approved by the Corporation. The Recipient shall simultaneously submit copies of such forms, without the accompanying documentation, to the General Resolution Trustee.

The Corporation agrees to certify disbursement requests for proceeds to the Recipient up to the difference between (a) the amount of the actual allowable costs (including costs of issuance relating to the Recipient Bonds or Corporation Bonds) incurred by the Recipient on or before the date of submission of the disbursement request, and (b) any proceeds already disbursed (including any proceeds disbursed according to the terms of this Project Finance Agreement to refund Existing Indebtedness). The Corporation retains the right to refuse to certify disbursement requests in accordance with Part B of this **Exhibit K**.

The Corporation agrees to promptly send to the Recipient and the General Resolution Trustee by hand delivery, by telecopy, by first class mail, by electronic mail, or by overnight delivery service (the choice of method of delivery to be at the discretion of the Corporation), an acknowledgment of receipt of each such disbursement request setting forth the date of receipt by the Corporation of such disbursement request and setting forth the tenth Business Day and the eleventh Business Day next succeeding such date of receipt. The date of receipt by the Corporation of a disbursement request shall be the date on which the Corporation receives such request, if received by the Corporation at or before 12:00 noon on that date, or, the Business Day next succeeding such date, if received by the Corporation after 12:00 noon on that date. If the Corporation approves a disbursement request, the Corporation will notify the Recipient and the General Resolution Trustee of such approval and the amount so approved which notice may be given by telefacsimile at the Corporation's discretion.

With respect to each disbursement request submitted by the Recipient in accordance with the terms hereof, the General Resolution Trustee shall be authorized to disburse the amount requested

therein as of 9 A.M. on the eleventh Business Day next succeeding the date of the Corporation's receipt of the request if the General Resolution Trustee has not received an express denial of such request from the Corporation within ten Business Days of receipt by the Corporation of such request. For purposes of this **Exhibit K** the term Business Day shall mean any day on which New York State offices are open to conduct business.

Section 2. Documentation Submission.

(a) Unless otherwise agreed to in writing by the Corporation or required pursuant to the agreement between EPA and DEC relating to the Revolving Fund, documentation evidencing Project Costs claimed for disbursement, in form and substance satisfactory to the Corporation and in full compliance with the Regulations, must be submitted with each reimbursement request.

(b) All submissions of documentation shall contain cross references by date and amount to the relevant disbursement requests, so that the documentation, and the amounts stated therein, can be reconciled with such disbursement requests.

PART B

WITHHOLDING DISBURSEMENT

Part B of this **Exhibit K** sets out the circumstances in which the Corporation may reject, correct, adjust, or withhold any disbursement request submitted by the Recipient. The Recipient expressly agrees to the terms hereof, and further agrees that (i) the rights of the Corporation contained herein are in addition to (and not in lieu of) any other rights or remedies available to DEC and the Corporation under the Project Finance Agreement, and (ii) nothing contained herein shall be construed to limit the rights of DEC or the Corporation to take actions including, but not limited to, administrative enforcement action and actions for breach of contract against the Recipient if it fails to carry out its obligations under the Regulations, and the Project Finance Agreement during the term thereof.

Section 1. Rejection. A disbursement request may be rejected by the Corporation if it is:

- (a) submitted without signature;
- (b) submitted under signature of a person other than the Recipient's duly authorized representative; or
- (c) submitted after prior disbursement of all proceeds of a [financing](#).

The Corporation will notify the Recipient and the General Resolution Trustee of any disbursement request so rejected, and the reasons therefor. Any disbursement request so rejected must be resubmitted in proper form in order to be considered for approval. If a disbursement request exceeds the balance of the proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the Corporation will so notify the Recipient.

Section 2. Correction. A disbursement request containing an apparent mathematical error will be corrected by the Corporation, after telephonic notification to the Recipient, and will thereafter be treated as if submitted in the corrected amount. The Corporation will confirm correction of the error, to the Recipient, in writing.

