

MINUTES OF THE REGULAR MEETING
OF THE
BUFFALO SEWER AUTHORITY
September 8, 2004

BUFFALO SEWER AUTHORITY

September 8, 2004

REGULAR MEETING

9:00 A.M.

1038 CITY HALL

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CALL OF THE ROLL

Present:	Herbert L. Bellamy, Jr.	Chairman
	James Naples	Vice Chairman
	John D. Kennedy, Sr.	Assistant Vice Chairman
	Christopher Roosevelt	Secretary
	Eleanor Wilson-DiVincenzo	Assistant Secretary
	Anthony A. Hazzan	General Manager
	Margaret Burke	Executive Secretary
	Pamela DiPalma	Director of Employee Relations
	Frank DiMascio. P.E.	Principal Sanitary Engineer
	Joseph Baudo	Engineering Dept.
	Salvatore LoTempio	Treatment Plant Superintendent
	Anthony Barone	Director of Sewer Maintenance
	Darby Fishkin	City Deputy Comptroller
	Frank Belliotti	City Auditor
	Nicole Elliott	Erie Co. Environment & Planning
Absent:		

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

ITEM NO. 1

Motion to Adopt the Minutes of the Meeting of July 21, 2004

MOTION TO	ADOPT		
MADE BY	MR. NAPLES		
2 ND BY	MR. KENNEDY		
AYES	5	NOES	0

Board Meeting of September 8, 2004

ITEM NO. 2

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

August 27, 2004

ISSUE DATE	MATURITY DATE	TOTAL DAYS	AMOUNT	BANK	RATE	INTEREST AMOUNT
CAPITAL IMPROVEMENT FUND						
15-Apr-02	Money Market		\$500,000.00	Chase	1.50%	High Yield
CONSTRUCTION FUND						
08-Apr-02	Money Market		\$12,282,834.87	Chase	1.50%	High Yield
LIABILITY AND CASUALTY RESERVE FUND						
22-Apr-02	Money Market		\$1,138,182.93	Chase	1.50%	High Yield
OPERATING FUND						
08-Apr-02	Money Market		\$3,411,939.79	Chase	1.50%	High Yield
TRUST & AGENCY FUND						
06-May-02	Money Market		\$30,327.86	Chase	1.50%	High Yield
SURPLUS FUND						
02-Jun-04	01-Sep-04	91	\$3,719,965.57	M&T Securities	1.17%	\$11,034.43
NET REVENUE FUND						
			\$1,914.29	MTB Funds		
30-Jun-04	27-Sep-04	89	\$1,002,518.12	M&T Securities	1.40%	\$3,481.88
26-Jul-04	25-Oct-04	91	\$1,628,537.71	M&T	1.47%	\$6,057.01
23-Jun-04	24-Nov-04	154	\$1,999,824.92	M&T Securities	1.53%	\$13,175.08
01-Jul-04	23-Dec-04	175	\$5,200,000.00	M&T	1.70%	\$42,972.22
25-Aug-04	31-Dec-04	128	\$1,820,193.03	M&T Securities	1.66%	\$10,806.97
25-Aug-04	25-Jan-05	153	\$1,999,927.80	M&T Securities	1.76%	\$15,072.20
			\$13,652,915.87			
DEBT RESERVE FUND						
30-Jun-04	31-May-06	700	\$1,156,364.75	Series F U.S. Treasury Notes	2.50%	
23-Sep-03	15-Aug-08	1788	\$7,350,000.00	Series I M&T Securities	3.25%	\$119,437.50
13-Mar-03	15-Apr-32		\$2,825,593.00	Series H SLG	4.35%	(2/15/05)
04-Mar-04	15-Nov-33		\$774,061.00	Series J SLG	3.82%	
22-Jul-04	15-Feb-33		\$498,654.00	Series K SLG	5.26%	
CONSTRUCTION FUND SERIES H						
			\$93.31	MTB Funds		
05-Aug-04	02-Sep-04	28	\$977,949.21	M&T Securities	1.38%	\$1,050.79
12-Aug-04	09-Sep-04	28	\$1,188,685.71	M&T Securities	1.42%	\$1,314.29
19-Aug-04	16-Sep-04	28	\$1,245,821.87	M&T	1.42%	\$1,375.94
26-Aug-04	23-Sep-04	28	\$1,177,688.69	M&T Securities	1.43%	\$1,311.31
			\$4,590,238.79			
CONSTRUCTION FUND SERIES J						
19-Aug-04	02-Sep-04	14	\$175,166.62	M&T	1.41%	\$96.05
CONSTRUCTION FUND SERIES K						
05-Aug-04	02-Sep-04	28	\$99,892.67	M&T Securities	1.38%	\$107.33
12-Aug-04	02-Sep-04	21	\$74,101.94	M&T	1.38%	\$61.38
19-Aug-04	09-Sep-04	21	\$100,098.00	M&T	1.42%	\$82.91
26-Aug-04	09-Sep-04	14	\$1,500,000.00	M&T	1.42%	\$828.33
26-Aug-04	16-Sep-04	21	\$1,625,152.21	M&T	1.42%	\$1,346.17
			\$3,399,244.82			

RECEIVE & FILE

ITEM NO. 3

RESOLUTION AUTHORIZING CWSRF APPLICATION AND AGREEMENT FOR PROJECT FINANCING - NEW YORK CLEAN WATER STATE REVOLVING FUND

WHEREAS: The following Resolution authorizes the execution and filing of an application and execution and delivery of an agreement setting forth the terms of the Project financing and other documents necessary for CWSRF assistance.

NOW THEREFORE
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes and directs the General Manager to execute and deliver an application for CWSRF assistance, to execute and deliver the Project financing agreement and any other documents necessary to receive financial assistance from the Fund for the Project, to act in connection with the Project and to provide such additional information as may be required and to make such agreements on behalf of the Buffalo Sewer Authority as stated in the Resolution that follows.

MOTION TO APPROVE

MADE BY MR. NAPLES

2ND BY MS. WILSON-DIVINCENZO

AYES 5 NOES 0

Board Meeting of September 8, 2004



New York State Environmental Facilities Corporation
 625 Broadway Albany, New York 12207-2997
 (800) 882-9721 within New York State
 (518) 402-6971 Fax (518) 402-6972
 Legal Division

**RESOLUTION AUTHORIZING CWSRF APPLICATION
 AND AGREEMENT FOR PROJECT FINANCING
 NEW YORK CLEAN WATER STATE REVOLVING FUND**

Resolution authorizing the execution and filing of an application and execution and delivery of a agreement setting forth the terms of the Project financing and other documents necessary for CWSRF assistance.

WHEREAS,

The Buffalo Sewer Authority

(Legal Name of Applicant)

herein called the "Applicant", after thorough consideration of the various aspects of the problems and study of available data, has hereby determined that the project generally described as:

Anaerobic Digester Upgrade-Phase 2 (Digesters 1 & 2)

(Description of Project)

and identified as CWSRF Project Number(s) C9-6602-06-01

herein called the "Project", is desirable and in the public interest, and to that end it is necessary that action preliminary to the construction of said Project be taken immediately; and

WHEREAS, the United States, pursuant to the Federal Water Quality Act of 1987 (as such may be amended from time to time, the "Water Quality Act"), requires each State to establish a water pollution control revolving fund to be administered by an instrumentality of the state before the state may receive capitalization grants under the Water Quality Act; and

WHEREAS, the State of New York has, pursuant to the State Water Pollution Control Revolving Fund Act, Chapter 565 of the Laws of New York 1989, as amended (the "CWSRF Act") established in the custody of the New York State Environmental Facilities Corporation (the "Corporation") a water pollution control revolving fund (the "Fund") to be used for purposes of the Water Quality Act; and

WHEREAS, the Corporation has been created, reconstituted and continued pursuant to the New York State Environmental Facilities Corporation Act, as amended, being Chapter 744 of the Laws of 1970, as amended, and 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, and constitutes a public benefit corporation under the laws of the State of New York, being a body corporate and politic with full and lawful power and authority to provide financial assistance from the Fund; and

WHEREAS, the Corporation has the responsibility to administer the Fund and to provide financial assistance from the Fund to municipalities for eligible projects, as provided in the CWSRF Act; and

WHEREAS, the CWSRF Act authorizes the establishment of a program for financial assistance for planning, design and construction of eligible projects;

NOW, THEREFORE, BE IT RESOLVED BYBuffalo Sewer Authority Board

(Governing Body of Applicant)

as follows;

1. The filing of an application for CWSRF assistance in the form required by the Corporation in conformity with the CWSRF Act is hereby authorized, including all understandings and assurances contained in said application.
2. The following person is directed and authorized as the official representative of the Applicant to execute and deliver an application for CWSRF assistance, to execute and deliver the Project financing agreement and any other documents necessary to receive financial assistance from the Fund for the Project, to act in connection with the Project and to provide such additional information as may be required and to make such agreements on behalf of the Applicant as may be required:

Anthony A. Hazzan

(print name)

General Manager

(print title)

3. The official designated above is authorized to make application for financial assistance under the CWSRF Program for either short-term or long-term financing or both.
4. One (1) certified copy of this Resolution shall be prepared and sent to the **New York State Environmental Facilities Corporation, 625 Broadway, Albany, New York 12207-2997.**
5. This Resolution shall take effect immediately.

CERTIFICATE OF RECORDING OFFICERThe attached Resolution is a true and correct copy of Resolution No. 3

authorizing the execution and filing of an application and the execution and delivery of a Project financing agreement and other documents necessary for CWSRF assistance, as regularly adopted at a legally convened meeting of the

Buffalo Sewer Authority Board

(Name of Governing Body of the Applicant)

duly held on the 8th day of September 2004 ; and further that such Resolution has

(month) (year)

been fully recorded in the Minutes of the Buffalo Sewer Authority Board in my office.

(Title of Record Book)

In witness whereof, I have herunto set my hand at this 8th day of September 2004

(month) (year)

If the Applicant has an Official Seal, impress here.

(Signature of Recording Officer)Executive Secretary

(Title of Recording Officer)

ITEM NO. 4

THE NOTE RESOLUTION, SERIES 2004 BOND ANTICIPATION NOTES

**EXTRACT OF MINUTES
Meeting of the Buffalo Sewer Authority
of the City of Buffalo, County of Erie, New York
September 8, 2004**

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 September 8, 2004, at 9:00 o'clock A.M. (Prevailing Time)

There were present: 15

Members: 5

There were absent: 0

Also present:

Member Naples offered the following resolution and offered its adoption:

MOTION TO _____ APPROVE _____

MADE BY _____ MR. NAPLES _____

2ND BY _____ MS. WILSON-DIVINCENZO _____

AYES _____ 5 _____ NOES _____ 0 _____

Board Meeting of September 8, 2004

BUFFALO SEWER AUTHORITY
SERIES 2004 BOND ANTICIPATION NOTES

NOTE RESOLUTION

Adopted: _____, 2004

BUFFALO SEWER AUTHORITY
SERIES 2004 BOND ANTICIPATION NOTE
RESOLUTION

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

WHEREAS, the Authority has determined to undertake certain improvements to the sewer system (collectively, the “Project”), to wit the Bird Island WWTP Anaerobic Digester Upgrade Phase II; and

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

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

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

ARTICLE I

Definitions and Interpretation

Section 1.1 Short Title. This Note Resolution may hereafter be cited by the Authority as the “Series 2004 Bond Anticipation Note Resolution.”

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

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

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

“Authority” shall mean the Buffalo Sewer Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, and any body, board,

authority, agency, or political subdivision or instrumentality of the State which shall hereafter succeed to the powers, duties and functions thereof.

