

**MINUTES OF THE REGULAR MEETING  
OF THE  
BUFFALO SEWER AUTHORITY  
March 18, 2009**

**52606.....52684**



# **BUFFALO SEWER AUTHORITY**

**March 18, 2009**

**REGULAR MEETING**

**9:00 A.M.**

**1038 CITY HALL**

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## ITEM NO. 2

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

**March 5, 2009**

ISSUE DATE	MATURITY DATE	TOTAL DAYS	AMOUNT	BANK	RATE	INTEREST AMOUNT
<b>CAPITAL IMPROVEMENT FUND</b>						
15-Apr-02	<b>Money Market</b>		<b>\$500,267.03</b>	Chase	0.65%	High Yield
<b>CONSTRUCTION FUND</b>						
08-Apr-02	<b>Money Market</b>		\$2,517,846.04	Chase	0.65%	High Yield
31-Dec-08	03-Apr-09	93	\$15,000,000.00	Citizens	1.22%	\$47,275.00
26-Jan-09	01-May-09	95	\$4,000,000.00	Citizens	0.91%	\$9,605.56
02-Mar-09	01-Jun-09	91	\$11,825,000.00	Citizens	0.92%	\$27,499.69
			<b>\$33,342,846.04</b>			
<b>LIABILITY AND CASUALTY RESERVE FUND</b>						
22-Apr-02	<b>Money Market</b>		<b>\$1,060,295.48</b>	Chase	0.65%	High Yield
<b>OPERATING FUND</b>						
08-Apr-02	<b>Money Market</b>		<b>\$3,390,853.92</b>	Chase	0.65%	High Yield
<b>TRUST &amp; AGENCY FUND</b>						
06-May-02	<b>Money Market</b>		<b>\$37,508.66</b>	Chase	0.65%	High Yield
<b>SURPLUS FUND</b>						
02-Feb-09	30-Jun-09	148	<b>\$6,310,184.15</b>	Citizens	1.36%	\$35,280.94
<b>NET REVENUE FUND</b>						
			\$20.25	MTB Funds		
31-Dec-08	25-Mar-09	84	\$9,848,215.43	Citizens	1.22%	\$28,034.59
26-Jan-09	27-Apr-09	91	\$1,200,000.00	M&T	1.00%	\$3,033.33
25-Feb-09	26-May-09	90	\$3,999,979.75	M&T Securities	0.90%	\$9,020.25
			<b>\$15,048,215.43</b>			



ISSUE DATE	MATURITY DATE	TOTAL DAYS	AMOUNT	BANK	RATE	INTEREST AMOUNT
<b>DEBT RESERVE FUND</b>						
08-May-08	08-May-09	365	\$1,319,229.56	Series F FHLB	2.00%	
01-Aug-08	06-Sep-13	1862	\$8,240,877.50	Series I FHLB	4.00%	
13-Mar-03	15-Apr-32		\$2,825,593.00	Series H SLG	4.35%	
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	4.63%	
27-Jul-06	01-Oct-35		\$952,666.00	Series L SLG	4.52%	

**RECEIVE & FILE**

Board Meeting of March 18, 2009

## ITEM NO. 3

**PRELIMINARY OUTLINE OF OPERATING BUDGET FOR THE FISCAL YEAR  
COMMENCING JULY 1, 2009**

A proposed Operating Budget, with full details, for the fiscal year beginning July 1, 2009, will be presented for formal consideration by your Honorable Body at the next scheduled meeting on April 15, 2009. This proposed budget will be in an amount not to exceed \$53,403,373, which is a \$1,110,102 decrease over the current budget of \$54,513,475.

At this time, an outline of the proposed budget is submitted for your tentative approval. Once approved, we will proceed in the preparation of a formal budget document complete with comparison charts and exhibits. Attached to this outline are the following exhibits:

A comparison of Appropriation by Division for the years 2006-07 to 2009-10 Proposed;

A revenue estimate and comparison for the years 2006-07 to 2009-10 Proposed;

Capital Budget Projects for 2009-2010.

Sewer rents based on assessed valuation will not be increased to fund this proposed budget. The final rate for sewer rent will be dependent upon the final City assessed valuation. Sewer rents based upon water usage will not be increased. The estimate of sewer rents based on water use and the final budget appropriation estimates will be detailed at the scheduled meeting of April 15, 2009.

WHEREAS: The preliminary budget presented herein reflects a balanced plan to fund the necessary operations of the Buffalo Sewer Authority for the fiscal year beginning July 1, 2009.

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to proceed in preparing a detailed budget not to exceed \$53,403,373 to be submitted to this Body at the meeting of April 15, 2009.

MOTION TO	<u>APPROVE</u>
MADE BY	<u>MS. WILSON-DIVINCENZO</u>
2 <sup>ND</sup> BY	<u>MR. KENNEDY, JR.</u>
AYES	<u>5</u> NOES <u>0</u>

Board Meeting of March 18, 2009

**BUFFALO SEWER AUTHORITY  
REVENUE ESTIMATE  
2009-2010 PRELIMINARY BUDGET**

<u>Revenue</u>	<u>2006-2007 Actual</u>	<u>2007-2008 Actual</u>	<u>2008-2009 Budget</u>	<u>2009-2010 Budget</u>
Assessment Sewer Rents	\$12,113,115	\$12,042,687	\$11,957,800	\$11,982,600
Water Use Sewer Rents	29,006,882	28,254,493	28,976,375	27,970,673
Industrial Waste	1,310,393	1,346,429	951,800	1,304,600
Outside City-Sewer Connection	9,024,341	9,246,051	9,674,000	9,708,000
Interest Income	2,471,036	2,315,671	2,046,000	1,480,000
Miscellaneous	1,282,578	1,091,021	907,500	957,500
<b>Total Revenues</b>	<b><u>\$55,208,345</u></b>	<b><u>\$55,168,603</u></b>	<b><u>\$54,513,475</u></b>	<b><u>\$53,403,373</u></b>