### Section 3. Adjustment.

(a) If, upon review of a disbursement request, the Corporation determines that any portion of the costs claimed:

(i) are ineligible under federal or State law to be financed by the Revolving Fund,  
or

(ii) do not constitute costs associated with the Project approved for financing with the proceeds of the subject [financing](#), under the terms of the Project Finance Agreement,

the Corporation will notify the Recipient of its determination in writing. The Recipient shall, within thirty (30) days of the date of receipt of such notice, submit additional documentation or evidence to the Corporation substantiating the eligibility or approval of such costs.

(b) If, upon review of such additional documentation and evidence, the Corporation affirms its original determination, the Corporation shall be entitled to make adjustments as provided in paragraph (c) below. If, upon review of such additional documentation and evidence, the Corporation reverses its determination with respect to any such costs, the Corporation shall (as applicable) either disburse the appropriate additional sum to the Recipient (if, pursuant to paragraph (c), an adjustment was taken out of the then-pending disbursement request), or revise (as required) the adjustment to be made to succeeding disbursement requests (if, pursuant to paragraph (c), an adjustment was to be taken out of succeeding disbursement requests).

(c) If the amount of the costs so determined to be ineligible, or unapproved, is less than the balance of the undisbursed proceeds of the related [financing](#) (after deducting therefrom the full amount of the pending disbursement request), the Corporation shall accept the pending disbursement and make an adjustment in the amount of the ineligible/unapproved costs out of succeeding disbursements. If the amount of the costs so determined to be ineligible, or unapproved, is greater than the balance of undisbursed proceeds of the related [financing](#) (after deducting therefrom the full amount of the pending disbursement request), the Corporation shall be entitled to make an immediate adjustment, and treat the pending disbursement request as if submitted in the adjusted amount.

### Section 4. Withholding.

(a) If the Recipient

(i) fails to pay any principal, premium, if any, or interest on a [financing](#) when the same is due and payable; or

(ii) applies proceeds for purposes other than payment of, or reimbursement for, Project Costs which have been the subject of an approved disbursement request hereunder; or

(iii) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal, State or local criminal law, in connection with the transactions contemplated hereby;

then the Corporation shall be entitled to immediately withhold approval on all pending and subsequent requests for the disbursement of proceeds.

## (b) If the Recipient

(i) fails to construct the Project in a manner consistent with plans, specifications, Engineering Reports or Facilities Plans previously submitted to and approved by DEC and/or the Corporation, or with good engineering practices, where such inconsistency prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of DEC and the Corporation to monitor compliance by the Recipient with applicable federal or State law pertaining to the Project, or with the terms and conditions of the Project Finance Agreement;

(ii) fails to observe or comply with any applicable federal, State or local law, or any term or condition of the Project Finance Agreement, concerning affirmative action, equal employment opportunity, or small, minority and women's business enterprises;

(iii) fails to provide the level of construction inspection for the Project approved as adequate by DEC and/or the Corporation in the review of the Recipient's engineering agreement or subagreement for the Project; or

(iv) fails to deliver documentation evidencing Project costs claimed for disbursement at the times and in the manner specified by the Project Finance Agreement;

and such failure continues for a period of more than thirty (30) days following written notice from the Corporation to the Recipient, the Corporation shall be entitled to withhold, from any requests for the disbursement of proceeds received after such thirty (30) day period has expired, and until such failure is cured or corrected, an amount determined by the Corporation (in its sole discretion) as adequate for the cure or correction of such failure, which amount shall be stated in such notice; provided, that if the nature of the failure is such that it cannot reasonably be cured or corrected within such thirty (30) day period, the Corporation shall not withhold any disbursement by reason of such failure if the Recipient commences cure or correction within such thirty (30) day period and thereafter diligently completes such cure or correction within a further reasonable time period.

The foregoing notwithstanding, if, as of the date of such notice from the Corporation, the balance of the proceeds remaining to be disbursed is less than the amount determined by the Corporation to be adequate for the cure or correction of such failure, the Corporation may immediately withhold all further disbursement of proceeds until such failure is cured or corrected within the time period specified by the preceding paragraph.

(c) Any determination, action or failure to act by the Corporation with respect to this Section 4, including but not limited to the withholding of a disbursement, shall be at the Corporation's sole discretion, and in no event shall the Corporation be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

Section 5. Special Provisions. Notwithstanding the foregoing, the disbursement of proceeds shall be subject to any special provisions set forth at **Exhibit E**.