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

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

- (a) obligations incurred for labor and materials and payments made to contractors, builders and materialmen in connection with construction or acquisition of any part of the Sewer System, and for the restoration of property damaged or destroyed in connection with such construction;
- (b) fees and expenses of the Paying Agent, payments, taxes or other governmental charges lawfully levied or assessed during construction or on any property acquired, and premiums on insurance (if any) during such construction or acquisition;
- (c) fees and expenses for studies, surveys and reports, engineering, borings, testings, estimates of costs and revenues, preparation of plans and specifications and inspecting or supervising construction or acquisition, as well as for the performance of all other duties of engineers or architects in connection with the acquisition, construction, extension, renewal or improvement of the Sewer System or required by this Note Resolution;
- (d) expenses of administration properly chargeable to the acquisition, construction, reconstruction, renewal, extension, or improvement of the Sewer System, including legal expenses and fees, financing charges, costs of audits and fiscal advice and all other items of expense not elsewhere in this definition specified, incident to the acquisition, construction, reconstruction, renewal, extension or improvement of the Sewer System, including the acquisition of real estate, franchises and rights-of-way therefor, including abstracts of title insurance;
- (e) the cost and expense of acquiring by purchase or condemnation or by leasing such property, lands, rights-of-way, franchises, easements, and other interest in land as may be deemed necessary or convenient for the acquisition, construction or completion of any part of the Sewer System and options and partial payments thereon, and the amount of any damages incident to or consequent upon the same; and
- (f) any obligations or expense heretofore or hereafter expended or incurred by the Authority and any amounts heretofore or hereafter advanced by the Authority for any of the foregoing purposes.

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

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

“City” shall mean the City of Buffalo, New York.

“Comptroller” and “Deputy Comptroller” shall mean, respectively, the Comptroller and Deputy Comptroller of the City.

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

“Consulting Engineer” shall mean a reputable and experienced engineer or firm of engineers selected by the Authority and may include a registered professional engineer who is an employee of the Authority.

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

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

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

“Fiduciary” shall mean the Paying Agent.

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

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

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

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

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

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

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

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

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

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

- (i) a master repurchase agreement or specific written repurchase agreement governs the transaction; and
- (ii) the securities are held free and clear of any lien by the Trustee or an independent third party acting solely as agent ("Agent") for the Trustee, and such third party is (1) a Federal Reserve Bank, or (2) a bank which is a member of the FDIC and which has combined capital, surplus and undivided profits of not less than \$50 million, and the Trustee shall have received written confirmation from such third party that it holds such securities, free and clear of any lien, as agent for the Trustee; and
- (iii) a perfected first security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.0 et seq. in such securities, is created for the benefit of the Trustee; and
- (iv) the repurchase agreement has a term of 10 years or less, and the Trustee or the Agent will value the collateral securities no less frequently than weekly and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two business days of such valuation; and
- (v) the fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 103%.

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

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

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

"Note Resolution" shall mean this Series 2004 Bond Anticipation Note Resolution.

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

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

- (a) any Notes cancelled by the Paying Agent at or prior to such date;

(b) any Note in lieu of or in substitution for which other Notes have been executed and delivered; and

(c) any Note deemed to have been paid as provided in Section 7.3 of this Note Resolution.

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

“Project” shall mean the Bird Island WWTP Anaerobic Digester Upgrade Phase II (CWSRF Project No. C9-6602-06-01), and all such connections, structures, equipment, apparatus and other property necessary or desirable for efficient construction and operation of such sewerage facilities, subject to any modifications and revisions approved by the Authority as necessary or desirable for the purposes of the Authority or the Sewer System under the Act.

“Project Finance Agreement” or “PFA” shall mean the project finance agreement between the Authority and the New York State Environmental Facilities Corporation relating to the Notes, as the same may be amended from time to time.

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

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

“Sewer System Revenue Bonds” shall mean any bonds of the Authority issued and delivered pursuant to the Sewer System Revenue Bond Resolution.

“Sewer System Revenue Bond Resolution” shall mean the Sewer System Revenue Bond Resolution adopted by the Authority on June 29, 1977, as amended and supplemented from time to time.

“State” shall mean the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

TERMS OF NOTES

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

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

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

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

Section 2.4 Authorization, Principal Amount and Purpose of Notes. There is hereby established and created an issue of Notes of the Authority to be known and designated as "Series 2004 Bond Anticipation Notes." Said Notes shall be issued in an aggregate principal amount to be set forth in

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

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

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

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

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

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

(A) the principal amount of the Notes, which shall not exceed \$9,700,000 in the aggregate, and the date and maturity date of the Notes; provided, however, that the maturity date of the Notes shall not be later than the third anniversary of the issuance of the Notes;

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

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

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

ARTICLE III

GENERAL TERMS AND PROVISIONS OF NOTES

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

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

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

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

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

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

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

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

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

Section 3.6 Registration of the Notes. The Notes shall be initially issued in the form of a separate single authenticated fully registered note in a principal amount not to exceed \$9,700,000 registered in the name of the New York State Environmental Facilities Corporation.

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

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

Section 3.9 Form of Notes. Subject to the provisions of this Note Resolution, the Notes shall be in substantially the following form and tenor, with such insertions, variations, omissions and endorsements as may be required by this Note Resolution:

Registered
No. R

Registered
\$

UNITED STATES OF AMERICA
STATE OF NEW YORK
BUFFALO SEWER AUTHORITY

E.F.C. Water Pollution Control Facility Note – 2004
(Bond Anticipation Note)

REGISTERED OWNER: NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION

MAXIMUM PRINCIPAL SUM:

DATED DATE: _____, 200__
_____, 200__

MATURITY DATE:

The BUFFALO SEWER AUTHORITY (the “Recipient”), a public benefit corporation of the State of New York, hereby acknowledges itself indebted and for value received promises to pay to the Registered Owner named above, the lesser of (x) the Maximum Principal Sum set forth above and (y) the unpaid principal amount of all advances (the “Advances”) made by or on behalf of New York State Environmental Facilities Corporation (the “Corporation”) to the Recipient pursuant to Article IV of the Project Finance Agreement dated as of _____, 2004 (the “Project Finance Agreement”), between the Corporation and the Recipient (the lesser of such amounts being hereinafter referred to as the “Unpaid Principal Sum”), such amount to be paid on the Maturity Date stated above or upon such date as may be established pursuant to the Project Finance Agreement in accordance with **Exhibit B** thereto. All advances made by or on behalf of the Corporation to the Recipient pursuant to the Project Finance Agreement and all prepayments made on account of the Unpaid Principal Sum hereof shall be recorded by or on behalf of the Corporation and endorsed on the grid attached hereto in accordance with the terms of the Project Finance Agreement, which is hereby made a part hereof. Recordation of Advances, confirmed by a certificate of the Recipient given in accordance with the Project Finance Agreement, shall conclusively establish the principal amount outstanding hereunder. Interest shall not accrue on said Unpaid Principal Sum prior to the earlier of the Maturity Date or the date of earlier redemption of said Unpaid Principal Sum, but in the event of any default in the payment of said Unpaid Principal Sum on the earlier of the Maturity Date or the date of earlier redemption, the Recipient promises to pay interest on said Unpaid Principal Sum to the Registered Owner named above at the rate of _____ per centum (____%) per annum on and after said Maturity Date or date of earlier redemption until said Unpaid Principal Sum is paid in full. Principal of and interest (in respect of overdue principal), if any, on this Note shall be payable to the Registered Owner hereof, at its address set forth on the books of the Recipient maintained for registration of this Note. For so long as the Corporation is the Registered Owner of this Note, the Corporation may, by written instruction to the Recipient, direct the Recipient to pay any principal of and interest (in respect of overdue principal), if any, on this Note to any bank acting as custodian of the Corporation. Both principal of and interest (in respect of overdue principal), if any, on this Note will be paid, without presentment, in funds available on or before the due date and in any

lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

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

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

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

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

This Note is issued pursuant to the provisions of the Public Authorities Law of the State of New York, as amended from time to time, the note resolution adopted by the Recipient on _____, 2004, authorizing the issuance of its Series 2004 Bond Anticipation Notes, and the Certificate of Determination executed by the Authorized Officer of the Recipient as of _____, 2004, as supplemented from time to time in accordance with the Project Finance Agreement.

This Note and the issue of which it is one are general obligations of the Authority payable from the moneys of the Authority available therefor and not otherwise pledged, which pledge shall be in all respects subordinate to the provisions of the Sewer System Revenue Bond Resolution adopted by the Authority on June 29, 1977, as amended (the "Bond Resolution"), and the lien and pledge of the Revenues (as such term is defined in said Bond Resolution) created by said Bond Resolution. The Notes are issuable in fully registered form only.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State of New York to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed, and that this Note, together with all other indebtedness of the Recipient, is within every debt and other limit prescribed by the Constitution and laws of such State.

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

BUFFALO SEWER AUTHORITY

(SEAL)

By: _____
Name: _____
Title: _____

ATTEST:

Name: _____
Title: _____

(FORM OF STATEMENT)

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

Dated: _____

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

[illegible]

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

CERTIFICATE OF AUTHENTICATION

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

MANUFACTURERS AND TRADERS
TRUST COMPANY,
Paying Agent and Registrar

By: _____
Authorized Signature

ARTICLE IV

ACCOUNTS

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

(B) Any amounts available pursuant to Section 504(G) (SECOND) of the Sewer System Revenue Bond Resolution and required to be deposited pursuant to Section 5.9 of this Note Resolution shall be deposited to the credit of the Note Payment Account.

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

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

Section 4.2 Deposits. (A) In lieu of investing in Investment Securities (except as provided in Section 7.3), the Fiduciary shall, at the written direction of an Authorized Officer, if permitted by law, deposit amounts or cause amounts to be deposited in the Note Payment Account held by the Fiduciary or under its control pursuant to the terms of this Note Resolution in interest-bearing time deposits or certificates of deposit, or shall make other similar banking arrangements with itself or a financial institution the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor. Each such interest-bearing time deposit or certificate of deposit or other similar banking arrangement shall permit the moneys so placed to be available at the times at which moneys are needed by the Authority to be expended and, except to the extent that any such deposits shall be insured by the United States of America or the federal corporations enumerated above on terms which in the judgment of the Authority (as expressed in written instructions to the Fiduciary) provide reasonable liquidity, all moneys in each such interest-bearing time deposit or certificate of deposit or other similar banking arrangement shall be continuously and fully secured under the laws of the State by Investment Securities (or other obligations rated in either of the two highest rating categories by a nationally recognized rating service) having a market value equal at all times to the amount of the deposit, certificate or other similar banking arrangement.

(B) In order to permit such amounts to be available for use at the time when needed, any amounts held under this Note Resolution by any Fiduciary, as such, may, if and as directed by the Authority, be deposited in the commercial banking department of such Fiduciary which may honor checks and drafts on such deposit with the same force and effect as if it were not such Fiduciary. Any

such Fiduciary shall allow and credit on such amounts at least such interest, if any, as it customarily allows upon similar funds of similar size and under similar conditions or as required by law.

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

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

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

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

(C) The Fiduciary shall sell at the best price obtainable, or present for redemption or exchange, any Investment Security purchased by it pursuant to this Note Resolution whenever it shall be necessary in order to provide moneys to meet any payment or transfer from the Account for which such investment was made. The Fiduciary shall advise the Authority in writing, on or before the twentieth day of each calendar month, of all investments held for the credit of each Account in its custody under the provisions of this Note Resolution as of the end of the preceding month.

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

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

ARTICLE V

PARTICULAR COVENANTS

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

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

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

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

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

Section 5.4 Power to Issue Notes and Pledge the Note Payment Account and Other Property. The Authority is duly authorized under all applicable laws to authorize and issue the Notes and to adopt this Note Resolution and to pledge the revenues and assets purported to be pledged hereby in the manner and to the extent herein provided. The revenues and assets so pledged are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created hereby, except for the lien and pledge of the Revenues created by the Sewer System Revenue Bond Resolution, and all corporate or other action on the part of the Authority to that end has been and will be duly and validly taken. The Notes and the provisions of this Note Resolution are and will be the valid and legally enforceable obligations of the Authority in accordance with their terms and the terms of this Note Resolution. The Authority shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the amounts in the Note Payment Account and other assets and revenues, including rights therein pledged under this Note Resolution and all the rights of the Noteowners under this Note Resolution against all claims and demands of all persons whomsoever.

