

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Authority, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is not excluded from gross income for federal income tax purposes under Section 103 of the Code. Bond Counsel is of the opinion that interest on the Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York). Bond Counsel expresses no opinion regarding any other tax consequences relating to the ownership or disposition of, or the amount, accrual, or receipt of interest on, the Bonds. The proposed form of opinion of Bond Counsel is contained in Appendix C hereto. See "TAX MATTERS."

**NIAGARA FALLS PUBLIC WATER AUTHORITY
(NEW YORK)**

**\$35,930,000 Water and Sewer System Revenue Refunding Bonds, Series 2022A
(FEDERALLY TAXABLE)**

Dated: Date of Delivery

Due: July 15, as shown on the inside cover

The Niagara Falls Public Water Authority (the "Authority") is a public benefit corporation of the State of New York. The Niagara Falls Water Board (the "Board") is a corporate municipal instrumentality of the State of New York. In 2003, the Board acquired from the City of Niagara Falls, New York (the "City") title to certain assets that formed the entirety of the City's water, wastewater and storm water facilities and properties (the "System").

The \$35,930,000 Water and Sewer System Revenue Refunding Bonds, Series 2022A (FEDERALLY TAXABLE) (the "Bonds") are being issued pursuant to a General Revenue Bond Resolution adopted by the Authority on May 16, 2003, as amended (the "General Resolution") and a Twelfth Supplemental Resolution dated as of January 15, 2022 (the "Twelfth Supplemental Resolution") (the General Resolution, as modified, amended and supplemented from time to time, including by the Twelfth Supplemental Resolution is herein called the "Resolution"). The Bonds are being issued to (i) refund the Authority's outstanding Series 2013A Bonds prior to maturity and (ii) pay certain costs of issuance. See "PLAN OF FINANCE AND SOURCES AND USES OF FUNDS" herein.

The Bonds are payable as to both principal and interest from the revenues of the System received by the Board and transferred to the Authority pursuant to the terms of a Financing Agreement, dated as of April 1, 2003 (the "Financing Agreement") and from amounts deposited in certain Funds and Accounts established by the Resolution. See "SECURITY FOR THE BONDS" herein. The Bonds shall be on a parity with Outstanding Bonds and Additional Parity Indebtedness (as defined in the Resolution) issued by the Authority. See "INTRODUCTION- Special Obligations" herein.

Interest on the Bonds is payable each January 15 and July 15, commencing January 15, 2023. The Bonds will be issued as fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The Bonds will be issued initially under the book-entry only system and will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"). Individual purchases of beneficial interests in the Bonds may only be made in such book-entry form (without certificates). See "DESCRIPTION OF THE BONDS--Book-Entry Only System" herein. Principal of, premium, if any, and interest on the Bonds will be payable by Manufacturers and Traders Trust Company, Buffalo, New York, Trustee and Paying Agent, to the registered owners thereof as more fully described herein.

The Bonds are subject to redemption prior to maturity as described herein.

The Bonds are special obligations of the Authority and are not a debt of the State of New York, Niagara County, any municipality in said County (including the City) or the Board and none of the State of New York, Niagara County, any municipality in said County (including the City) or the Board shall be liable thereon. The Authority has no taxing power.

The scheduled payment of principal of and interest on the Bonds when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Bonds by Build America Mutual Assurance Company ("BAM") (See "BOND INSURANCE" herein).



The Bonds are offered when, as and if issued by the Authority and received by the Underwriter and subject to the approval of legality by Orrick, Herrington & Sutcliffe LLP, New York, New York, Bond Counsel. Certain legal matters will be passed upon for the Authority by its in house counsel, Sean W. Costello, Esq. Certain legal matters will be passed upon for the Underwriter by its counsel, Harris Beach PLLC, Buffalo, New York. Capital Markets Advisors, LLC, Orchard Park, New York has acted as financial advisor to the Authority. It is expected that the Bonds will be available for delivery to DTC on or about March 15, 2022.



NIAGARA FALLS PUBLIC WATER AUTHORITY

\$35,930,000

Water and Sewer System Revenue Refunding Bonds, Series 2022A (FEDERALLY TAXABLE)

<u>MATURITY</u> <u>(JULY 15)</u>	<u>AMOUNT</u>	<u>INTEREST</u> <u>RATE</u>	<u>YIELD</u>	<u>CUSIP¹</u>
2024	\$ 575,000	2.00%	2.00%	653438CJ8
2025	1,010,000	2.25	2.25	653438CK5
2026	1,035,000	2.40	2.40	653438CL3
2027	1,060,000	2.65	2.65	653438CM1
2028	1,095,000	2.80	2.80	653438CN9
2029	4,895,000	3.00	3.00	653438CP4
2030	5,040,000	3.00	3.10	653438CQ2
2031	5,190,000	3.10	3.20	653438CR0
2032	5,345,000	3.125	3.30	653438CS8
2033	5,515,000	3.25	3.40	653438CT6
2034	5,170,000	3.375	3.45	653438CU3

¹ CUSIP numbers have been assigned by an independent company not affiliated with the Authority and are included solely for the convenience of the holders of the Bonds. The Authority is not responsible for the selection or uses of these CUSIP numbers and no representation is made as to their correctness on the Bonds or as indicated above.

No purchaser, dealer, broker, salesperson or other person has been authorized to give any information or to make any representations, other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. Certain information contained herein has been obtained from sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness and it is not to be construed as a representation by the Underwriter. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Authority or the Board or the other matters described herein since the date hereof.

This Official Statement contains forward-looking statements, including forecasts, projections and estimates that are based on current expectations or assumptions. The inclusion in this Official Statement of such forecasts, projections, and estimates and other forward-looking statements should not be regarded as a representation by the Authority, the Board or the Underwriter that such forecasts, projections, and estimates will occur. Such forecasts, projections, estimates and other forward-looking statements are not intended as representations of fact or guarantees of results and any such statements inherently are subject to a variety of risks and uncertainties that could cause actual results to differ materially from those that have been projected. These forward-looking statements speak only as of the date of this Official Statement. The Authority disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement contained herein to reflect any changes in the Authority's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

Build America Mutual Assurance Company ("BAM") makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, BAM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding BAM, supplied by BAM and presented under the heading "Bond Insurance" and "Appendix E - Specimen Municipal Bond Insurance Policy".

The Trustee has no responsibility for the form and content of this Official Statement and has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom.

The Underwriter has provided the following sentence for inclusion in this Official Statement: "The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information."

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT MAY STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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NIAGARA FALLS PUBLIC WATER AUTHORITY
(NEW YORK)

\$35,930,000 Water and Sewer System Revenue Refunding Bonds, Series 2022A
(FEDERALLY TAXABLE)

INTRODUCTION

General

The Niagara Falls Public Water Authority (the “Authority”), a body corporate and politic constituting a public benefit corporation organized and existing under, and by virtue of, the laws of the State of New York (the “State”), was established in 2002 pursuant to the “Niagara Falls Public Water Authority Act,” now codified as Title 10-B of Article 5 of the Public Authorities Law of the State and the acts amendatory thereof and supplemental thereto (collectively, herein sometimes called the “Authority Act”). The Niagara Falls Water Board (herein sometimes called the “Board”), a body corporate and politic constituting a corporate municipal instrumentality organized and existing under and by virtue of the laws of the State, was established in 2002 pursuant to the “Niagara Falls Water Board Act”; now codified as Title 10-C of Article 5 of the Public Authorities Law of the State and the acts amendatory thereof and supplemental thereto (collectively, herein sometimes called the “Board Act”; the Board Act and Authority Act are hereinafter collectively referred to as the “Act”).

The purpose of this Official Statement is to set forth information with respect to the Authority, the Board, the System and the Revenues thereof (as such terms are defined herein), the Authority’s \$35,930,000 Water and Sewer System Revenue Refunding Bonds, Series 2022A (FEDERALLY TAXABLE) (the “Bonds”), the General Revenue Bond Resolution adopted by the Authority on May 16, 2003, as amended (the “General Resolution”), the Twelfth Supplemental Resolution dated as of January 15, 2022 (the “Twelfth Supplemental Resolution”) (the General Resolution, as modified, amended and supplemented from time to time, including by the Twelfth Supplemental Resolution, is herein called the “Resolution) and other related matters for use in connection with the sale of the Bonds.

In 2003, pursuant to an Acquisition Agreement dated as of April 1, 2003 (the “Acquisition Agreement”) by and between the Board and the City of Niagara Falls (the “City”), the Board acquired title to certain assets that formed the entirety of the City’s water, wastewater and storm water facilities and properties (the “System”). The Board has the responsibility for the management, operation, maintenance and repair of the System as set forth in an Operation Agreement, dated as of April 1, 2003 (the “Operation Agreement”), by and among the Board, the City and the Authority. The Authority acts as a financing vehicle for the Board. Pursuant to a Financing Agreement, dated as of April 1, 2003 (the “Financing Agreement”), by and between the Board and the Authority, the Authority financed a portion of the costs of the acquisition of the System and has the authority to refinance prior debt and finance future improvements thereto, including through the issuance of the Bonds.

The Bonds will be issued by the Authority under and pursuant to the Act and in accordance with the Resolution. Manufacturers and Traders Trust Company, as trustee (the “Trustee”) is the

Trustee appointed under the Resolution to assume and perform the obligations and duties imposed on the Trustee by the provisions of the Resolution. For information regarding the purpose of the Bonds, see “PLAN OF FINANCE AND SOURCES AND USES OF FUNDS – Bonds” herein.

Special Obligations

The Bonds will be special obligations of the Authority, payable on a parity with the following outstanding indebtedness:

<u>Series</u>	<u>Type</u>	<u>Outstanding Principal</u>
2012B	EFC	\$ 4,840,000
2013B	EFC	14,115,000
2015B	EFC	3,355,000
2013A*	Authority	34,120,000
2013B	Authority	2,350,000
2016A	Authority	<u>20,130,000</u>
Total		<u>\$78,910,000</u>

* To be Refunded by the Bonds

The outstanding indebtedness and all Additional Parity Indebtedness hereafter issued, will be payable solely from and secured by a pledge of: (a) all right, title and interest of the Board in and to the Revenues (as such rights have been assigned to the Authority); (b) all right, title and interest of the Authority in and to the Financing Agreement, (c) all monies or securities in any of the funds or accounts established under the Resolution (other than the Rebate Fund and any fund permitted to be created free and clear of the Lien of the Resolution); (d) any and all other property rights and interests of every kind and nature from time to time that at the option or on behalf of the Authority are subject to the Lien of the Resolution; and (e) all rights and privileges of every kind and nature appurtenant to, all proceeds of, and all right, title and claim which the Authority now or may hereafter acquire in, the aforesaid property described in clauses (a) through (d), subject only to the provisions of the Resolution, the Act and the Financing Agreement relating to the use and application thereof. Revenues shall mean all rates, rents, fees, charges, payments, fines and other income and receipts derived from the operation of the System including, without limiting the generality of the foregoing, investment proceeds and proceeds of insurance, condemnation, and sale or other disposition of assets, together with all federal, State or municipal aid, if any. See “Plan of Finance and Sources and Uses of Funds” and “Security for the Bonds - Revenues - Flow of Funds” herein.

The Bonds are not a debt of the State of New York or of Niagara County, any municipality in said County (including the City) or the Board, and none of the State of New York, Niagara County, any municipality in said County (including the City) or the Board shall be liable thereon. The Authority has no taxing power.

The Acquisition Agreement and Operation Agreement

Pursuant to the Acquisition Agreement, the Board acquired the System from the City in 2003. The Operation Agreement provides that the Board is responsible for managing, operating, maintaining and repairing the System, including providing water, wastewater and storm water services to the residents of the Service Area. The City has annulled its power to levy any user fees, rents and other charges. The Act defines Service Area as the area comprising the entirety of the City on the effective date of the Act, as such area may be changed from time to time by mutual agreement with any municipality (as defined in the Act) or by special act of the State legislature. The Operation Agreement also requires that the City provide certain services to the Board, although the Board has the right to terminate such services subject to certain minimum terms of use and notice requirements. Such services include, but are not limited to, periodic water and sewer work (e.g. survey a project area, prepare plans and specifications, bid jobs, and provide construction and inspection services) by the City's Engineering Department, for which the Board reimburses the City under the Operation Agreement. The City performs, on average, two to three planned projects and one to two emergency projects per year for the Board. The City also performs certain collection, tax billing, and joint purchasing services for the Board.

The Authority Act requires conducting a public hearing before entering into agreements by the Authority, the Board, the City, any municipality and any other person for the purpose of providing for the construction and financing of a project (defined in the Authority Act as any System-related facility or properties, including the acquisition, planning, development, financing or construction thereof).

The Authority Act also provides for an estoppel procedure with respect to the Acquisition Agreement, the Operation Agreement and the Financing Agreement (collectively, the "Agreements") as well as any subsequent agreements by and between the Authority, the Board, any state agency and any municipality relating to the construction and financing of a project. This procedure involves publication of a notice describing the agreement and states that the validity of the agreement may be hereafter contested only upon the ground or grounds that (i) such agreement violates, or the performance of any provision thereof by any party thereto would violate, the provisions of the State constitution or (ii) the provisions of law which should have been complied with, in relation to the authorization and execution thereof, were not substantially complied with, and an action, suit or proceeding is commenced within sixty days after the date of the notice. This estoppel procedure has been complied with in relation to the Agreements and sixty days has elapsed without any legal challenge.

The Acquisition Agreement (Section 5.05 thereof) provides that the City will indemnify the Authority, the Board and their respective officers, employees, etc. from misrepresentation or any breach of warranty contained therein. It also includes indemnification from damages as a result of any contamination or release of Hazardous Materials existing on, above or under the property being acquired, at the time of the acquisition. See "LITIGATION" herein for a description of how the indemnification provided by the Acquisition Agreement impacts the Board's current environmental litigation.

Rate Setting Procedures

The Board begins budgeting procedures in late summer. Year to date and historical expense information is disbursed to department heads to determine needs for the upcoming year. The departments submit their anticipated budget needs for the upcoming year. These are reviewed with the department head and again with department directors to determine reasonableness. Expenses are reduced, left alone, or increased. Revenues are projected using the most current and historical information available. Changes in the customer base are also discussed and analyzed. The difference in anticipated revenues and expenses drives the rate increase request.

Revenues reflect the rate increase, if any, to present a balanced budget. This proposed budget is presented to the Board. The Board may request amendments to the budget. The proposed or amended proposed budget is then made available for the public hearing on proposed rate changes and subsequently voted on by the Board. The budget must be passed by a majority of the Board.

Section 1230-j of the Act authorizes the Board to establish, fix and revise, from time to time, fees, rates or other charges for the use of, or services furnished, rendered or made available by, all projects, facilities and systems owned by the Board to provide sufficient funds, together with other revenues available to the Board, (a) to pay Authority debt service and fund its Debt Service Reserve Fund or any other fund as determined necessary by the Authority; (b) to pay the City of Niagara Falls or any other municipality of the State in accordance with any agreements an amount sufficient for the purpose of paying the costs of administering, maintaining, repairing and operating and the cost of constructing capital improvements to the Board system; (c) to pay to the City in accordance with the Acquisition Agreement an amount sufficient for the purpose of paying liabilities issued for or allocable to the system, as the same shall become due and payable (d) to make PILOT payments; (e) to pay administration, management, maintenance, repairs and operation costs; (f) to meet any requirements of any agreement, including requirements relating to the establishment of reserves for renewal and replacement and for uncollected rates, fees or other charges and covenants respecting rates; and (g) to pay or provide for such other purposes or projects as the Board considers appropriate and in the public interest.

Section 1230-j 4. of the Act states that: “no fee, rate or other charge shall be established, fixed or revised unless and until the Board has held a public hearing at which the users of the system, the owners of property served or to be served and other interested persons have had an opportunity to be heard concerning the same.” Notice of the public hearing must be published by the Board in the local newspaper not less than ten (10) nor more than twenty (20) days before the date set for the public hearing. A copy of the notice must also be filed in the office of the secretary of the Board and must be available for inspection by the public. Any decision by the Board to adopt a rate/rule change must be made in writing (by resolution) and made available in the office of the secretary of the Board. The decision must also be published in the newspaper not less than thirty (30) days after the vote is taken.

The Act provides that the State Public Service Commission shall have no jurisdiction over the Board or the Authority with respect to the regulation of the fees, rates or other charges established, fixed or revised by the Board except as provided by law with respect to the supply of water to users outside the City or the service area. No other governmental approvals are required in connection with the rate setting process.

After the above is done, the State requires that the rule/rate change be published in the State Register. There are two methods to adopt a rate/rule change. The first is by filing a Notice of Proposed Rule Making. The second, by filing a Notice of Emergency Adoption and Proposed Rule Making.

The non-emergency rate/rule adoption requires that the Notice of Proposed Rule/Rate Change be filed and published in the State Register for at least 45 days before the Board adopts the rule or holds its first public hearing on the rule. Once the 45 day comment period is concluded the Board is free to hold its public hearing. The Board then has 365 days from either the publication date in the State Register or the date the Board held the public hearing to formally adopt the rule/rate by resolution. Once that is accomplished a second form, known as the Notice of Adoption, is required to be filed and published in the State Register. Once the second notice (Notice of Adoption) is filed and published the rule is effective. Rules adopted pursuant to a Notice of Emergency Adoption and Proposed Rule Making can be effective on the date filed, though comments must be accepted for a minimum of 60 days after publication in the State Register.

Rate Covenant

The Board has covenanted in the Financing Agreement to establish and collect rates, fees and charges sufficient in each Fiscal Year so that Revenues collected by the Board in such Fiscal Year will at least be equal to the sum of (i) one hundred and fifteen percent (115%) of the estimated Aggregate Debt Service and Projected Debt Service payable in such Fiscal Year; (ii) one hundred percent (100%) of the Operating Expenses and Authority Expenses payable in such Fiscal Year; and (iii) one hundred percent (100%) of the amount necessary to pay the Required Deposits for such Fiscal Year. See “SECURITY FOR THE BONDS- Rate Covenant”. The Act requires that the Board conduct a public hearing prior to the establishment, fixing or revision of rates. The Board adopted its current water and sewer rates on November 8, 2021 to be effective January 1, 2022.

PLAN OF FINANCE AND SOURCES AND USES OF FUNDS

Series 2022A Bonds

The proceeds of the Bonds will be utilized to (i) refund all of the outstanding principal amount of the Authority’s \$34,120,000 Water and Sewer System Revenue Bonds, Series 2013A and (ii) pay certain costs of issuance.

Plan of Refunding

Substantially all of the proceeds of the Bonds will be used to refund the specific maturities of the Authority’s Series 2013A Bonds in the principal amounts shown below (the “Refunded Bonds”), all of which were issued previously by the Authority under the Resolution. Such proceeds will be deposited with the Trustee to be held for the redemption of the Refunded Bonds on their respective redemption dates and at their respective redemption prices shown in the following table.

Maturing July 15,	Principal Amount To be Refunded	Maturity or Redemption Date	Redemption Price	CUSIP Number
2022	\$ 250,000	7/15/2022	100%	653438BR1
2023	235,000	7/15/2023	100%	653438BS9
2029	8,060,000	7/15/2023	100%	653438BT7
2031	9,820,000	7/15/2023	100%	653438BU4
2034	15,755,000	7/15/2023	100%	653438BV2

Sources and Uses of Funds

The following table sets forth the anticipated sources and uses of funds of the Bonds.

Sources:

Par Amount of Bonds	\$35,930,000.00
Original Issue Discount	(276,598.10)
Transfer from Existing Debt Service Fund	<u>413,371.00</u>
Total Sources	<u>\$36,066,772.90</u>

Uses:

Deposit to Escrow Fund	\$35,713,255.15
Costs of Issuance ¹	<u>353,517.75</u>
Total Uses	<u>\$36,066,772.90</u>

1. Includes underwriter's discount (including underwriter's counsel), bond insurance premium, fees for bond counsel, trustee, trustee's counsel, authority counsel, and accounting, and rating agency.

Description of the Bonds

Set forth below is a narrative description of certain provisions relating to the Bonds. These provisions have been summarized, and this description does not purport to be complete. Reference should be made to the Resolution and the Financing Agreement, copies of which are on file with the Authority. See also "APPENDIX D – GLOSSARY AND SUMMARY OF THE RESOLUTION AND AGREEMENTS" attached hereto, for a more complete description of certain provisions of the Bonds.

The Bonds shall be dated, shall bear interest at the rates and shall mature as set forth on the inside cover page of this Official Statement. The Bonds shall be issued in fully registered form without interest coupons appurtenant thereto in the denomination of \$5,000 or any integral multiple thereof. For a complete discussion of the tax consequences related to the ownership or disposition of the Bonds, see "TAX MATTERS" herein.

Principal of and redemption premium, if any, on the Bonds shall be payable at Manufacturers and Traders Trust Company, as Trustee, also designated as the registrar for the Bonds by the Resolution. Interest on the Bonds is payable by check mailed by the Trustee to the

holder of such Bond in whose name such Bond is registered upon the bond registration books as of the last Business Day of the calendar month next preceding each January 15 and July 15 (the “Record Date”) at the holder’s address as it appears on the bond registration books. The principal amount of the Bond and any redemption premium shall be paid to the Registered Owner thereof upon surrender of the Bond at the principal corporate office of the Trustee. However, the Bonds shall initially be issued in book-entry form only and during all such times principal of, premium, if any, and interest on the Bonds shall be payable by wire transfer by the Trustee to The Depository Trust Company, New York, New York (“DTC”). See “Book-Entry Only System” below.

Optional Redemption

The Bonds maturing on or after July 15, 2033 shall be subject to redemption prior to maturity on or after July 15, 2032 in principal amounts of \$5,000 or integral multiples thereof, at the option of the Authority, as a whole or in part on any date, in such order of maturities as determined by the Authority and at the redemption price of par, and interest accrued to the date of redemption.

Selection of Bonds to be Redeemed

If the Bonds are registered in book-entry only form and so long as DTC or a successor securities depository is the sole registered owner of the Bonds, if less than all of the Bonds of a maturity are called for prior redemption, the particular Bonds or portions thereof to be redeemed shall be selected by lot in accordance with DTC procedures, provided that, so long as the Bonds are held in book-entry form, the selection for redemption of such Bonds shall be made in accordance with the operational arrangements of DTC then in effect.

If the Bonds are not registered in book-entry only form, any redemption of less than all of a maturity of the Bonds shall be allocated (in the amounts of \$5,000 or any whole multiple) among the registered owners of such maturity of the Bonds then outstanding as nearly as practicable in proportion to the principal amounts of such maturity of the Bonds owned by each registered owner. This will be calculated based on the following formula:

$$\frac{(\text{principal to be redeemed}) \times (\text{principal amount owned by owner})}{(\text{principal amount outstanding})}$$

Notice of Redemption

In the event any Bonds shall be called for redemption, the Authority shall give to the Trustee notice of redemption not more than sixty (60) days’ and at least forty-five (45) days’ notice of the date fixed for redemption. When Bonds are called for redemption, whether at the option of the Authority or pursuant to mandatory redemption, the Trustee shall cause a notice to be deposited in the United States mail first class, postage prepaid, not more than sixty (60) days and at least thirty (30) days prior to the redemption date addressed to the Registered Owners of the Bonds called for redemption at the addresses appearing in the records kept by the Trustee. Registered Owners of all Bonds may file written waivers of notice with the Trustee, and if so waived, such Bonds may be redeemed without the requirement of written notice. Any defect in or failure to give the notice referred to in this paragraph shall not affect the validity of any such redemption of other Bonds.

In addition to the foregoing notice, the Trustee shall cause copies of such notice of redemption to be sent by registered mail, certified mail, overnight delivery service or confirmed telecopy (or other similarly secure service acceptable to the Trustee) to the Depository. Unless otherwise waived by the Depository, the notice to the Depository, shall be sent at least two (2) business days in advance of the date notices addressed to Registered Owners are deposited in the United States mail. The Trustee shall not be required to advertise the notice of redemption. The Trustee shall send a second copy of the redemption notice by registered or certified mail to all registered bond owners that do not present their Bonds for payment within thirty (30) days following the Redemption Date (See “Book-Entry Only System” below).

Book-Entry Only System

The Bonds initially will be issued solely in book-entry form to be held in the book-entry only system maintained by The Depository Trust Company (“DTC”). So long as such book-entry system is used, only DTC will receive or have the right to receive physical delivery of Bonds and, except as otherwise provided herein with respect to tenders by Beneficial Owners of Beneficial Ownership Interests, Beneficial Owners will not be or be considered to be, and will not have any rights as, owners or holders of the Bonds under the Resolution.

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered bonds registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity of the Bonds, in the aggregate principal amount of such issue, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of the Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and distributions on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by

standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such Participant and not of DTC nor its nominee, or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds and distributions to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority and the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Authority and the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

The Authority may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC’s book-entry system has been obtained from sources that the Authority believes to be reliable, but the Authority takes no responsibility for the accuracy thereof.

SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE BONDS, AS NOMINEE OF DTC, REFERENCE HEREIN TO THE BONDHOLDERS OR REGISTERED OWNER OF THE BONDS MEANS CEDE & CO., NOT THE BENEFICIAL OWNER OF THE BONDS.

NEITHER THE AUTHORITY NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO ANY DIRECT PARTICIPANT, INDIRECT PARTICIPANT OR ANY BENEFICIAL OWNER, OR ANY OTHER PERSON NOT SHOWN ON THE REGISTRATION BOOKS OF THE TRUSTEE AS BEING A HOLDER WITH RESPECT TO: (1) THE BONDS; (2) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT; (3) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PURCHASE PRICE OF TENDERED BONDS, OR THE PRINCIPAL OR REDEMPTION PRICE OF OR INTEREST ON THE BONDS; (4) THE DELIVERY BY ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY NOTICE TO ANY BENEFICIAL OWNER WHICH IS REQUIRED OR PERMITTED UNDER THE TERMS OF THE RESOLUTION TO BE GIVEN TO THE HOLDERS; (5) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE BONDS; OR (6) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS HOLDER.

Certain duties of DTC and procedures to be followed by DTC and the Trustee are set forth in a Blanket Issuer Letter of Representations (“DTC Letter of Representations”) between the Authority and DTC. In the event of a conflict between the provisions of the Resolution and the provisions of the DTC Letter of Representations relating to delivery of the Bonds to the Trustee, the provisions of the DTC Letter of Representations shall control.

The Authority, the Trustee and any Paying Agent designated in any Bond may treat the Registered Owner of the Bond as the absolute owner of such Bond for all purposes whether or not such Bond shall be overdue and neither the Authority, the Trustee nor any Paying Agent shall be affected by any notice to the contrary. Any consent, waiver or other action taken by the Registered Owner of the Bond shall be conclusive and binding upon such Registered Owner, his heirs, successors or assigns, and upon all transferees of such Bond whether or not notation of such consent, waiver or other action shall have been made on such Bond or any Bond issued in exchange therefor or upon registration or transfer thereof.