APPENDIX ONE TO EXHIBIT K  
FORM OF REQUISITION

New York State Environmental Facilities Corporation  
625 Broadway  
Albany, New York 12207-2997  
Attention: [Finance Loan Servicing Unit](#)

Manufacturers and Traders Trust Company  
One M&T Plaza  
Buffalo, New York 14203  
Attention: Corporate Trust Department

Re: Project No. C9-6602-06-00  
Buffalo Sewer Authority  
Series [2004](#) \_\_\_\_

Ladies and Gentlemen:

Pursuant to Section 3.5 of the Project Finance Agreement dated as of \_\_\_\_\_, [2004](#) between the New York State Environmental Facilities Corporation and Buffalo Sewer Authority (the "Project Finance Agreement"), we hereby request disbursement in the amount of \$\_\_\_\_\_ for Project Costs. Capitalized terms used but not defined herein have the meaning set forth in the Project Finance Agreement. In connection with this requisition the undersigned does hereby represent and certify the following:

1. This requisition is requisition number \_\_\_\_\_.
2. Payments aggregating \$\_\_\_\_\_ have been incurred by the Recipient for Project Costs constituting an "eligible project" under the State Act as shown on the attached Disbursement Request.
3. Such costs have not previously been paid with the proceeds of any grant, loan or other funds, except as specifically described herein:  
\_\_\_\_\_  
\_\_\_\_\_
4. The amount of this requisition, together with all prior requisitions, does not exceed the amount of the [financing](#).
5. A copy of this requisition has been delivered to each of the above named addressees.
6. All amounts requisitioned hereunder are for eligible Project Costs, which have not been included in any previous disbursement from proceeds.
7. All Minority/Women Business Enterprise and Equal Employment Opportunity issues have been satisfied or are being effectively addressed to resolve outstanding issues.
8. [The Recipient](#) hereby represents and warrants that it has not [made any award, contract or agreement for purchases of goods or services with any debarred or suspended party under](#)

Executive Order 12549 pursuant to the requirements of the Office of Management and Budget compliance supplement number A-133 as revised from time to time.

9. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Recipient.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature and Title of Authorized  
Representative for Recipient

**EXHIBIT L**  
**[FORM OF NOTICE OF TERMS]**

**NOTICE OF TERMS**

delivered by the New York State Environmental Facilities Corporation  
relating to  
Project Finance Agreement  
dated as of \_\_\_\_\_, 2004, between  
New York State Environmental Facilities Corporation  
and  
BUFFALO SEWER AUTHORITY

1. This Notice of Terms is being delivered pursuant to the Project Finance Agreement referred to above (the "Project Finance Agreement"). All capitalized terms used but not defined herein shall have the respective meanings set forth in the Project Finance Agreement.

2. The terms of the Leveraged Financing, in addition to those set forth in the Project Finance Agreement, are as set forth below (including **Schedule A** attached hereto). In accordance with the Project Finance Agreement, the Recipient Bonds shall be in conformity with such terms. maturity date(s), principal amount(s), interest rate(s) and aggregate debt service on the Leveraged Financing are as set forth in **Schedule A**.

3. The Recipient Bonds shall be subject to optional redemption prior to maturity, pursuant to paragraph VI of **Exhibit E** to the Project Finance Agreement, as follows:

On or after [ \_\_\_\_\_ or \_\_\_\_\_, 20\_\_ ] (the "First Optional Redemption Date"), at the option of the Recipient, the Recipient Bonds maturing after the First Optional Redemption Date shall be subject to redemption prior to maturity, in whole at any time or in part in principal amounts of \$5,000 or integral multiples thereof on any interest payment date, from any moneys available therefor, at a redemption price, in either case, equal to the principal amount of such Recipient Bonds to be redeemed, together with (i) the Applicable Redemption Premium and (ii) the accrued and unpaid interest on the principal amount to be redeemed to the date fixed for redemption. In the event that the Corporation refunds the Corporation Bonds and the Recipient Bonds are assigned to such refunding bonds, Recipient consents to the assignment of the Recipient Bonds and agrees that the First Optional Redemption Date shall then be the redemption date as provided in such refunding bonds. In the event of any partial redemption, the Recipient Bonds shall be redeemed in such order of maturities as shall be determined by the Recipient. The term "Applicable Redemption Premium" as used in Part VI of **Exhibit E** of the Project Finance Agreement with respect to any maturity of the Recipient Bonds to be redeemed shall be the redemption premium specified in **Schedule B** for such maturity for such date.