**BUFFALO SEWER AUTHORITY  
APPROPRIATIONS BY DIVISION  
2009-2010 PRELIMINARY BUDGET**

<u>Division</u>	<u>2006-2007 Actual</u>	<u>2007-2008 Actual</u>	<u>2008-2009 Budget</u>	<u>2009-2010 Budget</u>
General Offices	\$1,077,657	\$1,061,521	\$1,424,680	\$1,396,862
Wastewater Treatment Facility	19,613,527	19,293,261	22,954,153	21,985,234
Industrial Waste	530,628	520,684	609,170	571,176
Engineering	673,809	594,109	692,205	758,711
Sewer Maintenance	2,648,774	2,651,214	2,853,880	3,429,918
Miscellaneous Financial Chgs	3,517,138	3,364,532	2,914,690	2,914,690
Fringe Benefits	5,829,954	5,753,945	6,735,923	6,629,352
Debt Service & Reserve	12,115,425	11,704,745	16,328,774	15,717,430
<b>Total Appropriations</b>	<b><u>\$46,006,912</u></b>	<b><u>\$44,944,011</u></b>	<b><u>\$54,513,475</u></b>	<b><u>\$53,403,373</u></b>

**BUFFALO SEWER AUTHORITY  
CAPITAL PROJECTS  
2009 - 2010 PRELIMINARY BUDGET**

<b><u>PROJECT TITLE:</u></b>	<b><u>ESTIMATED COST</u></b>
<b><u>TREATMENT PLANT:</u></b>	
REPLACE ONE PLANT WATER SCREEN	\$340,000
SECONDARY CLARIFIER WEIR REFURBISHMENT	400,000
MISCELLANEOUS PIPE REPLACEMENT	200,000
ANNUAL CENTRIFUGE MAINTENANCE	50,000
CHILLER REPLACEMENT & HVAC IMPROVEMENTS	397,000
REPAIR RAILINGS AROUND AERATION BASINS	150,000
EVALUATE PUMPING STATIONS	75,000
REPLACE SCRUBBER WATER DISCHARGE PUMPS AND CONTROLS	300,000
INSTALL EMERGENCY GENERATION EQUIPMENT	3,000,000
PRIMARY CLARIFIER HYPOCHLORITE TANK REPLACEMENT	50,000
SCADA DCU REPLACEMENT	2,400,000
REMOVE FLOW BOTTLENECK-PRIMARY BYPASS	500,000
REPLACE THICKENER SLUDGE PUMPS AND CONTROLS	150,000
OUTDOOR LIGHTING	150,000
THICKENER TOP COLLECTOR REHABILITATION	400,000
REPLACE FINAL CLARIFIER SCUM COLLECTION BOXES	100,000
CEMS AND DAS REPLACEMENT	180,000
REPLACE LANDLINES WITH WIRELESS AT OUTLYING STATIONS	200,000
FERROUS CHLORIDE TANK REPLACEMENT	10,000
ROOF REPLACEMENT & STRUCTURAL REPAIRS	1,500,000
DIGESTER CLEANING AND MIXING IMPROVEMENTS	1,000,000
REPLACE DOORS AND WINDOWS	250,000
GAS CLEAN AERATION DIFFUSER STONES	100,000
POWER DISTRIBUTION SYSTEM SURVEY AND IMPLEMENTATION	200,000
REHAB OF (1) SWW AND RWW PUMP & MOTOR	210,000

**COLLECTION SYSTEM:**

SEWER CLEANING/TV INSPECTION	300,000
UNANTICIPATED SEWER REPLACEMENTS	400,000
OUTSIDE DISTRICT FLOW VERIFICATION	30,000
CSO SYSTEM IMPROVEMENTS - HAMBURG DRAIN	6,000,000
CSO PHASE II STUDY	800,000
CSO SYSTEM IMPROVEMENTS - CAZENOVIA PARK	1,000,000
SPP 123 A MODIFICATIONS	1,400,000
SPP 121 SUPPLEMENTAL CAPACITY	400,000
BSA/LACKAWANNA MERGER	400,000
<b><u>GRAND TOTAL</u></b>	<b><u>\$23,042,000</u></b>

ITEM NO. 4

**THE NOTE RESOLUTION, SERIES 2009 BOND ANTICIPATION NOTE**

**EXTRACT OF MINUTES  
Meeting of the Buffalo Sewer Authority  
of the City of Buffalo, County of Erie, New York  
March 18, 2009**

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**A regular meeting of the Buffalo Sewer Authority of the City of Buffalo, in the County of Erie, New York, was held at City Hall, Buffalo, New York, on March 18, 2009, at 9:00 o'clock A.M. (Prevailing Time)**

**There were present: 15**

**Members: 5**

**There were absent: 0**

**Also present:**

**Member Roosevelt offered the following resolution and offered its adoption:**

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

AYES 5 NOES 0

Board Meeting of March 18, 2009

**BUFFALO SEWER AUTHORITY**  
**SERIES 2009 BOND ANTICIPATION NOTE**

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**NOTE RESOLUTION**

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**Adopted: March 18, 2009**

**BUFFALO SEWER AUTHORITY**  
**SERIES 2009 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 (as more fully defined below, the “Project”), to wit the Hamburg Floatables Control Facility; and

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

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

WHEREAS, on February 7, 2007, the Authority adopted a Series 2007-A Bond Anticipation Note Resolution (the “Series 2007-A Note Resolution”) for purposes of providing temporary financing of the construction of the Project, but no bond anticipation notes were ever issued pursuant to the Series 2007-A Note Resolution; and

WHEREAS, the Authority wishes to replace and supersede the Series 2007-A Note Resolution with this new resolution authorizing the issuance of notes under the Act to provide for temporary financing of the construction of the Project;

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 2009 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 2009 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 Hamburg Drain Floatables Control Facility (CWSRF Project No. C9-6602-09-00), and all such roadways, connections, structures, equipment, apparatus and other property necessary or desirable for efficient construction and operation of such sewerage facilities, subject to any modifications and revisions approved by the Authority as necessary or desirable for the purposes of the Authority or the Sewer System under the Act.

“Project Finance Agreement” or “PFA” shall mean the project finance agreement to be entered into between the Authority and the EFC relating to the Notes, 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 there of 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
- (C) 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 2009 Bond Anticipation Notes.” Said Notes shall be issued in an aggregate principal amount to be set forth in the Certificate of Determination and the Authority covenants and agrees that after the issuance of the Notes, no other Notes shall thereafter be issued pursuant to this Note Resolution. The Notes are being issued for the purpose of providing interim financing of the Project, including the making of deposits in the amounts, if any, required by the PFA and this Note Resolution.