SECURITY FOR THE BONDS

Revenues

The Act requires the Board among other things to establish, fix, revise, charge, collect and enforce the payment of all fees, rates and other service charges for the use of, or services furnished, rendered or made available by, all Projects, including the System, owned, leased or utilized by the Board in an amount at least sufficient at all times to provide funds in an amount sufficient, together with other revenues available to the Board, if any, (i) to pay to the Authority, in accordance with the Financing Agreement, an amount sufficient to pay principal of and interest on the outstanding Bonds of the Authority as the same shall become due and payable and maintaining or funding a capital or debt service reserve fund therefor, or any other fund determined necessary by the Authority; and to the extent requested by the City or any municipality in, or annually pursuant to, any agreement, to pay to the City or any municipality, in accordance with any agreement, an amount sufficient for the purpose of paying the principal of and interest on general obligation bonds of the City or any municipality issued for or allocable to the facilities of the System, as the same shall become due and payable and to maintain fund reserves therefor; (ii) to pay to the City or any municipality, in accordance with any agreement, an amount sufficient for the purpose of paying the costs of administering, maintaining, repairing and operating and the cost of constructing capital improvements to the System; (iii) to pay to the City or any municipality, in accordance with an agreement entered into pursuant to the Act, an amount sufficient to pay liabilities issued for or allocable to the System, as the same shall become due and payable, (iv) to pay to the City or any municipality, in accordance with the Act or an agreement entered into pursuant to the Act, an amount sufficient for paying any payment in lieu of taxes as the same shall become due and payable; (v) to raise an amount sufficient for the purpose of paying the costs of administering, maintaining, repairing and operating the Projects, including the System; (vi) to satisfy the requirements of any agreement containing requirements relating to the establishment of reserves for renewal and replacement and for uncollected rates, fees or other charges and covenants respecting rates; (vii) to pay all other reasonable and necessary expenses of the Authority and the Board; and (viii) to pay and provide for such other purposes or projects as the Board considers appropriate and in the public interest. Such fees, rates or charges, if not paid when due, shall constitute a lien upon the premises receiving the service and such lien, which shall take precedence over all other liens or encumbrances except taxes, may be foreclosed in the same manner as tax liens.

Under the Act, a statutory lien is created upon the Revenues in favor of the payment of all amounts due pursuant to the Financing Agreement and in the order and priority set forth in such Agreement. The Act provides that such lien shall be a first lien upon the Revenues. In the event that the Board fails to make any required payment to the Authority, the Authority or the Trustee

may petition for the appointment, by the court having jurisdiction, of a receiver to administer the affairs of the Board, and, with court approval, to establish rates and charges to provide Revenues sufficient to make required payments. The statutory lien, however, does not give any holder or owner of any Bond issued by the Authority power to compel the sale of any part of the System.

Flow of Funds

Pursuant to the Financing Agreement, the Board is required to deposit, as promptly as practicable after receipt thereof, all Revenues received by the Board into the General Account within the Local Water Fund. Commencing on the first day of each Fiscal Year and on each day thereafter, the Board shall make payments from the General Account in the following order of priority:

- (i) to the Trustee for deposit in the Debt Service Fund, beginning with the first day of each calendar month, such amount as is necessary until the balance equals the Minimum Monthly Balance for each Series of Bonds in such month, and to the Authority Expense Fund for all Authority Expenses attributable to the Fiscal Year in accordance with the Authority Budget;
- (ii) beginning with the first day of each calendar month until paid in each calendar month to the Board Expense Account within the Local Water Fund, one-twelfth of amount specified in the Annual Budget for Board Expenses;
- (iii) from the balance, if any, after making the deposits required by the preceding paragraphs, to the Trustee for deposit in the Debt Service Reserve Fund and the Subordinated Indebtedness Fund in amounts required by the Resolution, such amounts as are necessary so that the balance in the Debt Service Reserve Fund equals the Debt Service Reserve Fund Requirement and to the Operation and Maintenance Reserve Account until the amount equals the total amount budgeted for deposit therein in such Fiscal Year;
- (iv) from the balance, if any, after making the deposits required by the preceding paragraphs, to the PILOT Payment Account until the balance equals the total amount budgeted for deposit therein in such Fiscal Year;
- (v) from the balance, if any, after making the deposits required by the preceding paragraphs, to the Construction Account until the balance equals the total amount budgeted for deposit therein in such Fiscal Year; and
- (vi) from the balance, if any, after making the deposits required by the preceding paragraphs, to the Operation and Maintenance Reserve Account.

Notwithstanding the above, upon the occurrence and continuance of an Event of Default under the Financing Agreement or of certain Events of Default under the Resolution, the Trustee may demand all moneys and securities then held by the Board in the Local Water Fund and in all accounts created thereunder. Upon any such demand by the Trustee, all Revenues thereafter received shall promptly be paid to the Trustee for deposit in the Revenue Fund.

For a more extensive discussion of the terms and provisions of the Resolution and the Financing Agreement, including the security for the Bonds, the Funds and Accounts established by the Resolution and the Financing Agreement, and the purposes to which moneys in such Funds and Accounts may be applied, see “APPENDIX D – GLOSSARY AND SUMMARY OF THE RESOLUTION AND AGREEMENTS” attached hereto.

Debt Service Reserve Fund

The Resolution establishes a Debt Service Reserve Fund to be funded in an amount equal to the Debt Service Reserve Requirement. The Debt Service Reserve Requirement on any date of calculation shall mean the lesser of: (a) the maximum annual Debt Service Requirements with respect to the Outstanding Bonds in the then current and all future Fiscal Years (for the purposes of which calculation any Variable Rate Indebtedness shall be calculated pursuant to the Supplemental Resolution pursuant to which the Indebtedness has been issued); (b) 125% of the average annual Debt Service Requirements with respect to Outstanding Bonds in the then current and all future Fiscal Years (for the purposes of which calculation any Variable Rate Indebtedness shall be calculated pursuant to the Supplemental Resolution pursuant to which the Indebtedness has been issued); and (c) the maximum amount that may be held in the Debt Service Reserve Fund, in the opinion of Bond Counsel to the Authority, with respect to the Bonds intended to be tax-exempt without adversely affecting the tax-exempt status of such Bonds. The Debt Service Reserve Requirement may be satisfied in whole or in part by a Reserve Fund Credit Facility.

The Resolution provides that the Trustee shall be authorized, without further direction from the Authority, to apply money in the Debt Service Reserve Fund toward the payment of the Debt Service Requirements from time to time becoming due and payable upon a series of Bonds to the extent that the Debt Service Fund shall at any time insufficient with respect to such series of Bonds.

Operation and Maintenance Reserve Account

The Financing Agreement requires the Board to establish an Operation and Maintenance Reserve Account within the Local Water Fund. The Operation and Maintenance Reserve Account currently has a balance of \$5,198,449.50. The amount on deposit shall at least equal the amount of the deposit to the Operation and Maintenance Reserve Account set forth in the Board’s Annual Budget for such Fiscal Year. The Board has further covenanted in the Resolution to maintain an amount on deposit in the Operation and Maintenance Reserve Account of at least one-sixth (1/6th) of the prior Fiscal Year’s Operating Expenses.

Amounts on deposit in the Operation and Maintenance Reserve Account may be used to pay the cost of extraordinary repairs to and replacements of the System and, if insufficient funds exist in the Board Expense Account therefor, to pay the City the requisite amounts for Operating Expenses pursuant to the Operation Agreement. The Operating Expenses payable to the City are for support services only (such as billing and collections) and are currently less than three percent of the Board’s total Operating Expenses. After satisfying any of the foregoing required payments, amounts in the Operation and Maintenance Reserve Account may also be used for Board Expenses, debt service, reserve fund replenishments and to pay for Projects. Surplus amounts on deposit in the Operation and Maintenance Reserve Account at the end of a Fiscal Year may be used for any purpose determined by the Board to be beneficial for the System unless the Authority notifies the Board that it does not concur with such application of surplus and expenditures therefrom.

Rate Covenant and Other Covenants

The Board has covenanted in the Financing Agreement to establish, fix and revise, from time to time fees, rates, rents or other charges for the use of, or the services furnished, rendered or made available by the System to provide, together with other available funds, for (i) the timely payment of Accrued Debt Service on the Bonds and the principal of and interest on any other indebtedness of the Authority payable from Revenues, (ii) the proper operation and maintenance of the System, (iii) all other payments required for the System not otherwise provided for, and (iv) all other payments that are required pursuant to the Financing Agreement and the Operation Agreement.

Without limiting the generality of the foregoing, the Board has covenanted to establish and collect rates, fees and charges sufficient in each Fiscal Year so that Revenues collected in such Fiscal Year will be at least equal to the sum of: (a) one hundred and fifteen percent (115%) of the estimated Aggregate Debt Service and Projected Debt Service payable in such Fiscal Year; and (b) one hundred percent (100%) of the Operating Expenses, Authority Expenses and any Required Deposits for such Fiscal Year.

The Board has covenanted in the Financing Agreement to review the adequacy of fees, rates and charges at least semi-annually. If such review, or the report of the Rate Consultant required pursuant to the Financing Agreement, indicates that the rates, fees and charges are or will be insufficient to meet the requirements of the rate covenant, the Board will promptly take necessary action to cure or avoid any such insufficiency.

The Board has further covenanted that it will enforce the payment of any and all amounts owing to the Board for use of the System. The Act provides that any rates, fees and charges that remain unpaid shall constitute a lien on the premises that received the service and that such lien may be enforced in the same manner as a lien for taxes.

Engineer and Rate Consultant

The Authority is required to retain annually a Consulting Engineer for a term of one year and the Board is required to retain annually a Rate Consultant for a term of one year whose duties, respectively, shall be to make any certificates and perform any other acts required or permitted of the Consulting Engineer and the Rate Consultant under the various documents. The same person or firm may perform the duties and functions of the Consulting Engineer and the Rate Consultant and may be reappointed from year to year.

In every other Fiscal Year, the Consulting Engineer, and in every year, the Rate Consultant, are each required to make an examination of, and must report on, the properties and operations of the System. Such reports must be submitted to the Authority, the Board, the Mayor and the Trustee no later than November 1 of each Fiscal Year and must set forth the following:

- (i) the Consulting Engineer's advice and recommendation as to the proper operation, maintenance and repair of the System during the ensuing two Fiscal Years, and an estimate of amounts of money necessary for such purposes and the amounts required for the Operation and Maintenance Reserve Account (in an amount at least equal to two months of Operating Expenses);

- (ii) the Consulting Engineer’s recommendations as to improvements which should be made during the ensuing five Fiscal Years, and an estimate of the amounts of money necessary for such purposes, including recommendation of the amount to be expended each Fiscal Year from the Construction Account;
- (iii) the Rate Consultant’s recommendations as to any necessary or advisable revisions of rates, fees and charges; and
- (iv) the Consulting Engineer’s findings whether the System has been maintained in good repair and sound operating condition, and its estimate of the amount, if any, required to be expended to place the System in such condition and the details of such expenditures and the approximate time required therefor. The Board is required to take prompt action to restore the System consistent with the Consulting Engineer’s finding.

Parity Obligations

The Bonds will be on a parity with other Additional Parity Indebtedness heretofore and hereafter issued pursuant to the Resolution, including the Bonds of the Authority issued to EFC. See “INTRODUCTION – Special Obligations.” The Resolution provides that the Authority may hereafter issue Additional Parity Indebtedness, including Bonds, on a parity with the Bonds for any lawful corporate purpose only upon satisfaction of certain requirements, including, among other things, receipt by the Trustee of the following:

- (i) a certificate duly executed by the Accountant stating that, based upon a review of the books and records of the Board and the Authority, for any twelve (12) consecutive month period of the eighteen (18) calendar months immediately preceding the month during which the Additional Parity Indebtedness is to be issued, or such shorter period if this much time has not yet elapsed, (i) the Board has complied with the Rate Covenant, (ii) all deposits required to be paid into the Debt Service Fund were made, and (iii) the Debt Service Reserve Fund Requirement was maintained in accordance with the Resolution;
- (ii) a certificate duly executed by an Engineer setting forth in detail and based upon reasonable assumptions set forth therein (1) his or her estimate of the Operating Expenses for each of the five (5) Fiscal Years following the issuance of such series of Bonds, plus the Fiscal Year in which such Bonds are issued; and (2) the Debt Service Requirements for each such Fiscal Year;
- (iii) a certificate of the Rate Consultant setting forth his or her opinion that the amount of estimated Operating Revenues for each such Fiscal Year as described above will be sufficient, together with amounts capitalized, and to be capitalized, from proceeds of the Additional Parity Indebtedness or otherwise made available and reserved, or to be made available and reserved in connection with the issuance of the Additional Parity Indebtedness, and not already taken into account under the Resolution by reduction of the obligation which Operating Revenues must cover, to satisfy the Rate Covenant for each such Fiscal Year;

- (iv) if the Additional Parity Indebtedness is being issued to finance Projects, a certificate duly executed by an Engineer that, among other things: (1) states that such Projects will be useful or desirable in connection with the operation of the System, will be technically feasible and in compliance with the Board's approved System plan, as the same may be amended from time to time; (2) setting forth the estimated Costs of the acquisition or construction of such Projects, including any financing expenses and, if judged necessary, a balance for contingencies, the sources of funds expected to be applied to finance such Costs, and the time period which will be required for completion of the acquisition or construction of such projects; (3) his or her opinion that the net proceeds of the Additional Parity Indebtedness, together with other moneys which are then available or reasonably expected to be available therefor, will be sufficient to pay the Costs of the acquisition or construction of the Projects; and (4) his or her opinion as to the date when such Projects will be placed in commercial operation;
- (v) if the Additional Parity Indebtedness is being issued to finance a refunding, the Authority may provide a certificate executed by an Accountant (in lieu of the certificate referred to in paragraph (iii) above) stating that for the then current and each future Fiscal Year, the Debt Service Requirements for the refunding Bonds will be no more than ten per centum (10%) more than the Debt Service Requirements that would have existed for that Fiscal Year with respect to the portion of the Bonds being refunded; and,
- (vi) if the Additional Parity Indebtedness is being issued to finance a refunding: (1) executed counterparts of such documents as are necessary or appropriate for the purposes of the refunding, including, specifically, an escrow deposit agreement providing for the deposit and application of funds for any refunding other than a refunding which occurs on the same day as the issuance of such Additional Parity Indebtedness, (2) unless all refunded Indebtedness is to be redeemed or otherwise retired on the date of settlement for the refunding Bonds, such schedules, verified as to their mathematical accuracy by an Accountant, as are necessary to demonstrate the adequacy of funds deposited for the refunding and the income thereon for the purpose of paying, when due, the principal or redemption price of and interest on the refunded Indebtedness, and (3) evidence satisfactory to the Trustee that notice of any necessary redemption has been properly given, or that provisions satisfactory to the Trustee have been made therefor, or that sufficient waivers of such notice have been duly filed with the Trustee.

The Resolution does, however, provide certain exceptions to the above requirements. First, certain certificates otherwise required to be executed by an Engineer or Accountant for purposes of paragraphs (i) through (v) above may be executed by an Authorized Representative of the Authority so long as the Additional Parity Indebtedness does not exceed \$2,000,000 or constitutes Completion Bonds except that, in the case of Completion Bonds, the Consulting Engineer shall be required to certify that the proceeds of such Bonds are sufficient to complete the construction of such Project. In addition, the Authority need not comply with the above requirements, if (a) all Outstanding Bonds are secured as to the payment of principal and interest due on such Bonds by a Credit Facility and (b) the Credit Facility Provider consents to the issuance of the Additional Parity Indebtedness without the satisfaction of such requirements or (c) the proceeds of such

Additional Parity Indebtedness will be expended on a Project to comply with any State or federal law, rule or regulation.

Notwithstanding the above, the Resolution provides that the Authority may borrow from time to time an amount outside the Resolution, which shall not exceed \$500,000 in principal amount in the aggregate at any one time for working capital purposes. The repayment of such obligation shall be secured by granting a Lien on Pledged Revenues that is on a parity with the Lien securing the Bonds if the Authority certifies to the Trustee that the Board needs the proceeds for the proper operation of the System and that the Authority reasonably believes it will meet its obligations on such borrowing and under the Resolution as and when the same come due.

DEBT SERVICE REQUIREMENTS

The following schedule sets forth the Authority's principal and interest requirements for the Outstanding Parity Indebtedness for each Fiscal Year ending December 31.

<u>Fiscal</u> <u>Year</u>	<i>Outstanding</i> <i>Parity Bonds^{1,2}</i> Total <u>Debt Service</u>	<u>SERIES 2022A BONDS</u>			Total Debt <u>Service</u>
		<u>Principal</u>	<u>Interest</u>	<u>Debt</u> <u>Service</u>	
2022	\$ 6,379,526	-	-	-	\$6,379,526
2023	5,395,257	-	\$ 1,463,348	\$ 1,463,348	6,858,605
2024	5,650,302	\$ 575,000	1,097,511	1,672,511	7,322,813
2025	5,619,579	1,010,000	1,086,011	2,096,011	7,715,590
2026	5,617,981	1,035,000	1,063,286	2,098,286	7,716,267
2027	5,614,898	1,060,000	1,038,446	2,098,446	7,713,344
2028	5,614,566	1,095,000	1,010,356	2,105,356	7,719,922
2029	1,840,295	4,895,000	979,696	5,874,696	7,714,991
2030	1,842,068	5,040,000	832,846	5,872,846	7,714,914
2031	1,857,220	5,190,000	681,646	5,871,646	7,728,866
2032	1,866,841	5,345,000	520,756	5,865,756	7,732,598
2033	1,852,349	5,515,000	353,725	5,868,725	7,721,074
2034	2,277,600	5,170,000	174,488	5,344,488	7,622,087
2035	297,503	-	-	-	297,503
2036	297,017	-	-	-	297,017
2037	296,414	-	-	-	296,414
2038	295,572	-	-	-	295,572
2039	294,612	-	-	-	294,612
2040	293,531	-	-	-	293,531
2041	757,331	-	-	-	757,331
Total	<u>\$53,960,000</u>	<u>\$35,930,000</u>	<u>\$10,302,117</u>	<u>\$46,232,117</u>	<u>\$100,192,577</u>

1. Payments on the EFC Parity Bonds represent debt service payable net of prior to application of interest subsidies plus associated fees.

2. Excludes the debt service on the Series 2013A Bonds that are to be refunded by the Series 2022A Bonds.

THE AUTHORITY

Purposes and Certain Powers

The Niagara Falls Public Water Authority is a public benefit corporation created pursuant to the Authority Act. Among its powers under the Act, the Authority may borrow money and issue negotiable or non-negotiable notes, bonds or other obligations, including the Bonds, and provide for the rights of holders thereof. Additionally, the Authority has entered into the Financing Agreement whereby the Board is required to charge and collect sufficient rates to pay the costs of operating and financing the System and to enforce the obligation of the Board to adequately operate and maintain the System.

Pursuant to the Act, there is a statutory lien upon the Revenues in favor of the payment of all amounts due to the Authority under the Financing Agreement. The Revenues will remain subject to this lien until provision for payment of all indebtedness issued by the Authority has been made.

The Authority is not required to pay taxes, special ad valorem levies or assessments, whether state or local, including but not limited to fees, taxes, special ad valorem levies or assessments on real property, franchise taxes, sales taxes or other excise taxes upon any property owned by it or under its jurisdiction, control or supervision, or upon the uses thereof, or upon its activities in the operation and maintenance of its facilities or any fares, tolls, rentals, rates, charges, fees, revenues or other incomes received by the Authority or the Board. The Authority is further exempt from any filing, mortgage recording or transfer fees or taxes in relation to instruments filed, recorded or transferred by or on its behalf. The Act also provides that notwithstanding any provision of such section to the contrary, (i) any real property of the Authority or the Board located outside the boundaries of the City will be exempt from the payment of taxes, special ad valorem levies and special assessments only if and to the extent that such real property would have been exempt if owned by the City and (ii) the Board may pay, or may enter into agreements with the City or any municipality to pay, a sum or sums, annually or otherwise, or to provide other considerations to such City or municipality, with respect to real property of the Board located within such municipality and provided that any such payment or agreement to pay will be subject to approval by the Authority.

Members

The Authority is governed by a body consisting of three members, at least one of which shall be a resident of the City, who are appointed as follows: (1) one member appointed by the Mayor of the City to serve until December 31st of the third year following the effective date of the Act; (2) one member appointed by the temporary president of the New York State Senate at the recommendation of the senator or senators representing all or a portion of the City to serve until December 31st of the fourth year following the effective date of the Act; (3) one member appointed by the speaker of the New York State Assembly at the recommendation of the assembly member or members representing all or a portion of the City to serve until December 31st of the fifth year following the effective date of the Act. Subsequent appointments of members shall be made for a term of three years. Members continue to hold office until their successors are appointed and qualify.

The Act provides that all members must hold, at a minimum, a bachelor's degree from an accredited college or university, with a concentration or degree in one of the following areas of study and at least five years of professional experience therein, or without such degree, such member must have at least ten years of professional experience in one of the following fields: legal, environmental, financial, management, engineering, human resources or science.

The powers of the Authority will be vested in and be exercised by the governing body at a meeting duly called and held where a quorum of at least two members are present. No action is permitted to be taken by the Authority except pursuant to the favorable vote of not less than two members of the Authority.

The present members of the Authority and the dates their terms as members expire are as follows:

<u>Name</u>	<u>Term Expires</u>
Jason Murgia, Chairman Education: BS Marketing Employment/Experience: Former Niagara County Legislator, Conference Center General Manager	December 31, 2013
Daniel Weiss, Vice Chairman Education: MS Education 2006 Buffalo State College BS Elementary Education 2003 Buffalo State College Employment/Experience: Niagara Falls Board of Education	December 31, 2018
Michael Monaco, Treasurer Education: AS Business Management Employment/Experience: United States Postal Service, Motel and Convenience Store Operator	December 31, 2020

Officers

The officers of the Authority consist of a Chair, a Vice-Chair, a Treasurer and Secretary. These officers, with the exception of the Treasurer and Secretary, are required to be members of the Authority. The Treasurer and Secretary are each appointed by the governing body and serve at the pleasure of that body. The governing body may also appoint and, at its pleasure, remove such additional officers as it deems necessary for the performance of the powers and duties of the Authority.

The following are the Officers of the Authority:

Jason Murgia, Chairman
Daniel Weiss, Vice Chairman
Michael Monaco, Treasurer
Sean Costello, Secretary

THE BOARD

Purposes and Certain Powers

The Board is a corporate municipal instrumentality of the State created by the Board Act. Among its powers pursuant to the Act, the Board is empowered to acquire from the City title to the System and to establish, fix, revise, collect and enforce the payment of all fees, rates, rents and other service charges for the use of or services furnished by the System.

The Board is required under the Act and the Financing Agreement to establish rates that will provide adequate funds to pay the debt service on outstanding Authority indebtedness and to provide for the proper operation and maintenance of the Facilities and for all other payments required pursuant to the Financing Agreement, the Resolution, the Acquisition Agreement and the Operation Agreement. For a detailed description of the application of such funds, see “SECURITY FOR THE BONDS - Flow of Funds” and “APPENDIX D – GLOSSARY AND SUMMARY OF THE RESOLUTION AND AGREEMENTS”. In accordance with the Financing Agreement, the Board remains responsible for the operation and management of the System.

No governmental board, agency, corporation or officer of the State has jurisdiction of, or control over, or is required to approve any water rates or charges for services or facilities of the Board except the Board itself. Section 1230-j(10) of the Act expressly declares that the Public Service Commission shall have no jurisdiction over the Board or the Authority with respect to the regulation of the fees, rates or other charges established, fixed or revised by the Board except as provided by law with respect to the supply of water to users outside the City or the Service Area. The Board, however, is required to conduct a public hearing prior to establishing, fixing, or revising rates, fees or other charges.

Members

The Board is governed by a board consisting of five members, at least three of whom shall be residents of the City, who shall be appointed as follows: (1) one member appointed by the governor to serve until December 31st of the first year following the effective date of the Act; (2) one member appointed by the temporary president of the New York State Senate at the recommendation of the senator or senators representing all of or a portion of the City to serve until December 31st of the second year following the effective date of the Act; (3) one member appointed by the speaker of the New York State Assembly at the recommendation of the assembly member or members representing all or a portion of the City to serve until December 31st of the third year following the effective date of the Act; (4) one member appointed by the Mayor of the City to serve until December 31st of the fourth year following the effective date of the Act; and (5) one member appointed by the majority vote of the City Council to serve until December 31st of the fifth year following the effective date of the Act.

Subsequent appointments of members shall be made for a term of three years. Members continue to hold office until their successors are appointed and qualify. No member of the governing body of the Board shall be a member of the governing body of the Authority.

The Act provides that all members must hold, at a minimum, a bachelor’s degree from an accredited college or university, with a concentration or degree in one of the following areas of study and at least five years of professional experience therein, or without such degree, such

member must have at least ten years of professional experience in one of the following fields: legal, environmental, financial, management, engineering, human resources or science.

The powers of the Board shall be vested in and be exercised by the governing body at a meeting duly called and held where a quorum of three members are present. No action shall be taken by the Board except pursuant to the favorable vote of at least three voting members of the Board.

The present members of the Board and the dates of expiration of their terms as members are as follows:

<u>Name</u>	<u>Term Expires</u>
Nicholas J. Forster Education: NYS Correctional Officer Academy, Erie County Sheriff Academy Employment/Experience: Union President, NYS Gaming Commission, Formerly Various Law Enforcement Positions	December 31, 2024
Colleen Larkin Education: BA, Mass Communication/Media Studies Employment/Experience: Manager of Internal Communication, Seneca Resorts & Casinos, Formerly Consultant, Editor	December 31, 2019
Michael J. Asklar Education: BS Physics, BS Civil Engineering Employment/Experience: Licensed Professional Engineer, New York Power Authority, Formerly Erie County Traffic Engineer	December 31, 2022
Rena Kimble Education: Juris Doctor Degree, BA Political Science, AAS Liberal Arts Employment/Experience: Former Niagara County Legislator, Risk Manager City of Niagara Falls, Director Niagara Falls Human Rights Commission	December 31, 2014
Gretchen Leffler Education: MS Education, BS Home Economics Education Employment/Experience: Regional Vice President, American Cancer Society, Girl Scout Public Relations and Field Director, Educator	December 31, 2015

Officers and Employees

The Officers of the Board consist of a Chair, a Vice Chair, a Treasurer, and a Secretary. These officers, with the exception of the Secretary, shall be members of the Board. In addition to the Secretary, the governing body may appoint and at its pleasure remove such additional officers and employees as it deems necessary for the performance of the powers and duties of the Board, and fix and determine their qualifications, duties and compensation, subject to the provisions of the Civil Service Law of the State and the rules of the Civil Service Commission of the City.