Pursuant to Section 3.3(c) of the Project Finance Agreement the Recipient shall pay all costs and expenses of the Corporation in effecting the redemption of any Corporation Bonds that are redeemed due to the redemption of any Recipient Bonds.

4. The Recipient's Proportionate Share of costs and expenses specified in Section 3.2(a) of the Project Finance Agreement, shall be in the amount set forth in **Schedule A** hereto.

5. The Recipient's Annual Administrative Fee shall be due annually on May 1, commencing May 1, \_\_\_\_\_.

**BUFFALO SEWER AUTHORITY****Schedule A**Terms of the Leveraged [Financing](#) and Recipient Bond(s)

<u>Maturity</u> <u>Date</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Interest</u>	<u>Semi-Annual</u> <u>Debt Service</u>	<u>Annual Debt</u> <u>Service-Fiscal</u> <u>Year ( )</u>
--------------------------------	-----------------------------------	--------------------------------	-----------------	---	--

TOTAL      =====

Amount payable pursuant to paragraph 4 of the Notice of Terms.... \$

## ITEM NO. 7

**ADJUSTMENT OF SEWER RENT**

- WHEREAS: In accordance with the Resolution adopted on December 15, 1982, requests for sewer rent cancellations, adjustments, or refunds in excess of \$400.00 must be submitted to the Board for its consideration and action; and
- WHEREAS: Donald H. Smith, owner of the premises located at 640 South Ogden, also known as 360 Dingens Street, Buffalo, New York, requests an adjustment of sewer rent based on water use for the October 2003 billing period, in the amount of \$2,335.90; and
- WHEREAS: Upon receiving his October 2003 water bill, which was approximately 200 percent higher than average, Mr. Smith contacted Grand Jude Plumbing & Heating Inc., to inspect the premises. Upon their inspection, it was determined that the main waterline had ruptured, resulting in the excessively high water bill; and
- WHEREAS: A review of this account by the Buffalo Sewer Authority staff recommends the requested adjustment of sewer rent.
- NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes and directs the General Manager to reduce the sewer rent based on water use in the amount of \$2,335.90 for the premises located at 640 South Ogden, also known as 360 Dingens Street, Buffalo, New York, for the October 2003 billing period.

MOTION TO	_____	APPROVE	_____
MADE BY	_____	MR. ROOSEVELT	_____
2 <sup>ND</sup> BY	_____	MR. KENNEDY	_____
AYES	_____ 4 _____	NOES	_____ 0 _____

Board Meeting of April 14, 2004

## ITEM NO. 8

**CLAIM AGAINST LIABILITY AND CASUALTY RESERVE FUND**

WHEREAS: On March 4, 2004, Patricia Moran-Guiati, of 586 Ashland Avenue, Buffalo, New York, filed a Claim with the Buffalo Sewer Authority for plumbing costs from property she owns at 286 Norwood Avenue, Buffalo, New York; and

WHEREAS: On February 19, 2004, Ms. Moran-Guiati hired a private plumber. Upon investigation, it was found that there were some problems associated with the main sewer and there were also some problems with the property lateral; and

WHEREAS: The General Manager reviewed the Claim and recommends payment in the amount of \$378.88.

NOW THEREFORE

BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to make payment to Patricia Moran-Guiati, 586 Ashland Avenue, Buffalo, New York, in the amount of \$378.88. This Claim will be paid out of the Liability and Casualty Reserve Fund.