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

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

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

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

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

Section 5.9 Withdrawal from Net Revenue Fund. In the event that the Authority cannot issue notes, bonds or other obligations of the Authority to redeem the Notes at maturity, the Authority shall, at least 15 days prior to the maturity date of the Notes, cause to be transferred to the Paying Agent and Registrar for the credit of the Note Payment Account from the Net Revenue Fund an amount sufficient, to the extent that moneys on deposit in the Net Revenue Fund are available therefor, to pay the Notes, provided, however, that any withdrawal from the Net Revenue Fund pursuant to this Section 5.9 shall be, in all respects, subject to the provisions of Section 504(G) of the Sewer System Revenue Bond Resolution.

ARTICLE VI
CONCERNING FIDUCIARIES

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

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

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

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

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

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

Section 6.4 Compensation. The Authority shall pay to such Fiduciary from time to time reasonable compensation for all services rendered under this Note Resolution, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Note Resolution.

The Authority further agrees to indemnify and save each Fiduciary harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and which are not due to its willful misconduct, gross negligence or bad faith.

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

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

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

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

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

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

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

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

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

ARTICLE VII

MISCELLANEOUS

Section 7.1 Findings and Determinations. The Authority hereby finds and determines that the PFA is fair and reasonable and in the best interests of the Authority and that, on the basis of such finding and determination, the Notes shall be sold to the EFC. The Authority 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, General Manager or Comptroller of the Authority to execute and deliver, or cause to be delivered, the PFA for and on behalf of the Authority, on such and terms and conditions as the person executing the same shall determine to be customary and prudent taking into account the best interests of the Authority, including any supplements or amendments thereto, provided that the purchase price shall not be less than one hundred percent (100%) of the aggregate principal amount of the Notes sold thereunder and there shall be no interest payable on the Notes, except in the event of default thereon. The execution of the PFA and delivery to the EFC thereof shall constitute conclusive evidence of such determination.

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

Section 7.2 Additional Findings and Determinations. The Authority hereby finds, determines and declares: (a) that the Notes are issued under and secured by this Note Resolution; (b) that the terms of sale do not contemplate an underwriting of the Notes; (c) that it is in the best interest of the Authority to sell, and the interest of the Authority will be best served by a sale of, the Notes to the EFC as provided in the PFA; and (d) that all provisions and conditions of applicable law have been complied with in the issuance of the Notes.

Section 7.3 Defeasance. (A) If the Authority shall pay or cause to be paid to the owners of all Notes then outstanding, the principal and interest, if any, to become due thereon, at the times and in the manner stipulated therein and in this Note Resolution, then the covenants, agreements and other obligations of the Authority to the Noteowners shall be discharged and satisfied.

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

Section 7.4 Moneys Held for Particular Notes. The amounts held by any Fiduciary for the payment due on any date with respect to Notes shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the owners of the Notes entitled thereto.

Section 7.5 No Recourse on the Notes. No recourse shall be had for the payment of the principal of or interest, if any, on the Notes or for any claim based thereon or on this Note Resolution against any member or officer of the Authority or any person executing the Note.

Section 7.6 Effective Date. This Note Resolution shall take effect from and after its adoption.

STATE WATER POLLUTION CONTROL REVOLVING FUND

BUFFALO SEWER AUTHORITY

and

NEW YORK STATE ENVIRONMENTAL
FACILITIES CORPORATION

PROJECT FINANCE AGREEMENT

(SHORT-TERM FINANCING PROGRAM)

STATE REVOLVING FUND PROJECT NO. C9-6602-06-01

Dated as of [closing date]

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This PROJECT FINANCE AGREEMENT, dated as of the date set forth on the cover page hereof, between the public benefit corporation duly organized and existing under the laws of the State of New York, which is named on the cover page hereof (the "**Recipient**") and 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 (the "**Corporation**").

WITNESSETH:

WHEREAS, the United States of America, pursuant to the federal Water Pollution Control Act (as 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**") pursuant to Chapter 565 of the Laws of New York of 1989, as amended (the "**State Act**") has 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 and public benefit corporations 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, for establishing 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 planning, design, acquisition, construction and installation of the project described in **Exhibit A** (the "**Project**"), 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 make [funding available through the purchase of the Recipient Notes](#) pursuant to Article IV (the "**Short-Term Financing**") to the Recipient to finance, or to reimburse the Recipient for costs incurred in connection with, the Project (to the extent actually financed with the Short-Term Financing, the "**Short-Term Project**"), and/or to prefinance any Third-Party Funding as defined below and/or to refund outstanding notes of the Recipient issued in connection with the Project (the "**Existing Indebtedness**", if any, more fully described in **Exhibit B**); and the Recipient desires to receive the [sale proceeds](#) upon the terms and conditions set forth in this Project Finance Agreement and required by the State Act and the New York State Environmental Facilities Corporation Act, as amended (the "**Act**"); and

WHEREAS, if an additional funds provider (the "**Third-Party Funding Entity**"), as defined herein, is being used, or may be used, the Recipient has received, or will receive, a commitment from such Third-Party Funding Entity for a grant, loan or other funds (the "**Third-Party Funding**") in an amount which, together with other funds available or expected to be available to the Recipient, will be sufficient to pay all costs of the Project; and

WHEREAS, the Short-Term Financing made by the Corporation pursuant to this Project Finance Agreement shall be evidenced and secured by the issuance of one or more Recipient Notes, which, in the case of any Third-Party Funding, shall be subject to mandatory redemption from and to the extent of amounts received by the Recipient as the proceeds of the Third-Party Funding on or after the date of the Recipient Note; and

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

NOW THEREFORE, in consideration of the premises and the representations, covenants and agreements herein set forth, the Recipient and the Corporation, each binding itself, its successors and assigns, promise, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

Unless stated otherwise, each capitalized term used in this Project Finance Agreement has the meaning specified for it in **Exhibit D**.

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. 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 (including any Long-Term Supplement); and the term "hereafter" means after, and the term "heretofore" means before, the date set forth on the cover page hereof.

(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.

Section 1.3 Exhibits and Appendices Incorporated.

All exhibits and appendices to the Project Finance Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of the Project Finance Agreement.

ARTICLE II

REPRESENTATIONS

Section 2.1 Representations of the Recipient.

The Recipient represents and warrants as follows:

(a) *Authority.* The Recipient is a public benefit corporation duly organized 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 the Project Finance Agreement, (iii) to adopt the Resolution, (iv) to issue and deliver the Recipient Note or Notes to the Corporation as provided herein, and (v) to carry out and consummate, by contract or otherwise, all other transactions contemplated by each of the aforesaid documents.

(b) *Approvals and Consents.* The Recipient has duly approved the execution and delivery of the Project Finance Agreement and has duly approved the incurrence of debt by the Recipient in an amount sufficient to finance the entire estimated cost of the Project contemplated by the Project Finance Agreement, whether for purposes of financing the planning, design, acquisition, construction and installation of the Project or to refund Existing Indebtedness issued to finance such Project; and any and all consents, authorizations and approvals of any third party required with respect thereto have been obtained.

(c) *Compliance.* With respect to the issuance of the Recipient Notes, the Recipient has complied and shall comply with the Resolution and with the State Constitution and all applicable laws of the State and laws and [resolutions](#) of the Recipient.

(d) *Binding Obligation.* The Project Finance Agreement has been duly authorized, executed and delivered by the Recipient and constitutes a legal, valid and binding obligation of the Recipient; the defense of sovereign immunity is not available to the Recipient in any proceedings by the Corporation to enforce any of the obligations of the Recipient under the Project Finance Agreement or the Recipient Notes; 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.

(e) *No Action.* 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 known to be threatened against the Recipient, nor 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 the Project Finance Agreement or the issuance or delivery of the Recipient Notes, or (iii) in any way contesting or affecting the validity or enforceability of the Resolution or the Recipient Notes or the execution of the Project Finance Agreement or any agreement or instrument relating thereto or used or contemplated for use in the consummation of the transactions contemplated by the Project Finance Agreement.

(f) *No Default.* The Recipient is not, and on the date of any Advance will not be, in default under any loan agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness. The Recipient is not, in any respect material to the transactions contemplated by this Project Finance Agreement, 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 other agreement or 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. The execution and delivery of the Project Finance Agreement, the issuance and delivery of the Recipient Notes, 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, administrative regulation or executive order of the State of 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 Notes.* When issued and delivered, the Recipient Notes will have been duly authorized, executed and delivered by the Recipient and will constitute validly issued, legally binding general obligations of the Recipient secured by a pledge of certain revenues as detailed in the Note Resolution of the Recipient which are available to the Recipient (without limitation as to rate or amount) to pay the principal of and interest (in respect of overdue principal) on the Recipient Notes; provided, however, that the enforceability (but not the validity) of the Recipient Notes 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 hereof.

(i) *Refunding of Existing Indebtedness.* Except as stated otherwise in **Exhibit E or B**, the Existing Indebtedness, if any, may be refunded without payment of any premium or penalty.

(j) *Application of Proceeds to Project Costs.* The Recipient shall apply the proceeds of the Short-Term Financing only to Project Costs.

(k) *Application of Proceeds of Existing Indebtedness.* Except as provided otherwise in **Exhibit E**, as of the date of delivery of the 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 Short-Term Project, as reflected in **Exhibit B**.

(l) *Commitment of Third-Party Funding Entity.* If applicable, the Recipient has received a written commitment from the Third-Party Funding Entity for the Third-Party Funding, as specified in **Exhibit E**.

(m) *Eligibility for Third-Party Funding.* The Recipient is eligible to receive the full amount of the Third-Party Funding specified in **Exhibit E**, if any, and knows of no existing fact, condition or circumstance that might act to vitiate such eligibility.

(n) *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.

The Corporation represents and warrants as follows:

(a) *Corporation.* 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.

(b) *Authority.* The Corporation has full power and authority to execute and deliver the Project Finance Agreement and to make the Short-Term Financing and otherwise 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) *Binding Obligation.* The Project Finance Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Corporation.

(e) *No Conflict.* The execution and delivery by the Corporation of the Project Finance Agreement and the consummation of the transactions contemplated herein will not violate any indenture, mortgage, loan 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.

(f) *Project Eligibility.* The Short-Term Project is included in the Intended Use Plan and is eligible for financial assistance from the Revolving Fund in the amount set forth in **Exhibit C** as "SRF Amount Requested - Short-Term Financing."

ARTICLE III

AGREEMENT TO PROVIDE FINANCIAL ASSISTANCE WITH RESPECT TO ENTIRE PROJECT

Section 3.1 Agreement to Provide Financial Assistance for Project Costs from the Revolving Fund.

The Corporation agrees to lend to the Recipient pursuant to a Short-Term Financing, and also, if so stated in **Exhibit C**, one or more Long-Term Financings, solely from the sources and to the extent specified in Section 3.2, in amounts not greater than the respective amounts set forth in **Exhibit C** (as it may be amended in accordance with the terms hereof) as "SRF Amount Requested - Short-Term Financing" and "SRF Amount Requested - Potential Long-Term Financing," as applicable. The Short-Term Financing proceeds will be advanced to the Recipient in accordance with the terms of Article IV and the Recipient Notes delivered pursuant thereto. The Long-Term Financing or Financings, if any, will be made at the times and in the principal amounts agreed to by the Corporation and the Recipient from time to time. The parties hereto acknowledge that the obligation of the Corporation to lend such amounts shall be subject to the determination by the Corporation at the time of each Financing that the costs to be financed are eligible for financing under the State Act and allowable under the Regulations and, to the extent applicable, that the costs financed by any outstanding bonds or notes of the Recipient proposed to be refunded with such Financing are so eligible and allowable. In no event shall (i) the principal amount of any Financing exceed the total Project Costs financed by such Financing; (ii) in the case of a refinancing, the principal amount of any Financing exceed the lesser of (A) the total Project Costs financed by the outstanding bonds or notes refunded with such Financing and (B) an amount sufficient to redeem such outstanding bonds or notes, or (iii) the aggregate outstanding principal amount of all Financings, together

with that of any other indebtedness of the Recipient issued under such authorization, exceed the amount of debt incurrence approved by the Recipient, as of the time any such Financing is made, to finance the Project and/or to refund outstanding notes or bonds of the Recipient issued to finance such Project.

Section 3.2 Sources of Funding; Nature of Obligations.