The following are the Officers of the Board:

Nicholas J. Forster, Chairman
Colleen Larkin, Vice-Chair
Michael J. Asklar, Treasurer
Sean W. Costello, Secretary

The Board's water and wastewater employees are covered by four collective bargaining agreements with the following unions: Building and Construction Trades Council (6 employees), U.S.W.A., Local 9434-00 - Civil Service (42 employees); U.S.W.A., Local 9434-01 - Utilities Operators (24 employees); and U.S.W.A., Local 9434-02 - Hourly Maintenance (25 employees). The collective bargaining agreements expire on May 31, 2024.

THE SYSTEM

Introduction

The System covers the existing territory of the City and includes three major components: a water distribution and treatment system (the "Water System"), a wastewater collection and treatment system (the "Wastewater System") and a storm water conveyance system (the "Storm Water System"). Pursuant to the terms of the Operation Agreement, the Board is responsible for the day-to-day operation and maintenance of the System, but it has retained the City to provide certain services. The Board initially hired the City, for a period of not less than five years from the date of the acquisition of the System, to render certain engineering, legal, billing, collection, and fleet maintenance services. The Board exercised its right to terminate this arrangement with respect to most of the services but left in place a reduced responsibility of the City to perform limited engineering services, to accept payments, and assist with collections, including the Board's water shut-off program and the City's in-rem proceedings.

Second, the City agreed to provide the Board with general overhead, support services and facilities, including but not limited to, use of City officers, employees, agents and contractors for payroll, personnel, auditing, accounting, purchasing, legal and other administrative matters and the use of the City's facilities for meetings and other administrative functions. The Board has exercised its right to terminate most of these services but does use the City's purchasing department to assist with some procurements. See "THE SYSTEM – Organization" below for more detail.

Finally, in accordance with Section 1230-j of the Act, the Board directs the City to levy the amount of any delinquent water charges levied by the Board or by the City against the users liable therefor and authorizes the City to exercise all of its powers pursuant to the provisions of the laws of the State covering enforcement and collection of unpaid taxes of the City and to enforce and collect such water charges. The City also collects all late payments of water charges through any applicable remedy available under current law on behalf of the Board.

In addition to the above services, the City has agreed in the Operation Agreement to use its best efforts to substitute the Board for the City in connection with ongoing permit applications or

similar governmental proceedings. The foregoing obligations of the City are set forth in Section 1230-h(7) of the Act.

Organization

The Board has taken a number of steps to enhance the efficiency and effectiveness of its operation and maintenance programs. The current executive management team is as follows:

Abderrahman Zehraoui, Ph.D, AM, ASCE, Executive Director. Dr. Zehraoui earned a Ph. D in Civil/Environnemental Engineering from the University of Cincinnati, a MSc. in Projects Management (Data Mining and Statistical IT) from Pavia University in Pavia Italy, and a BSc. in Physics and Chemistry from the University of Mohamed V in Rabat, Morocco. He has more than 25 years of relevant experience, and joined the Water Board in 2021 after serving as Director of Utilities for the City of East Chicago, Indiana, where he directed the water and wastewater utilities for that City, including treatment and distribution systems. His professional experience also includes working as Wastewater Operations manager as an employee of Sodexo for a GE plant in Houston, Texas, as a Technical Advisor for Norton Technology, Inc., a Water/Wastewater Project Development Engineer for Streamline Power Resources in Cincinnati, Ohio, and as a Senior Water/Wastewater and PMO Engineer for the Office National de l'Eau Potable in Rabat, Morocco. His professional memberships have included the European Federation of Biotechnology, American Society of Civil Engineers, International Desalination Association, American Concrete Institute, Air & Waste Management Association, International Society for Environmental Information Sciences, American Chemical Society, Ohio Water Environment Association (OWEA), and Researcher Institute. He has had many articles published in scientific journals, and has served on the editorial boards of the International Journal of Environmental Bioremediation & Biodegradation, Frontiers, Environmental Sciences (Wastewater Management), EPFL, Lausanne, Switzerland, and Austin Journal of Environmental Toxicology. Dr. Zehraoui continues his education through a variety of online courses. He is multilingual, proficient in English, French, and Arabic, and intermediate in Italian.

Sean W. Costello, General Counsel and Secretary. Mr. Costello holds a Juris Doctor Degree from Syracuse University College of Law, and a Bachelor of Arts Degree in International Relations, *magna cum laude*, from Syracuse University College of Arts and Sciences. He is admitted to practice law in New York, New Jersey, the Federal District Courts for the Northern, Southern, and Western Districts of New York, the United States Bankruptcy Court, Western District of New York, and the United States Court of Appeals for the Second Circuit. Prior to becoming an employee of the Water Board in 2018, Mr. Costello was a Partner with one of the region's largest private law firms and first worked on Water Board matters in 2012. His experience includes having served as Contract General Counsel to the Water Board, as attorney for a Western New York Town, and representing municipal entities in tort, civil rights, and employment-based claims in state and federal court. Mr. Costello's experience at the Water Board includes two periods when he was selected by the Board to serve as Acting Executive Director. He was a law clerk with the U.S. Department of Defense Education Activity and with the Defense Information Systems Agency, and is a member of various professional organizations, including the New York State Bar Association, Local and State Government Law Section. He has been honored as a Buffalo Business First 30 Under Thirty Honoree and as an Upstate New York Super Lawyers Rising Star in 2016, 2017, 2018, 2019, 2020, and 2021.

Douglas Williamson, Director of Technical and Regulatory Services. Mr. Williamson received a Bachelor of Science degree in civil engineering from the State University of New York at Buffalo. He is a licensed professional engineer in New York State. Mr. Williamson has 25 years of progressive experience focusing on construction and the water/wastewater fields and has been with the Water Board since 2009. He previously worked for the Seneca Nation of Indians and for one of Western New York’s largest mechanical contracting firms.

Brian Majchrowicz, Deputy Director of Financial Services. Mr. Majchrowicz holds a Bachelor of Science Degree in Business Administration with a Concentration in Accounting from the State University of New York at Buffalo. He has 20 years’ experience as an accounting and finance professional, including over a decade of audit experience. Prior to joining the Water Board full time in 2018, Mr. Majchrowicz was employed by the Water Board as a consultant, assisting with all aspects of operating the Financial Services Department.

John G. Accardo, Deputy Director of Administrative Services. Mr. Accardo possesses an Associates Degree in Business Administration from Niagara Community College and a Bachelor of Science Degree in Business Administration from Columbia Union College. He joined the Water Board in 2020. His professional experience includes employment as president of an insurance agency, and executive director of the Niagara County Workforce Investment Board. Mr. Accardo was a Niagara Falls City Councilman from 1992-2001, including serving as Council Chairman from 1993-1995, and he has served as a member of numerous civic and community boards in Niagara Falls.

The following table illustrates staffing levels for the System as of December 31, 2021.

System Staffing

	Staff Positions¹
Water Facilities Division	37.0
Wastewater Facilities Division	<u>52.0</u>
Total System	<u>89.0</u>

¹ Denotes filled positions. Authority and Board members and administrative/support staff are not included in the above figures. The above totals also do not include staff members that are currently on unpaid leave.

Total staffing levels have declined since the Board’s acquisition of the System. The Board anticipates generally level staffing over the next five years.

The following presents an overview of various aspects of the System. Comments regarding the condition of the System, the Capital Improvement Program (the “CIP”) and related matters are set forth in “APPENDIX A – FEASIBILITY REPORT” attached hereto. The Feasibility Report has been prepared by AECOM and Drescher & Malecki LLP (collectively, the “Feasibility Consultant”) in their capacity as Consulting Engineer to the Authority and Rate Consultant to the Board, respectively.

The Water System

The Water System obtains its raw water from the Niagara River. Water is drawn through a concrete intake structure near the bottom of the River. This intake has a permitted capacity of 60 million gallons per day (“mgd”).

The Feasibility Consultant has termed the water quality “excellent” in that it is an easily treated water source. The Feasibility Consultant has given the Water System distribution facilities a rating of adequate and has rated the water treatment plant as good (its highest rating category).

Treatment Facilities

The water treatment plant was placed in service in 1997 as a conventional filtration plant. The water treatment plant has met all finished water quality standards since being placed in service and has been the subject of a comprehensive preventive maintenance program. The treatment plant has a capacity of 36.75 mgd. The following table illustrates the average daily output from the water treatment plant from 2018 through 2021:

Historical Average Daily Production of Treated Water

<u>Year</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Flow (MGD)	21.35	21.53	22.57	21.24

The treatment facilities of the Water System include a raw water intake, a low-lift pump station, a conventional sedimentation and rapid sand filtration process, a high-lift major pumping station, and a sludge residuals handling facility. A description of the process follows.

Water is taken from the Niagara River through an intake and sent through a 72-inch pipe to the Low Lift Pumping Station. Screens protect the low lift pumps from debris that might enter the intake. The low lift pumps transfer the raw water to the pre-treatment tanks where powdered activated carbon can be added for taste and odor control, if needed, during the warm summer months. From this point, the water flows through each process by gravity to the clear well. These processes include: coagulation and flocculation where solids in the water are collected and settled out in four plate-settling basins; eight rapid sand mixed media filters that filter out any remaining solids; and three clearwells to store finished water with a capacity of about 2 million gallons. From the clearwells, the water is disinfected with gaseous chlorine and then pumped out to the distribution system at a pressure of approximately 87 pounds per square inch (“psi”).

In the process of removing unwanted solids from the water, “sludge” is produced and collected during the settling and filtering processes. As a result of a study sponsored by the New York State Energy Research and Development Authority, the City embarked on an innovative project to remove entrained water from the sludge through the construction of 3 freeze/thaw beds on water plant property. This process utilizes the natural winter/summer cycle to freeze and then evaporate the entrained water. Following its acquisition of the System from the City, the Board took over the implementation of this project and completed the facilities in 2004.

Water Distribution System and Unaccounted-for Water

The distribution system consists of approximately 260 miles of various diameter water mains, 2,287 fire hydrants, over 5,000 valves, two elevated water storage tanks and over 19,000 metered services. The distribution system is a single pressure system. The Water System services the City and several “out-of-town” customers adjoining the City. The Water System also has two major inter-municipal interconnections with the Niagara County Water District that allow for the purchase/sale of water in either direction for emergency or shut down maintenance events.

Treated water is pumped from the water treatment plant to the Water System’s 260 miles of pipe and also to the 56th Street elevated water storage tank that has a capacity of 2 million gallons (“mg”). The elevated tank provides added reliability to the Water System, as it will transparently pick up full system demand if the high-lift pump station is shutdown. A second 2 mg elevated storage tank at Beech Avenue is currently shut down and isolated from the Water System. This facility has been used to generate revenues through the lease of space for cellular antennas. The distribution system is constructed primarily of unlined cast iron piping varying in size from 6 inch to 30 inch. The following tables provide information on the water mains and the approximate age of the pipes comprising the water distribution system:

Water Distribution System Piping

<u>Water Main</u>	<u>Material Type</u>	<u>Length (ft)</u>
6-inch	PVC ¹	1,500
8-inch	PVC	2,610
10-inch	PVC	700
12-inch	Asbestos Cement	5,500
20-inch	Cast/Ductile Iron	7,800
24-inch	RCPP	5,600
30-inch	RCPP	13,370
36-inch	RCPP	16,810
42-inch	RCPP	7,850
2-inch	Cast/Ductile Iron	700
4-inch	Cast/Ductile Iron	95,030
6-inch	Cast/Ductile Iron	596,540
8-inch	Cast/Ductile Iron	239,680
10-inch	Cast/Ductile Iron	121,455
12-inch	Cast/Ductile Iron	102,045
14-inch	HDPE	6,540
16-inch	Cast/Ductile Iron	59,660
20-inch	Cast/Ductile Iron	46,730
24-inch	Cast/Ductile Iron	26,230
30-inch	Cast/Ductile Iron	<u>9,060</u>
	Total:	1,365,410

¹ PVC refers to polyvinyl chloride pipe, RCPP refers to reinforced concrete pressure pipe, and HDPE refers to high density polyethylene pipe.

***Niagara Falls Water Distribution System
Approximate Age of Pipe***

<u>Age</u>	<u>Feet</u>	<u>Percent</u>
1890-1910	65,802	5%
1911-1930	515,179	38
1931-1950	288,940	21
1951-1970	251,682	18
1971-1990	144,121	11
1991-2021	<u>101,772</u>	<u>7</u>
Total	1,367,496	100%

The distribution system as a whole has had normal maintenance needs. However, individual components of the distribution system have experienced a history of leaks or breaks, thereby contributing to a percentage of unaccounted-for water above industry standards. Funds are included in the CIP for main replacement/relining to help address this issue.

The determination of unaccounted-for water takes into account losses from unmetered municipal uses, main breaks, leakage and other factors. Over the past ten years, unaccounted-for water has been approximately 68 percent, a percentage that is greater than many water utilities. The Board actively searches to identify and repair leaks.

The Water System currently receives approximately 1.6 megawatts of low-cost hydropower from National Grid, which is made available through the New York State Power Authority (“NYPA”). This low-cost hydropower is one factor that allows the Water System to have a low unit cost of water production. The agreement to provide the low-cost hydropower has been extended through December 31, 2028.

Water System Staffing

The Water Facilities Division has seven (7) sections as indicated below:

Water System Staffing

<u>Section</u>	<u>Staff Positions</u>
Laboratory	2.0
Information Technology	2.0
Engineering	3.0
Purification Operations	7.0
Inside Water Maintenance	8.0
Outside Water Maintenance	10.0
Meter Shop	<u>5.0</u>
Total Water System Staff	<u>37.0</u>

The Feasibility Consultant has concluded that the Water Facilities Division is adequately staffed and key management personnel have the qualifications and experience commensurate with their responsibilities. See “APPENDIX A – FEASIBILITY REPORT” attached hereto for further information.

Water System Customer Base

The Water System currently serves a population of approximately 48,671 according to the 2020 U.S. Census. This includes approximately 18,810 residential, industrial, commercial and government accounts. The following table illustrates the recent trends in water consumption as well as the distribution of water sales by customer class:

Water Demand, Revenue and Account Information by Customer Class

<u>Class of Customer</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Unaudited 2021</u>
Residential/Commercial					
Consumption (CCF)	1,272,267	1,299,934	1,252,451	1,236,314	1,240,942
Number of Accounts	17,835	17,917	17,944	17,920	17,880
Revenues	\$ 4,822,853	\$ 5,120,518	\$ 4,985,808	\$ 4,981,737	\$ 5,167,139
Industrial					
Consumption (CCF)	852,457	926,684	912,621	887,571	966,867
Number of Accounts	261	245	245	258	256
Revenues	\$ 2,327,816	\$ 2,722,250	\$ 2,597,846	\$ 2,358,805	\$ 2,797,914
Significant Industrial					
Consumption (CCF)	971,721	876,822	890,139	930,712	1,115,955
Number of Accounts	23	24	22	23	23
Revenues	\$ 2,166,094	\$ 2,238,898	\$ 2,067,362	\$ 2,219,211	\$ 2,790,450
Non-Resident Users					
Consumption (CCF)	3,586	2,605	1,747	2,478	1,784
Number of Accounts	27	27	26	26	26
Revenues	\$ 30,912	\$ 22,467	\$ 22,232	\$ 30,633	\$ 42,265
Total					
Consumption (CCF)	3,100,031	3,106,045	3,056,958	3,057,075	3,325,548
Number of Accounts	18,146	18,213	18,237	18,227	18,185
Revenues	9,347,675	10,104,133	9,673,248	9,590,386	10,797,768
Plus: Other Departmental	1,497,008	1,450,379	1,921,647	1,351,427	1,193,950
Less: Adjustments	<u>(304,026)</u>	<u>(25,013)</u>	<u>(10,629)</u>	<u>(1,124)</u>	=
Total Departmental Revenue	<u>\$10,540,657</u>	<u>\$11,529,499</u>	<u>\$11,584,266</u>	<u>\$10,940,689</u>	<u>\$11,991,718</u>

The System’s ten largest customers during 2020 in terms of total revenues are listed below.

Ten Largest Water and Wastewater Customers

<u>Name</u>	<u>12/31/2020 Revenue</u>	<u>% of Total</u>	<u>12/31/2021 Revenue</u>
Norampac/Cascades #50	\$ 6,350,172	49.39%	\$ 8,803,359
Niacet Corporation #17	1,022,031	7.95	938,121
Covanta Niagara, LP #32	860,857	6.70	795,695
Town of Niagara	792,882	6.17	608,627
Occidental Chemical #22	786,923	6.12	808,092
Olin Corp	737,342	5.73	717,976
Seneca NF Gaming - Hotel	702,441	5.46	858,220
Olin Corp #23	595,761	4.63	717,976
Goodyear Tire & Rubber Co.	373,510	2.90	344,373
Seneca Niagara Gaming	<u>635,660</u>	<u>4.94</u>	<u>292,263</u>
	<u>\$12,857,579</u>	<u>100.00%</u>	<u>\$14,884,702</u>

Overall water sales to customers of the System decreased approximately 5% from 2016 to 2020 with two years seeing little to no change from the prior year (2018, 2020) and two years seeing reductions of 3.6% and 1.6% (2017 and 2019, respectively). As far as billing categories, water use for Residential users declined 8% from 2016 to 2020, while industrial use increased 10.4%, SIUs decreased 12.6%; and Non-Resident decreased 49.2% over the same time period. It is projected that consumption for both industrial and significant industrial users have increased 8.9% and 19.9%, respectively as of December 31, 2021.

The population of the City has declined in recent decades. For information regarding population trends, see “ECONOMIC AND DEMOGRAPHIC DATA” herein.

In response to the decline in the customer base, stringent cost controls have yielded significant expenditure controls in recent years. The Board has cellular antenna lease agreements for cell towers at its two elevated water storage tanks. This currently generates revenue of approximately \$230,000 per year.

The Wastewater System

Facilities and Collection

The facilities of the Wastewater System include a wastewater treatment plant (“WWTP”), 8 pumping stations, over 255 miles of combined and separate sanitary sewer lines and 6 combined sewer overflow points. The Wastewater System uses a collection system of lateral, collection and trunk sewers that convey wastewater to the WWTP. The majority of the service area utilizes combined sewers that carry both wastewater and storm water in one pipe. Pipe sizes range from 8 inches to 72 inches in diameter. The Wastewater System includes approximately 15 miles of large conveyance structures ranging in size from 36 inches to 32 feet in diameter.

The eastern portion of the City has a separated sanitary system and storm sewer system. This portion of the Wastewater System uses pumps to alleviate sanitary sewer overflows that occur during certain wet weather events. This procedure complies with the terms of the Board’s permit from the DEC. The pumping stations of the Board are listed in the following table:

Pump Station and Bypass Station Capacities

<u>Lift Station</u>	<u>Location</u>	<u>Approximate Capacity (MGD)</u>
Gorge	Gorge Pump Station Site	19.5
LS-1	Stephenson & 81 st Streets	4.3
LS-2	Griffon Avenue	1.0
LS-3	Buffalo Avenue & 56 th Street	1.7
LS-4	91 st Street & Luick Avenue	1.7
LS-6	81 st Street & Frontier Avenue	4.3
LS-7	Boiler Avenue & Military Road	0.8
LS-8	101 st Street	1.0
BPS-1	Cayuga Drive & South Military Road	2.9
BPS-2	West Rivershore Drive	1.0

Like most urban systems of its age with combined storm water and sanitary sewer systems, the Wastewater System has incurred problems with infiltration whereby storm water and ground water enter the pipes devoted to wastewater. This has resulted in added treatment expense. The CIP is currently funding an aggressive rehabilitation program of the Wastewater Treatment Facility.

Like the Water System, the Wastewater System obtains low-cost hydropower from National Grid, which is made available through NYPA. In the case of the Wastewater System, this amounts to approximately 1.869 megawatts per year. The agreement to provide low-cost hydropower has been extended through December 31, 2028.

Treatment Plant

The WWTP has a design capacity of 48 mgd, serves an area of 16 square miles and constitutes the largest municipal physical-chemical treatment plant in the United States. The WWTP began operations in 1977. The industrial nature of the City’s wastewater prompted the choice of the physical-chemical treatment methodology. The following table shows average daily flow from 2016 through 2021:

<u>Year</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Flow (MGD)	29.28	26.30	26.78	24.10	24.24

The WWTP contains several steps in the treatment process. A blend of industrial and municipal wastewater together with infiltration and storm water inflow enters the plant, passes through mechanically cleaned bar screens, and undergoes chemically-assisted sedimentation in rectangular basins. The wastewater then undergoes activated carbon treatment that provides physical filtration and chemical absorption. After chlorine disinfection, the effluent mixes with non-contact industrial cooling water (via the Diversion Sewer) and discharges to the Niagara River.

The WWTP produces certain residual products that form a sludge. After thickening and dewatering, the sludge cake is stabilized with lime and transported by a private contractor to a sanitary landfill. The WWTP generated 17.1 dry tons/day (59.35 wet tons/day) of sludge in 2021.

The major components of the WWTP have experienced normal maintenance requirements. However, a facility rehabilitation program, funded by the CIP, is also ongoing to repair and replace major components of the 44 year old plant. Phase III of the program was completed in 2017. Another facility improvement project completed during 2016 and 2017 was the replacement and upgrading of various equipment to accomplish energy and process improvements. This work was funded through a program offered by the NYPA. The cost of the improvements will be repaid to NYPA over a ten year period that commenced in 2017.

Projects were developed for Phase IV of the program to address the consent order received from the NYSDEC in 2018 due to a violation of the SPDES permit at the WWTP. Grant funding (50% match) was obtained to assist with the design and construction of the Phase IV projects. Design work began in 2019 and construction has been ongoing in 2021. These measures directly address concerns raised by the Feasibility Consultant.

The Feasibility Consultant has concluded that (i) the WWTP consistently meets the requirements of its discharge permit, (ii) has sufficient capacity to handle incoming wastewater flows and (iii) is well maintained and has had maintenance programs in place for many years.

Wastewater System Staffing

The Wastewater Facilities Division has six (6) sections as indicated below:

Wastewater System Staffing

<u>Section</u>	<u>Staff Positions</u>
Monitoring and Compliance	4.0
Analytical Services	3.0
Sewer Collection System Maintenance ¹	11.0
Administrative/Technical	2.0
Plant Operations	17.0
Plant Maintenance	<u>15.0</u>
Total Wastewater System Staff	<u>52.0</u>

(1) Includes sanitary sewers, combined sewers, and storm sewers. Positions for stormwater maintenance were paid for through the City's General Fund, prior to acquisition of the System by the Board.

The Feasibility Consultant has concluded that the Wastewater Facilities Division is adequately staffed and key management personnel have the qualifications and experience commensurate with their responsibilities. See "FINANCIAL INFORMATION - Conclusions of Feasibility Consultant" herein.

Wastewater System Customer Base

The Wastewater System serves the City and, through a mutual services agreement, limited portions of the Town of Niagara. The Wastewater System serves a population of approximately 47,136 according to the 2020 U.S. Census. The following table shows consumption and revenue information by category of customer.

Wastewater Revenue and Account Information by Customer Class

<u>Class of Customer</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Unaudited 2021</u>
Residential/Commercial					
Consumption (CCF)	1,272,267	1,299,934	1,252,451	1,236,314	1,240,942
Number of Accounts	17,835	17,917	17,918	17,920	17,880
Revenues	\$ 6,406,907	\$ 6,693,730	\$ 6,613,490	\$ 6,631,300	\$ 6,876,161
Industrial					
Consumption (CCF)	852,457	926,684	912,621	887,571	966,867
Number of Accounts	261	245	244	258	256
Revenues	\$ 3,487,388	\$ 4,197,516	\$ 3,879,443	\$ 3,165,994	\$ 3,752,813
Significant Industrial Users (SIU)					
Consumption (CCF)	971,721	876,822	890,139	930,712	1,115,955
Number of Accounts	23	24	23	23	23
Revenues	\$ 8,680,470	\$ 8,379,467	\$ 7,917,883	\$10,811,521	\$12,735,281
Totals					
Consumption (100 CF)	3,096,445	3,103,440	3,055,211	3,054,597	3,323,764
Number of Accounts	18,119	18,186	18,185	18,201	18,159
Revenues	\$ 18,574,765	\$ 19,270,713	\$18,410,816	\$ 20,608,815	\$ 23,364,255
Plus: Other Departmental Revenues	\$ 1,036,764	\$ 1,188,385	\$ 1,374,123	\$ 396,687	\$ 940,727
Less: Adjustments	<u>(\$ 169,020)</u>	<u>(\$ 44,948)</u>	<u>(\$ -)</u>	<u>(\$ -)</u>	<u>(\$ -)</u>
Total Departmental Revenue²	<u>\$19,442,509</u>	<u>\$20,414,150</u>	<u>\$19,784,939</u>	<u>\$21,005,502</u>	<u>\$24,304,982</u>

* Non-Resident Users are only water supplied, no wastewater activity was recorded in the year listed above.

The Wastewater System’s ten largest customers during 2020 in terms of total revenues are listed in the table below

Ten Largest Wastewater Customers

<u>Name</u>	<u>12/31/2020 Revenue</u>	<u>% of Total</u>	<u>12/31/2021 Revenue</u>
Norampac/Cascades #50	\$ 5,786,198	54.95%	\$ 8,177,460
Niacet Corporation #17	803,295	7.63	704,896
Town of Niagara	792,882	7.53	608,627
Covanta Niagara, LP #32	734,622	6.98	665,792
Occidental Chemical #22	622,814	5.91	629,900
Seneca NF Gaming - Hotel	468,648	4.45	571,910
Olin Corp #23	441,234	4.19	557,655
Goodyear Tire & Rubber Co.	298,257	2.83	249,029
Allied Waste	293,056	2.78	198,396
Durez Corporation	<u>288,599</u>	<u>2.74</u>	<u>246,143</u>
	<u>\$10,529,605</u>	<u>100.00%</u>	<u>\$12,609,808</u>

The Wastewater System has lost a number of its largest customers in recent years. In addition, conservation efforts by industrial users and the installation of pretreatment systems have contributed to the loss of industrial usage.

In response to the decline in the industrial sector and the associated revenue loss, the City prior to September 2003 and the Board thereafter have undertaken several cost savings measures with regard to the Wastewater System’s facilities operations and maintenance. One such measure deals with staffing. The Wastewater Facilities Division has reduced staff levels significantly since 2000. The 2022 budget has 102 positions for the Water Facilities Division and the Wastewater Facilities Division. By comparison, the staffing level in 2000 was 168. As a matter of policy, the Board undertakes an exhaustive review prior to filling vacant positions. The Board has reduced staffing costs through attrition and a decreased cost structure for new employees.

Capital Improvement Program

The Board has the obligation to adopt and implement a CIP for the System. The CIP is presented in “APPENDIX A – FEASIBILITY REPORT” attached hereto.

It is anticipated that the CIP will be funded from (i) existing monies in the Construction Fund; (ii) proceeds of anticipated future bonds issued by the Authority; (iii) proceeds from the NYPA payment; and (iv) surplus funds generated in each year. Significant additional improvements to the wastewater treatment plant will be required both within and beyond the 2022-2026 projection period.