MOTION TO APPROVE

MADE BY MR. KENNEDY

2<sup>ND</sup> BY MR. ROOSEVELT

AYES 4 NOES 0

Board Meeting of April 14, 2004

## ITEM NO. 9

**AUTHORIZATION FOR RECORDS DISPOSITION PURSUANT TO SCHEDULE (MU-1)**

WHEREAS: On September 12, 2001, the Board of the Buffalo Sewer Authority adopted New York State's Records Retention and Disposition Schedule (MU-1) and authorized the appointment of Charles L. Michaux, III, City Clerk and Officer of Records Management for the City of Buffalo's Records Management Office, as Records Management Officer for the Buffalo Sewer Authority; and

WHEREAS: Pursuant to Schedule (MU-1), local government records that do not contain sufficient administrative, fiscal, legal, or historical value to merit retention beyond established legal minimum periods may be disposed of; and

WHEREAS: The Board of the Buffalo Sewer Authority must authorize the disposal of unessential records.

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority authorizes Charles L. Michaux, III, as Records Management Officer for the Buffalo Sewer Authority, to facilitate the disposal of unessential records pursuant to Schedule (MU-1). The Board of the Buffalo Sewer Authority further authorizes adoption of any future changes or revisions to New York State's Records Retention and Disposition Schedule (MU-1).

MOTION TO	<u>APPROVE</u>		
MADE BY	<u>MR. ROOSEVELT</u>		
2 <sup>ND</sup> BY	<u>MR. KENNEDY</u>		
AYES	<u>4</u>	NOES	<u>0</u>

Board Meeting of April 14, 2004

## ITEM NO. 10

**AUTHORIZATION FOR RENEWAL OF ANNUAL CUSTOMER SUPPORT PLAN WITH MRO SOFTWARE**

WHEREAS: The Buffalo Sewer Authority has been utilizing Maximo Maintenance System software for its work order tracking, purchasing, and inventory control programs; and

WHEREAS: An annual customer support plan is beneficial in order to keep current, receive the latest releases of this program, and receive unlimited telephone support; and

WHEREAS: The Treatment Plant Superintendent, Computer Systems Engineer Coordinator, and staff recommend renewal of the annual customer support plan with MRO Software through March 31, 2005, at a cost of \$34,478.00.

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to renew the annual customer support plan with MRO Software through March 31, 2005, at a cost of \$34,478.00. Funds are available in account no. 00200106-443420.

MOTION TO APPROVE

MADE BY MR. ROOSEVELT

2<sup>ND</sup> BY MR. KENNEDY

AYES 4 NOES 0

Board Meeting of April 14, 2004



## ITEM NO. 11

**AUTHORIZATION FOR RIGGING AND REPAIR ASSISTANCE - HOHL INDUSTRIAL**

WHEREAS: On November 12, 2003, the Board of the Buffalo Sewer Authority authorized the General Manager to utilize the services of Dresser Roots, Inc., the original equipment manufacturer, for the disassembly, inspection, and balancing of two blowers at the Treatment Plant; and

WHEREAS: Due to the Buffalo Sewer Authority's insufficient overhead crane capacity, the limited workspace, and the restricted abilities of Dresser Roots, Inc., to provide the heavy rigging and equipment necessary to complete this service, additional rigging and repair assistance is required; and

WHEREAS: The following informal quotes were solicited and received by the Buffalo Sewer Authority for the additional rigging and repair assistance required:

Hohl Industrial	\$ 56,920.00
Quackenbush Co., Inc.	\$109,600.00
; and	

WHEREAS: The Treatment Plant Superintendent, Superintendent of Mechanical Maintenance, and staff recommend acceptance of the low bid from Hohl Industrial for the additional rigging and repair assistance required in conjunction with the work being done by Dresser Roots, Inc., for a total cost not to exceed \$56,920.00; and

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to utilize the services of Hohl Industrial for the additional rigging and repair assistance required for a total cost not to exceed \$56,920.00. Funds are available in account no. 00300106-443301.