(a) *Sources of Funding.* The Corporation shall have no obligation to make any Long-Term Financing pursuant to Section 3.1, or any Advance pursuant to Section 4.1, except from the sources within the Revolving Fund provided for in this Section 3.2. The sole source of funding for the Short-Term Financing shall be amounts set aside or to be set aside for short-term financings from the sources indicated in the Intended Use Plan, and the Corporation's commitment to make Advances of the Short-Term Financing shall be subject to any further limitations set forth in **Exhibit E**. Notwithstanding anything to the contrary in the Project Finance Agreement, the Recipient acknowledges and agrees that:

(1) The Recipient must be on the Intended Use Plan for the appropriate year in order to have any Financing funded by the Corporation;

(2) The Corporation's source of funding for the Short-Term Financing is intended to be moneys drawn or to be drawn by the Corporation under the EPA-ACH account and/or from State Matching Share;

(3) The availability of such moneys under the EPA-ACH account or from State Matching Share is subject to appropriation and, if not timely drawn, reappropriation by the State; and

(4) The agreement of the Corporation to make any Advance of the Short-Term Financing, as provided in Section 4.1 of the Project Finance Agreement, is subject to the receipt by the Corporation of such moneys under the EPA-ACH account or from State Matching Share in an amount equal to the aggregate principal amount of such Advance, unless the Corporation, in its sole discretion, determines to use other moneys available for such purpose in the Revolving Fund.

(b) *Long-Term Financing.* The Corporation's commitment to make any Long-Term Financing pursuant to Section 3.1 may be fulfilled, in the sole discretion of the Corporation, either from the proceeds of Corporation Bonds or directly from moneys in or to be deposited in the Revolving Fund. The Corporation's commitment to make any Long-Term Financing that it has determined to make from the proceeds of Corporation Bonds shall be conditioned upon the sale and delivery of such Corporation Bonds. The Corporation shall have no obligation to make any Long-Term Financing except to the extent that there are sufficient funds available or expected to be available for the Project from the sources indicated in the Intended Use Plan in effect when such Long-Term Financing is to be made.

The parties hereto agree and acknowledge that, with respect to any Long-Term Financing, certain transactions contemplated by the Project Finance Agreement, and the obligation of the Corporation to make any Long-Term Financing, are subject to receipt of governmental approvals that may not have been received as of the date hereof. Such approvals include, but are not limited to: (i) approval by the Corporation and by the State's Public Authorities Control Board of the execution by the Corporation of a Long-Term Financing and, in the case of a Leveraged Financing, of the issuance of Corporation Bonds, (ii) in the case of a Leveraged Financing, approval by the State Comptroller of the terms of the sale of Corporation Bonds, and (iii) approval by the Recipient of the definitive terms of such Long-Term Financing.

(c) *Conditions for Financings and Advances.* The obligations of the Corporation to make any Advance of the Short-Term Financing shall be subject to continuing fulfillment of the General Project Conditions set forth in Article V and the special Project conditions set forth in **Exhibit E**. The obligations of the Corporation to make any Long-Term Financing pursuant to Section 3.1 shall be subject to (i) continuing fulfillment of the General Project Conditions set forth in Article V and the special Project conditions set forth in **Exhibit E**, (ii) approval and execution of necessary financing documents satisfactory to the Recipient and the Corporation, and (iii) compliance with applicable conditions set forth in the Long-Term Financing Supplement.

The Corporation agrees to use all reasonable efforts (i) to assure the availability of moneys from the EPA-ACH account and from State Matching Share to timely fund (A) Advances of the Short-Term Financing in accordance with the terms hereof, (B) any Long-Term Financing that the Corporation, in its sole discretion, determines to make directly from such sources or (C) any Reserve Allocation to be made from such sources in connection with a Long-Term Financing that the Corporation, in its sole discretion, determines to make in the form of a Leveraged Financing and (ii) to issue Corporation Bonds at times and in amounts sufficient to make any Long-Term Financing that the Corporation, in its sole discretion, determines to make in the form of a Leveraged Financing pursuant to Section 3.1.

Section 3.3 Additional Financings.

The Corporation is not and shall not be obligated hereunder to make any Additional Financings to the Recipient.

ARTICLE IV

SHORT-TERM FINANCING PROVISIONS

Section 4.1 Short-Term Financing Clauses.

(a) *Advances.* Subject to the conditions and in accordance with the terms of this Project Finance Agreement (including but not limited to Section 4.4), the Corporation hereby agrees to make the Short-Term Financing by making advances ("**Advances**") to the Recipient from time to time, during the period from the date hereof to and including the date each such Advance is due by reason of maturity or earlier redemption of the Recipient Note pursuant to which it was made, in an aggregate principal amount not to exceed the Maximum Principal Amount specified in **Exhibit E**. Such Advances shall not be made more frequently than once a week, and the Corporation shall not be required to honor any request for an Advance received by it on or after the tenth Business Day preceding the date of maturity or earlier redemption of the related Recipient Note. The Recipient shall be obligated to repay each Advance in one or more principal installments in the amount(s) and at the time(s) specified in or determined in accordance with **Exhibit E**. No interest shall accrue on Advances prior to the date on which such amount is due by reason of maturity or earlier redemption of the Recipient Note pursuant to which it was made. The Recipient hereby agrees to pay interest on each such Advance (or portion thereof) on and after any date on which such Advance (or portion thereof) is due in accordance with the Recipient Note pursuant to which it was made, whether by reason of maturity or earlier redemption, until such Advance (or portion thereof) is paid, such interest to accrue at the Overdue Interest Rate.

(b) *Recipient Notes.* Pursuant to Section 4.5 and as evidence of the Short-Term Financing made to the Recipient, the Recipient hereby agrees to issue and deliver to or upon the order of the Corporation the Recipient Notes in the Maximum Principal Amount, maturing at the times and in the amounts set forth in or determined in accordance with **Exhibit E**. Each Recipient Note shall be

substantially in the form of **Exhibit G**. All Advances and all payments made on account of the unpaid principal balance of a Recipient Note, and any extension of the maturity date of a Recipient Note permitted in **Exhibit E**, shall be recorded by or on behalf of the Corporation and endorsed on the grid attached to such Recipient Note, which record shall be conclusive; provided, however, that such recording and endorsement of Advances and payments shall be made and shall be effective only upon receipt of and in accordance with the terms of a Supplemental Certificate of Determination in substantially the form of **Exhibit L** and executed by the Authorized Officer of the Recipient.

(c) Events/Actions after Construction Completion. The Recipient agrees that this Financing must be repaid or refinanced no later than one year after completion of construction. The Recipient agrees to repay or convert to Long-term financing no later than the date of the next pooled financing.

The Recipient agrees that, notwithstanding any law to the contrary, it shall commence principal payments no later than one year after the completion of construction of the Project.

In the event that the Recipient fails to comply, the Recipient understands and agrees that it will be in default, and it shall comply and pay interest on the amount of the outstanding balance of the Financing at the default rate from the date of default. The date of default shall be deemed to be the date of the next pooled financing after completion of construction of the Project.

Section 4.2 Other Amounts Payable.

(a) Costs of Default. The Recipient agrees to pay to the Corporation, as such expenses are incurred, the amount of any expenses (including but not limited to the reasonable fees and expenses of the Corporation and attorneys representing the Corporation) incurred as a result of the Recipient's failure to make any payment on the Recipient Notes when due or other failure to comply with the terms of the Project Finance Agreement or the Recipient Notes.

(b) Indemnification. To the fullest 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 planning, design, construction, operation or maintenance of the Financed Project. In each case, such obligation of the Recipient shall 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, absent the Corporation's prior written consent, no settlement, compromise or other voluntary resolution shall be entered into which would impose any liability or obligation on the Corporation. 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 thereof.

Section 4.3 Redemption Provisions for Short-Term Financing.

(a) Mandatory Redemption. The Recipient Notes then outstanding shall be subject to mandatory redemption at any time, in whole or in part, at a redemption price equal to 100% of the principal amount outstanding on such Notes, in accordance with the terms and provisions of the next succeeding paragraphs and, if applicable, **Exhibit E**. On or prior to the date of redemption, the Recipient shall pay to the Corporation the full redemption price of the Recipient Notes being redeemed, together with all other sums due and owing to the Corporation hereunder.

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

The Recipient Notes shall be subject further to mandatory redemption, in whole or in part, prior to maturity, within five Business Days next succeeding the date on which the Recipient receives any proceeds of any Third-Party Funding which is intended to pay, in whole or in part, any costs of the Project which have been financed with the Short-Term Financing made pursuant to this Project Finance Agreement; provided, however, that the Recipient Notes shall be subject to such mandatory redemption solely to the extent of, and in an amount equal to, the proceeds of such Third-Party Funding received by the Recipient on or after the date of the Recipient Notes.

(b) *Optional Redemption.* Unless provided otherwise in **Exhibit E**, the Recipient, at any time, may redeem the outstanding Recipient Notes, in whole or in part, at a redemption price equal to 100% of the principal amount outstanding on such Recipient Notes, upon compliance with the following conditions:

(1) The Recipient shall deliver a written notice to the Corporation, at least five days prior to the date of redemption, indicating that the Recipient desires to redeem all or such portion of the Recipient Notes outstanding, and specifying the date of redemption; and

(2) On or prior to the date of redemption, the Recipient shall pay to the Corporation the full redemption price of the Recipient Notes being redeemed, together with all other sums due and owing to the Corporation hereunder.

Unless the Recipient and the Corporation agree otherwise, any such redemption payment shall be applied to the redemption of Advances in the order in which they were made, and the Corporation shall note such redemption on the grid attached to the appropriate Recipient Note. Unless the Corporation agrees otherwise, not more than one partial redemption of a Recipient Note shall be made per month.

Section 4.4 Procedures for Advances of Short-Term Financing.

(a) *Request for Advance.* Advances of Short-Term Financing proceeds shall be made pursuant to requests for Advances contained in Supplemental Certificates of Determination submitted by the Recipient to, and approved by, the Corporation as follows:

(1) Copies of each Supplemental Certificate of Determination shall be delivered to the Corporation in accordance with the Project Finance Agreement (including **Exhibit K**). Bills, invoices, evidence of payment or other evidence that Project Costs for which an Advance is requested have been incurred by the Recipient shall be delivered to the Corporation in accordance with **Exhibit K**; and

(2) Where Advances are to be made under more than one Recipient Note, a separate Supplemental Certificate of Determination shall be required for the Advances under each Recipient Note. Upon approval by the Corporation of a request for an Advance contained in a Supplemental Certificate of Determination, as provided in **Exhibit K**, the Corporation shall pay the amount so

approved to or upon the order of the Recipient, as provided in the approved Supplemental Certificate of Determination; provided, however, that the aggregate of all Advances outstanding under any Recipient Note shall never exceed the Maximum Principal Sum thereof, and the aggregate of all Advances outstanding under this Article IV shall never exceed the Maximum Principal Amount.

(b) *Advances to Refund Existing Indebtedness.* Notwithstanding the provisions of Section 4.4(a), Advances of Short-Term Financing proceeds to refund Existing Indebtedness shall be made upon direction of the Corporation, at any time or times selected by the Corporation occurring on or before the applicable maturity or redemption date, subject to satisfaction of any conditions specified in **Exhibit E**. The Recipient hereby agrees to apply or cause to be applied, promptly, any such Short-Term Financing proceeds to (and only to) the refunding of such Existing Indebtedness and to provide prompt written confirmation of such application of proceeds to the Corporation.

Section 4.5 Execution and Delivery of Recipient Notes to the Corporation.

(a) *Provisions.* In order to evidence the obligation of the Recipient to the Corporation to repay the Short-Term Financing, the Recipient agrees to execute and deliver to the Corporation its Recipient Notes. Such Recipient Notes shall be substantially in the form of **Exhibit G**, with only such changes, deletions and additions as have been agreed to by the Corporation, and shall:

(1) provide for payments of principal and interest (in respect of overdue principal) as set forth in **Exhibit E**;

(2) require that all payments of principal of, and interest (in respect of overdue principal) on, the Recipient Notes be made to the Corporation 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; and

(3) contain the redemption provisions required by Section 4.3.