The Feasibility Consultant has concluded that the CIP is reasonable and will help ensure that high quality water and wastewater services are delivered to customers in a reliable manner. For additional information regarding the System CIP and the Feasibility Consultant’s assessment thereof, see “APPENDIX A – FEASIBILITY REPORT” attached hereto.

Regulatory Matters

Water Quality – The New York State Department of Health (“DOH”) is the primary regulating agency for water systems and has jurisdiction over the Water System. The DOH, acting through its Bureau of Water Supply Protection, regulates water quality, water treatment, water facilities construction and water system operations. The DOH enforces regulations promulgated under the State Sanitary Code and has also been granted primary enforcement authority by the United States Environmental Protection Agency (“EPA”) with regard to federal standards set forth in the Safe Drinking Water Act and its amendments. The Water System currently meets or exceeds DOH and EPA water quality standards.

The recently-enacted Interim Enhanced Surface Water Treatment Rule will require that the Water System be monitored for pathogens, including arsenic. Such monitoring is not expected to have a significant impact on operations.

Water Supply – The New York State Department of Environmental Conservation (the “DEC”) regulates the withdrawal of water from the Niagara River. The Water System has a water supply permit from the DEC for up to 60 mgd of water from the Niagara River for drinking water purposes. The Water System is in full compliance with the permit conditions and has never violated a state established maximum contaminant level.

The Water System’s two main permits include a water supply permit and a State Pollutant Discharge Elimination System (“SPDES”) permit, both issued by the DEC. The water supply permit allows the withdrawal of up to 60 mgd of water from the Niagara River and has no stated expiration date. The SPDES permit authorizes the Water Facilities Division to discharge certain byproducts of the water treatment process and the current five-year permit will be in effect through January 31, 2023.

Wastewater – The Wastewater System operates under a State Pollutant Discharge Elimination System (“SPDES”) permit issued by the DEC under authority granted to the DEC by the EPA. This permit allows the WWTP to discharge effluent into the lower Niagara River. The NFWB’s five-year permit was renewed effective November 1, 2013, and expired October 31, 2018. It has been administratively renewed since that time. Renewal materials were submitted by the NFWB in 2018, 2019, and 2021; and the facility’s SPDES permit is currently being reviewed by the NYSDEC. The NYSDEC is expected to issue a new permit in the next several years, and it is not known at this time if there will be any significant changes to limits which would require capital projects or alter operating expenses. In the last four years (2018–2021) the Wastewater System has reported one permit excursion as a result of an unexplained anomaly in the analysis of a single trace organic compound. Other than this one minor event, the Wastewater System has been in full compliance with the terms of its SPDES permit. The SPDES permit comprises the only significant permit required by the Wastewater System.

In the opinions of management and Consulting Engineer AECOM, the CIP is reasonable and will help ensure that quality water and wastewater services are provided to customers in a reliable manner. However, there remain unanswered questions regarding the need for other capital expenditures depending on the potential outcome of the facility’s SPDES permit and the potential

conversion of the existing wastewater treatment plant from a physical chemical (activated carbon) treatment facility to a biological (activated sludge) treatment plant.

Updated CIP Approved in 2019

The Board and the Authority have the responsibility to adopt and implement the CIP for the System. The CIP was last formally approved by the Board on May 20, 2019, but the CIP continues to be updated by staff and reviewed by the Board on a regular basis. The Board is expected to review and formally to approve the latest updated CIP during the first quarter of 2022. The amounts presented include an allowance for inflation. The Board will continue to periodically review and update the CIP.

On a System-wide basis, the CIP includes provisions for the implementation of new technology which is primarily focused on the monitoring and control of water and wastewater facilities. Such technology will enable Board personnel to continue to attempt to operate more efficiently and effectively. The past improvements have allowed for some significant reductions in personnel. While further improvements may provide the opportunity for additional minor staff reductions, the future improvements may allow for more efficient use of utilities, reduce water system loss and overall better system management. Funds are also included each year for the replacement of Board vehicles.

The CIP for the Water System is focused primarily on distribution system improvements to enhance overall water quality, system reliability and reduce water loss, including water main, hydrant and large valve replacement programs. In addition, the recently completed meter replacement program has become an important part of reducing the cost of reading meters and replacement of older faulty meters.

In the Water Distribution System, the CIP includes funds for twenty-one (21) specific water distribution main replacement projects, continued replacement of large valves and hydrants, continued leak detection & distribution system modeling to reduce leakage rates, and funding for unplanned system repairs. The specific areas identified for replacement have been prioritized based on factors such as the history of main breaks, known areas of leakage, the need to upgrade the size or materials of the main and other factors. The continued implementation of a water main replacement program should, over time, reduce the level of unaccounted-for water in the Water System.

The improvements in the Wastewater System represent the larger share of the budgeted funds, with the continued upgrades at the wastewater plant consuming the greatest amount of the planned investments. Investments in pumping stations, tunnels/interceptors and the collection system also will continue.

The largest investments provided for in the CIP are for WWTP improvements. Completion of the flood mitigation measures that were necessary following the July 2013 flooding event at the WWTP occurred in 2017. Four (4) new main pumps, motors, and drives were installed including all new SCADA controls for both the main pumps and the intermediate pumps.

The Phase III WWTP upgrades (\$5.4 million) were completed in 2017. Phase III work included:

- Continued replacement of carbon filtration mechanical equipment,
- Replacing underdrain support gravel and minor internal repairs in 23 of 28 filters,
- Replacement of the granular activated carbon in 8 of 28 filters, which is in addition to the 5 filters where carbon is being replaced in 2016 through routine operation and maintenance planning,
- Sedimentation Basin 1 replacement of traveling bridge with chain and flight scraper system (prototype for eventual conversion of all basins to chain and flight scraper system, described below as Phase IV Project 1),
- Polymer feed and transfer pumps replacement for polymer feed to both the sedimentation basins and the belt filter presses.
- Plant water pumps, motors, and VFD replacement.
- Sludge blanket detectors in the gravity thickeners to improve thickener operation.
- Miscellaneous heating and ventilation system improvements in the Sludge and Pump Buildings.
- Minor grit piping improvements.
- Exterior door replacement.
- Additional process monitoring instrumentation.

The WWTP Energy Efficiency Project that was funded by NYPA with incentives from National Grid was completed in 2017. The \$2.2 million project included:

- Remove inoperable paddle flocculators in all five (5) sedimentation basins and replace with curtain baffles that promote flocculation with no required energy input.
- Relocate/replace polymer addition piping in the five (5) sedimentation basins.
- Replace heating and ventilation equipment utilizing electric heat with new units fired with natural gas.
- Install new gas fired infrared heaters in the outside sewer garage.
- Rebuild the primary sedimentation basin sludge and grit pump motor controls (17 pumps) to enable SCADA control of this equipment.
- Rebuild the primary sedimentation basin sludge screws motor controls to enable SCADA control of this equipment.
- Miscellaneous lighting upgrades to reduce electricity consumption and improve lighting.

Design work for Phase IV WWTP upgrades was started in 2019 and completed in 2021. Construction began in 2020 and is currently ongoing. Phase IV work includes:

Project No.1 - Sedimentation Basins and Scum Collection System Modification

- Demolition of the existing DAF system and scum wet well mixer.
- Cleaning of existing scum wells and scum transport pipes.

- Supply and installation of a new wedge-wire fine drum screen system and controls.
- Supply and installation of two new scum pumps and level-based controls.
- Supply and installation of a new sump pump in the scum pump dry well.
- Supply and installation of a pumped scum wet well mixing system to maintain scum consistency.
- Supply and installation of a new hot water heater.
- Completion of general improvements to isolate acid mixer area.
- Scum Building heating and ventilation improvements.
- Sedimentation basin concrete tank spall and crack repairs
- Resealing of expansion joints between sedimentation basins.
- Grit screw drive, sludge screw drive, and flocculation chain and flight drive replacements on all five (5) sedimentation basins.
- Grit screw and sludge screw replacements on four (4) sedimentation basins.
- Remote monitoring of flocculation chain and flight tilt poles.
- Automatic shutdown and alarm generation upon loss of signal to flocculation chain and flight motors.
- Modify scum pipe handrail and incorporate a fall prevention system.

Project No.2 - Gorge Pump Station Rehabilitation

- Three (3) new 600 hp pumps with new motors and drives.
- Replacement of grinders in approach channel.
- Wet Well Heating and Ventilation Improvements.
- Wet Well and Overflow Channel Lighting Improvements.
- Wet Well Sluice Gate Replacements.
- Upper Building Interior Wall Stabilization.
- Falls Street Tunnel CSO closure that included replacement of weir structures within the Gorge Pump Station overflow channels, removal and replacement of timbers in the Parshall Flume stop log structure, enlargement of the two existing bulkhead orifices from 2.5 feet wide by 1 foot high to 2.5 feet wide by 4 feet high, installation of new slotted stainless-steel orifice covers and removal of the no-longer-needed Outfall 003 sampler and bubbler instrumentation cabinets.

Project No.3 - Screenings and Grit Transport Equipment Improvements, Polymer Equipment Upgrades, and Dewatering Equipment Control Upgrades

- Removal of existing screenings belt conveyor, polymer equipment and systems, dewatering control panels, and other equipment, materials, systems, and appurtenances.
- New screenings belt conveyor, grit screw conveyor, sedimentation basin no. 5 polymer feed pump and variable frequency drive, and dry polymer mixing systems.
- Dewatering system controls improvements.
- Structural improvements, including new structural supports for new polymer equipment and concrete slab infills, new dewatering system control room, and appurtenant systems.
- Associated Work, such as demolition, concrete, metals, finishing, signage, mechanical/piping, and other required construction associated with the Project.
- Electrical demolition Work, including removing existing electrical systems associated with existing belt conveyor, polymer, and belt filter press and appurtenant systems.

- Providing electrical Work for the new belt conveyor and screw conveyor, polymer systems, dewatering controls systems, and other Work shown and specified.

Project No.4 - Granular Activated Carbon and Carbon Support Gravel Replacement

- Replacement of carbon from within approximately 30 percent to 40 percent of the carbon filters.
- Support gravel within five filters (Filter Nos. 3, 4, 12, 13, and 26).

Project No.5 - Electrical Systems Improvements

- Electrical Assessment of High Voltage System, power centers and transformers.
- Repairs to (20) defective 480-volt circuit breakers.
- Installation of (3) 15,000-volt vacuum breakers for the main substation.
- Replacement of electrical tie buss breakers in power centers 2 and 5.
- Integration of the switchyard relays into the existing SCADA system.
- Replacement of transformers at five (5) power centers.
- Replacement of stone and grounding grid at electrical substation.
- Lightning protection system for plant rooftops and equipment.
- Retrofit of the spare 480-volt breakers draw-out circuit breakers with a new electronic trip unit.

Project No.6 - Effluent Disinfection

- Installation of a new sodium hypochlorite feedline from the Odor Control Building to the chlorine contact tank.
- Installation of new sodium hypochlorite feed pumps and control panel.

Project No.7 - HVAC Improvements

- Former vacuum pump room HVAC improvements.
- Belt filter press roof exhaust fan improvements.
- Carbon storage area ventilation improvements.
- Main pump building and wet well ventilation improvements.
- Headworks area heating and ventilation improvements.

Project No.8 - Backwash Blower and Piping

- Removal and replacement of the existing blower with a new blower and ancillary equipment.

Project No.9 - Interior Piping Improvements

- Removal and replacement of existing city water piping, including the installation, maintenance and removal of a temporary city water bypass system, and handling and disposal of hazardous materials.
- Removal and replacement of existing plant water line, including the installation, maintenance and removal of a temporary waterline bypass system, and reestablishment of waterline connections.
- Removal and replacement of spent carbon flush assemblies.

Project No.10 - SCADA Improvements

- Improvements to the existing SCADA system for the new WWTP equipment.

Project No.11 - Exterior Piping Improvements

- Removal of a portion of existing sludge lines and the installation of new sludge lines from the Sludge Building to the Thickened Sludge Pump Building (TSPB).
- Replacement of the north gravity thickener drain line valve.
- Removal and replacement of existing plug valves in the TSPB.
- Installation of a new drainpipe and manholes for sedimentation basin no. 5.
- Installation of a new casing pipe and poly tubing for sodium hypochlorite transport to the scum building.
- Installation of a new city water pipe from the Pump Gallery to the Scum Building.

The CIP also addresses a DEC Order on Consent involving the Sanitary Sewer Overflow (SSO) abatement in the LaSalle portion of the sewer collection system. The utility is presently in year 11 of an 18-year DEC approved plan aimed at the abatement of the SSO bypassing during moderate to strong wet weather events. Measures being undertaken as part of the plan include sewer main cleaning, excavations for spot repairs, cured-in-place pipe, leaky joint repairs, cross connection elimination, root control, manhole rehabilitation, and pipe grouting. Annual reports on activities and achievements are prepared and submitted to the DEC as required. Discussions between the NFWB and the DEC in the past two years regarding the LaSalle SSO program will likely lead to a new approach for addressing SSO abatement in the LaSalle portion of the City. Discussions with the DEC are ongoing and a revision to the LaSalle SSO Order on Consent is expected in 2022. The Board anticipates that the revision will specify more effective projects at a cost similar to the projects required under the current version of the LaSalle SSO Order on Consent.

The Storm Water System

The eastern section of the City and sections of downtown are served by dedicated storm water drainage systems, distinct from the combined sewage collection system. The Wastewater Facilities Division maintains the storm sewers, combined sewers, sanitary sewers and lift stations. There are multiple storm water outfalls into Cayuga Creek, the Little Niagara River and the Niagara River.

The Niagara Falls Water Board has been identified by the DEC as a nontraditional Municipal Separate Storm Sewer System (MS4) owner. As such, it is responsible for implementing 3.5 of the six minimum control measures. It does so under SPDES permit NYR20A094. The City of Niagara Falls, New York, who retains authority over land use through planning, zoning and inspections, remains responsible for implementing the other 2.5 measures. Annual reports on program goals and achievements are prepared and submitted to the DEC as required.

FINANCIAL OPERATIONS

Financial Overview

Historical Financial Performance

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Unaudited 2021</u>	
1	Receipts from customers	\$30,701,932	\$31,090,867	\$30,427,792	\$32,526,018	\$36,190,274
3	Interest earnings	459,709	647,827	1,163,345	644,697	445,245
4	Proceed from sales of assets	11,039	8,783	290,485	308,397	82,744
5	Total cash receipts available for debt service	\$31,172,680	\$31,756,727	\$31,881,622	\$33,479,112	\$36,718,263
7	Payments to employees	10,839,241	11,592,392	11,517,253	11,915,979	11,717,344
8	Payments to suppliers	8,686,164	9,418,908	10,191,194	12,620,781	12,457,200
9	Total operating expenses (excluding PILOT payment)	\$19,525,405	\$21,011,300	\$21,708,447	\$24,536,760	\$24,174,544
10	Cash available for debt service (line 5 - line 9)	\$ 11,647,275	\$ 10,735,427	\$10,173,175	\$8,942,352	\$ 12,543,719
11	Interest payment	3,170,188	3,419,231	3,119,649	3,225,126	2,704,844
12	Principal payment	3,780,000	3,915,000	4,269,607	4,332,897	4,485,326
13	Total debt service	\$ 6,950,188	\$ 7,334,231	\$ 7,389,256	\$ 7,558,023	\$ 7,190,170
14	Surplus (line 10 - line 13)	\$4,697,087	\$3,401,196	\$2,783,919	\$ 1,384,329	\$ 5,353,549
16	Debt service coverage (Line 10 /Line 13)	1.68x	1.46x	1.38x	1.18x	1.74x

Fiscal Year 2020 results show that on a combined water and wastewater basis, total receipts increased by approximately 7% over 2019 while total expenditures increased by approximately 13% from 2019 resulting in decrease in Cash available for debt service of approximately 12%. Cash available for debt service still remains sufficient to meet both the Authority's Parity and total obligations with debt service coverage on Parity and total obligations of at least 1.38x and 1.18x, respectively, since Fiscal Year 2018. Rising costs, especially chemicals, have resulted in higher-than-expected expenses. This has been offset in the 2022 budget by increasing rates 16.9%.

Revenues

Over the past six years, water and sewer rate increases have been as follows:

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Water Rate Increase	0.00%	2.40%	2.00%	0.0%	2.99%
Sewer Rate Increase	0.00%	2.40%	2.00%	0.0%	2.99%

For the current year (2022), the Board has enacted a 16.9% rate increase for both water and sewer rates.

Billing and Collection

All but a limited number of water and sewer customers are billed quarterly based on actual or estimated meter reads. Significant industrial users are billed monthly based on two estimated months followed by an actual meter read in the third month.

Customers of the Board can pay their water and sewer bills online at the Board's website, to a lockbox at a local bank, or to the City of Niagara Falls Billing and Collection Department at City Hall. All revenues, including those collected by the City, are put immediately into the Board's depository account of the Local Water Fund. The City collects on delinquent accounts; in particular, any unpaid balances that remain as of November 21 of each year create a lien on the property and are added to the next year's City tax bill. These liens then become due and payable with the tax collection. The City collects the funds, reconciles the tax roll and water/sewer liens and disburses a check to the Board in July and the following January for the two collection periods. These amounts are reconciled to the Board's records for verification of the receipts.

In 2015 the Board completed a meter replacement program for all CSIRU customers. The Board made meter replacement a major priority, since it last replaced meters in 1990 and the old meters had reached the end of their expected useful service life. The advantages of electronic meter reading include having a real-time measure of actual use, taking a fraction of the time, eliminating the need to access a customer's property, minimizing worker's compensation injuries from weather conditions or animals, and detecting continuous water leaks.

The following table presents financial information of the System:

	Water & Sewer Billings and Cash Collections - Historical ¹				
<u>FYE 12/31</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Service Billings	\$29,702,412	\$30,512,619	\$29,973,753	\$31,874,002	\$34,048,559
Penalties	360,222	331,107	405,651	430,808	637,524
Invoice Adjustments	<u>473,046</u>	<u>18,045</u>	<u>(67,164)</u>	<u>169,058</u>	<u>953,024</u>
Total Billed	<u>\$30,535,680</u>	<u>\$30,861,771</u>	<u>\$30,312,240</u>	<u>\$32,473,868</u>	<u>\$35,639,107</u>
Total Cash Collections – Billings	29,208,181	29,531,100	28,481,104	31,302,901	32,896,275
Total Cash Collections – Property Tax Bill	<u>1,118,498</u>	<u>1,281,664</u>	<u>1,530,987</u>	<u>1,223,117</u>	<u>1,370,344</u>
Total Collections	<u>\$30,326,679</u>	<u>\$30,812,764</u>	<u>\$30,012,091</u>	<u>\$32,526,018</u>	<u>\$34,266,619</u>
% of Total Cash Collections to Total Billed	99.3%	99.8%	99.0%	100.2%	96.2%

¹ The information set forth in this table represents management's estimates of cash based on billings and collections. These amounts are on the cash basis and are not presented in accordance with Generally Accepted Accounting Principles (GAAP). Any billings for water and sewer service not collected are returned to the City of Niagara Falls for re-levy in the City's subsequent tax levy process.

Other Revenues and Operation and Maintenance Expenses

Other information regarding the System relating to Other Revenues and Operation and Maintenance Expenses is shown in “APPENDIX A – FEASIBILITY REPORT” attached hereto. The Feasibility Consultant has concluded that the projected expense budget is sufficient to properly maintain and operate the System.

Projected Cash Flows and Debt Service Coverage The following table summarizes the projected cash flow, debt service coverage and rate increases of the Authority for the period from Fiscal Year 2022 through Fiscal Year 2025. The Board anticipates that the projected rate increases summarized below will be sufficient to maintain debt service coverage in excess of the Rate Covenant.

Line		Estimated			
		<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
	Revenues				
1	Operating revenues	\$37,233,381	\$38,506,625	\$39,636,174	\$41,187,420
2	Total	37,233,381	38,506,625	39,636,174	41,187,420
	Operations and Maintenance Expenses				
3	Salaries and benefits	11,712,914	12,096,735	12,495,839	12,910,914
4	Chemicals/sludge	12,459,513	12,833,298	13,218,297	13,614,846
5	Insurance/safety	463,427	486,599	510,929	536,475
6	Maintenance	834,835	876,577	920,406	966,426
7	Utilities	2,242,274	2,337,847	2,435,984	2,536,723
8	Other expenses	962,025	1,000,506	1,040,526	1,082,147
9	Equipment	221,633	230,499	239,719	249,307
10	PILOT payment to City	700,000	700,000	700,000	700,000
11	Total	\$29,596,622	\$30,562,061	\$31,561,699	\$32,596,839
12	Revenues available for debt service	\$7,636,759	\$7,944,564	\$8,074,475	\$8,590,581
	Debt Service				
13	Debt service on outstanding bonds	6,379,526	6,734,499	7,004,734	7,232,326
14	Debt service on future Authority bonds	-	-	-	-
15	Total	\$6,379,526	\$6,734,499	\$7,004,734	\$7,232,326
16	Debt Service Coverage (minimum 1.15)	1.20x	1.18x	1.15x	1.19x
17	Actual/Proposed Rate Increase	16.90%	3.0%	3.5%	4.0%

Note: Projected cash flow and rates above are subject to change.

Conclusions of Feasibility Consultant

AECOM, Amherst, New York, and Drescher & Malecki LLP, Buffalo, New York (collectively, the “Feasibility Consultant”) have prepared a Feasibility Report that is included in this Official Statement as Appendix A. The conclusions of the Feasibility Consultant, as stated in the Feasibility Report, are as follows:

The Feasibility Consultant has rated the System facilities “ADEQUATE.” The following sets forth the specific opinions of the Feasibility Consultant:

- The System is currently in adequate condition to support the delivery of water, wastewater and stormwater services and the generation of user revenues.
- The water treatment facilities are in good condition, requiring few modifications during the projection period. The water distribution system is currently in adequate condition overall although the rate of leakage is higher than typical industry averages.
- The wastewater treatment plant (the “WWTP”) is in fair condition overall, but certain components are in poor condition. Phase IV capital improvements are underway and are expected to be completed in 2024. In addition, during the projection period, the wastewater treatment facilities will require routine and non-routine repairs, replacements and improvements as described herein.
- The wastewater collection system is in adequate condition overall, but certain facilities require capital improvements as described herein. Additional capital improvements will be implemented in 2022 and beyond within the wastewater collection system.
- Board staff, including management and operations personnel, are well qualified and effectively organized.
- Through appropriate technology, staffing, tools, and equipment, the Board has operations and maintenance programs that are capable of ensuring the continued effective operation of the System. The System should continue to provide adequate levels of service with minimal disruption.
- The Board is currently in compliance with the conditions of all existing permits, regulations, and other requirements governing safe drinking water standards.
- The Board is currently in compliance with the conditions of all existing permits, regulations, and other requirements governing wastewater treatment facilities, with certain minor exceptions. The Board has two active Orders on Consent pertaining to: Sanitary Sewer Overflow (SSO) abatement in the LaSalle portion of the City and the July 29, 2017 incident that resulted in a dark colored discharge to the Niagara River at Outfall 001. The Board is expected to receive an updated Order for the LaSalle SSO program sometime in 2022, that will replace the schedule of projects required under the prior order, substituting more effective remediation projects with a similar cost for those originally planned. The Board is in full compliance with the terms of the Consent Order pertaining to the July 29, 2017 incident.
- Regarding the July 29, 2017 incident, the Board has undertaken numerous operations, maintenance, and managerial measures to prevent such an event from reoccurring in the future. In addition, the Phase IV capital improvements that are currently underway will improve the reliability and redundancy of the existing treatment facilities.
- One of the outcomes of the July 29, 2017 incident and resulting Consent Order was the performance of pilot scale treatability testing to evaluate the potential for alternative treatment technologies to be employed in place of the existing activated carbon. An engineering report recommended converting the treatment facility to a biological treatment

plant that utilizes an aerobic membrane bioreactor. The report was submitted to and approved by the New York State Department of Environmental Conservation (NYSDEC). The estimated cost of the conversion to a biological treatment facility is \$223 million dollars (2019 20-year net present worth), which is far beyond the financial capability of the Board to fund such a project. At this time, the Board desires to convert the WWTP to a biological treatment facility but must await grant funding to do so. In the meantime, capital projects will be focused on those portions of the plant that would continue to be necessary following the conversion to a biological treatment facility. Anticipating the eventual conversion of the WWTP to a biological treatment facility, other than required maintenance and routine activated carbon changes, capital funds will not be used for any significant capital upgrades to the carbon filters.

- It is anticipated that the Board will fund the CIP through the following sources: existing monies in its Construction Fund; the proceeds of anticipated future bonds issued by the Authority; proceeds from the NYPA payment; and surplus funds generated in each year. Significant additional improvements to the wastewater treatment plant will be required both within and beyond the Projection Period.
- In April 2017, the Board reached a settlement with the collective bargaining agreements of all four of its labor unions. The new agreements will result in substantial savings in healthcare costs for the Board over the next seven (7) years while allowing employees and retirees to retain quality and affordable healthcare benefits. Employees share a modest 20% of costs and the Board contributes to employee Health Savings Plans to help offset costs associated with a high deductible health plan.
- Overall water sales to customers of the System decreased approximately 5% from 2016 to 2020 with two years seeing little to no change from the prior year (2018, 2020) and two years seeing reductions of 3.6% and 1.6% (2017 and 2019, respectively). As far as billing categories, water use for Residential users declined 8% from 2016 to 2020, while industrial use increased 10.4%, SIUs decreased 12.6%; and Non-Resident decreased 49.2% over the same time period. It is projected that consumption for both industrial and significant industrial users have increased 8.9% and 19.9%, respectively as of December 31, 2021.
- Year-to-date cash collections from customer payments are slightly below expectations most likely due to the COVID pandemic. Year-to-date interest earnings are lower than expected. The Board's contractual expenses in 2021 are higher than projected due to rising chemical costs and increased usage. This was offset by an increase in wastewater revenues due to the same increase in usage.
- Based on the year-to-date results, the Board will have to carefully monitor its cash flows during 2022 to ensure that debt service coverage requirements are met. While current projections show the Board will meet debt service coverage requirements for 2022, there are many factors, such as weather and economic conditions, which could affect such projections.
- The Board has increased the rates 16.90% for water and wastewater service in the City of Niagara Falls (the "City") for 2022 as compared to those for 2021. Historical rate increases for the past 10 years are:

<u>Year</u>	<u>Increase</u>
2013	6.00%
2014	2.60
2015	0.00
2016	4.40
2017	0.00
2018	2.40
2019	2.00
2020	0.00
2021	2.99
2022	16.90

The projected increase in rates included in Table 3 of the Feasibility Report are preliminary and subject to change. The future increases in the rates of the Board are dependent upon upcoming Board policy decisions regarding: the size, scope, and timing of the CIP; the use of the remaining monies from the NYPA settlement; and potential reductions in annual operation and maintenance expenses. Future increases in rates are also dependent upon actual experience and future assumptions regarding customer demand as well as other factors. The Board has expressed its interest in minimizing rate increases while at the same time meeting its financial, capital investment and operating obligations. As a result of all of the above considerations, actual increases adopted by the Board may differ from those projected. Additionally:

- Current rates for water and wastewater service are comparable to surrounding service providers.
- The Board is in compliance with the reserve fund requirements of the Resolution, including the required amounts on deposit in the Debt Service Reserve Fund and the Operating Reserve Fund.
- During the analysis of 2021-2025 revenues and revenue requirements, Drescher & Malecki LLP reviewed certain assumptions with respect to conditions, events, and circumstances, which may occur in the future. The firm believes that these assumptions are reasonable and attainable, although actual results will differ from those forecasted as influenced by the conditions, events and circumstances that actually occur.