MOTION TO	APPROVE
MADE BY	MR. KENNEDY
2 <sup>ND</sup> BY	MR. ROOSEVELT
AYES	4 NOES 0

Board Meeting of April 14, 2004

## ITEM NO. 12

**AUTHORIZATION TO PURCHASE FOUR (4) NEW TOW-BRO MECHANISM RETROFITS FOR FINAL CLARIFIER NOS. 2A, 7A, 8A, & 1B**

WHEREAS: On July 23, 2003, the Board of the Buffalo Sewer Authority designated U. S. Filter/Envirex as a sole source for replacement parts, supplies, and service for the grit collectors, sludge thickeners, and final clarifier withdrawal equipment; and

WHEREAS: Board approval is required on purchases made over \$10,000.00; and

WHEREAS: Final Clarifier Nos. 2A, 7A, 8A, and 1B are approximately twenty-five years old and are worn beyond repair. This equipment is essential to plant operations; and

WHEREAS: U. S. Filter has submitted a quote in the amount of \$366,400.00 for four (4) new Tow-Bro mechanism retrofits for these final clarifiers; and

WHEREAS: The Treatment Plant Superintendent, Superintendent of Mechanical Maintenance, and staff recommend the purchase of this equipment from U. S. Filter/Envirex at a total cost of \$366,400.00, plus any incurred freight charges.

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to purchase four (4) new Tow-Bro mechanism retrofits for Final Clarifier Nos. 2A, 7A, 8A, and 1B from U.S. Filter/Envirex at a total cost of \$366,400.00, plus any incurred freight charges. This purchase will be charged to account no. 02000212-474080.

MOTION TO	APPROVE
MADE BY	MR. KENNEDY
2 <sup>ND</sup> BY	MR. ROOSEVELT
AYES	4 NOES 0

Board Meeting of April 14, 2004

## ITEM NO. 13

**CHANGE ORDER NO. 2 – CONTRACT NO. 84200016**

CONTRACTOR:	ORIGINAL CONTRACT COST	\$266,888.00
URS Corporation	PREVIOUS CHANGE ORDER	\$53,950.00
640 Ellicott Street	THIS CHANGE ORDER	\$44,951.00
Buffalo, New York 14203	ADJUSTED CONTRACT COST	\$365,789.00

WORK: Anaerobic Digester Mixing and Heating Upgrade

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**DESCRIPTION OF CHANGE OR EXTRA WORK:**

Item #1 Task No. 10 – Additional Engineering Services to include design, construction administration, and inspection for Unit Load Center II replacement.

**REASON FOR CHANGE OR EXTRA WORK:**

Item #1 Unit Load Center II is over 50 years old and parts are no longer available. The existing Unit Load Center II presently cannot supply all the power needs required for the project.

**COST OF CHANGE OR EXTRA WORK:**

Item #1 Task No. 10 - \$44,951.00

THE TOTAL COST OF THE CHANGE OR EXTRA WORK \$44,951.00

The total INCREASE to the contract as a result of this Change Order is \$44,951.00

; and

WHEREAS: The Buffalo Sewer Authority Treatment Plant Administrator, Senior Sanitary Engineering Supervisor, and staff reviewed the cost and recommend the increase to the contract.

NOW THEREFORE  
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby approves Change Order No. 2 to Contract No. 84200016 as written in the above Agenda Item, increasing the contract cost in the amount of \$44,951.00, making the adjusted contract cost \$365,789.00.

MOTION TO APPROVE

MADE BY MR. ROOSEVELT

2<sup>ND</sup> BY MR. KENNEDY

AYES 4 NOES 0

Board Meeting of April 14, 2004

## ITEM NO. 14

**HEALTH INSURANCE DEDUCTION FOR RETIREES**

WHEREAS: The Buffalo Sewer Authority provides eligible retirees with Independent Health Encompass A health maintenance organization at no cost; and

WHEREAS: The retiree is responsible for any difference in cost between said plan and any other plan which may be offered to retirees; and

WHEREAS: The Buffalo Sewer Authority currently bills retirees for this difference; and

WHEREAS: The New York State and Local Retirement System has offered to establish a pension deduction program for the Buffalo Sewer Authority, which will deduct this difference from the retirees pension; and

WHEREAS: All retirees will be required to enroll in this program.

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to establish a pension deduction program through the New York State and Local Retirement System, requiring retirees to have the difference in cost between health-care plans deducted from their pension.