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

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

Section 2.7 Sale of Notes. (A) The 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 \$18,000,000 in the aggregate (provided that if changes are proposed to be made to the Project which the Board of the Authority determines will enhance the value, efficiency, operation, longevity or other aspect of the Project, the aggregate principal amount of the Notes may be in an amount not to exceed \$20,000,000), the rate or rates of interest to be paid on the Notes, if the General Manager determines that the Notes should bear interest, and the date and maturity date of the Notes; provided, however, that the maturity date of the Notes shall not be later than the third anniversary of the issuance of the Notes;

B) the disposition of the proceeds of the sale of the Notes for Costs of Issuance, 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. Unless otherwise determined by the General Manager of the Authority, the Notes shall be initially issued in the form of a separate single authenticated fully registered note in a principal amount not to exceed \$18,000,000 (or \$20,000,000 under the circumstances described in Section 2.5 hereof) 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 or to comply with any changes made by the General Manager of the Authority pursuant to this Note Resolution:

Registered  
No. R

Registered  
\$

**UNITED STATES OF AMERICA**  
STATE OF NEW YORK  
BUFFALO SEWER AUTHORITY

E.F.C. Water Pollution Control Facility Note – 2009  
(Bond Anticipation Note)

REGISTERED OWNER: NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION

MAXIMUM PRINCIPAL SUM:

DATED DATE: \_\_\_\_\_, 2009

MATURITY DATE: \_\_\_\_\_, 200\_

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 \_\_\_\_\_, 2009 (the “Project Finance Agreement”), between the Corporation and the Recipient (the lesser of such amounts being hereinafter referred to as the “Unpaid Principal Sum”), such amount to be paid on the Maturity Date stated above or upon such date as may be established pursuant to the Project Finance Agreement in accordance with **Exhibit E** thereto. All advances made by or on behalf of the Corporation to the Recipient pursuant to the Project Finance Agreement and all prepayments made on account of the Unpaid Principal Sum hereof shall be recorded by or on behalf of the Corporation and endorsed on the grid attached hereto in accordance with the terms of the Project Finance Agreement, which is hereby made a part hereof. Recordation of Advances, confirmed by a certificate of the Recipient given in accordance with the Project Finance Agreement, shall conclusively establish the principal amount outstanding hereunder. Interest shall not accrue on said Unpaid Principal Sum prior to the earlier of the Maturity Date or the date of earlier redemption of said Unpaid Principal Sum, but in the event of any default in the payment of said Unpaid Principal Sum on the earlier of the Maturity Date or the date of earlier redemption, the Recipient promises to pay interest on said Unpaid Principal Sum to the Registered Owner named above at the rate of \_\_\_\_\_ per centum (\_\_\_%) per annum on and after said Maturity Date or date of earlier redemption until said Unpaid Principal Sum is paid in full. Principal of and interest (in respect of overdue principal), if any, on this Note shall be payable to the Registered Owner hereof, at its address set forth on the books of the Recipient maintained for registration of this Note. For so long as the Corporation is the Registered Owner of this Note, the Corporation may, by written instruction to the Recipient, direct the Recipient to pay any principal of and interest (in respect of overdue principal), if any, on this Note to any bank acting as custodian of the Corporation. Both principal of and interest (in respect of overdue principal), if any, on this Note will be paid, without presentment, in funds available on or before the due date and in any

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

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

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

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

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

This Note is issued pursuant to the provisions of the Public Authorities Law of the State of New York, as amended from time to time, the note resolution adopted by the Recipient on March 18, 2009, authorizing the issuance of its Series 2009 Bond Anticipation Notes, and the Certificate of Determination executed by the Authorized Officer of the Recipient as of \_\_\_\_\_, 2009, 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.



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. The execution of the PFA and delivery to the EFC thereof shall constitute conclusive evidence of such determination.

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

Section 7.2 Official Intent. As authorized in the Series 2007-A Note Resolution, the Authority may pay certain expenses incurred in connection with the Project prior to the date the Notes are issued out of the Authority's general operating fund. The Authority intends to reimburse any such original expenditure with the proceeds of the Notes.

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

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

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

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

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

Section 7.7 Rescission of Series 2007-A Note Resolution. The Series 2007-A Note Resolution is hereby rescinded in all respects except for Section 7.2 thereof.

Section 7.8 Effective Date. This Note Resolution shall take effect from and after its adoption.

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

AYES: 5

NOES: 0

**CERTIFICATE**

I, the undersigned, Secretary of the Buffalo Sewer Authority (the Authority) in the county of Erie, State of New York, DO HEREBY CERTIFY that I have compared the annexed extract of the minutes of the meeting of the Authority, including the resolution contained therein, held the 18th day of March, 2009, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Authority and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Authority this 18<sup>th</sup> day of March, 2009.

(SEAL)

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Eleanor C. Wilson-DiVincenzo  
Secretary of the Board

ITEM NO. 5

**THE THIRTEENTH SUPPLEMENTAL SEWER SYSTEM REVENUE BOND RESOLUTION  
SEWER SYSTEM REVENUE BONDS, SERIES M**

**EXTRACT OF MINUTES  
Meeting of the Buffalo Sewer Authority  
of the City of Buffalo, County of Erie, New York  
March 18, 2009**

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A regular meeting of the Buffalo Sewer Authority of the City of Buffalo, in the County of Erie, New York, was held at City Hall, Buffalo, New York, on March 18, 2009, at 9:00 o'clock A.M. (Prevailing Time)

There were present: 15

Members: 5

There were absent: 0

Also present:

Member J. Kennedy, Sr., offered the following resolution and offered its adoption:

2<sup>ND</sup> BY MS. WILSON-DIVINCENZO

AYES 5 NOES 0

Board Meeting of March 18, 2009

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**BUFFALO SEWER AUTHORITY**

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**Thirteenth Supplemental Sewer System Revenue Bond Resolution  
Authorizing Up To \$20,000,000  
Sewer System Revenue Bonds, Series M**

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**Adopted: March 18, 2009**

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**BUFFALO SEWER AUTHORITY****Thirteenth Supplemental Sewer System Revenue Bond Resolution  
Authorizing Up To \$20,000,000  
Sewer System Revenue Bonds, Series M**

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

**ARTICLE I****DEFINITIONS AND AUTHORITY**

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

Section 102. Definitions.