The Board is projected to comply with all reserve requirements and is projected to meet or exceed the bond coverage requirements of the Resolution, considering the proposed issuance of the 2022 Refunding Bonds, anticipated future bonds, and projected increases in water and wastewater rates.

Other Financial Matters

The Feasibility Consultant has prepared a Feasibility Report that is attached to this Official Statement as Appendix A. The Feasibility Report presents the Feasibility Consultant's independent analysis of the forecasted cash flows of the Authority and the Board for fiscal years 2021 through 2025.

Financial Statements

See “APPENDIX B—AUDITED FINANCIAL STATEMENTS OF THE BOARD” for a copy of the Board’s financial statements as of December 31, 2020, audited by Bonadio & Co., LLP, independent auditors.

Pension Payments

The Board participates in the New York State Employees' Retirement System and the Public Employees' Group Life Insurance Plan (the “Retirement Systems”). These are cost sharing multiple employer retirement systems. The Retirement Systems provide retirement benefits as well as death and disability benefits. Obligations of employers and employees to contribute and benefits to employees are governed by the New York State Retirement and Social Security Law (“NYSRSSL”). As set forth in the NYSRSSL, the Comptroller of the State (“Comptroller”) serves as sole trustee and administrative head of the Retirement Systems. The Comptroller shall adopt and may amend rules and regulations for the administration and transaction of the business of the Retirement Systems and for custody and control of their funds. The Retirement Systems issue a publicly available financial report that includes financial statements and required supplementary information. That report may be obtained by writing to the New York State and Local Retirement Systems, 110 State Street, Albany, New York 12244.

The Systems are noncontributory, except for employees who joined the New York State and Local Employees' Retirement System (“ERS”) after July 27, 1976 who contribute 3% of their salary for the first ten years of membership and employees who join on or after January 1, 2010 and before April 1, 2012 who generally contribute 3% of their salary for the entire length of service. Employees joining after April 1, 2012 are required to contribute between 3% and 6%, depending on their salary, for their entire working career. Under the authority of the NYSRSSL, the Comptroller shall certify annually the rates expressed as proportions of payroll of members, which shall be used in computing the contributions required to be made by employers to the pension accumulation fund. The rates billed by the Comptroller for ERS during the years ended December 31, 2018, 2019 and 2020 ranged from 9.3% to 16.0%. 2021 rates are 9.6% to 16.10%. 2022 rates are to be 10.6% to 18.2%. The required contributions for the years 2018-2022 are based on salaries through March 31 of the prior year, as follows:

<u>Year</u>	<u>Contribution</u>
2022	\$ 725,652
2021	640,535
2020	569,756
2019	556,630
2018	663,616

The Board's contributions made to the Retirement Systems were equal to 100 percent of the contributions required for each year.

Other Post-Employment Benefits

The Board adopted Governmental Accounting Standards Board (“GASB”) Statement No. 75, Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions,

starting with its fiscal year ending December 31, 2017. Statement No. 75 establishes standards for recognizing and measuring liabilities, deferred outflows of resources, deferred inflows of resources, and expense/expenditures related to certain postemployment non-pension benefits (“OPEB”). For defined benefit OPEB, this Statement identifies the methods and assumptions that are required to be used to project benefit payments, discount projected benefit payments to their actuarial present value, and attribute that present value to periods of employee service.

The following table shows the components of the Board’s annual OPEB cost for most recent audited fiscal year, the amount actually contributed to the plan, and changes in the Board’s net OPEB obligation.

Total OPEB Liability Balance at December 31, 2019	\$88,864,058
Changes for the year:	
Service Cost	1,349,028
Interest	1,769,731
Changes in assumptions	5,504,550
Benefit payments	<u>(2,507,223)</u>
Net changes	<u>6,116,086</u>
Balance at December 31, 2020	<u>\$94,980,144</u>

Source: Board’s Audited Financial Statements for Fiscal Year 2020.

Insurance

The Board has covenanted in the Financing Agreement that, so long as any Bonds are outstanding, it will insure or cause to be insured any at or above ground physical structures of the System against loss or damage by fire and such other risks as are generally included in extended coverage insurance, excepting only during the periods and to the extent that the Board or contractors shall carry builders’ risk or other insurance during construction. The policy or policies shall be issued by responsible insurance companies in such reasonable amounts as are usually carried for like properties and as may be recommended by the Consulting Engineer or an independent insurance consultant retained by the Board. The Board further covenants in the Financing Agreement that it will maintain public liability, including bodily injury and property damage insurance, with responsible companies in such amounts as may be recommended by a Consulting Engineer or an independent insurance consultant retained by the Board.

The Financing Agreement provides that the foregoing insurance requirements can be satisfied through Qualified Self Insurance in certain circumstances such as an inability to obtain insurance at a reasonable cost. The Financing Agreement defines Qualified Self Insurance as insurance maintained through a program of self-insurance or, to the extent permitted by law, insurance maintained with an association in which the Board has a material interest or of which the Board has control, either singly or with others.

ECONOMIC AND DEMOGRAPHIC DATA

The following discussion provides certain information regarding the Board's Service Area. Since the Service Area consists primarily of the City of Niagara Falls, the information is limited to that portion of the Service Area that is within the boundaries of the City.

The City is located on the eastern banks of the Niagara River, nearly halfway between Lake Ontario and Lake Erie. The geographical region of the City is called the Niagara Frontier. Due to the location, availability of power, concentration of transportation, climate, historical forces, and human resources, the Niagara Frontier is one of the nation's dynamic economic centers.

The City is approximately 16 square miles, is located 23 miles northwest of the City of Buffalo, New York, and is one of the principal ports of entry into Canada. The City is best known as the location of "Niagara Falls."

Historically, the City has been an important industrial center due to low cost hydroelectric power. In recent years, the City's manufacturing sector has reflected nationwide trends of smaller, light industrial development. This, in turn, has led to a declining population and a weakening in certain socioeconomic indices. Nevertheless, the City remains an important segment of the diversified Niagara Frontier industrial complex.

Major Employers in Niagara Falls Area

<u>City/County</u>	<u>Employer</u>	<u>Employees</u>
County	Niagara Falls Air Reserve Station	3,165
City	Seneca Niagara Casino and Hotel	2,528
City	Fashion Outlets of Niagara	2,027
County	Niagara County	1,425
County	General Motors Components Holdings, LLC	1,400
City	Niagara Falls City School District	1,200
City	Niagara Falls Memorial Medical Center	1,029
County	North Tonawanda City School District	704
County	Niagara County Community College	700
County	Lockport City School District	675

Source: Niagara County Center for Economic Development.

Population

Changes in the City's population as compared to changes in the population of the County, the State and the United States as reported by the US Bureau of the Census are as follows:

	<u>1990</u>	<u>2000</u>	<u>2010</u>	<u>2020</u>	<u>% of Change 2010-2020</u>	<u>% of Change 2000-2010</u>
City of Niagara Falls	61,840	55,593	50,193	48,671	(3.03)%	(9.71)%
Niagara County	220,756	219,846	216,469	212,666	(1.76)	(1.54)
New York State	17,990,455	18,876,457	19,378,102	20,201,249	4.25	2.66
United States	248,709,873	281,421,906	308,745,538	331,449,281	7.35	9.71

Source: U.S. Bureau of Census.

Employment and Unemployment Data

Civilian Labor Force – Annual Average (thousands)

	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
City	21.3	21.1	20.9	20.6	21.2
County	100.3	99.3	98.9	98.2	98.1
State	9,527.0	9,549.0	9,511.2	9,507.1	9,289.2

Yearly Average Unemployment Rates

<u>Year</u>	<u>City (1)</u>	<u>County</u>	<u>State</u>
2016	7.2%	5.8%	4.8%
2017	7.9	6.2	4.7
2018	6.7	5.2	4.1
2019	5.9	5.0	3.8
2020	13.8	10.4	10.0

Source: New York State Department of Labor, Bureau of Labor Statistics, Information not seasonally adjusted (note that "City" refers to the Niagara Falls city, NY Statistical Area).

Monthly Unemployment Rates

<u>Month</u>	<u>City</u>	<u>County</u>	<u>State</u>
October 2021	7.0%	4.6%	5.9%
November 2021	5.9	4.3	5.5
December 2021	4.3	3.5	5.0

Source: New York State Department of Labor, Bureau of Labor Statistics, Information not seasonally adjusted (note that "City" refers to the Niagara Falls city, NY Statistical Area).

Utilities

Sewer and water facilities are furnished by the Board.

Gas and electric services are provided by the National Fuel Corporation and National Grid, respectively.

Transportation

The City is served by the Niagara Falls International Airport and the nearby Buffalo-Niagara International Airport. The City is also served by several railroads, including an international railroad to Canada, Interstate and State highways, and two international bridges to Canada.

Educational, Cultural and Recreational Facilities

Cultural and educational facilities in the immediate area include, among others, the Native American Center for the Living Arts, the Aquarium, Artpark Performing Arts Center, the Aerospace Museum, Niagara Community College and Niagara University. City residents also have easy access to the communities of Buffalo, NY- 23 miles to the south and, Toronto, Ontario - 70 miles northwest of the City.

Fiscal Health of the City

Although the Authority and the Board are separate legal entities from the City, certain fiscal issues facing the City could have certain negative effects on the Authority, the Board and the System.

Fitch Ratings has rated the City a “BBB-“. The City is also rated “Baa1” by Moody’s Investors Service and “BBB+” by S&P Global.

There are three principal potential negative effects on the Authority, the Board and the System. First, as described under “LITIGATION”, the Acquisition Agreement between the City and the Board calls for the City to indemnify the Authority and the Board against certain environmental liabilities. Should the City suffer financial difficulties, there can be no assurance that the City will have sufficient funds to satisfy such obligations, if necessary.

Second, the service area of the Board lies within the City limits. Any fiscal problems of the City could affect the overall economic health of the service area and result in decreased demand for water and sewer services.

Third, the City assists in the collection of delinquent accounts through the lien process described above in “**Billing and Collection**” as well as through the ability of Water Board customers to pay their bill at City Hall. Severe financial distress of the City could potentially interrupt either or both of these activities.

INVESTMENT POLICY

The Authority and the Board have adopted investment guidelines. These guidelines provide that monies held under a bond resolution or similar instrument governing an issue of the Authority's bonds, notes or other obligations (including the Bonds) shall be invested only in the permitted investments specified in such bond resolution or instrument. The investment guidelines of the Authority and the Board also provide that monies of the Board or Authority not held under a bond resolution or similar instrument governing an issue of the Authority's bonds, notes or other obligations shall be deposited in interest-bearing accounts in a bank or banks in the State and, while on deposit, shall be secured by obligations of the United States or the State of a market value equal at all times to the amount on deposit. The investment guidelines further provide that any such monies of the Board or Authority not required for immediate use or disbursement may be invested in those obligations specified pursuant to the provisions of Section 98-a of the State Finance Law.

TAX MATTERS

Taxable Bonds

In the opinion of Bond Counsel, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is not excluded from gross income for federal income tax purposes under Section 103 of the Code. Bond Counsel is of the opinion that interest on the Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York). Bond Counsel expresses no opinion regarding any other tax consequences relating to the ownership or disposition of, or the amount, accrual, or receipt of interest on, the Bonds. The proposed form of opinion of Bond Counsel is contained in Appendix C hereto.

The following discussion summarizes certain U.S. federal income tax considerations generally applicable to U.S. Holders (as defined below) of the Bonds that acquire their Bonds in the initial offering. The discussion below is based upon laws, regulations, rulings, and decisions in effect and available on the date hereof, all of which are subject to change, possibly with retroactive effect. Prospective investors should note that no rulings have been or are expected to be sought from the U.S. Internal Revenue Service (the "IRS") with respect to any of the U.S. federal income tax considerations discussed below, and no assurance can be given that the IRS will not take contrary positions. Further, the following discussion does not deal with U.S. tax consequences applicable to any given investor, nor does it address the U.S. tax considerations applicable to all categories of investors, some of which may be subject to special taxing rules (regardless of whether or not such investors constitute U.S. Holders), such as certain U.S. expatriates, banks, REITs, RICs, insurance companies, tax-exempt organizations, dealers or traders in securities or currencies, partnerships, S corporations, estates and trusts, investors that hold their Bonds as part of a hedge, straddle or an integrated or conversion transaction, investors whose "functional currency" is not the U.S. dollar, or certain taxpayers that are required to prepare certified financial statements or file financial statements with certain regulatory or governmental agencies. Furthermore, it does not address (i) alternative minimum tax consequences, (ii) the net investment income tax imposed under Section 1411 of the Code, or (iii) the indirect effects on persons who hold equity interests in a holder. This summary also does not consider the taxation

of the Bonds under state, local or non-U.S. tax laws. In addition, this summary generally is limited to U.S. tax considerations applicable to investors that acquire their Bonds pursuant to this offering for the issue price that is applicable to such Bonds (i.e., the price at which a substantial amount of the Bonds are sold to the public) and who will hold their Bonds as “capital assets” within the meaning of Section 1221 of the Code. The following discussion does not address tax considerations applicable to any investors in the Bonds other than investors that are U.S. Holders.

As used herein, “U.S. Holder” means a beneficial owner of a Bond that for U.S. federal income tax purposes is an individual citizen or resident of the United States, a corporation or other entity taxable as a corporation created or organized in or under the laws of the United States or any state thereof (including the District of Columbia), an estate the income of which is subject to U.S. federal income taxation regardless of its source or a trust where a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons (as defined in the Code) have the authority to control all substantial decisions of the trust (or a trust that has made a valid election under U.S. Treasury Regulations to be treated as a domestic trust). If a partnership holds Bonds, the tax treatment of such partnership or a partner in such partnership generally will depend upon the status of the partner and upon the activities of the partnership. Partnerships holding Bonds, and partners in such partnerships, should consult their own tax advisors regarding the tax consequences of an investment in the Bonds (including their status as U.S. Holders).

Prospective investors should consult their own tax advisors in determining the U.S. federal, state, local or non-U.S. tax consequences to them from the purchase, ownership and disposition of the Bonds in light of their particular circumstances.

U.S. Holders

Interest. Interest on the Bonds generally will be taxable to a U.S. Holder as ordinary interest income at the time such amounts are accrued or received, in accordance with the U.S. Holder’s method of accounting for U.S. federal income tax purposes.

To the extent that the issue price of any maturity of the Bonds is less than the amount to be paid at maturity of such Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Bonds) by more than a de minimis amount, the difference may constitute original issue discount (“OID”). U.S. Holders of Bonds will be required to include OID in income for U.S. federal income tax purposes as it accrues, in accordance with a constant yield method based on a compounding of interest (which may be before the receipt of cash payments attributable to such income). Under this method, U.S. Holders generally will be required to include in income increasingly greater amounts of OID in successive accrual periods.

Bonds purchased for an amount in excess of the principal amount payable at maturity (or, in some cases, at their earlier call date) will be treated as issued at a premium. A U.S. Holder of a Bond issued at a premium may make an election, applicable to all debt securities purchased at a premium by such U.S. Holder, to amortize such premium, using a constant yield method over the term of such Bond.

Sale or Other Taxable Disposition of the Bonds. Unless a nonrecognition provision of the Code applies, the sale, exchange, redemption, retirement (including pursuant to an offer by the

[Issuer]) or other disposition of a Bond will be a taxable event for U.S. federal income tax purposes. In such event, in general, a U.S. Holder of a Bond will recognize gain or loss equal to the difference between (i) the amount of cash plus the fair market value of property received (except to the extent attributable to accrued but unpaid interest on the Bond, which will be taxed in the manner described above) and (ii) the U.S. Holder's adjusted U.S. federal income tax basis in the Bond (generally, the purchase price paid by the U.S. Holder for the Bond, decreased by any amortized premium, and increased by the amount of any OID previously included in income by such U.S. Holder with respect to such Bond). Any such gain or loss generally will be capital gain or loss. In the case of a non-corporate U.S. Holder of the Bonds, the maximum marginal U.S. federal income tax rate applicable to any such gain will be lower than the maximum marginal U.S. federal income tax rate applicable to ordinary income if such U.S. holder's holding period for the Bonds exceeds one year. The deductibility of capital losses is subject to limitations.

Information Reporting and Backup Withholding. Payments on the Bonds generally will be subject to U.S. information reporting and possibly to "backup withholding." Under Section 3406 of the Code and applicable U.S. Treasury Regulations issued thereunder, a non-corporate U.S. Holder of the Bonds may be subject to backup withholding at the current rate of 24% with respect to "reportable payments," which include interest paid on the Bonds and the gross proceeds of a sale, exchange, redemption, retirement or other disposition of the Bonds. The payor will be required to deduct and withhold the prescribed amounts if (i) the payee fails to furnish a U.S. taxpayer identification number ("TIN") to the payor in the manner required, (ii) the IRS notifies the payor that the TIN furnished by the payee is incorrect, (iii) there has been a "notified payee underreporting" described in Section 3406(c) of the Code or (iv) the payee fails to certify under penalty of perjury that the payee is not subject to withholding under Section 3406(a)(1)(C) of the Code. Amounts withheld under the backup withholding rules may be refunded or credited against the U.S. Holder's federal income tax liability, if any, provided that the required information is timely furnished to the IRS. Certain U.S. holders (including among others, corporations and certain tax-exempt organizations) are not subject to backup withholding. A holder's failure to comply with the backup withholding rules may result in the imposition of penalties by the IRS.

Foreign Account Tax Compliance Act ("FATCA")

Sections 1471 through 1474 of the Code impose a 30% withholding tax on certain types of payments made to foreign financial institutions, unless the foreign financial institution enters into an agreement with the U.S. Treasury to, among other things, undertake to identify accounts held by certain U.S. persons or U.S.-owned entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent it from complying with these and other reporting requirements, or unless the foreign financial institution is otherwise exempt from those requirements. In addition, FATCA imposes a 30% withholding tax on the same types of payments to a non-financial foreign entity unless the entity certifies that it does not have any substantial U.S. owners or the entity furnishes identifying information regarding each substantial U.S. owner. Under current guidance, failure to comply with the additional certification, information reporting and other specified requirements imposed under FATCA could result in the 30% withholding tax being imposed on payments of interest on the Bonds. In general, withholding under FATCA currently applies to payments of U.S. source interest (including OID) and, under current guidance, will apply to certain "passthru" payments no earlier than the date that is two years after publication of final U.S. Treasury Regulations defining

the term “foreign passthru payments.” Prospective investors should consult their own tax advisors regarding FATCA and its effect on them.

The foregoing summary is included herein for general information only and does not discuss all aspects of U.S. federal taxation that may be relevant to a particular holder of Bonds in light of the holder’s particular circumstances and income tax situation. Prospective investors are urged to consult their own tax advisors as to any tax consequences to them from the purchase, ownership and disposition of Bonds, including the application and effect of state, local, non-U.S., and other tax laws.

COVENANT BY THE STATE OF NEW YORK

Under the Act, the State pledges and agrees with the holders of any Bonds issued by the Authority and with those persons or public corporations who may enter into contracts with the Authority or the Board pursuant to the Act that the State will not alter, limit or impair the rights vested in the Authority or the Board to, among other things, establish and collect rates, rents, fees and other charges referred to in the Act, to fulfill the terms of any contracts or agreements made with or for the benefit of holders of the Bonds or to in any way impair the rights and remedies of the holders of the Bonds, until the Bonds, together with interest thereon, including any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the holders thereof, are fully met and discharged and such contracts are fully performed on the part of the Authority or the Board. The State further covenants with the purchasers and all subsequent holders and transferees of the Bonds issued by the Authority that the Bonds of the Authority issued pursuant to the Act and the income therefrom and all revenues, monies, and property pledged to secure the payment of the Bonds shall at all times be free from taxation, except for transfer and estate taxes.

LITIGATION

There is not now pending or, to the best of the Authority’s knowledge, threatened any litigation restraining or enjoining the issuance or delivery of the Bonds or questioning or affecting the validity of the Bonds or the proceedings and authority under which they are to be issued, nor is the creation, organization, or existence of the Authority being contested. Nor is there any litigation pending or, to the best of the Authority’s knowledge, threatened which in any manner questions the right of the Authority to operate the System or its right to conduct its activities in accordance with the provisions of the Act and of the Resolution. Other than as described below, all other litigation pending is of a routine nature, which does not affect the right of the Authority to conduct its business or affect the validity of its obligations.

The Abbo-Bradley Action (Index No. E146816/2012)

In January 2011, Scott Lawn Yard was under contract with the Board to excavate and replace a damaged section of sanitary sewer line along Colvin Boulevard. During the course of the excavation, Scott Lawn Yard employees noticed a strong chemical odor coming from the trench. They stopped work immediately and notified the NFWB. The Board notified GSH immediately, and GSH promptly took over the site and started containment and testing of the soil.¹

1. GSH is a subsidiary of Occidental Chemical Corporation (OCC) and is responsible for maintaining and operating the Love Canal Containment Area, under the supervision of the New York Department of Environmental Conservation (NYSDEC) and the United States Environmental Protection Agency (USEPA).

GSH determined the soil around the sewer line was contaminated with chemicals known to reside in the Love Canal Containment Site. Under the supervision of NYSDEC, GSH remediated the contaminated soil.

On April 10, 2012, three families (Abbo-Bradley, Herr, and Korson families) commenced a lawsuit against the Board, the City of Niagara Falls (“the City”), Glenn Springs Holdings, Inc. (“GSH”), and Conestoga Rovers & Associates (“CRA”) entitled *Abbo-Bradley v. City of Niagara Falls, et al.* The plaintiffs alleged they sustained personal injuries and property damages due to exposure to chemical contaminants unearthed during the January 2011 excavation of the sanitary sewer line on Colvin Boulevard. Plaintiffs alleged chemicals from the excavation infiltrated their homes, resulting in personal injuries and diminished market value of their homes. Their complaint asserted six causes of action against all of the defendants, including negligence, abnormally dangerous activity, gross negligence, private nuisance, trespass, and an equitable request for medical monitoring. The complaint also includes a claim for punitive damages against GSH, CRA, and the Board. The complaint did not quantify the amount of damages sought by the plaintiffs, as that is not permitted under New York law. The Board answered the complaint and denied all of the material allegations in the complaint.

In March 2013, the plaintiffs filed their first amended complaint, adding eleven new defendants, including Occidental Chemical Corporation (“OCC”) and Scott Lawn Yard. The amended complaint contained a broader set of factual allegations, describing conduct dating all the way back to the original dumping of chemicals at the Love Canal site by Hooker Chemical Corporation in the 1940s and 1950s. The amended complaint also alleged the containment system implemented by OCC and other defendants to remediate the site and contain the chemicals within the Love Canal Containment Area was defectively designed and constructed. Notably, that conduct occurred long before the Board was created in 2003. The amended complaint also included the allegations concerning the discovery of chemicals in the Colvin Boulevard excavation site in January 2011. The amended complaint contained the following causes of action against the Board: negligence, abnormally dangerous activity, private nuisance, trespass, equitable and injunctive relief, and loss of companionship and services. The complaint included more specifics about the personal injuries being alleged, including “birth defects, chromosomal abnormalities, bone marrow abnormalities, cardiac conditions, pulmonary symptoms, unexplained fevers, skin conditions, behavioral problems, learning disabilities, and loss of teeth.”

In January 2014, the plaintiffs filed a second amended complaint, which discontinued the claims against defendants Edward S. Roberts and Kandey Company, Inc.; discontinued all claims for equitable relief and medical monitoring; discontinued the claims for the loss of comfort, society, and companionship of the infant-plaintiffs (which is not actionable in New York); and added claims for loss of services of the infant plaintiffs. The second amended complaint contained the following causes of action against the Board: negligence, abnormally dangerous activity, private nuisance, trespass, loss of services and support of the infant plaintiffs, and loss of spousal companionship, services, and support. The second amended complaint also included a claim for punitive damages against OCC, GSH, CRA, Miller Springs Remediation Management, Inc. (“MSRM”), the City, and the Board.

On January 7, 2020, plaintiffs served a third amended complaint. In addition to prior allegations concerning dumping of chemicals into Love Canal, negligent remediation of Love Canal, and the release of chemical contaminants during the January 2011 sewer line replacement project, the third amended complaint significantly expanded the scope of plaintiffs' allegations to include the negligent dumping of chemicals in and around the Occidental Chemical Plant at 4700 Buffalo Avenue, the discharge of toxic pollution into the Niagara River, and the discharge of chemicals into the sewers and waters near Cayuga Creek. Against the NFWB, plaintiffs asserted claims for negligence, abnormally dangerous activity, private nuisance, trespass, and seeking loss of services, support, and companionship. Plaintiffs also included a demand for punitive damages.

On February 1, 2020, OCC removed this action to federal court.

However, on January 25, 2021, U.S. District Court Judge Geraci issued an Order remanding the case back to New York State Supreme Court.

The defendants, led by OCC, filed a joint appeal from the remand Order. On June 16, 2021, the defendants perfected the appeal. The appeal was fully briefed, with reply briefs being filed, on October 6, 2021. The Second Circuit Court of Appeals has not yet issued a decision.

On February 17, 2021, the defendants moved for an Order staying the state court action pending the outcome of the defendants' appeal from the remand Order. Oral argument of the motion to stay was held in March 2021, but the state court has not yet issued a decision.

While there has been significant litigation concerning procedural matters, very little discovery has been exchanged to-date. However, there have been extensive investigations conducted by third parties. In terms of investigation, CRA, an environmental consulting firm retained by GSH, conducted a detailed investigation of the January 2011 incident. It issued a report entitled Sanitary Sewer Investigation and Remediation – Colvin Boulevard and 96th Street, dated March 2011. The CRA report explained that it was highly unlikely that any chemical contaminants that were found in the sewer line excavation migrated to neighboring properties through groundwater because (1) the “residual impacts” are located 20 to 22 feet below ground surface; (2) the trench walls consist of clay and bedrock, which would prevent any lateral migration of chemical contaminants; (3) no groundwater infiltration was observed entering the excavation; (4) the asphalt road surface above the excavation has a relatively impermeable surface; and (5) the replaced sewer line has water tight joints, which would prevent exfiltration of any contaminated groundwater through the sewer system.