(b) *Opinions and Certificates.* The Recipient further agrees to deliver to the Corporation, concurrently with the delivery of such Recipient Notes:

(1) an unqualified opinion of nationally recognized bond counsel, in substantially the form set forth in **Exhibit H**;

(2) the local counsel certificate set forth in **Exhibit I**, executed by local counsel to the Recipient;

(3) if required by local law or the Resolution, a certificate as to authentication of the Recipient Notes;

(4) A Certificate of Determination, executed by an Authorized Officer of the Recipient, relating to signatures, litigation and the terms of the Recipient Notes, in substantially the form set forth in **Exhibit J**; and

(5) such additional certificates, documents and opinions as may be reasonably requested by the Corporation.

The obligation of the Corporation to make the Short-Term Financing is conditioned upon the Recipient's delivery of the foregoing opinions, certificates and documents, in form and substance

satisfactory to the Corporation, concurrently with the delivery of the Recipient Notes and the Corporation's performance.

(c) *Form of Opinions and Certificates.* With respect to the 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 the form appended hereto (except for the insertion of the appropriate names and titles).

ARTICLE V

GENERAL PROJECT CONDITIONS, COVENANTS AND REPRESENTATIONS

Section 5.1 Compliance with Laws and Agreements.

(a) *Compliance.* The Recipient agrees that at all times during the term of any Financing the Project shall be in compliance with applicable federal and State laws and regulations. The Recipient shall construct and operate the Project (or cause the Project to be constructed and operated) in compliance at all times with all applicable federal, State and local laws (including, without limitation, the Act, the State Act, the Water Quality Act and Sections 2.04(d)(2) and 513 of the Clean Water Act), ordinances, rules, regulations, Executive Orders and the Project Finance Agreement, and in compliance 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 will effectively protect water quality, employ good management practices and fulfill all federal and State requirements, all requirements of the Project Finance Agreement and all applicable instructions issued by the Commissioner to ensure that these requirements are met.

(b) *Capacity.* The Recipient certifies that it has the legal, institutional, managerial, contractual and financial capability to ensure adequate 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 shall 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, that it shall comply with those additional requirements. The Recipient agrees to provide all environmental documents as may be required by DEC and the Corporation, and the Recipient certifies that it has notified, and 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, regulations, and executive orders applicable to the Project regarding affirmative action, equal employment opportunity, and small, minority and women's business enterprises.

(f) *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.

(g) *Special Project Conditions*. The Recipient agrees to comply with any and all special Project conditions set forth in **Exhibit E**.

Section 5.2 Plans and Specifications.

(a) *Design and Construction*. The Recipient shall cause the Financed Project to be designed and constructed in accordance with plans and specifications therefor delivered to, and approved by, the Corporation and/or DEC and consistent with **Exhibit A**. The Recipient shall 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 Financed Project*. Neither the Corporation nor DEC makes any warranty, 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 of the Financing 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 plan, design, and build the Project properly, and to operate and maintain the Project effectively, 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 a Recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.

(c) *Performance Standards*. The Recipient agrees to take 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 5.3 Construction of Project.

(a) *Construction*. 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.

(b) *Contracts and Security Bonds*. The Recipient agrees that DEC and the Corporation have the right 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 to provide competent and adequate inspection of all Project construction under the direction of a professional engineer licensed in the State. The Recipient shall direct such engineer to inspect work necessary for the construction of the Project and to determine whether the construction conforms to the approved plans and specifications. At the completion of construction, the engineer shall be required to certify to the Recipient, DEC, and the Corporation 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 the Corporation and DEC.

(d) *Change Orders.* The Recipient agrees to submit all change orders to the Corporation within thirty (30) days following the date they are ordered. The Recipient agrees that changes which 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** 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.* **Within seven (7) Business Days following completion of the Financed Project,** the Recipient shall deliver to the Corporation a certificate of an authorized officer stating that the Financed Project has been completed in accordance with this Project Finance Agreement.

(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 shall obtain from appropriate authorities all permits and authorizations, if any, required for operation and use of the Project as contemplated by the Project Finance Agreement.

Section 5.4 Ownership, Operation and Maintenance.

(a) *Notice of Beginning Operation.* The Recipient agrees to 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 agrees 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 operate the Project or otherwise cause the Project to be operated properly and in a sound and economical manner and shall maintain, preserve and keep the Project, or cause the Project to be maintained, preserved and kept, in good repair, working order and condition and shall make, or cause to be made, all necessary and proper repairs, replacements and renewals from time to time, so that at all times the Project may be operated properly in a manner consistent with the project performance standards contained in the Engineering Report or Facilities Plan 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.* Unless authorized to cease operations or dispose of the Project, the Recipient shall own, operate and maintain the Project in accordance with the provisions of Section 17-1909.4.g. (ii) and (vii) of the State Environmental Conservation Law. So long as the Financing is outstanding, the Recipient shall not discontinue operation of or sell 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 the approval of the Commissioner. [A sale, transfer or other disposition of the Project shall constitute an event of mandatory redemption in whole, unless otherwise agreed to by the Corporation.](#)

Except as disclosed to the Corporation in connection with the Recipient's application for the Short-Term Financing, the Recipient does not intend to lease the Short-Term Project or enter into a long-term contract for operation of the Short-Term Project.

(d) *Access to Project and Work.* The Recipient shall 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 of the Recipient for construction or operation of all or a portion of the Project shall 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 shall provide proper facilities for such access and inspection and shall permit extracts and copies of Project records to be made by the foregoing persons.

(e) *User Fee Covenant.* The Recipient from time to time shall revise and charge User Fees with respect to the Project in accordance with the State Act, 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 Financed Project.

(f) *Title.* The Recipient certifies that it has or shall obtain such title, estate or interest in the site of the Project, including easements and rights-of-way, as may be necessary to ensure undisturbed use and possession for the purposes of constructing the Project and operating it during its estimated life.

Section 5.5 Accounting and Records.

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

(b) *Access to Records.* The Recipient agrees: (i) to permit DEC, the State Comptroller, or the Corporation, or their authorized representatives to review or audit all records relative to the Project; (ii) to 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) to permit extracts and copies of Project records to be made by them or their authorized representatives; and (iv) to promptly fulfill information requests by them or their authorized representatives.

(c) *Record Retention.* The Recipient agrees to 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 repayment 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 shall be retained for the useful life of the Project. The Recipient further agrees to 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 5.6 Representations Regarding Project.

The Recipient represents and warrants as follows:

(a) *Description of the Project.* The description of the Project set forth in **Exhibit A** is an accurate description of the Project.

(b) *Treatment Works.* Each of the facilities comprising a part of the Project constitutes Treatment Works; and the Recipient intends to continue to use the Project as Treatment Works during the term of the Project Finance Agreement.

(c) *Estimate of Costs.* The estimated or actual costs of the Short-Term Project as shown in **Exhibit C** are equal to or in excess of the amount of the Short-Term Financing and represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Short-Term Project.

Section 5.7 Application of Short-Term Financing Proceeds.

The Recipient shall apply the proceeds of the Short-Term Financing solely for Project Costs and to refund the Existing Indebtedness, as the case may be, in accordance with this Project Finance Agreement and shall reimburse the Revolving Fund pursuant to Part C of **Exhibit K** in the event that it fails so to apply such proceeds.

Section 5.8 Payment of Recipient Notes.

The Recipient covenants and agrees that it shall duly and punctually pay or cause to be paid the principal installments or redemption price of its Recipient Notes and any interest (in respect of overdue principal) thereon, at the dates and places and in the manner stated in such Recipient Notes, and that such obligation shall not be subject to any defense (other than payment) or any rights of setoff, recoupment, abatement, counterclaim or deduction and shall be without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Corporation or DEC.

Section 5.9 Payment of Additional Financed Project Costs.

In the event that Financing proceeds are not sufficient to pay the costs of the Financed Project in full, the Recipient shall nonetheless complete the Financed Project and pay such portion of the Project Costs as may be in excess of available Financing proceeds, and the Recipient shall not be entitled to any reimbursement therefor from the Corporation.

Section 5.10 Remediation.

The Recipient agrees to rectify promptly any breach of this Article V.

Section 5.11. Respecting the Third-Party Funding.

With respect to receipt and application of the Third-Party Funding, if any, the Recipient covenants and agrees as follows:

(a) *Necessary Actions.* It shall take, in a timely fashion, all actions required or necessary to enable it to obtain the full anticipated proceeds of the Third-Party Funding.

(b) *Use of Proceeds.* Until payment in full of the principal of all of the Recipient Note, any and all proceeds of any Third-Party Funding received by the Recipient on or after the date of the Recipient Note shall be deposited in a segregated account for use and application solely to pay the principal of the Recipient Note and shall be so applied, promptly, as and when received, only to the payment of the Recipient Note, and to no other purpose.

(c) *Compliance with Conditions and Requirements.* It shall comply with all stated conditions to any Third-Party Funding commitment, as the same may be amended and supplemented by any Third-Party Funding Entity, and all applicable present and future eligibility requirements of such Third-Party Funding commitment.

(d) *Prompt Notice.* It shall promptly, and in any event within five (5) days after having notice or knowledge thereof, inform the Corporation in writing of any anticipated failure on its part to be able (i) to meet all eligibility requirements of any Third-Party Funding Entity, (ii) to be qualified to receive any Third-Party Funding proceeds in an amount at least equal to such Third-Party Funding Entity commitment, or (iii) to receive the proceeds of such Third-Party Funding.

(e) *Documentation.* The Corporation is authorized and permitted to prepare and submit to the Third-Party Funding Entity such documentation and/or vouchers on behalf of the Recipient, if the Recipient has failed to do so timely, as are needed to obtain timely any Third-Party Funding; and, in such circumstances, (i) the Recipient shall cooperate fully with the Corporation by providing necessary data for preparing, executing and submitting such documentation.

(f) *Receipt of Third-Party Funding.* It shall notify the Corporation promptly of the date scheduled for the Recipient's receipt of any Third-Party Funding and shall permit representatives of the Corporation to attend any meeting held for that purpose between the Recipient and any Third-Party Funding Entity with respect to such Third-Party Funding.

(g) *Repayment.* It shall repay the Recipient Notes and the related Financing in a full and timely fashion, regardless of whether or when any proceeds of any Third-Party Funding are actually received by the Recipient.

(h) *Alternate Financing.* If, for any reason, any such Third-Party Funding is unavailable, unless it uses other lawfully available funds, the Recipient will use its best efforts to secure alternate financing in an amount sufficient to redeem the Recipient Note, and the related Financing, to the extent of any Third-Party Funding commitment.

ARTICLE VI

REMEDIES

Section 6.1 Remedies.

(a) *Rejection or Adjustment of Advances.* The Corporation shall have the right to reject, correct, adjust or withhold requests for Advances of Short-Term Financing proceeds and to take such actions in the circumstances and in the manner set forth in **Exhibit K**.

(b) *Nonexclusive Remedy.* 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) *Right to Remedial Action.* 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.

(d) *Certification.* 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 Notes) issued as security for the Short-Term 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 No Obligation of State.

Nothing in this Project Finance Agreement shall constitute a commitment of the State to appropriate or reappropriate any federal or State funds.

Section 7.2 Effectiveness; Term.

The Project Finance Agreement shall become enforceable upon execution by each of the parties hereto. The Project Finance Agreement shall remain in full force and effect so long as any portion

of a Financing or other amounts payable in connection with a Financing remain outstanding hereunder; provided, however, that Section 4.2(b) shall survive any termination of this Project Finance Agreement.

Section 7.3 Severability.

In the event that any provision of the Project Finance Agreement is 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 Amendment of Project Finance Agreement.

The Project Finance Agreement may not be amended except by an instrument in writing signed by each of the parties hereto and, with respect to a Leveraged Financing, if such amendment occurs after the issuance of the Corporation Bonds, upon compliance with applicable provisions of the Indenture.

Section 7.5 Execution in Counterparts.

The 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.

The 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 Benefit of Project Finance Agreement.