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

(B) In this Thirteenth Supplemental Resolution:

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

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

"Series M Bonds" means the Sewer System Revenue Bonds, Series M, authorized by, and the terms, conditions and other details of issuance of which are to be determined as set forth in, this Thirteenth Supplemental Resolution.

"Thirteenth Supplemental Resolution" shall mean this Thirteenth Supplemental Sewer System Revenue Bond Resolution.

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

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



## ARTICLE II

AUTHORIZATION OF THE SERIES M BONDS AND  
DETERMINATION OF CERTAIN TERMS OF THE SERIES M BONDS

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

Section 202. Principal Amount, Designation and Series. Pursuant to the provisions of the Resolution, a Series of Bonds (the "Series M Bonds") entitled to the equal benefit, protection and security thereof, is hereby authorized, and shall be issued in an aggregate principal amount not to exceed \$18,000,000, as set forth in the Project Finance Agreement (provided that if changes are proposed to be made to the Project which the Board of the Authority determines will enhance the value, efficiency, operation, longevity or other aspect of the Project, the aggregate principal amount of the Bonds may be in an amount not to exceed \$20,000,000). The Series M Bonds shall be designated as, and shall be distinguished from the Bonds of all other Series by the title, "Sewer System Revenue Bonds, Series M".

Section 203. Purposes. The Series M Bonds are issued to provide moneys for the making of deposits in the amounts, if any, required by the Project Finance Agreement or by the Resolution or this Thirteenth Supplemental Resolution into the Construction Fund and any other Funds and Accounts established pursuant to Article V of the Resolution, this Thirteenth Supplemental Resolution or the Project Finance Agreement. The proceeds of the Series M Bonds shall provide permanent long-term financing for the Hamburg Drain Floatables Control Facility (CWSRF Project No. C9-6602-09-00), and all roadways, connections, structures, equipment, apparatus and other property necessary or desirable for efficient construction and operation of such sewerage facilities, subject to any modifications and revisions approved by the Authority as necessary or desirable for the purposes of the Authority or the Sewer System under the Act; and will also fund required debt service reserve funds and costs of issuance in connection with such financing.

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

Section 205. Form, Denominations, Numbers and Letters. The Series M Bonds maturing in any particular year shall be issued in the form of fully registered bonds, in the denomination of \$5,000 or any multiple thereof not exceeding the aggregate principal amount of the Series M Bonds maturing in such year, provided that the principal payment of any odd amount (exceeding a \$5,000 increment) will be paid in 20\_\_ . The Series M Bonds shall be lettered MR, and numbered from one consecutively upward. Alternatively, at the request of the Corporation, the Series M Bonds may be issued as one or more installment bonds providing for payments of principal and interest identical to those which would be required if a separate bond or bonds were issued for each stated maturity, or as

one or more term bonds with mandatory sinking fund installments, or as a combination of serial bonds, installment bonds and term bonds.

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

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

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

## ARTICLE III

## SALE AND DISPOSITION OF PROCEEDS AND OTHER AMOUNTS

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

Section 302. Sale of the Series M Bonds.

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

(B) The Chairman, Vice-Chairman, General Manager, Comptroller, Chief Fiscal Officer, Secretary, Assistant Secretary, if any, Executive Secretary and General Counsel (the "Authorized Representatives") of the Authority are hereby severally authorized to execute and deliver any and all papers, instruments, opinions, certificates, affidavits, and other documents and to do and cause to be done all acts and things necessary, convenient or proper for carrying out the Resolution, this Thirteenth Supplemental Resolution, the PFA and the issuance, sale and delivery of the Series M Bonds.

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

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

Section 304. Tax Covenants. (A) The Authority shall not permit at any time or times any of the proceeds of the Series M Bonds or any other funds of the Authority to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Series M Bond to be an “arbitrage bond” as defined in Section 148 of the Internal Revenue Code of 1986, as amended (herein in this Section called the “Code”).

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

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

## ARTICLE IV

## FORM AND EXECUTION

Section 401. Form of the Series M Bonds. Subject to the provisions of the Resolution, including Section 205, and the PFA, the Series M Bonds shall be executed in substantially the following form:

REGISTERED

REGISTERED

No. MR-

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

BUFFALO SEWER AUTHORITY  
SEWER SYSTEM REVENUE BOND, SERIES M

MATURITY  
DATE

INTEREST  
RATE

DATE OF  
ORIGINAL ISSUE

REGISTERED OWNER:

PRINCIPAL SUM:

DOLLARS AND NO CENTS

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

This Bond is one of a series of duly authorized bonds (the “Bonds”) of the Buffalo Sewer Authority (the “Recipient”) designated “Sewer System Revenue Bonds, Series M” in the aggregate principal amount of \$ \_\_\_\_\_ which are issued to provide moneys for the making of deposits in the amounts, if any, required by the Resolution (as defined below) and to finance improvements to the municipal sewer system of the City of Buffalo. The Bonds are issued pursuant to the provisions of the Buffalo Sewer Authority Act, Title 8 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (the “Act”), a Sewer System Revenue Bond Resolution (as amended, the “General Resolution”) duly adopted by the Recipient on June 29, 1977, and a Thirteenth Supplemental Resolution (the “Thirteenth Supplemental Resolution”) duly adopted by the Authority on March 18, 2009 (the General Resolution and the Thirteenth Supplemental Resolution being collectively referred to herein as the “Resolution”). A copy of the Resolution is on file at the office of the Recipient in the City of Buffalo, New York and at the corporate trust office in Buffalo, New York, of the Trustee. Reference to the Resolution and any and all supplements thereto and modifications and amendments thereof and to the Act is made for a description of the pledges and covenants securing the bonds, the nature, extent and manner of enforcement of such pledges, the rights and remedies of the registered owners of the bonds with respect thereto and the terms and conditions upon which the bonds are issued and additional bonds may be issued in additional series for the purpose of providing sufficient funds for the capital costs of the Authority’s sewer system or for the purpose of refunding Outstanding Bonds.

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

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

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

owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes whatsoever.

The Bonds are issuable in the form of registered Bonds without coupons in the denomination of \$5,000 or any integral multiple thereof, not exceeding the aggregate principal amount of Bonds stated to mature in the year of stated maturity of the Bond for which the denomination of the Bond is to be specified, provided that the principal payment of any odd amount (exceeding a \$5,000 increment) will be paid in 20\_\_.