CRA also conducted air monitoring in and around the excavation site while the contaminated materials were removed and the damaged sewer line was replaced. All readings taken from the perimeter around the work area were well below the “action level.”

USEPA also investigated the incident. On March 1, 2012, USEPA communicated the results of its initial investigation to the Abbo-Bradley plaintiffs, stating:

Our review of the data and documentation of the Colvin Boulevard repair and mitigation work, as well as the supplemental investigation, indicates that it was done in a comprehensive and appropriate manner, following strict health and safety and community air monitoring protocols. The work was performed under the field oversight of both NYSDEC and NYSDOH.

The EPA reiterated that finding in an April 24, 2013 report to U.S. District Judge John Curtin, in which the agency stated: “EPA also reviewed data and documentation provided by DEC and Glenn Springs of the Colvin Boulevard sewer repair and mitigation work and some subsequent follow-up work. The work appeared to be performed in a comprehensive and appropriate manner.” Love Canal Superfund Site Report, April 24, 2013, pg. 19.

In the same report, USEPA concluded the chemical contaminants discovered during the January 2011 excavation were from “an isolated pocket of **historical** contamination” in the sewer line bedding that had migrated from the Love Canal Site. In other words, it appears the contaminants found in the bedding material likely had been there since the time when the Love Canal site was first remediated in the 1970s and 80s – before the Board even existed. USEPA conducted air and soil testing in the Love Canal neighborhood and did not find any evidence of chemical contamination above established threshold limits.

Although it is not possible to predict the outcome of litigation, particularly where very little discovery has been conducted, based on their review of the pleadings, preliminary investigation, and the investigations conducted by entities including USEPA, the Board’s attorneys are of the opinion that the Board has meritorious defenses in the *Abbo-Bradley* action and ultimately will prevail in this action. Indeed, the Board maintains that it followed all established procedures in designing and overseeing the sewer reconstruction project on Colvin Boulevard, and it followed the proper procedures in responding to the discovery of historical chemical contamination – facts supported by independent investigations by USEPA and CRA.

Other Love Canal Actions.

Including *Abbo Bradley*, in recent years 20 lawsuits have been commenced in various courts in Western New York that involve claims of personal injuries and property damages sustained as a result of exposure to Love Canal contaminants. Initially, the Board was named as a defendant in 19 of the 20 lawsuits. However, the Board has been successful in securing dismissals in 18 of the lawsuits based on the plaintiffs’ failure to serve proper notices of claim. Currently, the Board is a defendant in only one Love Canal lawsuit – i.e., the *Abbo-Bradley* action discussed above.

Board’s Claim for Indemnification Against the City.

The Board has asserted a cross-claim against the City for contractual indemnification in the *Abbo-Bradley* case. This claim is based on the terms of an Acquisition Agreement (the “Agreement”) between the City and the Board dated April 1, 2003 and executed by the Board on April 14, 2003.

Based on the terms of the Agreement, the Board’s attorneys are of the opinion that the City will be required to indemnify the Board in the unlikely event that there is a judgment or verdict against the Board in the *Abbo-Bradley* case. This would include reimbursement of all expenses and legal fees incurred by the Board in defending the lawsuit.

The Agreement applies to environmental conditions existing at the time the Board acquired the System from the City. The indemnification requirements of the Agreement would not apply to matters involving post-acquisition actions taken by the Board. For instance, the complaint in

Abbo-Bradley alleges that the Board failed to adequately maintain the site after the January, 2011 incident; allowed the use of high-pressure hoses which led to further disbursement of contamination; and misrepresented the problem to residents. Although the Board denies these allegations and the Board's attorneys are of the opinion that the Board has meritorious defenses and that the Board will ultimately prevail in the *Abbo-Bradley* case, such allegations, if proven to be true, would not be covered by the indemnification provisions of the Agreement.

The indemnification described in the foregoing paragraph requires the Board to notify the City of all possible claims. The Board has done so with respect to the *Abbo-Bradley* lawsuit. In order to preserve its rights pending further investigation and discovery, the City has to date refused to assume the defense of the Board on such matters. The Board will have ample opportunity to either have the City acknowledge its obligation to provide indemnification or to petition the court to force such result. There can be no assurance that the City will have sufficient funds to indemnify the Board pursuant to the Acquisition Agreement. See "Economic and Demographic Data - Fiscal Health of the City" for information about the City's financial condition.

Insurance Coverage.

At all pertinent times with respect to the *Abbo-Bradley* matter, the Board was insured under a Public Entity Liability policy issued by Everest National Insurance Company with a policy limit of \$5,000,000 per occurrence and a \$500,000 "retained limit." The "retained limit" clause in the policy requires the Board to pay the first \$500,000 in litigation expenses and any settlement or verdict before the insurance coverage would apply.

However, the Board's insurance policy contains many standard terms and conditions, including a pollution exclusion, and the Board's insurer has disclaimed coverage for these claims under the pollution exclusion of the policy. The Board considered contesting the disclaimer; however, pollution exclusions generally are interpreted and applied quite broadly by the courts. In fact, one of the other defendants in these actions, Roy's Plumbing, litigated the applicability of the pollution exclusion in its own insurance policy, and the United States District Court for the Western District of New York held that the pollution exclusion applied to these actions.

LEGAL MATTERS

Orrick, Herrington & Sutcliffe LLP, New York, New York, Bond Counsel to the Authority, will render its approving opinion as to the validity and legality of the Bonds, copies of which will be available at the time of delivery of the Bonds and the form of which is annexed hereto in Appendix C. Certain legal matters will be passed upon for the Authority by its in-house counsel, Sean W. Costello, Esq. Certain legal matters will be passed upon for the Underwriter by its counsel, Harris Beach PLLC, Buffalo, New York.

BOND INSURANCE

As noted herein, concurrently with the issuance of the Bonds, Build America Mutual Assurance Company ("BAM") will issue its Municipal Bond Insurance Policy (the "Policy") for the Bonds. The Policy guarantees the scheduled payment of principal of and interest on the Bonds when due as set forth in the form of the Policy included in Appendix F, herein. (See "APPENDIX

F – MUNICIPAL BOND INSURANCE AND SPECIMEN POLICY” herein.) The Authority has not made any independent investigation of BAM or its policy and reference should be made to Appendix E for a description thereof.

In the event that BAM is unable to make payments of principal of and interest on the Bonds for which its policy has been issued, as such payments become due, the Bonds are payable solely from the Authority moneys.

The insured rating on the Bonds is dependent on the claims paying ability of BAM. BAM’s current claims paying ability is predicated upon a number of factors which could change over time and could result in a downgrading of the insured rating on the Bonds. Such a downgrade could adversely affect the market price for, and marketability of, the Bonds. BAM is not contractually bound to maintain its present claims paying ability in the future. (See “RATINGS” herein.)

RATINGS

The Bonds are rated “AA” by S&P Global (“S&P”) in reliance on the Policy being issued by BAM with respect to the Bonds. In addition, on February 16, 2022, S&P assigned the Bonds an underlying rating of “A”. The insured rating reflects S&P’s current assessment of the creditworthiness of BAM and its ability to pay claims on its policies of insurance. The underlying rating reflects S&P’s current assessment of the creditworthiness of the Authority. Such ratings reflect only the view of S&P and any explanation of the significance of such ratings may only be obtained from S&P. There is no assurance that the insured or underlying ratings will remain in effect for any given period of time or that they will not be lowered, suspended or withdrawn entirely if, in the judgment of S&P, circumstances so warrant. Any lowering, suspension or withdrawal of the insured rating may have an adverse effect on the market price or marketability of the Bonds.

VERIFICATION OF MATHEMATICAL ACCURACY

Causey Demgen Moore P.C., independent certified public accountants, will deliver its report indicating that it has verified the mathematical accuracy of the computations in the schedules provided by the Underwriter. Included in the scope of its verification report will be a verification of the mathematical accuracy of the computations of the adequacy of the cash, the maturing principal amounts and the interest on the Investment Securities deposited with the Trustee for the refunding of the Refunded Bonds and paying of the interest and redemption price coming due on the Refunded Bonds on or prior to their respective redemption dates as described in “PLAN OF FINANCE AND SOURCES AND USES OF FUNDS”.

CONTINUING DISCLOSURE

In order to assist the Underwriter in complying with Rule 15c2-12, as it may be amended (the “Rule”) promulgated by the Securities and Exchange Commission (“SEC”) under the Securities Exchange Act of 1934, as amended, the Authority and the Board, to the extent the Rule requires, will agree for the benefit of the beneficial owners from time to time of the Bonds (each, an “Undertaking”) to deliver to the Municipal Securities Rulemaking Board (the “MSRB”), as the sole repository of information required to be provided pursuant to the Rule, in each instance

through and in accordance with the MSRB's Electronic Municipal Market Access system ("EMMA"):

- (a) within 270 days after the end of the 2021 Fiscal Year and each subsequent Fiscal Year, core financial information and operating data for the prior Fiscal Year, including (i) audited financial statements, if available, prepared in accordance with generally accepted accounting principles in effect from time to time, or, if such annual audited financial statements are not available, annual unaudited financial statements shall be so provided and such annual audited financial statements shall be so delivered when they become available, and (ii) material historical financial and operating data concerning the System and the Revenues of the Authority and the Board generally of the type included under the captions "DEBT SERVICE REQUIREMENTS," "THE SYSTEM," "FINANCIAL OPERATIONS" and "ECONOMIC AND DEMOGRAPHIC DATA";
- (b) in a timely manner, not later than ten (10) business days after the occurrence of the event, notice of any of the following events with respect to the Bonds:
 - (1) principal and interest payment delinquencies;
 - (2) non-payment related defaults, if material;
 - (3) unscheduled draws on debt service reserves reflecting financial difficulties;
 - (4) unscheduled draws on credit enhancements reflecting financial difficulties;
 - (5) substitution of credit or liquidity providers, or their failure to perform;
 - (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or Final determinations of taxability, Notice of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;
 - (7) modification to rights of bondholders, if material;
 - (8) bond calls, if material, and tender offers;
 - (9) defeasances;
 - (10) release, substitution, or sale of property securing repayment of the Bonds, if material;
 - (11) rating changes;
 - (12) bankruptcy, insolvency, receivership or similar event of the Authority or the Board;
 - (13) consummation of a merger, consolidation, or acquisition or the sale of all or substantially all assets, entry into or termination of a definitive agreement to undertake such an actions;

- (14) appointment of a successor or additional trustee or the change of the name of a trustee, if material;
- (15) incurrence of a financial obligation of the Authority or the Board, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Authority or the Board, any of which affect security holders, if material; and
- (16) a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Authority or the Board, any of which reflect financial difficulties.

In addition, the Undertaking provides that the Authority and the Board shall also file a notice of the failure to comply with the requirement of clause (a) above. The provisions of each Undertaking inure solely to the benefit of the beneficial owners from time to time of the Bonds who will be third-party beneficiaries of each Undertaking.

The obligations of the Authority and the Board to comply with the provisions of their respective Undertaking shall be enforceable (i) in the case of enforcement of obligations to provide financial statements, financial information, operating data and notices, by any owner of outstanding Bonds, or by the Trustee on behalf of the owners of outstanding Bonds, or (ii) in the case of challenges to the adequacy of the financial statements, financial information and operating data so provided, by the Trustee on behalf of the owners of outstanding Bonds; provided, however, that the Trustee shall not be required to take any enforcement action except at the direction of the owners of not less than a majority in aggregate principal amount of the Bonds at the time outstanding who shall have provided the Trustee with adequate security and indemnity. Neither the Authority, the Board, nor their respective directors, officers or employees shall have any liability under an Undertaking for any act or failure to act under such Undertaking. The owners and Trustee's sole remedy with respect to enforcement of the provisions of an Undertaking shall be a right, by action in mandamus or for specific performance, to compel performance of the Authority's or the Board's obligations under such Undertaking. In consideration of the third-party beneficiary status of beneficial owners of Bonds pursuant to each Undertaking, beneficial owners shall be deemed to be owners of Bonds for purposes of enforcement of each Undertaking. All proceedings may be instituted only as specified herein, in the State court located in and Federal court serving the County of Niagara, State of New York, and for the equal benefit of all holders of the outstanding Bonds.

Each Undertaking provides that the Authority's, the Board's, and the Trustee's respective obligations thereunder will terminate upon a legal defeasance pursuant to the Resolution, prior redemption or payment in full of all of the Bonds. Each Undertaking further provides that it, or any provision thereof, shall be null and void in the event that the Authority or the Board as may be applicable (1) delivers to the Trustee an opinion of Counsel, as defined in such Undertaking, addressed to the Authority or the Board and the Trustee, to the effect that those portions of the Rule which require the provisions of such Undertaking, or any of such provisions, do not or no longer apply to the Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, as shall be specified in such opinion, and (2) delivers copies of such opinion to the MSRB.

Copies of each Undertaking when executed by the parties thereto on the date of the initial delivery of the Bonds will be on file at the office of the Trustee.

In the last five years, the Authority and the Board have complied, in all material respects, with their respective continuing disclosure undertaking obligations.

FINANCIAL ADVISOR

Capital Markets Advisors, LLC has served as financial advisor to the Authority with respect to the issuance of the Bonds.

UNDERWRITING

FHN Financial Capital Markets, a division of First Horizon Bank, the Underwriter of the Bonds, has agreed, subject to certain conditions, to purchase the Bonds from the Authority at a price of \$35,535,291.35, which represents the par amount of the Bonds, less an original issue discount of \$276,598.10 and less the Underwriter's discount of \$118,110.55. The initial public offering prices for the Bonds are set forth on the inside cover page of this Official Statement. The Bonds may be offered and sold to certain dealers (including dealers depositing such Bonds into unit investment trusts) at prices lower than the initial public offering prices. The initial public offering prices may be changed from time to time by the Underwriter.

On February 28, 2022, First Horizon Corporation and TD Bank Group announced that First Horizon Corporation entered into a definitive agreement to be acquired by TD Bank Group. FHN Financial Capital Markets is the municipal underwriting business line of FHN Financial, the fixed income division of First Horizon Bank, whose parent company is First Horizon Corporation. The acquisition is expected to be completed in late 2022 or early 2023 pending regulatory approvals. This transaction should not have any material effect on this underwriting transaction.

LEGALITY FOR INVESTMENT

The Act provides that bonds and notes issued by the Authority (including the Bonds) are securities in which all public officials and bodies of the State and all municipalities, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business and administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest the bonds or other obligations of the State, may properly invest their funds including capital in their control or belonging to them.

The bonds and notes issued by the Authority are also, by the Act, made securities which may be deposited with and may be received by all public officers and bodies of the State and all municipalities for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized.

CERTIFICATION AS TO OFFICIAL STATEMENT

For certain portions of this Official Statement, the Authority has relied upon the detailed studies assumptions and conclusions set forth in the Feasibility Report prepared by AECOM and Drescher & Malecki LLP.

The Appendices are hereby incorporated as integral parts of this Official Statement. The Feasibility Report, included as Appendix A, is included in this Official Statement in reliance upon the expertise of such firms as consultants knowledgeable with respect to the design and operation of water systems or facilities and in preparing financial forecasts.

The references herein to the Act, the Resolution, the Twelfth Supplemental Resolution and the Bonds are made subject, respectively, to all of the provisions thereof, to which reference is hereby made for further information. The references thereto in this Official Statement do not purport to be complete statements thereof. The agreement of the Authority with the holders of the Bonds is fully set forth in the Resolution, and neither any advertisement of such Bonds nor this Official Statement are to be construed as a contract with the purchasers of such Bonds. So far as any statements are made in the Official Statement involving matters of opinion or estimate, whether or not expressly so stated, they are intended merely as such and not as presentations of fact. Copies of the documents mentioned in this paragraph are on file at the offices of the Authority and the Trustee.

This Official Statement has been duly executed and delivered by the authorized representatives of the Authority and the Board and has been authorized to be distributed by the Authority and the Board to prospective purchasers of the Bonds.

NIAGARA FALLS PUBLIC WATER AUTHORITY

By: /s/Jason Murgia
 Jason Murgia
 Chairperson

NIAGARA FALLS WATER BOARD

By: /s/Nicholas J. Forster
 Nicholas J. Forster
 Chairperson

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APPENDIX A
FEASIBILITY REPORT

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APPENDIX A

FEASIBILITY REPORT

AECOM in association with Drescher & Malecki LLP

February 18, 2022

Chairperson and Members
Niagara Falls Public Water Authority
5815 Buffalo Avenue
Niagara Falls, NY 14302

Chairperson and Members
Niagara Falls Water Board
5815 Buffalo Avenue
Niagara Falls, NY 14302

Re: Feasibility Report of the Consulting Engineer and Rate Consultant
\$35,840,000* Water and Sewer System Revenue Refunding Bonds, Series 2022A

Dear Members of the Authority and Board:

The purpose of this letter is to summarize the conclusions of our independent engineering and financial analysis in connection with the proposed issuance by the Niagara Falls Public Water Authority (“NFPWA” or the “Authority”) of its \$35,840,000* Water and Sewer System Revenue Refunding Bonds, Series 2022A (hereinafter referred to as the “2022 Refunding Bonds”). The Niagara Falls Water Board (the “Board”) acquired the Water, Wastewater, and Stormwater System (the “System”) serving the City of Niagara Falls (the “City”) in 2003 through the proceeds of bonds issued by the NFPWA. Proceeds of the 2022 Refunding Bonds will be used for the following purposes: (i) refund the Authority’s outstanding Series 2013A Bonds prior to maturity and (ii) pay certain costs of issuance.

All terms referred to in this letter and the accompanying Report that are not defined herein are as defined in the Official Statement for the 2022 Refunding Bonds. The projections presented in the accompanying Report are based on historical financial experience of the Board and assumptions regarding future performance. The projections include provisions for the financing of future improvements to the System as reflected in the Capital Improvement Program (the “CIP”) for the period of 2022 through 2026 (the “Projection Period”). The projected cash flows set forth the ability of the Board and Authority to meet the operating costs, working capital needs and other financial requirements, including the debt service requirements associated with the previously issued bonds of the Authority and bonds issued by the New York State Environmental Facilities Corporation (“NYSEFC”) for the System (the “Outstanding Bonds”), and the 2016 Refunding Bonds.

Revenues pledged to secure the Authority’s bonds include but are not limited to all fees, charges and other income and receipts derived by the Board from its ownership and operation of the System, and earnings on the investment of any moneys held under the Resolution by the Trustee or the Authority.

In preparing our Report, we have reviewed, to the extent practicable, the books, records, financial reports, operating information, and statistical data of the Board and the Authority, and have conducted such other investigations and analyses as deemed necessary to assemble and analyze the projection of revenues, revenue requirements, and debt service coverage following the issuance of the 2022 Refunding Bonds. We have performed various financial tests and analyses necessary to support our findings and conclusions. Proposed improvements and additions to the System under the CIP in 2022-2026 were evaluated to assess the anticipated operating condition of the System during the projection period.

* Preliminary, subject to change.

Based on our studies, we offer the following opinions and conclusions:

- The System is currently in adequate condition to support the delivery of water, wastewater and stormwater services and the generation of user revenues.
- The water treatment facilities are in good condition, requiring few modifications during the projection period. The water distribution system is currently in adequate condition overall although the rate of leakage is higher than typical industry averages.
- The wastewater treatment plant (the “WWTP”) is in fair condition overall, but certain components are in poor condition. Phase IV capital improvements are underway and are expected to be completed in 2024. In addition, during the projection period, the wastewater treatment facilities will require routine and non-routine repairs, replacements and improvements as described herein.
- The wastewater collection system is in adequate condition overall, but certain facilities require capital improvements as described herein. Additional capital improvements will be implemented in 2022 and beyond within the wastewater collection system.
- Board staff, including management and operations personnel, are well qualified and effectively organized.
- Through appropriate technology, staffing, tools, and equipment, the Board has operations and maintenance programs that are capable of ensuring the continued effective operation of the System. The System should continue to provide adequate levels of service with minimal disruption.
- The Board is currently in compliance with the conditions of all existing permits, regulations, and other requirements governing safe drinking water standards.
- The Board is currently in compliance with the conditions of all existing permits, regulations, and other requirements governing wastewater treatment facilities, with certain minor exceptions. The Board has two active Orders on Consent pertaining to: Sanitary Sewer Overflow (SSO) abatement in the LaSalle portion of the City and the July 29, 2017 incident that resulted in a dark colored discharge to the Niagara River at Outfall 001. The Board is expected to receive an updated Order for the LaSalle SSO program sometime in 2022, that will replace the schedule of projects required under the prior order, substituting more effective remediation projects with a similar cost for those originally planned. The Board is in full compliance with the terms of the Consent Order pertaining to the July 29, 2017 incident.
- Regarding the July 29, 2017 incident, the Board has undertaken numerous operations, maintenance, and managerial measures to prevent such an event from reoccurring in the future. In addition, the Phase IV capital improvements that are currently underway will improve the reliability and redundancy of the existing treatment facilities.
- One of the outcomes of the July 29, 2017 incident and resulting Consent Order was the performance of pilot scale treatability testing to evaluate the potential for alternative treatment technologies to be employed in place of the existing activated carbon. An engineering report recommended converting the treatment facility to a biological treatment plant that utilizes an aerobic membrane bioreactor. The report was submitted to and approved by the New York State Department of Environmental Conservation (NYSDEC). The estimated cost of the conversion to a biological treatment facility is \$223 million dollars (2019 20-year net present worth), which is far beyond the financial capability of the Board to fund such a project. At this time, the Board desires to convert the WWTP to a biological treatment facility but must await grant funding to do so. In the meantime, capital projects will be focused on those portions of the plant that would continue to be necessary following the conversion to a biological treatment facility. Anticipating the eventual conversion of the WWTP to a biological treatment facility, other than required maintenance and routine

activated carbon changes, capital funds will not be used for any significant capital upgrades to the carbon filters.

- It is anticipated that the Board will fund the CIP through the following sources: existing monies in its Construction Fund; the proceeds of anticipated future bonds issued by the Authority; proceeds from the NYPA payment; and surplus funds generated in each year. Significant additional improvements to the wastewater treatment plant will be required both within and beyond the Projection Period.
- In April 2017, the Board reached a settlement with the collective bargaining agreements of all four of its labor unions. The new agreements will result in substantial savings in healthcare costs for the Board over the next seven (7) years while allowing employees and retirees to retain quality and affordable healthcare benefits. Employees share a modest 20% of costs and the Board contributes to employee Health Savings Plans to help offset costs associated with a high deductible health plan.
- Overall water sales to customers of the System decreased approximately 5% from 2016 to 2020 with two years seeing little to no change from the prior year (2018, 2020) and two years seeing reductions of 3.6% and 1.6% (2017 and 2019, respectively). As far as billing categories, water use for Residential users declined 8% from 2016 to 2020, while industrial use increased 10.4%, SIUs decreased 12.6%; and Non-Resident decreased 49.2% over the same time period. It is projected that consumption for both industrial and significant industrial users have increased 8.9% and 19.9%, respectively as of December 31, 2021.
- Year-to-date cash collections from customer payments are slightly below expectations most likely due to the COVID pandemic. Year-to-date interest earnings are lower than expected. The Board's contractual expenses in 2021 are higher than projected due to rising chemical costs and increased usage. This was offset by an increase in wastewater revenues due to the same increase in usage.
- Based on the year-to-date results, the Board will have to carefully monitor its cash flows during 2022 to ensure that debt service coverage requirements are met. While current projections show the Board will meet debt service coverage requirements for 2022, there are many factors, such as weather and economic conditions, which could affect such projections.
- The Board has increased the rates 16.90% for water and wastewater service in the City of Niagara Falls (the "City") for 2022 as compared to those for 2021. Historical rate increases for the past 10 years are:

<u>Year</u>	<u>Increase</u>
2013	6.00%
2014	2.60
2015	0.00
2016	4.40
2017	0.00
2018	2.40
2019	2.00
2020	0.00
2021	2.99
2022	16.90

The projected increase in rates included in Table 3 of the Feasibility Report are preliminary and subject to change. The future increases in the rates of the Board are dependent upon upcoming Board policy decisions regarding: the size, scope, and timing of the CIP; the use of the remaining monies from the NYPA settlement; and potential reductions in annual operation and maintenance expenses. Future increases in

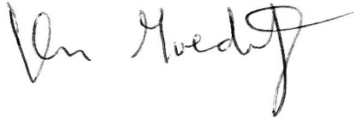
rates are also dependent upon actual experience and future assumptions regarding customer demand as well as other factors. The Board has expressed its interest in minimizing rate increases while at the same time meeting its financial, capital investment and operating obligations. As a result of all of the above considerations, actual increases adopted by the Board may differ from those projected. Additionally:

- Current rates for water and wastewater service are comparable to surrounding service providers.
- The Board is in compliance with the reserve fund requirements of the Resolution, including the required amounts on deposit in the Debt Service Reserve Fund and the Operating Reserve Fund.
- During the analysis of 2021-2025 revenues and revenue requirements, Drescher & Malecki LLP reviewed certain assumptions with respect to conditions, events, and circumstances, which may occur in the future. The firm believes that these assumptions are reasonable and attainable, although actual results will differ from those forecasted as influenced by the conditions, events and circumstances that actually occur.

The Board is projected to comply with all reserve requirements and is projected to meet or exceed the bond coverage requirements of the Resolution, considering the proposed issuance of the 2022 Refunding Bonds, anticipated future bonds, and projected increases in water and wastewater rates.

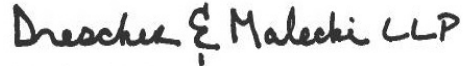
We wish to extend our gratitude to the Board and the Authority for the support provided in preparing this Report. We appreciate the opportunity to be of service in this important matter.

Very truly yours.



John Goeddertz, Ph.D.
AECOM
Senior Project Manager

Very truly yours.



Matthew J. Montalbo
Drescher & Malecki LLP
Rate Consultant

1. Introduction

1.1 Overview of the Authority and the Board

The Authority was created by Chapter 275 of the Laws of 2002 of the State of New York (the “State”), constituting the Niagara Falls Public Water Authority Act, codified as Sections 1230-a through 1230-aa of Title 10-B of Article 5 of the Public Authorities Law of the State, as amended (the “Authority Act”). The Board was created by Chapter 325 of the Laws of 2002 of the State, codified as Sections 1231-a of Title 10-C of Article 5 of the Public Authorities Law of the State, as amended (the “Board Act”). The Authority Act and the Board Act are collectively referred to in this Report as the “Act”.

Pursuant to the Act and the terms of an Acquisition Agreement between the Board, the City, and the Authority, the Board purchased the System from the City in September 2003. Since that time, the Board has owned the System and has been responsible for its operation and maintenance as well as all capital improvements.

The Board and the Authority entered into a Financing Agreement that requires the Authority to finance acquisition-related costs (as applicable) and future capital improvements to the System. The Financing Agreement includes a pledge of the revenues of the Board to pay debt service, operation and maintenance expenses and other obligations. The Board and the City also entered into an Operation Agreement setting forth the requirements of the Board with respect to the operation of the System and the continuity of certain support services by the City.