The Project Finance Agreement is executed, among other reasons, to induce the purchase of the Recipient Notes by the Corporation.

Section 7.8 Further Assurances.

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

Section 7.9 Covenant Against Discrimination.

The Recipient in the performance of the 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 7.10 Project Finance Agreement Supersedes Prior Agreements.

The Project Finance Agreement supersedes any other prior or contemporaneous agreements or understandings, written or oral, between the parties relating to the financing of the Financed Project.

Section 7.11 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, or to such other address or telecopier number as the appropriate party may hereafter designate by notice in writing given to the others.

- (a) *Corporation:*
New York State Environmental Facilities Corporation
625 Broadway
Albany, New York 12207-2997
Attn.: [Chief Financial Officer](#)
Telefacsimile No.: [\(518\) 402-7086](#)

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

- (b) *Trustee:*
Manufacturers and Traders Trust Company
One M & T Plaza
Buffalo, New York 14203
Attn.: Corporate Trust Department
Telecopier No.: (716) 842-5905

- (c) *Recipient:*

At the address specified on the signature page of this Agreement.

Section 7.12 Signs.

In recognition of the Financing provided hereunder for the Project, the Recipient agrees that any identifying signs that relate to this Project shall be in a form acceptable to the Corporation and DEC and shall note that the Project has been funded, in whole or in part, through the New York State Water Pollution Control Revolving Fund Program.

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 written above.

BUFFALO SEWER AUTHORITY

By:

Anthony A. Hazzan
General Manager

Notice Address:

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

**NEW YORK STATE ENVIRONMENTAL
FACILITIES CORPORATION**

By:

Thomas J. Kelly
President

EXHIBIT D TO PROJECT FINANCE AGREEMENT

DEFINITIONS

Capitalized terms used in the Project Finance Agreement have the meanings set forth in this **Exhibit D** or, if not defined herein, have the meanings set forth in the Regulations.

"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 from time to time amended and supplemented.

"Additional Financing" means a Financing made for purposes of financing Additional Project Costs.

"Additional Project Costs" means cost of the Project in excess of the Estimated Project Costs which costs have been reviewed and approved by the Corporation. Such Additional 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 Financing exceed the total Project Costs financed by the Financing or by the outstanding bonds or notes refunded by such Financing, as applicable.

"Advance" or "Advances" has the meaning set forth in Section 4.1.

"Basic Project Financing Agreement" means the Project Finance Agreement, not including amendments and supplements effected by a Long-Term Financing Supplement.

"Board" means the Buffalo Sewer Authority [Board of Members](#), 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.

"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 bonds or notes issued by the Corporation under the Act for purposes of providing financial assistance, in the form of a Leveraged Financing, to the Recipient from the Revolving Fund.

"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.

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

"EPA-ACH" means the Automated Clearing House payment 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 funding the Short-Term Financing or direct Long-Term Financing or, in the case of a Leveraged Financing, the Reserve Allocation for the Leveraged Financing.

"Estimated Project Costs" means the projected costs of the Recipient 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 of the Recipient, which projections are set forth in **Exhibit C**. 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 Financing exceed the total Project Costs financed by the Financing or by the outstanding bonds or notes refunded by such Financing as applicable.

"Existing Indebtedness" means (i) when used in the Basic Project Financing Agreement, the notes of the Recipient, if any, described in **Exhibit B** of the Basic Project Financing Agreement, which notes have financed the Financed Project and which are to be refinanced with proceeds of the Short-Term Financing and (ii) when used in any Long-Term Financing Supplement, the bonds or notes (including any Recipient Notes) of the Recipient, if any, described as such in the Long-Term Financing Supplement, which bonds or notes have financed the Financed Project and which are to be refinanced with proceeds of the Long-Term Financing.

"Authorized Officer" means the officer(s) of the Recipient so designated in accordance with the Recipient Act and Resolution authorized to act in connection with delivery of the Project Finance Agreement, Notes or Bonds, and Certificate of Determination or Supplemental Certificates of Determination by the Recipient.

"Financed Project", (i) when used in connection the Short-Term Financing, means the Short-Term Project and (ii) upon execution and delivery of a Long-Term Financing by the Corporation and the Recipient, means any applicable portion of the Short-Term Project together with any additional portion of the Project being financed with the Long-Term Financing when used in connection with such Long-Term Financing.

"Financing" means any financing that the Corporation makes pursuant to the Project Finance Agreement and, (i) in the case of the Short-Term Financing, means the financing made in accordance with Article IV, in an aggregate amount not to exceed the amount specified pursuant to Article IV and, (ii) in the case of a Long-Term Financing, means the financing made pursuant to a Long-Term Financing.

"Indenture" means the indenture of trust or resolution pursuant to which Corporation Bonds may be issued, proceeds of which would be used to make a Leveraged Financing.

"Intended Use Plan" means an Intended Use Plan prepared by DEC in connection with the capitalization grant program established by the Clean Water Act, as it may be amended or supplemented from time to time.

"Leveraged Financing" means any Financing made by the Corporation hereunder from the proceeds of Corporation Bonds.

"Long-Term Financing" means any Financing, other than a Short-Term Financing, made by the Corporation to the Recipient, which Financing may be a Leveraged Financing directly from the Revolving Fund (rather than from the proceeds of Corporation Bonds).

"Master Trust Agreement" means a Master Trust Agreement between the Corporation and a trustee and a custodian thereunder, 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 Principal Amount" means the aggregate maximum principal amount of the Short-Term Financing and the Recipient Notes that may be outstanding at any time, which amount (i) shall be equal to the aggregate of the Maximum Principal Sums of all Recipient Notes outstanding at any time and (ii) shall be equal to the amount designated in **Exhibit C** as "SRF Amount Requested - Short-Term Financing".

"Maximum Principal Sum" means the aggregate maximum principal amount that may be outstanding at any one time under a particular Recipient Note, as set forth in **Exhibit E**.

"Note Resolution" means the 2004 Note Resolution adopted by the Recipient on [_____, 2004], as amended and supplemented.

"Note Resolution Trustee" and "Paying Agent" means Manufacturers and Traders Trust Company, in its capacity as trustee or paying agent under the Note Resolution, and its successors and any other person which may be substituted in its place as trustee or paying agent under and pursuant to the Note Resolution.

"Overdue Interest Rate" means the interest rate per annum on the Short-Term Financing and the Recipient Notes agreed to pursuant to Section 4.1(a) of the Project Finance Agreement, which shall be 12% per annum; provided, however, that such interest shall accrue only on the unpaid principal balance of any Advance from such date that the Short-Term Financing is due at scheduled maturity or earlier redemption until paid in full. Such interest rate shall be calculated on the basis of a 360-day year, consisting of twelve 30-day months.

"Project" means the project of the Recipient described in **Exhibit A**, as such exhibit may be amended and supplemented in accordance with the terms hereof.

"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 under the Regulations and which are reasonable, necessary and allocable by the Recipient to the Financed Project under generally accepted governmental 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.

"Project Finance Agreement" means this Project Finance Agreement, as it may be amended and supplemented in accordance with the terms hereof, which upon execution and delivery of any Long-Term Financing shall include the Long-Term Financing.

"Recipient" means the entity named on the cover page of the Project Finance Agreement, which is a public benefit corporation duly organized and existing under the laws of the State and authorized by resolution of its governing body to enter into the 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" means the bonds or notes to be issued and delivered by the Recipient to or upon the order of the Corporation, [and purchased by the Corporation](#), in order to evidence the Recipient's obligation to repay a Long-Term Financing, and in consideration of financial assistance provided from the Revolving Fund.

"Recipient Notes" means the notes to be issued and delivered by the Recipient in accordance with Article IV, [and purchased by the Corporation](#), in order to evidence the Recipient's obligation to repay the Short-Term Financing, which notes shall have Maximum Principal Sums equal in the aggregate to the Maximum Principal Amount.

"Regulations" means the regulations of the Corporation and/or DEC promulgated pursuant to the State Act, constituting 6 NYCRR, Part 649, and any regulations promulgated by the Corporation pursuant to the State Act, in either case as such may be amended from time to time.

"Reserve Allocation" means the Reserve Allocation established by the Corporation for a Leveraged Financing as set forth in the Leveraged Financing therefor.

"Resolution" means, collectively, the resolutions of the Recipient authorizing (a) the execution and delivery of this Project Finance Agreement, (b) the adoption or the execution and delivery of the Note Resolution as amended and supplemented, and (c) [the sale of the Recipient Notes or Bonds to the Corporation](#).

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

"Short-Term Financing" means, collectively, the Advances made in accordance with Article IV.

"Short-Term Project" means the portion or portions of the Project identified in **Exhibit A** as being eligible for financing from the Short-Term Financing.

"State" means the State of New York.

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

"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.

"Supplemental Certificate of Determination" means a certificate of the Recipient, in substantially the form of **Exhibit L**, executed by a Authorized Officer and delivered in order to obtain an Advance.

"Third-Party Funding" means any grant, loan or other funds which are intended to be used to pay any costs of the Project which have been financed with the Short-Term Financing made pursuant to this Project Finance Agreement, including, without limitation, the Third-Party Funding specified in **Exhibit E**.

"Third-Party Funding Entity" shall mean any entity, including, without limitation, the Corporation, the New York State Department of Environmental Conservation, the United States Department of Housing and Urban Development, the New York State Empire State Development Corporation, and/or Rural Development of the United States Department of Agriculture, or their agents, successors and assigns, which provides any Third-Party Funding for the Project; the term shall include, without limitation, any entity which is specified in **Exhibit E**.

"Treatment Works" means (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; or (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.

"User Charge System" has the meaning set forth in the Regulations.

"User Fees" means rates, rentals, fees and other charges of the Recipient in accordance with applicable provisions of law.

"Water Quality Act" means the federal Water Quality Act of 1987, an act to amend the Clean Water Act.

EXHIBIT F TO PROJECT FINANCE AGREEMENT

SPECIAL PROJECT CONDITIONS

To the extent identified in **Exhibit E** as applicable to the Project, the following special project conditions shall apply:

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

The Corporation and the Recipient acknowledge that the Recipient has not, as of the date hereof, 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, notwithstanding anything herein to the contrary, proceeds will not be advanced 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 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 as of the date thereof to undertake the Project. The Recipient 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, notwithstanding anything herein to the contrary, Short-Term Financing proceeds will not be advanced 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 Advance, 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 DEC or E.F.C. approval or acceptance of certain plans and specifications, relating to certain element(s) of the Project.

The Recipient agrees that, notwithstanding anything herein to the contrary, proceeds will not be advanced 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. 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 plans and specifications which have not been accepted by DEC or the Corporation.

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 to the Corporation certain professional services agreements relating to certain element(s) of the Project.

The Recipient agrees that, notwithstanding anything herein to the contrary, proceeds will not be advanced 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 Advance requested does not include any costs incurred pursuant to any professional services agreements which have not been furnished to 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 6A. 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 E.F.C. approval of the Technical Force Account Proposal to utilize municipal employees to perform element(s) of the Project.

The Recipient agrees that, notwithstanding anything herein to the contrary, 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 has not been approved by the Corporation.

Section 6B. Special Condition Regarding the Administrative 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 E.F.C. approval of the Administrative Force Account Proposal to utilize municipal employees to perform element(s) of the Project.

The Recipient agrees that, notwithstanding anything herein to the contrary, proceeds will not be advanced for costs incurred pursuant to such Administrative Force Account unless and until the Corporation has reviewed such Administrative Force Account Proposal and determined to its satisfaction that such services were consistent with the scope of work for the Project. The Recipient shall certify, in each requisition submitted, that the Advance requested does not include any costs incurred pursuant to the Administrative Force Account Proposal which has 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.

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The Recipient agrees that, notwithstanding anything herein to the contrary, proceeds will not be disbursed pursuant to Section 3.4 for costs of such equipment unless and until the equipment purchase 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 of equipment which have not been accepted by DEC or the Corporation.