MOTION TO	<u>APPROVE</u>		
MADE BY	<u>MR. KENNEDY</u>		
2 <sup>ND</sup> BY	<u>MR. ROOSEVELT</u>		
AYES	<u>4</u>	NOES	<u>0</u>

Board Meeting of April 14, 2004

## ITEM NO. 15

**AMENDMENT TO SCHEDULE OF JOB CLASSIFICATION PLAN**

WHEREAS:                    There is a need to modify the Job Classification Plan.

NOW THEREFORE

BE IT RESOLVED: That the Board of the Buffalo Sewer Authority approves the deletion of the following position from the Job Classification Plan:

**One (1) Special Assistant (BSA)**

**00650131 411001**

MOTION TO                    APPROVE

MADE BY                    MR. ROOSEVELT

2<sup>ND</sup> BY                    MR. KENNEDY

AYES                    4                    NOES                    0

Board Meeting of April 14, 2004

## ITEM NO. 16

**CONFIRMATION OF APPOINTMENT**

**SPECIAL ASSISTANT (BSA) (EXEMPT)**  
**CHANGE OF STATUS ONLY**  
SEWAGE TREATMENT PLANT  
\$47,422 PER ANNUM  
EFFECTIVE: APRIL 1, 2004

JOSEPH COREY  
7 COVE CREEK RUN  
WEST SENECA, NY

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WHEREAS: The preceding appointment was 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 appointment is hereby confirmed by the Board of the Buffalo Sewer Authority.

MOTION TO APPROVE

MADE BY MR. KENNEDY

2<sup>ND</sup> BY MR. ROOSEVELT

AYES 4 NOES 0

Board Meeting of April 14, 2004

## ITEM NO. 17

**REQUEST FOR LEAVE WHILE ON UNION BUSINESS**

WHEREAS:                   The General Manager has received the following communication from the President of CSEA Local 815:

“March 15, 2004

Mr. Anthony A. Hazzan  
General Manager  
Buffalo Sewer Authority  
1038 City Hall  
Buffalo, NY 14202

Dear Tony,

As President of the Sewer Unit of C.S.E.A., I am being sent to the Local Government Workshop in Albany, NY, on Friday, June 4, 2004 through Monday, June 7, 2004.

I will need Friday, June 4, 2004, and Monday, June 7, 2004, to attend. I am asking for Board approval as per our union contract for Union Business.

Very truly yours,

Richard Stoddard, Sr. /s/  
President  
CSEA Buffalo Sewer Unit”

MOTION TO	_____	APPROVE	_____
MADE BY	_____	MR. ROOSEVELT	_____
2 <sup>ND</sup> BY	_____	MR. KENNEDY	_____
AYES	_____	4	NOES _____ 0

Board Meeting of April 14, 2004



## ITEM NO. 18

**REQUEST FOR LEAVE WHILE ON UNION BUSINESS**

WHEREAS: The General Manager has received the following communication from the President of CSEA Local 815:

“March 15, 2004

Mr. Anthony A. Hazzan  
General Manager  
Buffalo Sewer Authority  
1038 City Hall  
Buffalo, NY 14202

Dear Tony,

As President of the Sewer Unit of C.S.E.A., I am being sent to the Region VI meeting in Jamestown, NY, on Friday June 11, 2004 through Monday, June 14, 2004.

I will need Friday, June 11, 2004, and Monday, June 14, 2004, to attend. I am asking for Board approval as per our union contract for Union Business.

Very truly yours,

Richard Stoddard, Sr. /s/  
President  
CSEA Buffalo Sewer Unit”

MOTION TO	_____	APPROVE	_____
MADE BY	_____	MR. KENNEDY	_____
2 <sup>ND</sup> BY	_____	MR. ROOSEVELT	_____
AYES	_____	4	NOES _____ 0

Board Meeting of April 14, 2004

## ITEM NO. 19

**ADJOURNMENT OF MEETING**MOTION TO APPROVEMADE BY MR. KENNEDY2<sup>ND</sup> BY MR. ROOSEVELTAYES 4 NOES 0

Board Meeting of April 14, 2004