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

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

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

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

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

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

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

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



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

BUFFALO SEWER AUTHORITY

(SEAL)

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

\_\_\_\_\_  
Secretary

[FORM OF ASSIGNMENT]

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

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

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

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

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

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

Signature Guaranteed:

\_\_\_\_\_

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

[CERTIFICATE OF AUTHENTICATION]

This Bond is one of the Series M Bonds described in the within-mentioned Resolution.

MANUFACTURERS AND TRADERS  
TRUST COMPANY, as Trustee

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

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

## ARTICLE V

## FINDINGS AND DETERMINATIONS AND OTHER MATTERS

Section 501. Findings and Determinations. The Authority hereby finds and determines that the PFA is fair and reasonable and in the best interests of the Authority and that, on the basis of such finding and determination, the Series M Bonds shall be sold to the Corporation. The Authority further finds and determines that all conditions precedent to and concurrent with the acceptance of the PFA by the Authority have been met. The Authority hereby authorizes the Chairman, Vice-Chairman or General Manager of the Authority to execute and deliver, or cause to be delivered, the PFA for and on behalf of the Authority, on such terms and conditions as the person executing the same shall determine to be customary and prudent taking into account the best interests of the Authority, including any supplements or amendments thereto, provided that the purchase price shall not be less than one hundred percent (100%) of the principal amount of the Series M Bonds sold thereunder. The execution of the PFA and delivery thereof to the Corporation thereof shall constitute conclusive evidence of such determination.

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

Section 502. Appointment of Paying Agent. Manufacturers and Traders Trust Company, Buffalo, New York, is hereby appointed Paying Agent for the Series M Bonds pursuant to Section 1102 of the Resolution.

Section 503. Additional Findings and Determinations. The Authority hereby finds, determines and declares: (a) that the Series M Bonds are issued under and secured by the Resolution and this Thirteenth Supplemental Resolution; (b) that the terms of sale of the Series M Bonds do not contemplate an underwriting of the Series M Bonds; (c) that it is in the best interest of the Authority to sell, and the interest of the Authority will be best served by a sale of, the Series M Bonds to the Corporation as provided in the PFA; and (d) that all provisions and conditions of the Resolution and of other applicable law have been complied with in the issuance of the Series M Bonds under the Resolution and this Thirteenth Supplemental Resolution.

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

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

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

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

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

**CERTIFICATE**

I, the undersigned, Secretary of the Buffalo Sewer Authority (the Authority) in the county of Erie, State of New York, DO HEREBY CERTIFY that I have compared the annexed extract of the minutes of the meeting of the Authority, including the resolution contained therein, held the 18th day of March, 2009, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Authority and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Authority this 18<sup>th</sup> day of March, 2009.

(SEAL)

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Eleanor C. Wilson-DiVincenzo  
Secretary of the Board

## ITEM NO. 6

**AUTHORIZATION TO PURSUE AND ACQUIRE PERMANENT EASEMENT RIGHTS FOR CONSTRUCTION OF HAMBURG DRAIN FACILITY**

- WHEREAS: The Buffalo Sewer Authority, as part of the Inner Harbor Development Project, has entered into a Memorandum of Understanding with the Empire State Development Corporation, the lead agency pursuant to the State Environmental Quality Review Act (SEQRA) as part of the Buffalo Inner Harbor Development Project Master Plan; and
- WHEREAS: The Buffalo Sewer Authority has committed to the construction of the Hamburg Drain Screening Facility (the Project) in order to remove floatable material from the Hamburg Drain;
- WHEREAS: The location for construction of this facility is land in an area bounded by Michigan Avenue, Scott, Washington, and Exchange Streets as shown on the attached map (the Property); and
- WHEREAS: Based on examination of public records for this area, ownership of the Property is held by the People of the State of New York, under the present administrative jurisdiction of the New York State Thruway Authority; and
- WHEREAS: In order to implement the Project, it is necessary for the Buffalo Sewer Authority to acquire easement rights for the Property from said owner; and
- WHEREAS: The New York State Public Authorities Law Sections 1178(7) and 1182 authorizes the Buffalo Sewer Authority to acquire lands, or any right, title, interest, or easement therein in the name of the City of Buffalo, and upon such acquisition, any such fee, right, title, interest, or easement shall become dedicated to the uses and purposes of the Buffalo Sewer Authority; and
- WHEREAS: The Buffalo Sewer Authority has submitted respective applications to the New York State Thruway Authority for issuance of an occupancy permit and conveyance of a permanent easement to implement the Project.









PERMANENT EASEMENT FOR SEWER PIPE LINE AND  
APPURTENANCES

A permanent, right, privilege, and easement ("Easement") to treat and transmit sewage, effluent, wastewater, and other related material and substances, and, for such purposes, to construct, reconstruct, maintain, inspect, and operate a solid-waste screening facility and sanitary-sewer pipeline system consisting of such buildings, encasements, conduits, sleeves, pipes, valves, and appurtenances as may be deemed necessary by the grantee of the Easement ("Grantee") for the proper operation and/or improvement thereof; provided that no structure constructed on, or improvement made to, the real property within the area of the Easement shall, in any way whatsoever, interfere with the operation, maintenance, and/or improvement of the highway system, viaduct, and other appurtenant infrastructure ("Thruway System") of the New York State Thruway Authority ("Authority"); and further provided that when the Grantee deems activity involving the crossing, blocking, barricading, and/or disruption of the Thruway System to be necessary to fulfill the purposes of the Easement, no such activity shall be carried out unless and until a work permit has been duly issued to the Grantee by the Authority, in the event that the Grantee deems emergency-related or exigent circumstances to have arisen in connection with the fulfillment of the purposes of the Easement, no such activity shall be carried out unless and until the Authority has received prior written notice thereof.

The Easement shall be exercised in, to, over, and across all those pieces or parcels of real property, hereinafter designated as Parcel No. 1144, situate in the City of Buffalo, County of Erie, State of New York, as shown on the accompanying map.

Being a portion of Parcel No. 1003, Map No. 1003R-1, New York State Thruway, Niagara Section, County of Erie, Subdivision No. N-3, filed in the Erie County Clerk's Office on 10/03/1960.

Subject to the reservation to the New York Central Railroad Company and New York State Realty & Terminal Company as set forth on the aforementioned Map No. 1003R-1.