An overview of the responsibilities of the Board and the Authority is presented in Figure 1.

Figure 1
Responsibilities of the Board and the Authority

<p>Water Board:</p> <ul style="list-style-type: none">• Owns the System• Operates and maintains the System• Responsible for System improvements• Sets rates and collects revenues• Pay debt service on bonds• Pays Authority and Board expenses
<p>Water Authority:</p> <ul style="list-style-type: none">• Issues debt• Provides proceeds of debt for construction and improvements• Provides oversight regarding adequacy of revenues and System conditions

Under the Act, the Board may acquire, own, operate, maintain, and manage a water distribution and treatment system (“Water System”), a wastewater collection and treatment system (“Wastewater System”), and a stormwater conveyance system (“Stormwater System”) or, collectively, the “System” as defined previously. The System is operated as a self-sustaining, non-profit enterprise of the Water Board.

The Act specifies the composition of the Board and the Authority, including required minimum qualifications for members. Members of each body receive no compensation. The Authority is composed of three members, and the Board has five members.

1.2 Purpose of this Feasibility Report

This Feasibility Report (the “Report”) was prepared in connection with the proposed issuance of the 2022 Refunding Bonds. The Report provides information regarding the facilities, organization, operations, management, financing, cash flows and rates of the System. It presents our findings regarding the existing facilities and the Capital Improvement Program (“CIP”), and provides information relating to the proposed 2022 Refunding Bonds.

This Report is organized in four (4) sections:

1. Introduction
2. Evaluation of the System
3. Capital Improvement Program
4. Projected Cash Flows and Debt Service Coverage

Comments on the System and the CIP are presented in Sections 2 and 3 of the Report. Our review of the Board’s organization and operating capabilities is presented in Section 2. Section 4 presents the projected cash flows and rates for the System for the five-year period ending December 31, 2025 (the “projection period”).

1.3 Study Methodology

The Feasibility Study is presented as one Report which includes the results of technical; organizational; financial; and other analyses. AECOM conducted the technical portion of the Feasibility Study as the Consulting Engineer to the Board and the Authority. Drescher & Malecki LLP prepared the organizational and financial portions of the Study as the Rate Consultant to the Board and the Authority. Certain findings and conclusions in the Study reflect the results of analyses prepared by both firms.

In preparing this Report, we reviewed the records of the Board since its acquisition of the System. AECOM conducted visual inspections of certain above-ground water and wastewater facilities and assessed the adequacy of the CIP. Both AECOM and Drescher & Malecki LLP conducted interviews with key personnel of the Board and conducted other investigations we deemed appropriate and necessary to perform the Study.

The regulatory standards or requirements referenced in this Report as being applicable, being fulfilled, or to be attained, are those promulgated by the United States Environmental Protection Agency (“USEPA”), the New York State Department of Health (“NYSDOH”), and the NYSDEC. Capitalized terms not otherwise defined shall have the same meaning as ascribed to them in the Official Statement. References throughout this Report to specific years are for the fiscal years ending December 31.

The evaluations described in this Report reflect the condition of the System and its effectiveness in delivering water and wastewater services and meeting regulatory requirements as of the date of this Report. Our evaluation also considered the System’s ability to continue to meet such requirements during the projection period.

1.4 AECOM and Drescher & Malecki LLP

AECOM is a leading fully integrated firm positioned to design, build, finance and operate infrastructure assets for governments, businesses, and organizations in more than 150 countries. AECOM provides planning, consulting, architectural and engineering design services to commercial and government clients worldwide in major end markets such as transportation, facilities, environmental, energy, water, and government markets. AECOM also provides construction services, including building construction and energy, infrastructure, and industrial construction. In addition, AECOM provides program and facilities

management and maintenance, training, logistics, consulting, technical assistance, and systems integration and information technology services, primarily for agencies of the U.S. government and also for national governments around the world. According to *Engineering News-Record's* (ENR's) 2015 Design Survey, AECOM is the largest general architectural and engineering design firm in the world, ranked by 2014 design revenue. AECOM has more than 92,000 employees and FY 2015 revenues of \$18.0 billion dollars.

Drescher & Malecki LLP is a firm of certified public accountants that was founded approximately seventeen years ago by Thomas P. Malecki and Wayne W. Drescher. The founding partners were previously with the firm of Deloitte. Thomas P. Malecki has over 35 years of experience, while Wayne W. Drescher retired in 2014 after 30 + years of service. Since then, the firm has added four additional partners, Luke R. Malecki, Matthew J. Montalbo, who each have approximately 17 years of experience and Carl A. Widmer and Nichole M. Ruf, who each have approximately 13 years of experience. Drescher & Malecki LLP specializes in public sector accounting and financing. Included in their clients are the Buffalo Sewer Authority and the Buffalo Water Authority.

2. Evaluation of the System

2.1 Overview

AECOM assessed the condition and operation of the System as part of the Feasibility Report. Visual inspections were conducted to evaluate the System's major above-ground facilities. System management and engineering personnel were interviewed, and records of recent performance were reviewed. The assessment rates the components of the System using three evaluation criteria: Good, Adequate, and Poor. This evaluation framework is designed to focus on the essential characteristics of the facilities, and to communicate the important conclusions regarding the financial implications of the facility condition assessments. Detailed engineering analyses were not performed, but facilities were assessed to determine their ability to provide continuing service in the future. The three ratings are defined below.

Good: The facility is in a condition to provide reliable operation in accordance with design parameters. This ranking is the highest and is given to facilities that require routine maintenance only.

Adequate: The facility is operating at or near design levels; however, nonroutine renovation, upgrading, and repairs are needed to assure continued reliable operation.

Poor: The facility cannot be operated within design parameters. Major renovations or replacements are required to restore the facility to reliable operation.

The remainder of this Section presents the results of AECOM's evaluation of the components of the System.

2.2 Water System

2.2.1 Water Treatment Plant ("WTP")

The WTP is rated good. With pumping rates that are typically in the range of 15 to 17 million gallons per day (MGD), the plant is operating well below its average daily production capacity of 35 MGD. The treatment plant has met all finished water quality standards since being placed into service. The facilities are well maintained in part due to the effective utilization of a comprehensive preventive maintenance program. No concerns were expressed regarding the WTP or treatment operations by representatives of the NYSDOH. A discussion of the performance of the major components of the water treatment system is provided herein.

Intake and Pretreatment

Zebra mussels were a periodic problem for the Water System from 1990 to 1997. The major concern with zebra mussels is their ability to clog intake pipes. When they were discovered at the treatment plant, a chlorine feed line was added to the raw water intake to kill off zebra mussels. This approach has been effective and since 1998, there have been no further problems with zebra mussels and intake chlorination has ceased. Inspections of the intake have been performed using remote operated vehicles. Chlorination is available at the raw water intake should mussels be detected. The WTP's intake screens will require eventual replacement but not likely within the projection period.

Coagulation, Flocculation, Settling and Filtration

The plant consistently produces filtered water with a low turbidity (<0.04 NTU) despite the varying influent raw water quality (turbidity levels can exceed 120 NTU). The results are within the standards required by the federal Safe Drinking Water Act ("SDWA") and indicate that the solids coagulation, settling, and filtration system is performing well. No significant changes in these processes are expected to be needed during the projection period. Routine and non-routine maintenance on these facilities will be necessary during the projection period.

Disinfection

The plant uses gaseous chlorine for disinfection, which is common practice in the water industry but is also recognized as a potentially hazardous material. In compliance with USEPA requirements, a Risk Management Plan for gaseous chlorine was prepared and submitted pursuant to Section 1-12(r) of the 1990 Clean Air Act amendments. Appropriate controls, alarms, and a sodium hydroxide scrubber limits the risk of a catastrophic release of chlorine gas. Upgrades to the disinfection system are planned during the projection period.

Residuals Handling

The facility utilizes freeze/thaw beds to provide sludge dewatering and stabilization of residuals. The facilities are located on the plant site. The freeze/thaw beds have proven to be an innovative, relatively low operating cost method of managing residuals. They do however require routine cleaning and disposal of the settled solids. There has been some settling of the pond embankments which also serve as roadways that may need to be addressed during the projection period.

2.2.2 Distribution System

The assessment of the distribution system by AECOM is based primarily on discussions and interviews with Water System staff and the review of records since the system is below ground. Large portions of the distribution system are composed of old unlined cast iron water main. The experience of the Water System with water main breaks indicates that the age of the mains is typically not a factor in the occurrence of breaks.

The water distribution system receives an overall rating of adequate. However, there are individual components of the distribution system that are in poor condition such as a number of valves and sections of pipe that are leaking or have a history of breaks. The percentage of unaccounted-for water in the System (68% to 72% unaccounted during past 5 years) is above industry standards and reflects the fact that the Board and its predecessor (the City) have not been replacing/relining pipes as aggressively as needed. AECOM recommends that a more ambitious water main replacement and relining program be implemented. The work should be prioritized based on existing leakage, break history, and other factors.

To improve the water distribution system, the NFWB has undertaken a program to map and hydraulically model the existing water distribution system. The hydraulic model is being used to identify areas where water pressure is insufficient and to plan for future upgrades to the distribution system. Additionally, an aggressive program has been undertaken by the NFWB to repair or replace all out-of-service fire hydrants. The objective is to return all fire hydrants to a fully functional status. Many of these hydrants that are being replaced were also a source of water leakage. During 2017 and 2018, 75 fire hydrants have been replaced or repaired. This number has increased to approximately 50 hydrants replaced and 34 hydrants repaired in 2019. In 2020, 100 hydrants were replaced and 21 repaired. In 2021 75 hydrants were replaced and 44 were repaired. As of the date of this report there are no known non-functional fire hydrants. Replacement will continue and over the next 5 years up to 375 additional hydrants are anticipated to be replaced.

The NFWB has embarked upon an evaluation and replacement program for large water line valves. A 2-man crew is assigned to exercise large valves and report findings. In 2021 107 large valves were evaluated and exercised. As a result of the findings valve replacement numbers are as follows for 2019 through 2021: 2019: 36 valves replaced, 2020: 10 valves replaced, and for 2021 44 valves were replaced. This program is expected to continue and over the next 5 years, the target replacement rate is 5 valves per year.

In 2012, and 2013 through 2015 the Board undertook an aggressive meter replacement program. In 2012 a pilot study was performed that included replacement of 450 meters. In 2013 through 2015 16,000 residential and commercial meters were replaced. The new meters are auto-read (drive by), which reduces the labor necessary to obtain meter readings and free up personnel for other tasks. The objective of the meter replacement program is to improve the accuracy of the water meters as metered water use is the means by which revenue is generated. Based on the experiences of other water utilities in similar situations, the implementation of these programs should lead to a reduction in unaccounted-for water and water main breaks over the long-term.

From a maintenance perspective, AECOM recommends that the NFWB continue implementing a maintenance management program for the distribution system. The maintenance management program should include, but not be limited to: valve exercising and replacement; hydrant flushing; maintenance and replacement; storage tank painting; and related tasks.

Finished Water Storage:

The facility has two elevated water storage tanks. The one on Beech Avenue is out-of-service and is not necessary for operation of the system. The Board does not intend to use this tank in the near future. The other tank, on 56th Street is in good condition. This tank was installed in 1996 and was inspected in 2010. The CIP includes the addition of a second water storage tank to help address storage needs and to maintain pressure throughout the distribution system.

2.2.3 Regulatory Assessment for the Water System

The Water System is presently in compliance with applicable regulatory requirements. Under the Interim Enhanced Surface Water Treatment Rule (“IESWTR”) and Long Term 1 and 2 IESWTRs, the Water System is required to monitor for pathogens. Based on arsenic levels that vary from non-detect to less than 2 parts per billion, the Arsenic Rule does not affect the Water System. The System has many lead service connections to customer premises and utilizes chemical addition for corrosion control. Other than ensuring that the pH of the distributed water is stable and routine monitoring, no further actions are necessary at this time.

2.2.4 Staffing Assessment for the Water System

The Board possesses an experienced staff that is very familiar with the operation and maintenance of the System. Key personnel are well qualified and possess the certifications that are appropriate for their positions. The staffing levels for the Water System are expected to be reasonably stable in subsequent years. It is the conclusion of AECOM and Drescher & Malecki LLP that the staff qualifications and the number of personnel for the Water System are appropriate for proper operation and maintenance during the projection period.

2.3 Wastewater System Assessment

2.3.1 Wastewater Treatment Plant (WWTP)

Our assessment of the WWTP included a review of the performance of the major components of the treatment systems, including: Influent Pumps, Headworks, Rapid Mix and Flocculation Basins, Sedimentation Basins, Intermediate Pumps, Granular Activated Carbon Filters, Disinfection System, Carbon Replacement Systems, Sludge Thickening, Sludge Dewatering and Stabilization, Chemical Storage and Feed Systems, and the Stand-by Engine-Generator.

The WWTP was initially placed into service in 1977 and is approximately 44 years old. The plant is a physical/chemical treatment plant that does not utilize activated sludge treatment, and instead relies upon activated carbon filtration. The plant consistently meets the requirements of its discharge permit. Factors that contribute to the plant's ability to achieve its permit requirements include the following: 1) the plant's rated capacity exceeds the average daily flow entering the plant; 2) the strength of the incoming wastewater has declined significantly in recent years as significant industrial users (SIUs) have installed wastewater pretreatment facilities or reduced/eliminated their operations; and 3) the carbon treatment process at the plant performs well even under significant variations in wastewater volume and strength.

Over the past 44 years the operation and maintenance of this plant has proven to be problematic. The carbon filters are known to generate sulfide. Sulfide production tends to be worse in the summer when wastewater temperatures tend to be at their highest. Sulfide formation can lead to:

- Odors,
- High consumption of sodium hypochlorite necessary for effluent disinfection,
- A turbid effluent following effluent chlorination,
- An effluent that can at times exhibit color (light grey to black), and
- Corrosion of metallic components due to hydrogen sulfide particularly metals that contain copper (copper, brass, bronze).

These issues have been studied over the past 40 years in varying degrees, although no consensus was reached on how to remedy the situation. Corrective actions were typically geared towards managing the resulting sulfide (odor scrubber, indoor air treatment, replacement of electrical components, etc.). In 2014 the NYSDEC requested the NFWB to evaluate the apparent visual contrast of the WWTP's effluent with the receiving water in the lower Niagara River. A report was submitted to the NYSDEC in October 2105 (Turbidity Study, URS Corporation, October 2015) that evaluated the WWTP and the resultant effluent turbidity and visual contrast. The report identified a number of operational and process issues, but also concluded that the activated carbon filtration process should be replaced with an aerobic biological treatment process. Doing so would eliminate the generation of sulfide and eliminate the factors leading to

the color and turbid appearance of the outfall. The report was accepted by the NYSDEC and no further action was taken.

An event on July 29, 2017 that led to a dark colored discharge into the lower Niagara River drew the attention of the NYSDEC and led to the further scrutiny of the WWTP. Ultimately the NFWB entered into an Order on Consent with the NYSDEC on December 19, 2017. The Consent Order required the NFWB to undertake 18 action items and included a compliance schedule. The Consent Order requirements focused on four main areas of required activities:

- Proper operation and maintenance of the existing physical chemical treatment facilities,
- Evaluate and optimize existing physical chemical treatment processes,
- Undertake necessary capital improvements to significantly improve the functionality, reliability, and redundancy of the existing physical chemical treatment processes, and
- Evaluate alternatives for different outfall locations and different treatment methods to reduce or eliminate the visual impact of the WWTP's outfall on the receiving water.

As of December 31, 2021, all technical and schedule requirements listed in the December 19, 2017 Consent Order have been met. Numerous deliverables have been provided to the NYSDEC and posted on the NFWB's website as required by the Consent Order, including the production of quarterly reports that detail events that occurred each quarter. Key developments as a result of the above include the following:

- Operations and maintenance staff have significantly improved their capability,
- Numerous process and operational changes have been implemented to enhance and optimize existing treatment processes,
- Phase IV capital projects are under construction and when complete will improve the functionality, reliability, and redundancy of the existing treatment equipment. The improvements focus on processes other than activated carbon filtration, that would remain if the plant is converted to a biological treatment plant.
- The study to evaluate alternative outfall locations identified one relatively low-cost option that would significantly reduce the number of discharges at Outfall 003 (Falls Street Tunnel). This option has since advanced to design and construction, and the project is complete.
- Following on the recommendations of the 2015 Turbidity Study, a pilot scale biological treatability study was conducted at the WWTP that evaluated two alternative treatment technologies. The 8-month long study utilized WWTP primary influent wastewater in pilot scale treatment systems to evaluate whether biological treatment was a viable option and could meet SPDES permit requirements. The study ultimately recommended an aerobic membrane bioreactor (MBR) activated sludge facility be constructed at a cost of \$223 million dollars (2019 20-year net present worth).

Following the developments of the past 5-years the NFWB has taken a different approach than in the past. The Board would like to convert the activated carbon treatment facilities into a biological treatment facility but recognizes that doing so is beyond the financial capability of the NFWB and its existing customer base. The Board has embarked upon an aggressive campaign to obtain state and/or federal grants for the conversion. Lacking such grant funds, the NFWB will continue to operate the physical chemical plant as well as possible.

The ongoing Phase IV capital improvements are focused on improving those facilities that would remain even if the WWTP was converted to a biological treatment facility. The Phase IV expenditures are complementary and necessary as part of maintaining the overall operability of the WWTP, but purposely avoided any large expenditures on the activated carbon treatment process. The thought being that if and when grants were obtained to convert the WWTP to a biological treatment facility, the carbon filters would be removed and replaced with a biological treatment process.

Upon completion of the Phase IV improvements the WWTP will be in adequate condition to continue operation in its current mode; and/or will be ideally suited to work in conjunction with a new biological treatment facility.

2.3.2 Collection System

The collection system is comprised of pipes ranging in size from 8-inch sanitary sewers to interceptors that are 6 feet in diameter. The Wastewater Collection System also includes very large tunnels including the Adams Tailrace Tunnel (18' x 20'), the Schoellkopf Tunnel (32'), the North Gorge Interceptor (NGI) and the Falls Street Tunnel (FST). The collection system experiences high levels of infiltration and inflow ("I/I).

In the recent past a number of projects have been completed to reduce infiltration and to correct structural issues in the collection system. These projects included:

- North Gorge Interceptor ("NGI") cleaning in 2011 which partially restored the capacity of the interceptor and reduced the overflow of combined wastewater and stormwater during storm events.
- Falls Street Tunnel Infiltration Reduction Project in 2012 (Contract 62) and the follow-on project 62A which sealed additional leakage points into the FST.
- Iroquois Sewer Infiltration Reduction Project (2014) – repaired a 54-inch sewer that was experiencing collapse and major leakage of groundwater.
- The Falls Street Tunnel and the Iroquois Sewer project reduced infiltration by an estimated 5 to 7 million gallons per day.

The Board has ten (10) sewage pumping stations in its collection system. Generally, the stations are in adequate to poor condition. The Gorge Pumping Station is the Board's largest pump station and contributes between 35 and 50% of the WWTP's influent flow. Major upgrades to the Gorge Pumping Station are underway as part of Phase IV capital improvements. Other recent projects at some of the smaller pumping stations include:

- Electrical system upgrades at several pumping stations including:
 - Installed emergency backup power generators at seven (7) pumping stations (2019),
 - New variable frequency drives (VFDs) at three (3) pumping stations (2019)
- Control system upgrades including remote monitoring of seven (7) pump stations (2018),
- Exterior envelope repair including roofs, gutters, and masonry were performed at three (3) pumping stations.
- Site work including tree removal, landscaping, security upgrades, and paving was performed at four (4) pumping stations (2021).

The overall rating for the sewage pump stations is adequate. As with the Water System, AECOM recommends that a comprehensive maintenance management system be developed and implemented for the collection system. This program will include routine sewer cleaning, maintenance, and related work.

2.3.3 Wastewater Regulatory Assessment

The Wastewater System is permitted to discharge treated wastewater pursuant to the SPDES permit issued by the NYSDEC. The WWTP has a good compliance record with regard to meeting the requirements stipulated in its SPDES Permit. Since 2018 when significant operational and maintenance improvements have been enacted at the WWTP there has been only one excursion reported in the facilities SPDES permit monthly discharge monitoring. One organic compound was detected at slightly above the permit limit in September 2021. A letter of explanation was prepared and submitted to the NYSDEC explaining that the reported value was believed to be an anomaly that occurred for unknown reasons. Several corrective measures were identified to prevent reoccurrence. Therefore, other than this one event, the WWTP has operated for approximately 4 years with 100 percent compliance with its effluent permit.

2.3.4 Staffing Assessment for the Wastewater System

The wastewater operations and maintenance staff has experienced a complete turn-over in the past approximately 10 years, meaning that the staff that were originally hired to run the plant have all retired and all new personnel have been hired. This is to be expected for a WWTP of this age. As of the end of 2021, maintenance staff average approximately 6 years on the job, and operations staff average approximately 5 years on the job. The capabilities of operations and maintenance staff have improved tremendously over the past 4 years and are considered adequate. The WWTP does however lack an operator with the appropriate New York State license (Class 4), as a result a consultant has been retained to provide the necessary licensure, on a part time (20 hours per week) basis. It would be desirable for the plant's Chief Operator to obtain the necessary Class 4 license. Additionally, the other 16 operations staff should be strongly encouraged and expected to obtain licensing at levels consistent with their years of experience, ultimately leading to a Class 4 license. Currently none of the other 16 operators hold any level of licensure.

It is anticipated that staffing levels for the Wastewater System will remain steady in the future. It is the conclusion of AECOM and Drescher & Malecki LLP that the staff qualifications and the number of personnel for the Wastewater System are appropriate for proper operation and maintenance during the projection period. Engineering assistance with process control, operations, and maintenance of the wastewater system has been and will likely continue to be provided by outside consultants as the NFWB currently lacks this internal capability.

3. Capital Improvement Program

3.1 Capital Improvement Plan (CIP) Development and Implementation

Prior to the acquisition of the System by the Board, with the exception of the WTP construction, funding for capital improvements in the System was very limited. Since that time the Board has created a CIP which considers the needs of all of its assets. A rating and ranking process is used to establish priorities and the scheduling of work within the CIP. The CIP formally is approved annually but is updated by staff and reviewed by the Board in draft form on a continual basis to reflect changes in funding sources and other relevant developments. Based on our experience in the water and wastewater industry, the CIP development process is well-structured and reflects the best practices in the industry.

The Director of Technical and Regulatory Services of the Board, working with other managers of the Board, has primary responsibility for the development and implementation of the CIP. The City of Niagara Falls Engineering Department provides engineering, surveying, and other support to the Board on water, wastewater or stormwater projects that involve work in City streets. Consulting engineering firms are retained to provide professional assistance during engineering design and construction of capital improvement projects.

3.2 CIP

Table 1 presents the CIP for 2022 through 2026. The CIP is updated by management and reviewed by the Board periodically. The amounts shown in the table include an allowance of approximately 3% per year for inflation.

The CIP for the Water System is focused primarily on distribution and storage system improvements to enhance overall water quality, system reliability and reduce water loss, including water main, hydrant and large valve replacement programs. In addition, the meter replacement program has become an important part of reducing the cost of reading meters and replacement of older faulty meters.

The improvements in the Wastewater System represent the larger share of the budgeted funds, with the continued upgrades at the wastewater plant (Phase IV) consuming the greatest amount of the planned investments. Investments in pumping stations, tunnels/interceptors and the collection system also will continue. At this time funding for conversion of the WWTP to a biological treatment facility has not yet been obtained.

On a System-wide basis, the CIP includes provisions for the implementation of new technology which is primarily focused on the monitoring and control of water and wastewater facilities. Such technology will enable Board personnel to continue to attempt to operate more efficiently and effectively. The past improvements have allowed for some reductions in personnel, while further improvements may allow for more efficient use of utilities, reduce water system loss and overall better system management. Funds are also included each year for the replacement of Board vehicles.

Table 1 – Capital Improvement Plan (“CIP”)

Description	2022	2023	2024	2025	2026	Total
COMBINED PROJECTS (WATER AND WASTEWATER)						
IT Plan Implementation	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$150,000
Meter Replacement & Upgrades	70,000	70,000	70,000	70,000	70,000	350,000
Fleet Replacement	80,000	80,000	80,000	80,000	80,000	400,000
Water/sewer GIS/GPS Mapping	5,000	5,000	5,000	5,000	5,000	25,000
Combined Projects - Miscellaneous	100,000	100,000	100,000	100,000	100,000	500,000
WASTEWATER INFRASTRUCTURE PROJECTS						
WWTP Rehab Phase 4A	2,653,949	2,653,949	2,653,949	-	-	7,961,847
WWTP Rehab Phase 4B	1,969,794	-	-	-	-	1,969,794
WWTP Rehab Phase 4C	1,580,549	-	-	-	-	1,580,549
WWTP Rehab Phase 4E	1,000,000	1,000,000	-	-	-	2,000,000
WWTP Rehab Phase 4G	1,000,000	-	-	-	-	1,000,000
WWTP Rehab Phase 4I	269,246	-	-	-	-	269,246
WWTP SCADA Improvements	81,321	81,321	81,321	-	-	243,962
WWTP Phase II Upgrades to the Sewer Line	173,914	-	-	-	-	173,914
WWTP Phase II Replacement of Sludge and Hypo Pipelines	173,914	-	-	-	-	173,914
WWTP Intermediate Pump Upgrades	75,000	1,500,000	1,500,000	-	-	3,075,000
WWTP Chemical Bulk Storage	-	150,000	-	-	-	150,000
WWTP Infrastructure Projects - Miscellaneous	200,000	200,000	200,000	200,000	200,000	1,000,000
SEWER INFRASTRUCTURE PROJECTS						
Lasalle Area Sewer Improvements (SSO)	180,000	333,333	333,333	333,333	-	1,180,000
Sewer /GPA Infrastructure Projects - Miscellaneous	100,000	100,000	100,000	100,000	100,000	500,000

(continued)

(concluded)

Description	2022	2023	2024	2025	2026	Total
WATER TREATMENT PLANT INFRASTRUCTURE PROJECTS						
WTP Pump Replacements	30,000	30,000	30,000	30,000	30,000	150,000
WTP SCADA Control System Upgrades		250,000	250,000			500,000
WTP Security Upgrades		25,000	25,000			50,000
WTP Building Improvements and Caulking	50,000	50,000	50,000	50,000	50,000	250,000
WTP Roofing Work	50,000	50,000	50,000	50,000	50,000	250,000
WTP Chlorine System Upgrades		250,000	250,000			500,000
WTP Emergency Backup Generator Upgrades		250,000	250,000			500,000
WTP HVAC Rooftop & Make Up Air		300,000	300,000			600,000
WTP Fluoride System Upgrades		229,000	229,000			458,000
WTP Infrastructure Projects	200,000	200,000	200,000	200,000	200,000	1,000,000
WATER INFRASTRUCTURE PROJECTS						
10th Street and Michigan Avenue Mains	-	830,000	-	-	-	830,000
18th Street Main - Ontario Avenue to Whitney Avenue	550,000	550,000	-	-	-	1,100,000
77th Street Main - Stephenson Ave to Niagara Falls	-	-	550,000	550,000	-	1,100,000
80th Street - Niagara Falls Blvd. to Rick Manning Drive	-	-	-	300,000	-	300,000
College Terrace - Madison to College Avenue	-	-	155,000	-	-	155,000
LaSalle Avenue Main - Hyde Park Blvd to 11th Street	-	-	1,600,000	-	-	1,600,000
Laughlin Drive Main - 82nd Street to Bollier Ave	-	928,074.00	-	-	-	928,074
McKoon Avenue Main - DeVeaux Ave to James Ave	-	-	-	880,000	-	880,000
Military Road Main - Jacob Place to Bollier Avenue	200,000	-	-	-	-	200,000
Ontario Avenue Main - 13th Street to Main Street	-	-	-	822,517	-	822,517
Van Rensselaer Ave - 900 Block	-	140,115	-	-	-	140,115
Whitney Avenue Main - 11th Street to Hyde Park Blvd.	-	-	925,000	925,000	-	1,850,000
Large Valve Replacement	200,000	200,000	200,000	200,000	200,000	1,000,000
Hydrant Replacement	170,000	170,000	170,000	170,000	170,000	850,000
20 inch main from Beach Ave. Storage Tank to Ontario St	-	-	1,000,000	1,000,000	-	2,000,000
Leak Detection/Distribution Modeling	-	50,000	-	-	-	50,000
Loop Niagara Ave. Main to Parkview Drive	7,000	-	-	-	-	7,000
Witkop Avenue and 85th Street Loop (all 8")	-	834,633	-	-	-	834,633
Water Infrastructure Projects - Miscellaneous	120,000	120,000	120,000	120,000	120,000	600,000
Total	\$11,319,686	\$11,760,425	\$11,507,603	\$6,215,850	\$1,405,000	\$42,208,564

The CIP continues to be heavily weighted on capital improvements at the WWTP. Many of these projects are ongoing and major construction will continue through 2026. Beyond these ongoing projects, the CIP includes a number of projects that will be necessary over the next 5 years in order to maintain the existing treatment plant. The conversion of the current WWTP to a biological treatment facility is identified as a project that should be undertaken, however, the NFWB cannot be expected to fund the conversion of the WWTP to a biological treatment facility. The cost is beyond the capability of the existing rate paying base. The NFWB will continue to seek external grant funding for this conversion. The facility's SPDES permit is currently being reviewed by the NYSDEC and potential changes could result in significant increases in capital expenditures to meet potentially reduced effluent limits for residual chlorine, total phenols,

biochemical oxygen demand (BOD), and percent removal requirements for BOD and total suspended solids (TSS). Funds for these projects are not currently included in the CIP, as the permit review process has not yet advanced to the point where changes are reasonably certain and the permit review process may not be complete for months or years.