EXHIBIT K TO PROJECT FINANCE AGREEMENT**REQUISITION PROCEDURES FOR ADVANCES****PART A****REQUISITION SUBMISSION PROCEDURES
FOR RECIPIENTS**

Part A of this **Exhibit K** sets out the procedures which the Recipient agrees to follow in submitting requests for Advances ("requisitions") of Short-Term Financing proceeds to finance the planning, design, acquisition, construction and installation of any portion of the Short-Term Project not yet completed. Section 1 sets out the manner in which requisitions are to be submitted and reviewed. Section 2 sets out the documentation which must be submitted in support of the costs claimed in such requests. Capitalized terms are defined in **Exhibit D** to the Project Finance Agreement.

Section 1. General Requirements.

All requests by the Recipient for Advances of Short-Term Financing proceeds shall be made by submission to the Corporation (Attention: Administrative Services Unit) of a Supplemental Certificate of Determination in substantially the form of **Exhibit L** to the Project Finance Agreement in form and substance satisfactory to the Corporation and in each case completed and executed by an Authorized Officer and accompanied by the documentation required pursuant to Section 2 of this Part A captioned "Documentation Submission."

The Corporation agrees to certify requests for Advances of Short-Term Financing Proceeds to the Recipient up to the difference between (a) the amount of the actual allowable costs incurred by the Recipient on or before the date of submission of the request, and (b) any Short-Term Financing proceeds already advanced (including any proceeds advanced according to the terms of the Project Finance Agreement to refund Existing Indebtedness). The Corporation retains the right to refuse to certify requests for Advances in accordance with Part B of this **Exhibit K**. Within ten Business Days of its receipt¹ of any such request for an Advance, the Corporation shall either (i) make such Advance, or (ii) give written notice to the Recipient that the Corporation is rejecting, correcting, adjusting or withholding such advance in accordance with the procedures set forth under Part B of this **Exhibit K**. Notwithstanding the foregoing, the Corporation further reserves the right, at any time, to demand reimbursement in accordance with Part C of this **Exhibit K**.

Section 2. Documentation Submission.

Unless otherwise agreed to in writing by the Corporation or required pursuant to the agreement between EPA and DEC relating to the Revolving Fund, each request for an Advance of Short-Term Financing proceeds submitted by, or on behalf of, the Recipient to the Corporation must be accompanied by documentation evidencing the particular Project Costs claimed in such request for an Advance of Short-term Financing proceeds. The documentation evidencing the particular Project Costs claimed must be, in form and substance, satisfactory to the Corporation and in full compliance with the Regulations. Without limiting the foregoing, such documentation must, at a minimum, contain specific references, by date and

¹ Note that any request for an Advance of Short-Term Financing proceeds which is received by the Corporation after 12:00 noon on any Friday will be deemed to have been received on the following Business Day.

amount, to the particular costs claimed in the corresponding request for and Advance of Short-term Financing proceeds, so that such documentation, and the Project Costs evidenced therein, can be reconciled by the Corporation with the corresponding request for an Advance of Short-Term Financing proceeds. In addition, documentation evidencing the request for Third Party Funding made to the appropriate parties for release of such Third Party Funding, as applicable, must be submitted with each request.

PART B

WITHHOLDING ADVANCES

Part B of this **Exhibit K** sets out the circumstances in which the Corporation may reject, correct, adjust, or withhold any Advance requested 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, or the Project Finance Agreement during the term thereof.

Section 1. Rejection.

A requisition 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;
- (c) submitted after prior payment of all proceeds of a Financing; or
- (d) submitted without documentation of request for Third Party Funding once the Third Party Funding is available to be drawn down.

The Corporation will notify the Recipient of any requisition so rejected, and the reasons therefor. Any requisition so rejected must be resubmitted in proper form in order to be considered for approval. If a request for an Advance exceeds the balance of the Short-Term Financing proceeds remaining to be advanced, 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 requisition 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, at any time, 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, or portion thereof, approved for financing with the proceeds of the subject Short-Term Financing, under the terms of the Project Finance Agreement, the Corporation, in addition to any of its other powers under this **Exhibit K**, shall be entitled to suspend its processing of any pending or subsequent requests for the advance of Short-Term Financing proceeds, to the extent of the disputed amount, and adjust any such pending or subsequent requests, in accordance with the provisions of this Section 3.

The Corporation will notify the Recipient of any such determination in writing and request additional documentation regarding the disputed costs. 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 reverses its determination with respect to any such costs, the Corporation shall advance the appropriate additional sum to the Recipient.

(c) If, upon review of such additional documentation and evidence, the Corporation affirms, in whole or in part, its original determination, the Corporation shall be entitled to make an immediate adjustment to any pending or future requisition in an amount equal to the amount of the costs so determined to be ineligible, or unapproved, and treat the pending or subsequent requisition 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 (in respect of overdue principal) on a Short-Term Financing when the same is due and payable; or

(ii) applies Short-Term Financing proceeds for purposes other than payment of, or reimbursement for, Project Costs which have been the subject of an approved requisition hereunder (including purposes that have been the subject of an approved requisition hereunder but which the Corporation subsequently determines are costs that are not permissible Project Costs); 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;

the Corporation shall be entitled to immediately withhold approval on all pending and subsequent requests for the advance of Short-Term Financing 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 advances 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 requisitions of Short-Term Financing 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 requisition 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.

Notwithstanding the foregoing, if, as of the date of such notice from the Corporation, the balance of the Short-Term Financing proceeds remaining to be advanced 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 Advances of Short-Term Financing proceeds until such failure is cured or corrected within the time period specified by the preceding paragraph.

Section 5. Special Provisions.

Notwithstanding the foregoing, Advances shall be subject to any special provisions set forth in **Exhibits C or F** to the Project Finance Agreement.

PART C

REIMBURSEMENT OF REVOLVING FUND

If the Corporation determines that funds advanced as part of the Short-Term Financing have been expended by the Recipient for costs that are not permissible Project Costs, the Corporation shall provide written notice to the Recipient of such determination. Such notice shall specify the amount of such funds.

The Recipient hereby agrees that, within 30 days after the receipt of such notice, the Recipient will reimburse the Revolving Fund in an amount equal to the amount of the funds which the Corporation has determined were improperly applied. In the event the Recipient fails to reimburse the Revolving Fund in such amount within 30 days after the receipt of such notice, the Recipient hereby further agrees to pay interest on such amount at the Overdue Interest Rate, such interest to begin accruing on the 31st day after the Recipient's receipt of such notice, until such amount is paid.

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

AYES: 5

NOES: 0

ITEM NO. 5

CONTRACT APPROVAL – LEGAL SERVICES

WHEREAS: The Buffalo Sewer Authority requires the skills of a specialized attorney for the issuance of bonds and notes; and

WHEREAS: Timothy Cashmore, of Damon & Morey, has extensive expertise in these areas; and

WHEREAS: The Buffalo Sewer Authority wishes to utilize his expertise and services; and

WHEREAS: The General Manager and the members of his committee recommend the approval of this contract.

NOW THEREFORE
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to retain, on an as-needed basis, the services of Mr. Timothy Cashmore, of Damon & Morey, to provide legal services as required. Mr. Cashmore shall be compensated at the rate of two hundred dollars (\$200) per hour to a maximum of \$20,000.00. This agreement will be for the fiscal year beginning on July 1, 2004. The cost for these services will be charged to account no. 02000218-432003.

MOTION TO APPROVE

MADE BY MS. WILSON-DIVINCENZO

2ND BY MR. ROOSEVELT

AYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 6

CONTRACT APPROVAL - SELF INSURED WORKERS' COMPENSATION PROGRAM

WHEREAS: The use of a professional claims management company is necessary for the successful continuation of the Buffalo Sewer Authority's self insured Workers' Compensation Program; and

WHEREAS: First Niagara Risk Management, Inc., has proposed a Workers' Compensation Administrative Agreement with the Buffalo Sewer Authority for a one-year period beginning July 1, 2004, and ending June 30, 2005, for a fee of \$29,000.00; and

WHEREAS: The Executive Secretary and her committee recommend accepting this proposal.

NOW THEREFORE
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby approves the proposed Workers' Compensation Administrative Agreement from First Niagara Risk Management, Inc., for a one-year period at a cost of \$29,000.00 and authorizes the General Manager to enter into an Agreement with First Niagara Risk Management, Inc., for this service. This expense will be charged to account nos. 00110108-452000, 00200108-452000, and 00650108-452000 on a pro-rata basis.

MOTION TO APPROVEMADE BY MS. WILSON-DIVINCENZO2ND BY MR. KENNEDYAYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 7

CLAIM AGAINST LIABILITY AND CASUALTY RESERVE FUND

WHEREAS: On July 26, 2004, a vehicle owned by the Buffalo Sewer Authority and assigned to Anthony A. Hazzan, the General Manager, was one of numerous vehicles broken into while parked in a parking lot located at 135 Cleveland Avenue; and

WHEREAS: Various personal items of Mr. Hazzan's were stolen from the vehicle as indicated in a police report. The replacement value of these items totals \$900.00; and

WHEREAS: Also stolen from the vehicle was a Kenwood TK-380 portable hand-held radio which will be removed from the Buffalo Sewer Authority inventory; and

WHEREAS: Frank Belliotti, the City Auditor, reviewed the replacement cost of the stolen personal items and recommends payment in the amount of \$900.00.

NOW THEREFORE
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes payment of this Claim to Anthony A. Hazzan in the amount of \$900.00. This Claim will be paid out of the Liability and Casualty Reserve Fund.

MOTION TO APPROVEMADE BY MR. ROOSEVELT2ND BY MS. WILSON-DIVINCENZOAYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 8

PAYMENT FROM JUDGMENT AND CLAIMS

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

WHEREAS: The following services were received during the 2003-04 fiscal year and charged to the 2004-05 budget account number 00800108-480214:

VENDOR	AMOUNT
Buckpitt & Co., Inc.	\$345.83
Irish Carbonic and Welding Corp.	\$ 33.00
; and	

WHEREAS: The Treatment Plant Superintendent and staff recommend the above payments from the Judgment and Claims account.

NOW THEREFORE
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby approves the above payments from the Judgment and Claims account no. 00800108-480214.

MOTION TO	_____	APPROVE	_____
MADE BY	_____	MR. NAPLES	_____
2 ND BY	_____	MR. KENNEDY	_____
AYES	_____	5	NOES _____ 0

Board Meeting of September 8, 2004

ITEM NO. 9

PAYMENT FROM JUDGMENT AND CLAIMS

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

WHEREAS: The following service was received during the 2003-04 fiscal year and charged to the 2004-05 budget account number 00800108-480214:

VENDOR	AMOUNT
Goodyear Truck Tire	\$1,520.28
; and	

WHEREAS: The Director of Sewer Maintenance and staff recommend the above payment from the Judgment and Claims account.

NOW THEREFORE
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby approves the above payment from the Judgment and Claims account no. 00800108-480214.

MOTION TO APPROVE

MADE BY MS. WILSON-DIVINCENZO

2ND BY MR. ROOSEVELT

AYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 10

AUTHORIZATION FOR RENEWAL OF AGREEMENT FOR SOFTWARE MANAGEMENT SERVICES

WHEREAS: Buffalo Sewer Authority installed a Supervisory Control and Data Acquisition (SCADA) System for its daily plant operations in 1999. This system monitors and controls plant processes; and

WHEREAS: On July 21, 2004, the Board of the Buffalo Sewer Authority designated ABB Automation, Inc., the original equipment manufacturer of this proprietary system, as a sole source for support for the SCADA system; and

WHEREAS: Our current software management service agreement is up for renewal for fiscal year 2004-05. The software management services agreement provides the Buffalo Sewer Authority with the latest software versions to insure the continued viability of the SCADA system; and

WHEREAS: The Treatment Plant Superintendent, Computer Systems Coordinator, and staff recommend approval to renew this agreement for fiscal year 2004-05 with ABB Automation, Inc., for software management services in the amount of \$37,449.00.

NOW THEREFORE
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to renew the agreement with ABB Automation, Inc., for software management services in the amount of \$37,449.00. Funds are available in account no. 00200106-443420.