I hereby certify that the easement mapped above will not interfere with Thruway operations

Date February 24, 2009

Christopher A. Waite

CHRISTOPHER A. WAITE, P.E.  
Chief Engineer  
New York State Thruway Authority



I hereby certify that this is an accurate map made from an accurate survey performed under my direction

Date February 23, 2009

Douglas R. Hager

DOUGLAS R. HAGER, P.L.S. - Land Surveyor  
P.L.S. License No. 050204

NEW YORK STATE THRUWAY AUTHORITY  
DESCRIPTION AND MAP FOR THE GRANT OF EASEMENT

NEW YORK STATE THRUWAY  
NIAGARA SECTION  
SUBDIVISION NO. N-3

Map No. 1144-C  
Parcel No. 1144

EASEMENT PROPOSED TO  
BE GRANTED

Total Area =  
0.616±ACRE  
26,830±S.F.

The description and original Tracing of this map are hereby officially filed in the office of the New York State Thruway Authority.

Date \_\_\_\_\_ 20 \_\_\_\_\_

Robert B. Frazier, P.E.  
Director  
Bureau of Design Support Services

**CERTIFICATE**

I, the undersigned, Secretary of the Buffalo Sewer Authority (the Authority) in the county of Erie, State of New York, DO HEREBY CERTIFY that I have compared the annexed extract of the minutes of the meeting of the Authority, including the resolution contained therein, held the 18th day of March, 2009, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Authority and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Authority this 18<sup>th</sup> day of March, 2009.

(SEAL)

---

Eleanor C. Wilson-DiVincenzo  
Secretary of the Board

## ITEM NO. 7

**CLAIM AGAINST LIABILITY AND CASUALTY RESERVE FUND**

WHEREAS: On October 25, 2008, Michael Rivera, 268 Crescent Avenue, Buffalo, New York, filed a Claim with the Buffalo Sewer Authority for plumber and clean up costs associated with sewer back-ups which occurred on 8/10, 8/15, 8/29 and 9/14/08; and

WHEREAS: The Claim stated damages in the amount of \$2,422.94; and

WHEREAS: The General Manager determined that the Buffalo Sewer Authority is liable in this matter; and

WHEREAS: The General Manager has negotiated a settlement for this Claim in which Mr. Rivera will accept \$798.94 as payment in full.

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to make payment to Michael Rivera, 268 Crescent Avenue, Buffalo, New York, in the amount of \$798.94 as full settlement. This Claim will be paid out of the Liability and Casualty Reserve Fund.

MOTION TO APPROVE

MADE BY MS. WILSON-DIVINCENZO

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

AYES 5 NOES 0

Board Meeting of March 18, 2009



## ITEM NO. 9

**TRAVEL AUTHORIZATION - NORFOLK, VIRGINIA, AND WASHINGTON, DC**

WHEREAS: The Buffalo Sewer Authority (BSA) intends to replace the existing Distributed Control System (DCS) at the Bird Island Sewage Treatment Plant; and

WHEREAS: The Hampton Roads Sanitation Commission (HRSD) in Norfolk, Virginia and the Washington, DC Water and Sewer Authority (WASA) use an Emerson DCS. The BSA is interested in reviewing the operation of this system first hand; and

WHEREAS: In addition, the HRSD uses Maximo as their computerized maintenance management system. The BSA is also interested in reviewing maintenance management and maintenance organizational structure at this facility; and

WHEREAS: The General Manager, Secretary to the General Manager, Treatment Plant Superintendent, Treatment Plant Administrator, Principal Chief Stationary Engineer, Computer Systems Coordinator, and Shift Superintendent will be participating in this trip.

NOW THEREFORE  
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager, Secretary to the General Manager, Treatment Plant Superintendent, Treatment Plant Administrator, Principal Chief Stationary Engineer, Computer System Coordinator, and Shift Superintendent to travel to Norfolk, Virginia and Washington, DC from April 2 – 3, 2009, to visit the HRSD and WASA facilities, at a total cost not to exceed \$2,800.00. Funds are available in account nos. 00110104-458010, 00200104-458010, and 00520104-458010.

MOTION TO APPROVE

MADE BY MR. KENNEDY, JR.

2<sup>ND</sup> BY MS. WILSON-DIVINCENZO

AYES 5 NOES 0

Board Meeting of March 18, 2009



## ITEM NO. 11

**REPORT ON BIDS RECEIVED - NATURAL GAS SUPPLY**

WHEREAS: Informal bids were solicited by United Energy, the Buffalo Sewer Authority's energy consultant, to supply natural gas to the Treatment Plant and outlying stations for various terms beginning October 1, 2009. The following bids were received and opened at the Treatment Plant facility on March 3, 2009:

<b>Bidder</b>	<b>Location</b>	<b>One-Year Base Contract Cost</b>	<b>Two-Year Base Contract Cost</b>
Mid American Natural Resources	Treatment Plant	\$0.617/Dth + NYMEX	N/A
	Outlying Stations	\$1.300/Dth + NYMEX	N/A
National Fuel Resources	Treatment Plant	\$0.709/Dth + NYMEX	\$0.713/Dth+ NYMEX
	Outlying Stations	\$1.660/Dth + NYMEX	\$1.660/Dth+ NYMEX

; and

WHEREAS: Upon review of the bids received United Energy recommends that the Buffalo Sewer Authority enter into an agreement with Mid American Natural Resources for a one-year period, October 1, 2009 through September 30, 2010; and

WHEREAS: The General Manager, Treatment Plant Superintendent, and Treatment Plant Administrator concur with United Energy and recommend awarding a one-year contract to Mid American Natural Resources for natural gas supply for the Treatment Plant and outlying stations.





## ITEM NO. 12

**REPORT ON BIDS RECEIVED - ROOF REPLACEMENT PHASE III BIRD ISLAND MEGA-STRUCTURE**

WHEREAS: Formal bids were advertised and solicited for Roof Replacement Phase III Bird Island Mega-Structure. The following bids were received and opened by the Buffalo Sewer Authority on March 5, 2009:

Jameson Roofing Company	\$1,410,684.00
Grove Roofing	\$1,530,000.00
Progressive Roofing, Inc.	\$1,669,000.00
Weaver Metal & Roofing, Inc.	\$1,866,000.00
Jos. A. Sanders	\$1,876,209.00
; and	

WHEREAS: The bids were received and the contract will be awarded on the basis of unit bid and lump sum prices. The bids reflect the true amount of the contract; and

WHEREAS: The Administrator of Capital Improvement and Development and staff reviewed the bids and recommend awarding the contract to the lowest bidder, Jameson Roofing Company, at a cost not to exceed \$1,410,684.00.

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 Jameson Roofing Company, at a cost not to exceed \$1,410,684.00. Expenses for this contract will be charged to account no. 02000274-490740.

MOTION TO	<u>APPROVE</u>		
MADE BY	<u>MR. KENNEDY, JR.</u>		
2 <sup>ND</sup> BY	<u>MS. WILSON-DIVINCENZO</u>		
AYES	<u>5</u>	NOES	<u>0</u>

Board Meeting of March 18, 2009



## ITEM NO. 14

**AUTHORIZATION FOR CHANGE ORDER TO PURCHASE ORDER NO. 20900832**

WHEREAS: On January 14, 2009, the Board of the Buffalo Sewer Authority authorized the General Manager to award the service repair of Incinerator No. 3 to Sterling Refractory at a total cost of \$16,200.00 and replacement of the burner tiles with installation of a lute cap at a cost of \$17,000.00, bringing the total monies payable to Sterling Refractory for fiscal year 2008-2009 to \$59,350.00; and

WHEREAS: In December 2008 during the above repairs additional repairs for falling brick work at Wasteheat Boiler No. 3 and falling and missing refractory at the center shaft at Incinerator No. 3 was needed; and

WHEREAS: Due to exigency, the repair work was completed with the additional cost of \$17,350.00 owed to Sterling Refractory; and

WHEREAS: A change order is requested to PO 20900832 in the amount of \$17,350.00, increasing this purchase order from \$16,200.00 to \$33,550.00; and

WHEREAS: The Treatment Plant Superintendent, Principal Chief Stationary Engineer, and staff recommend this change order and payment to Sterling Refractory, bringing the total monies payable to Sterling Refractory for services rendered for fiscal year 2008-2009 to \$76,700.00.

NOW THEREFORE  
BE IT RESOLVED:

That the Board of the Buffalo Sewer Authority hereby authorizes a change order to Purchase Order No. 20900832 with Sterling Refractory in the amount of \$17,350.00, increasing this purchase order from \$16,200.00 to \$33,550.00, for the exigency repair work for the falling brick and missing refractory on Incinerator No. 3. Account no. 00380106-443301 will be charged.

MOTION TO	<u>APPROVE</u>
MADE BY	<u>MR. KENNEDY, SR.</u>
2 <sup>ND</sup> BY	<u>MR. ROOSEVELT</u>
AYES	<u>5</u> NOES <u>0</u>

Board Meeting of March 18, 2009

## ITEM NO. 15

**AUTHORIZATION TO PURCHASE REPLACEMENT PARTS FOR ASH SYSTEM AND INCREASE TOTAL AUTHORIZED COSTS FOR FISCAL YEAR 2008-2009**

WHEREAS: On June 18, 2008, the Board of the Buffalo Sewer Authority designated Diamond Power International, Inc., the original equipment manufacturer, and/or their authorized local representative as a sole source for replacement parts, supplies and service for the propriety ash system located at the Treatment Plant. The Board further authorized a total not to exceed purchase cost from Diamond Power for fiscal year 2008-2009 of \$30,000.00; and

WHEREAS: In February 2009, a quote was requested and received from Diamond Power International, Inc., in the amount of \$14,834.00, plus estimated freight charges not to exceed \$775.00, for needed replacement parts for the ash system; and

WHEREAS: Total monies payable to Diamond Power International, Inc., for purchases to date are \$15,573.40. The purchase of these replacement parts would bring the total to \$31,182.40; and

WHEREAS: The Treatment Plant Superintendent, Principal Chief Stationary Engineer, and staff recommend the purchase of these necessary ash system replacement parts and an increase in the total not to exceed purchase cost for fiscal year 2008-2009 from Diamond Power International, Inc., of \$10,000.00, from \$30,000.00 to \$40,000.00; and

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to purchase the necessary ash system replacement parts from Diamond Power International, Inc., and hereby amends and increases the total authorized not to exceed purchase cost from Diamond Power International, Inc., for fiscal year 2008-2009 from \$30,000.00 to \$40,000.00.

MOTION TO	_____	APPROVE	_____
MADE BY	_____	MR. ROOSEVELT	_____
2 <sup>ND</sup> BY	_____	MR. KENNEDY, JR.	_____
AYES	_____	5	NOES _____ 0

Board Meeting of March 18, 2009

## ITEM NO. 16

**AUTHORIZATION TO PURCHASE REPLACEMENT PARTS FOR INCINERATOR AND INCREASE TOTAL AUTHORIZED COSTS FOR FISCAL YEAR 2008-2009**

WHEREAS: On June 18, 2008, the Board of the Buffalo Sewer Authority designated BSP Thermal Systems, the original equipment manufacturer, and/or their authorized local representative as a sole source for replacement parts, supplies and service for BSP hearth sludge incinerators located at the Treatment Plant. The Board further authorized a total not to exceed purchase cost from BSP Thermal Systems for fiscal year 2008-2009 of \$30,000.00; and

WHEREAS: In February 2009 a quote was requested and received from BSP Thermal Systems in the amount of \$8,057.00, plus estimated freight charges not to exceed \$450.00, for a lute cap needed for one of the incinerators; and

WHEREAS: Total monies payable to BSP Thermal Systems for purchases to date are \$25,442.00. The purchase of the lute cap would bring the total to \$33,949.00; and

WHEREAS: The Treatment Plant Superintendent, Principal Chief Stationary Engineer, and staff recommend the purchase of the lute cap and an increase in the total authorized not to exceed purchase cost for fiscal year 2008-2009 from BSP Thermal Systems of \$10,000.00, from \$30,000.00 to \$40,000.00; and

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to purchase the necessary lute cap needed for one of the incinerators from BSP Thermal Systems and hereby amends and increases the total authorized not to exceed purchase cost from BSP Thermal Systems for fiscal year 2008-2009 by \$10,000.00, from \$30,000.00 to \$40,000.00.