MOTION TO _____ APPROVE _____

MADE BY _____ MR. KENNEDY _____

2ND BY _____ MS. WILSON-DIVINCENZO _____

AYES _____ 5 _____ NOES _____ 0 _____

Board Meeting of September 8, 2004

ITEM NO. 11

AUTHORIZATION FOR TRANSPORTATION AND DISPOSAL OF CENTRIFUGALLY DEWATERED SLUDGE

WHEREAS: Digesters 3 and 4 are out of service for major rehabilitation. Recently, Digester 1 went down and is scheduled to be repaired, leaving three (3) remaining digesters for plant operations; and

WHEREAS: Due to these circumstances, the Buffalo Sewer Authority is processing more sludge through the solids dewatering and incineration facilities. Buffalo Sewer Authority has leased a pilot centrifuge in order to help maintain proper sludge dewatering operations and has solicited informal quotes for the transportation and disposal of centrifugally dewatered sludge as follows:

Modern Disposal Services, Inc.	Option 1: \$28.90/ton for transportation & disposal; \$65/hr. demurrage (dump trucks)
	Option 2: \$34.44/ton for transportation & disposal; \$65/hr. demurrage (roll-offs)
BFI of New York, Inc.	\$42.95/ton for transportation & disposal \$75/hr. demurrage (roll-offs)
American Waste Management	\$40/ton for transportation & disposal \$75/hr. demurrage (roll-offs)

; and

WHEREAS: The Treatment Plant Superintendent, Treatment Plant Administrator, and staff reviewed the bids and recommend Board approval for this service from the low bidder, Modern Disposal Services, Inc.; and

WHEREAS: Due to the necessity to expedite this service, the Board was polled and verbally authorized this service on July 21, 2004. The Treatment Plant Superintendent may, at his discretion, utilize either (Option 1) at a cost of \$28.90/ton for transportation and disposal, and \$65/hour demurrage (dump trucks); or (Option 2) at a cost of \$34.44/ton for transportation and disposal, and \$65/hr. demurrage (roll-offs); and

WHEREAS: It is now necessary to formally ratify that authorization.

NOW THEREFORE
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby formally authorizes the General Manager to enter into and execute an agreement with Modern Disposal Services, Inc., for the transportation and disposal of centrifugally dewatered sludge required at the Treatment Plant, on an as-needed basis beginning August 4, 2004. The Treatment Plant Superintendent may at his discretion utilize either (Option 1), at a cost of \$28.90/ton for transportation and disposal, and \$65/hour demurrage (dump trucks); or (Option 2), at a cost of \$34.44/ton for transportation and disposal, and \$65/hr. demurrage (roll-offs). Expenses for this agreement will be charged to account no. 00360106-442100.

MOTION TO APPROVE

MADE BY MS. WILSON-DIVINCENZO

2ND BY MR. NAPLES

AYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 12

AMEND BOARD RESOLUTION ITEM NO. 9 OF BOARD MEETING JULY 21, 2004

WHEREAS: On July 21, 2004, the Buffalo Sewer Authority Board approved Item No. 9, which authorized the General Manager to enter into an agreement with Westfalia Separator, Inc., for rental of a centrifuge on a month-to-month basis at a cost of \$17,500.00 per month; and

WHEREAS: Omitted from the Resolution was a one-time delivery charge in the amount of \$1,650.00; and

WHEREAS: The Resolution should be amended to read the Board of the Buffalo Sewer Authority authorizes the General Manager to enter into an agreement with Westfalia Separator, Inc., for the rental of a centrifuge on a month-to-month basis at a cost of \$17,500.00 per month, plus a one-time delivery charge in the amount of \$1,650.00; and

WHEREAS: The Treatment Plant Superintendent, Treatment Plant Administrator, and staff recommend acceptance of this amendment.

NOW THEREFORE
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby amends Item No. 9 of the Board Meeting of July 21, 2004, and increases the cost for rental of a centrifuge by \$1,650.00 to include the one-time delivery charge.

MOTION TO APPROVE
MADE BY MR. KENNEDY
2ND BY MS. WILSON-DIVINCENZO
AYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 13

AUTHORIZATION TO ENTER INTO AN ENGINEERING AGREEMENT WITH MALCOLM PIRNIE, INC., FOR AN EMERGENCY DEWATERING SYSTEM AT THE BIRD ISLAND WASTEWATER TREATMENT PLANT

WHEREAS: The Buffalo Sewer Authority requires design and construction-phase services for installation of an Emergency Sludge Dewatering System; and

WHEREAS: This system will run concurrent with the centrifuge procurement bidding and award and will be designed to pump sludge from the existing sludge mixing tanks to a full-sized centrifuge; and

WHEREAS: The Treatment Plant Administrator and Senior Sanitary Engineering Supervisor reviewed the proposal from Malcolm Pirnie, Inc.; and

WHEREAS: The proposal submitted by Malcolm Pirnie, Inc., is to perform the required work in the five (5) following separate tasks:

Task 1 – Design of Emergency Dewatering System - \$183,904.00

Task 2 – Bidding Assistance (construction contract) - \$13,075.00

Task 3 – Construction Contract Administration - \$109,425.00

Task 4 – Resident Project Representative Services - \$50,267.00

Task 5 – System Checkout and Testing - \$4,902.00

WHEREAS: The total cost of this Engineering Agreement is not to exceed \$362,000.00; and

WHEREAS: The Treatment Plant Administrator and Senior Sanitary Engineering Supervisor recommend entering into a contract with Malcolm Pirnie, Inc.

NOW THEREFORE
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to enter into and execute a contract with Malcolm Pirnie, Inc., for Engineering Services for design and construction-phase services for the installation of an Emergency Sludge Dewatering System at the Bird Island Wastewater Treatment Plant at a cost not to exceed \$362,000.00. Funds for this contract will be charged to account no. 02000201-432004.

MOTION TO APPROVE

MADE BY MR. ROOSEVELT

2ND BY MS. WILSON-DIVINCENZO

AYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 14

CONTRACT NO. 84200009

CERTIFICATE OF ACCEPTANCE AND OCCUPANCY

WORK: RAS/WAS Pump Station Improvements

BID: \$2,381,000.00

CONTRACTOR: Quackenbush Company, Inc.
495 Kennedy Road
Buffalo, New York 14227

WHEREAS: The Treatment Plant Administrator of the Buffalo Sewer Authority and Malcolm Pirnie, Inc., have certified that the Contractor completed the work in accordance with the plans and specifications on February 11, 2004.

NOW THEREFORE
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby finds and determines that:

- a. The work to be performed under the terms of the Contract has been complete and is accepted;
- b. The date of entrance and occupancy be fixed as of February 11, 2004;
- c. The maintenance period commence on February 11, 2004;
- d. Final payment be made to the Contractor in the amount of \$12,586.06, an increase of \$136,212.04 by change orders, making the final cost of the contract \$2,517,212.04.

MOTION TO APPROVEMADE BY MR. NAPLES2ND BY MR. ROOSEVELTAYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 15

CHANGE ORDER NO. 1 – CONTRACT NO. 84400008

CONTRACTOR:	ORIGINAL CONTRACT COST	\$99,990.00
Sterling Refractory	PREVIOUS CHANGE ORDER	.00
120 Michigan Avenue	THIS CHANGE ORDER	<u>39,300.00</u>
Buffalo, New York 14203	ADJUSTED CONTRACT COST	\$139,290.00

WORK: Multiple Hearth Sludge Incinerator Rehabilitation Incinerator No. 1

DESCRIPTION OF CHANGE OR EXTRA WORK:

- Item #1 Burner jackets need to be replaced.
- Item #2 Afterburner jackets need to be replaced.
- Item #3 Brickwork and additional afterburner jacket need replacement.
- Item #4 Brickwork and steel lining to afterburner duct to scrubber need replacement.

REASON FOR CHANGE OR EXTRA WORK:

- Item #1 Six (6) burner jackets are deteriorated and require replacement. This can be accomplished before the afterburner tile is poured for \$2,500.00 per burner jacket.
- Item #2 Three (3) afterburner jackets also need replacement. This can be done prior to the pour of the afterburner tile for \$3,400.00 per jacket.
- Item #3 One (1) additional afterburner jacket is connected to a brick wall jam. Both are falling down and in need of replacement.
- Item #4 The afterburner duct to the scrubber needs to have the brickwork torn out. The brickwork is not good and the steel lining needs to be replaced.

COST OF CHANGE OR EXTRA WORK:

Item #1	\$15,000.00
Item #2	\$10,200.00
Item #3	\$ 6,800.00
Item #4	\$ 7,300.00

THE TOTAL COST OF THE CHANGE OR EXTRA WORK	\$39,300.00
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The total INCREASE to the contract as a result of this Change Order is	\$39,300.00
--	-------------

;and

50238

WHEREAS:

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

NOW THEREFORE

BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby approves Change Order No. 1 to Contract No. 84400008 as written in the above Agenda Item, increasing the contract cost in the amount of \$39,300.00, making the adjusted contract cost \$139,290.00.

MOTION TO APPROVE

MADE BY MS. WILSON-DIVINCENZO

2ND BY MR. ROOSEVELT

AYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 16

ESTABLISHMENT OF TEMPORARY POSITION - HEAD CARPENTER

WHEREAS: The Buffalo Sewer Authority's "Schedule of Job Classification Plan" provides, when so authorized by the Board, temporary positions may be established for a definite period which will not, without further action of the Board, exceed six (6) months. Such positions will be recorded under this section and will state the termination date thereof.

NOW THEREFORE
BE IT RESOLVED: That one (1) temporary Head Carpenter is hereby established for a period of six (6) months effective September 1, 2004, with a termination date of February 28, 2004.

MOTION TO APPROVE

MADE BY MR. KENNEDY

2ND BY MS. WILSON-DIVINCENZO

AYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 17

CONFIRMATION OF APPOINTMENT

**ADMINISTRATIVE ASSISTANT (TEMPORARY)
CHANGE OF STATUS ONLY
ADMINISTRATIVE OFFICES
\$49,044 PER ANNUM
EFFECTIVE: AUGUST 30, 2004**

TERESA PLEASANT
4545 CHESTNUT RIDGE RD.
AMHERST, NY

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 MS. WILSON-DIVINCENZO

2ND BY MR. ROOSEVELT

AYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 18

TUITION ASSISTANCE

WHEREAS: In accordance with the Agreements between the Buffalo Sewer Authority and CSEA Local 815 and the Communications Workers of America, the following Buffalo Sewer Authority employees have applied for Tuition Assistance:

<u>EMPLOYEE</u>	<u>SCHOOL</u>	<u>COURSE</u>	<u>SEMESTER</u>	<u>TUITION</u>
James Eagan	SUNY at Buffalo	<i>Foundation Engineering</i>	Fall 2004	\$700.00
Charles Riley	Erie Community College	<i>Business Law II</i>	Fall 2004	\$363.00

WHEREAS: No funds will be expended at this time.

NOW THEREFORE
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby approves the above applications for Tuition Assistance.

MOTION TO APPROVE

MADE BY MR. NAPLES

2ND BY MR. KENNEDY

AYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 19

TUITION REIMBURSEMENT

WHEREAS: In accordance with the Agreements between the Buffalo Sewer Authority and CSEA Local 815 and the Communications Workers of America, the following Buffalo Sewer Authority employees have applied for Tuition Reimbursement:

<u>EMPLOYEE</u>	<u>SCHOOL</u>	<u>COURSE</u>	<u>TUITION%</u>	<u>REIMBURSEMENT TOTAL</u>
David Capizzi	California State University, Sacramento	<i>Treatment of Metal Waste Streams</i>	100 %	\$ 25.00
Charles Riley	Erie Community College	<i>Principles of Management</i>	90%	\$440.06

NOW THEREFORE
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby approves the above applications for Tuition Reimbursement totaling \$465.06. These Reimbursements will be charged to account no. 00800108-480214.

MOTION TO APPROVE
MADE BY MR. NAPLES
2ND BY MS. WILSON-DIVINCENZO
AYES 5 NOES 0

Board Meeting of September 8, 2004

ITEM NO. 20

ADJOURNMENT OF MEETINGMOTION TO APPROVEMADE BY MR. ROOSEVELT2ND BY MR. KENNEDYAYES 5 NOES 0

Board Meeting of September 8, 2004