MOTION TO APPROVE  
MADE BY MR. KENNEDY, JR.  
2<sup>ND</sup> BY MS. WILSON-DIVINCENZO  
AYES 5 NOES 0

Board Meeting of March 18, 2009

## ITEM NO. 17

**AUTHORIZATION TO PURCHASE TURNTABLE FOR FINAL CLARIFIER 1A  
AND INCREASE TOTAL AUTHORIZED COSTS FOR FISCAL YEAR 2008-2009**

WHEREAS: On June 18, 2008, the Board of the Buffalo Sewer Authority designated Siemens Water Technologies, the original equipment manufacturer, and/or their authorized local representative as a sole source for replacement parts, supplies and service for US Filter/Envirex parts and supplies. The Board further authorized a total not to exceed purchase cost from Siemens Water Technologies for fiscal year 2008-2009 of \$30,000.00; and

WHEREAS: In March 2009 a quote was requested and received from Siemens Water Technologies in the amount of \$15,789.00, plus estimated freight charges not to exceed \$827.00, for a turntable subassembly for Final Clarifier 1A; and

WHEREAS: Total monies payable to Siemens Water Technologies for purchases to date are \$19,966.00. The purchase of the turntable subassembly would bring the total to \$36,582.00; and

WHEREAS: The Treatment Plant Superintendent, Principal Chief Stationary Engineer, and staff recommend the purchase of the turntable and an increase in the total authorized not to exceed purchase cost for fiscal year 2008-2009 from Siemens Water Technologies of \$10,000.00, from \$30,000.00 to \$40,000.00; and

NOW THEREFORE  
BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager to purchase the necessary turntable from Siemens Water Technologies and hereby amends and increases the total authorized not to exceed purchase cost from Siemens Water Technologies for fiscal year 2008-2009 by \$10,000.00, from \$30,000.00 to \$40,000.00.

MOTION TO APPROVE  
MADE BY MS. WILSON-DIVINCENZO  
2<sup>ND</sup> BY MR. KENNEDY, JR.  
AYES 5 NOES 0

Board Meeting of March 18, 2009

## ITEM NO. 18

**REPORT ON BIDS RECEIVED - MUMFORD STREET SEWER IMPROVEMENTS**

WHEREAS: Formal bids were advertised and solicited for Mumford Street Sewer Improvements. The following bids were received and opened by the Buffalo Sewer Authority on March 2, 2009:

Tom Greenauer Development	\$517,100.00
E & R General Construction	\$524,650.00
Visone Construction	\$625,940.00
Kandey Company	\$627,625.00
Sicar Management	\$710,970.00
; and	

WHEREAS: The bids were received, and the contract will be awarded on the basis of a combined unit and lump sum bid. The bids do not reflect the true amount of the contract, but rather are subject to some variance. These variances are due to the actual amount of the quantities used as they appear in the estimate column multiplied by the unit price as bid; and

WHEREAS: The Principal Sanitary Engineer and staff reviewed the bids and recommend awarding the contract to the lowest bidder, Tom Greenauer Development, at a cost not to exceed \$517,100.00.

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 Tom Greenauer Development, at a cost not to exceed \$517,100.00. Expenses for this contract will be charged to account no. 02000301-49074.

MOTION TO	<u>APPROVE</u>
MADE BY	<u>MR. KENNEDY, SR.</u>
2 <sup>ND</sup> BY	<u>MR. ROOSEVELT</u>
AYES	<u>5</u> NOES <u>0</u>

Board Meeting of March 18, 2009



## ITEM NO. 19

**AUTHORIZATION FOR CHANGE ORDER NO. 1 TO CONTRACT NO. 84900006 WITH MALCOLM PIRNIE, INC., TO COMPLETE LONG TERM CONTROL PLAN WATER QUALITY AND SEWER SYSTEM MODELING AND MONITORING PROFESSIONAL SERVICES**

- WHEREAS: The Buffalo Sewer Authority is negotiating with the United States Environmental Protection Agency (USEPA), the United States Department of Justice, and the New York State Department of Environmental Conservation to address sewer system improvements to comply with the Federal Clean Water Act; and
- WHEREAS: The Buffalo Sewer Authority Board, at their May 21, 2008, Board Meeting, retained Malcolm Pirnie, Inc., to assist with negotiations and to complete work planning efforts to define the extent of the water quality and sewer system monitoring and modeling per negotiations with the United State Environmental Protection Agency, United States Department of Justice, and the New York State Department of Environmental Conservation at a cost of \$1,175,000.00; and
- WHEREAS: The work plan for water quality and sewer system modeling and monitoring has been completed by Malcolm Pirnie, Inc., in accordance with the scopes of work developed in concert with the regulatory agencies; and
- WHEREAS: Flow monitoring of the combined sewer system was initiated in the summer of 2008 through Malcolm Pirnie's subcontractor, Geotivity, Inc., at a cost not to exceed \$73,100.00; and
- WHEREAS: Geotivity, Inc., declared bankruptcy in the fall of 2008 and is no longer in business; and
- WHEREAS: The flow data obtained from Geotivity, Inc., has been determined to be useless by the USEPA, thus requiring a new round of data collection to be conducted in 2009; and
- WHEREAS: Malcolm Pirnie, Inc., was required to solicit bids from three (3) flow monitoring sub-consultants and recommends retaining the low responsible bidder, ADS Environmental Services, at a cost of \$218,448.46; and
- WHEREAS: The bid by ADS Environmental Services represents \$145,348.46 more than that of Geotivity, Inc.; and



## ITEM NO. 20

**CONFIRMATION OF APPOINTMENTS**

**LABORER I (SEASONAL)**  
SEWAGE TREATMENT PLANT  
\$90.00 PER DAY  
EFFECTIVE: MARCH 2, 2009

WILLIAM CONROY  
373 CUMBERLAND  
BUFFALO, NY

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**LABORER II (PERMANENT)**  
SEWAGE TREATMENT PLANT  
\$16.60 PER HOUR  
EFFECTIVE: MARCH 9, 2009

MARCIA PASQUARELLA  
350 AVON RD.  
TONAWANDA, NY

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**LABORER I (PERMANENT)**  
**CHANGE OF STATUS ONLY**  
SEWER MAINTENANCE DEPARTMENT  
\$14.46 PER HOUR  
EFFECTIVE: MARCH 9, 2009

LANCE PARKER  
32 AVERY  
BUFFALO, NY

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**LABORER I (SEASONAL)**  
SEWAGE TREATMENT PLANT  
\$90.00 PER DAY  
EFFECTIVE: MARCH 23, 2009

ROGER STATES  
16 RACE ST.  
BUFFALO, NY

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