In the Water Distribution System, the CIP includes 26 specific water distribution main replacement projects, along with continued replacement of large valves, and continued leak detection & distribution system modeling to reduce leakage rates. Thirteen (13) of the water main projects are expected to be completed over the next 5 years based on grant availability and prioritization. The Water Distribution System CIP also includes funding for unplanned system repairs that are likely to be necessary each year. The specific areas identified for replacement have been prioritized based on factors such as the history of main breaks, known areas of leakage, the need to upgrade the size or materials of the main and other factors. The continued implementation of a water main replacement program should, over time, reduce the level of unaccounted-for water in the Water System.

In the opinion of AECOM, the CIP is reasonable and will help ensure that quality water and wastewater services are provided to customers in a reliable manner.

4. Projected Cash Flows and Debt Service Coverage

4.1 Introduction

This Section of the Report presents the findings of Drescher & Malecki LLP regarding the ability of the Board to meet the financial needs of the System including the debt service on the Outstanding Bonds, the 2022 Refunding Bonds and additional bonds whose issuance is anticipated during the projection period.

4.2 Plan of Finance

4.2.1 Series 2022A Bonds

The proceeds of the Bonds will be utilized to (i) refund the outstanding principal amount of the Authority's \$34,120,000 Water and Sewer System Revenue Bonds, Series 2013A and (ii) pay certain costs of issuance.

Plan of Refunding

Substantially all of the proceeds of the Bonds will be used to refund the specific maturities of the Authority's Series 2013A Bonds in the principal amounts shown below (the "Refunded Bonds"), all of which were issued previously by the Authority under the Resolution.

4.2.2 Sources and Uses of Funds for the CIP

Table 2 presents the anticipated sources and uses of funds for the CIP. It is anticipated that the cash requirements of the CIP for the 2021-25 period will be met through 1) remaining funds currently on hand with the Board received from the New York Power Authority; 2) remaining funds on hand from cash surpluses from operations of the preceding years; 3) interest on funds on hand whose use is restricted to capital improvements; and, 4) the proceeds of grants, and other short-term debt to be issued by the Authority.

Table 2 – Sources and Use of Funds for the CIP

	2021	2022	2023	2024	2025
Opening balance, January 1:					
Remaining funds restricted for capital projects**	\$ 2,786,581	\$ 1,909,301	\$ 7,590,145	\$ 5,784,220	\$ 3,778,295
Sources of CIP funds:					
Prior year coverage	842,000	885,000	835,000	885,000	835,000
Short-term financing	-	11,005,000	-	-	-
Grants	3,552,281	6,470,822	2,302,592	2,602,592	1,521,000
EFC loan	2,495,000	-	-	-	-
Use of CIP funds:					
CIP spending (per Table 11)	<u>(7,766,561)</u>	<u>(12,679,978)</u>	<u>(4,943,517)</u>	<u>(5,493,517)</u>	<u>(3,370,000)</u>
Ending balance, December 31	<u>\$ 1,909,301</u>	<u>\$ 7,590,145</u>	<u>\$ 5,784,220</u>	<u>\$ 3,778,295</u>	<u>\$ 2,764,295</u>

** The beginning balance includes NYPA funding remaining from \$19m settlement, bond proceeds and annual contributions from operating funding coverage.

4.3 Projected Cash Flows

The projected cash flows of the System are presented in Table 3. The table was prepared based on the historical experience of the System, the 2021 and 2022 budgets for the System, and assumptions regarding future conditions. The achievement of any projection of future events will be affected by economic, demographic, and other conditions, as well as being dependent upon the occurrence of other future events and conditions such as public policy initiatives which cannot be predicted. Therefore, the actual financial requirements and performance of the System may vary from the estimates presented herein, and such variations could be material.

The projected revenues consider the increase in water and wastewater rates of 2.99% and 16.90% that was approved by the Board effective January 1, 2021 and 2022, respectively. In addition, it is assumed that the Board will enact increases in water and wastewater rates and charges of 3% in 2023, 3.5% in 2024, and 4% in 2025.

Table 3 – Preliminary Projections of Cash Flows and Rate

Line	Estimated					
	2021	2022	2023	2024	2025	
Revenues						
1	Operating revenues	\$ 33,924,231	\$ 37,233,381	\$ 38,506,625	\$ 39,636,174	\$ 41,187,420
2	Total	33,924,231	37,233,381	38,506,625	39,636,174	41,187,420
Operations and Maintenance Expenses						
3	Salaries and benefits	11,462,767	11,712,914	12,096,735	12,495,839	12,910,914
4	Chemicals/sludge	6,494,177	12,459,513	12,833,298	13,218,297	13,614,846
5	Insurance/safety	507,970	463,427	486,599	510,929	536,475
6	Maintenance	868,212	834,835	876,577	920,406	966,426
7	Utilities	2,203,537	2,242,274	2,337,847	2,435,984	2,536,723
8	Other expenses	1,105,879	962,025	1,000,506	1,040,526	1,082,147
9	Equipment	253,931	221,633	230,499	239,719	249,307
10	PILOT payment to City	700,000	700,000	700,000	700,000	700,000
11	Total	23,596,474	29,596,622	30,562,061	31,561,699	32,596,839
12	Revenues available for debt service	\$ 10,327,757	\$ 7,636,759	\$ 7,944,564	\$ 8,074,475	\$ 8,590,581
Debt Service						
13	Debt service on outstanding bonds	7,021,537	6,379,526	6,734,499	7,004,734	7,232,326
14	Debt service on future Authority bonds	-	-	-	-	-
15	Total	\$ 7,021,537	\$ 6,379,526	\$ 6,734,499	\$ 7,004,734	\$ 7,232,326
16	Debt Service Coverage (minimum 1.15)	1.47	1.20	1.18	1.15	1.19
17	Actual/Proposed Rate Increase	2.99%	16.90%	3.0%	3.5%	4.0%

4.4 Notes for the Projected Cash Flows

4.4.1 Introduction

The following notes provide background information and the assumptions and analysis underlying the projections provided in Table 3. Notes regarding the revenues of the System are provided in 4.4.2 through 4.4.7 of this Section. Notes regarding operation and maintenance expenses are presented in 4.4.8 through 4.4.15. Information regarding debt service is included in 4.4.16 through 4.4.18. The calculation of the revenues available for debt service (projected surplus), debt service coverage and anticipated future rate increases are described in 4.4.19 and 4.4.20 of this Section.

4.4.2 Operating Revenues - Water Sales

The Water System provides treated water to customers throughout the City and also serves the Seneca Nation of Indians and the Town of Niagara. Payments from water sales are dependent on changes in the customer base, the demand for water, the rate structure, and other factors such as the efficiency of collection for the bills.

Customer Demand

Between 2011 and 2016, the number of customers of the Water System had been slowly declining (3% drop from 18,873 accounts to 18,252 accounts), however from 2016 to date the number of customers has remained relatively steady (18,185 customers projected in 2021). Between 2011 and 2016 the amount of water consumed increased 11% and the increase was primarily driven by industrial users. Between 2017 and 2021 total water consumption has increased an additional 7.3%, mainly from increases in industrial and SIU consumption. Table 4 illustrates the billed water consumption and revenues generated from 2017 through 2021, as projected.

Table 4 – Water Consumption by Customer Class

<u>Class of Customer</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Projected 2021</u>
Residential/Commercial					
Consumption (CCF)	1,272,267	1,299,934	1,252,451	1,236,314	1,240,942
Number of Accounts	17,835	17,917	17,944	17,920	17,880
Revenues	\$ 4,822,853	\$ 5,120,518	\$ 4,985,808	\$ 4,981,737	\$ 5,167,139
Industrial					
Consumption (CCF)	852,457	926,684	912,621	887,571	966,867
Number of Accounts	261	245	245	258	256
Revenues	\$ 2,327,816	\$ 2,722,250	\$ 2,597,846	\$ 2,358,805	\$ 2,797,914
Significant Industrial Users (SIU)					
Consumption (CCF)	971,721	876,822	890,139	930,712	1,115,955
Number of Accounts	23	24	22	23	23
Revenues	\$ 2,166,094	\$ 2,238,898	\$ 2,067,362	\$ 2,219,211	\$ 2,790,450
Non-Resident Users					
Consumption (CCF)	3,586	2,605	1,747	2,478	1,784
Number of Accounts	27	27	26	26	26
Revenues	\$ 30,912	\$ 22,467	\$ 22,232	\$ 30,633	\$ 42,265
Total					
Consumption (CCF)	3,100,031	3,106,045	3,056,958	3,057,075	3,325,548
Number of Accounts	18,146	18,213	18,237	18,227	18,185
Revenues	\$ 9,347,675	\$ 10,104,133	\$ 9,673,248	\$ 9,590,386	\$ 10,797,768
Plus: Other Departmental	1,497,008	1,450,379	1,921,647	1,351,427	1,193,950
Less: Adjustments	(304,026)	(25,013)	(10,629)	(1,124)	-
Total Departmental Revenue	<u>\$ 10,540,657</u>	<u>\$ 11,529,499</u>	<u>\$ 11,584,266</u>	<u>\$ 10,940,689</u>	<u>\$ 11,991,718</u>

Water rates are based on a declining block structure which is common in the water industry among utilities with a surplus of water supply capacity. The following water rates are applicable for 2022.

Table 5 – 2022 Rates for Water Customers

	Inside City (\$/ccf)	Outside City (\$/ccf)
First 20,000 CF	4.11	10.99
Next 60,000 CF	3.56	9.60
Next 120,000 CF	3.02	7.99
> 200,000 CF	2.50	6.73

The 2022 rates reflect a 16.9% increase over the 2021 rates. Further increases will be necessary in water and sewer rates in 2023, 2024 and 2025 according to the schedule set forth in Table 3. The increases represent an assumed across-the-board increase in the rates for water service, sewer service and other related services provided to customers. The Board may also consider future increases in existing meter surcharges or consider instituting a capital improvement surcharge.

There are no active wholesale water sales agreements. However, the System has a reciprocity agreement with the County of Niagara to provide water under certain circumstances. Water sales under this agreement have historically been well below 1 percent of System production.

The City’s Department of Finance is responsible under the Operations Agreement for collecting payments on behalf of the Board. This Agreement continues the role of the Finance Department prior to the formation of the Board and Authority. Historic collection rates are approximately 96 to 97 percent of total billings. This percentage is based on total collections, including receipts from subsequent tax sales, divided by total billings.

Unpaid water and sewer bills are combined with unpaid taxes and the resulting amounts become liens against the customers’ property. Property sales provide proceeds to satisfy part or all of the liens. This arrangement is expected to continue in the future and the Board will pay the City for the services it provides. The amounts shown in Line 1 of Table 3 assume that bill collection will continue at historical rates of collection throughout the projection period.

4.4.3 Operating Revenues - Other Water Revenues

Other revenue in the Water System is derived from connection fees, inspection fees, meter rentals, hydrant services and other sources. Other revenues are typically less than \$1,000,000 annually.

4.4.4 Operating Revenues - Revenues from Sewer Service Charges

The Wastewater System provides wastewater collection and treatment services to customers in the City. Payments from customers for sewer user charges are the result of the demand for water (since sewer volume rates for most customers are based on water use), the strength of the wastewater, the rate structure, and other factors such as the levels of bill collection. In addition, certain customers discharge contaminated groundwater to the sewer system and are charged for their groundwater discharges. The rate structure for sewer service consolidates all consumers into two classes: Significant Industrial Users (SIU), and Commercial, Small Industrial, and Residential Users (CSIRU). The user charge system includes ten

Substance of Concern charges that are assessed exclusively within the SIU class. Table 6 illustrates the billed wastewater consumption and revenues generated from 2017 through 2021, as projected.

Table 6 – Wastewater Consumption by Customer Class

<u>Class of Customer</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Projected 2021</u>
Residential/Commercial					
Consumption (CCF)	1,272,267	1,299,934	1,252,451	1,236,314	1,240,942
Number of Accounts	17,835	17,917	17,944	17,920	17,880
Revenues	\$ 6,406,907	\$ 6,693,730	\$ 6,613,490	\$ 6,631,300	\$ 6,876,161
Industrial					
Consumption (CCF)	852,457	926,684	912,621	887,571	966,867
Number of Accounts	261	245	245	258	256
Revenues	\$ 3,487,388	\$ 4,197,516	\$ 3,879,443	\$ 3,165,994	\$ 3,752,813
Significant Industrial Users (SIU)					
Consumption (CCF)	971,721	876,822	890,139	930,712	1,115,955
Number of Accounts	23	24	22	23	23
Revenues	\$ 8,680,470	\$ 8,379,467	\$ 7,917,883	\$ 10,811,521	\$ 12,735,281
Non-Resident Users*					
Consumption (CCF)	-	-	-	-	-
Number of Accounts	-	-	-	-	-
Revenues	\$ -	\$ -	\$ -	\$ -	\$ -
Total					
Consumption (CCF)	3,096,445	3,103,440	3,055,211	3,054,597	3,323,764
Number of Accounts	18,119	18,186	18,211	18,201	18,159
Revenues	\$ 18,574,765	\$ 19,270,713	\$ 18,410,816	\$ 20,608,815	\$ 23,364,255
Plus: Other Departmental	1,036,764	1,188,385	1,374,123	396,687	940,727
Less: Adjustments	(169,020)	(44,948)	-	-	-
Total Departmental Revenue	\$ 19,442,509	\$ 20,414,150	\$ 19,784,939	\$ 21,005,502	\$ 24,304,982

* Non-Resident Users are only water supplied, no wastewater activity was recorded in the year listed above.

The 2022 wastewater user charges for the CSIRU class of customers are summarized in Table 7.

Table 7 – 2022 Wastewater Rates for CSIRU Customers

Minimum Charge
All meter sizes and
flow up to 1,300 cf
\$70.78

Volume Charge
Usage in excess of 1,300 cf
per quarter (per 100 cf)
\$5.44

Three of the wastewater user charges for the SIU class of customers in 2022 are summarized in Table 8.

Table 8 – 2022 Wastewater Rates & Charges for SIU Customers

<u>Flow Charge (\$/MG)</u>	<u>Solids Charge (\$/lb)</u>	<u>SOC Charge (\$/lb)</u>
3.83	1.23	2.12

The current rate structure was developed to accommodate the large base of industrial wastewater that was discharged to the plant, and the need to recover the costs to treat these wastes.

4.4.5 Operating Revenues - Sales to Other Jurisdictions

The Board provides wastewater service to Town of Niagara customers outside of the City. Revenues are pursuant to an agreement with the Town of Niagara developed in 2015 that includes the use of wastewater flow meters for measuring actual wastewater volumes discharged to the NFWB collection system. This change, along with the 2.99% and 16.9% rate increases enacted in 2021 and 2022, respectively should result in increased revenues from Out of District users.

4.4.6 Operating Revenues - Other Wastewater Revenues

The Wastewater System also provides a variety of miscellaneous services to customers. Several of the Board’s fees for miscellaneous services have been in place for many years without adjustment. There is the flexibility for the Board to adjust these fees upward in the future.

4.4.7 Operating Revenues - Interest and Other Income Earnings

The System will earn interest on the funds maintained by the Board and the Authority based on the anticipated balances in each fund and the current investment rates. Table 9 presents the estimated interest earnings for 2021:

Table 9 – Estimated Interest Earnings – 2021

<u>Fund</u>	<u>Average End of Month Balance</u>	<u>Interest Earnings Rate</u>	<u>Estimated Annual Earnings</u>
Debt Service restricted cash	\$ 20,406,355	Varies	\$ 408,127
Capital Project restricted cash	2,786,581	0.25%	6,966
Operating cash	21,859,723	0.15%	<u>32,790</u>
			<u>\$ 447,883</u>

Interest earnings rates have continued to decrease in 2021. This situation is affecting the revenue of water utilities across the country.

4.4.8 Operating Expenses — Salaries & Benefits

The System’s expenses include the costs associated with the operation, maintenance and administration of the water treatment facilities and distribution system as well as the costs associated with the operations, maintenance and administration of the wastewater collection and treatment facilities, and stormwater facilities. The historical operating costs for these services are presented in the Official Statement for the 2022 Refunding Bonds. Operating expenses are comprised of labor-related costs and other expenses. Labor-related costs include salaries and wages, fringe benefits such as medical insurance for employees as well as pension contributions. Labor-related costs are dependent on the following factors: the number of Board employees; the salaries and wages for each personnel classification; the use of overtime; the costs of health care and related benefits; benefits payable to retirees; and the amounts required by the Office of the State Comptroller for deposits to the New York State and Local Employees Retirement System. Based on the rates provided by the Retirement System, the budgeted amount for pension fund contributions in 2021 and 2022 is \$587,252 \$619,230, respectively.

In April 2017, the Board reached a settlement with the collective bargaining agreements of all four of its labor unions. The new agreements will result in substantial savings in healthcare costs for the Board over the next 7 years while allowing employees and retirees to retain quality and affordable healthcare benefits. Employees share a modest 20% of costs and the Board contributes to employee Health Savings Plans to help offset costs associated with a high deductible health plan. Without burden to rate payers, other cost-savings measures such as comprehensive training, professional development, and greater utilization of technology in daily operations are also being implemented. The Board will spearhead an aggressive and long-term public relations campaign to better educate the public on future initiatives such as its aggressive pursuit of funds through the New York State Clean Water Infrastructure Act.

At the time of this Feasibility Study, the future annual changes in salaries, wages and benefits were not known. The projected cash flows in Table 3 incorporate assumptions regarding potential annual increases in average labor-related costs, as well as, the expectation that the number of Board employees will remain consistent over time. As illustrated in Line 3 of Table 3, the total cost for labor-related expenses is expected to increase at the rate of approximately 3% during the projection period through December 31, 2025.

Payroll and benefit expenses continue to be largest proportional share of expenses in the Board’s budget. Required contributions to the Retirement System and medical insurance costs have significantly outpaced inflation since the Board’s inception. Table 10 shows changes in system staffing from 2016 to date. In the recent past the Wastewater System was understaffed and resulted in extensive overtime. In 2018, a concerted effort was made to increase staffing to necessary levels. At present operations and maintenance are fully staffed.

Table 10 – System Staffing

	<u>Staff Positions *</u>
Water Facilities Division	36.0
Wastewater Facilities Division	<u>52.0</u>
Total System	<u>88.0</u>

* Denotes filled positions. Authority and Board members, as well as personnel providing support services are not included in the above figures. The above totals also do not include staff members that are currently on unpaid leave.

4.4.9 Operating Expenses —Chemicals/sludge

Line 4 of Table 3 reflects the amount of chemicals and sludge disposal costs. Chemicals are used in both the water treatment and the wastewater treatment processes although the majority of the cost of chemicals is wastewater related. These costs have increased significantly in recent years and are projected for a one-time unavoidable \$7.5 million increase in 2022, due to recent inflation as referenced in the new bids.

4.4.10 Operating Expenses —Insurance/safety

Line 5 of Table 3 reflects the amount of insurance and safety related expenses. Insurance represents the cost of property and liability insurance. Safety includes safety equipment and supplies and for potential contingencies that may occur throughout the year. These costs have been slowly increasing and the projection includes an annual increase of 5% based on historical trends.

4.4.11 Operating Expenses —Maintenance

Line 6 of Table 3 reflects maintenance expenses. This expense represents the cost of small tools; repairs and maintenance for machinery, vehicles, and real property; fuel for vehicles; waste disposal and cleaning supplies. With the exception of fuel for vehicles, which is a minor proportion of the total costs of this category, these costs have been reasonably stable, and the projection includes an annual increase of 5% based on historical trends.

4.4.12 Utilities

This expense represents the cost of communications (office telephones and cellular phones); electricity; natural gas; and water and sewer service. The Board does receive low-cost hydro power which does significantly assist in reducing costs as the Boards water and wastewater processes use significant amounts of electric utilities. These costs have been slowly increasing and the projection includes an annual increase of 4.2% based on historical trends.

4.4.13 Other Expenses

This expense represents the cost for legal services; various consulting services; computer hardware and software and software maintenance agreements; postage; travel and training; advertising; and various other miscellaneous expenses. These costs are projected to increase at an average rate of 4% between 2021 and 2025.

4.4.14 Equipment

Line 9 of Table 3 includes equipment purchases and are projected to increase 4% annually based on historical trends.

4.4.15 PILOT Payment to the City

Under the Operations Agreement between the Board and the City, the Board will provide payments in lieu of taxes (PILOT) to the City. Such PILOT payments began in 2008. The base PILOT payment is \$700,000 per year. Beginning in 2008 and every five years thereafter, the PILOT payment will be adjusted in accordance with a formula in the Operations Agreement. According to the formula, if water consumption in the System is declining or remaining the same, the PILOT payment remains the same. If water consumption increases, the PILOT will be increased proportionally for the next five-year period. As of the date of this report, the PILOT payment remained at \$700,000.

4.4.16 Revenues Available for Debt Service (Line 12)

The revenues available for debt service equals total revenues (Line 2) less total operations and maintenance expenses (Line 11). The annual surplus from the prior year is assumed to be deposited in the Construction Fund.

4.4.17 Debt Service - Debt Service on Outstanding Bonds (Line 13)

The Outstanding Bonds of the System includes the following: 1) bonds issued by the Authority and the New York State Environmental Facilities Corporation (“NYSEFC”) in 2003 to acquire the System from the City, make deposits to reserve funds, provide funds for capital improvements and to pay for the costs of issuance; 2) bonds issued in 2005 by the NYS EFC to finance costs associated with the NGI cleaning work and to finance the freeze/thaw beds for sludge produced at the WTP; 3) bonds issued in 2012 by the NYS EFC to pay for projects originally financed in 2010-11 (originally financed using NYS EFC short-term loans) along with an American Recovery and Reinvestment Act Grant; 4) bonds issued in 2013 to refund the previously issued 2003 bonds; 5) bonds issued in 2014 to refund the Series 2004 serial bonds; 6) bonds issued in 2015 by the NYS EFC to refund the 2005 NYS EFC bonds; and 7) bonds issued in 2016 to advance refund the Series 2005A Bonds.

It is anticipated that a portion of the proceeds of the 2022 Refunding Bonds will be used to advance refund selected bonds. The amount of debt service included on this line is projected using the original principal and interest due on each of the previously noted issues, less the excepted annual savings from refunding. Table 11 illustrates the amount of principal and interest due on currently outstanding debt and the estimated savings to be realized upon refunding.

Table 11 – Principal and Interest Due on Outstanding Debt and Estimated Savings from Refunding

Year	Amounts Due on Existing Debt			Estimated Savings	Estimated
	Principal	Interest	Total	from Refunding Bonds	Debt Service
2021	\$ 4,280,000	\$ 2,741,537	\$ 7,021,537	\$ -	\$ 7,021,537
2022	4,430,000	2,939,642	7,369,642	990,116	6,379,526
2023	4,575,000	2,527,988	7,102,988	368,489	6,734,499
2024	4,980,000	2,735,690	7,715,690	710,956	7,004,734
2025	5,200,000	2,519,967	7,719,967	487,641	7,232,326

The Authority also maintains a separate NYPA Energy Loan, which is not included within the outstanding parity bonds. In 2012 the Board undertook a project to examine the wastewater plant to look for energy saving opportunities. The study was funded by the New York Power Authority (NYPA) and the New York State Environmental Facilities Corporation (NYSEFC). As a result of that project, \$2.2 million in energy saving upgrades were identified. The design of this project was completed in 2015 and construction was completed in 2017. During 2019, the Board received proceeds of \$2,189,993 from the New York State Power Authority for the Energy Efficiency Program at an interest rate of 2.79%.

Table 12 – Principal Due on Outstanding NYPA Loan

Year	Principal on NYPA Loan
2021	\$ 186,316
2022	208,755
2023	214,654
2024	220,720
2025	226,958

4.4.18 Debt Service - Debt Service on Future Authority Bonds (Line 14)

Capital projects in the CIP are assumed to be funded utilizing remaining funds received from the NYPA, short-term financing and prior year surplus. Due to the renewable short-term opportunities, no long-term Future Authority bonds are included in the cash flow projections, but the Board is considering future issues due to the current market condition.

4.4.19 Debt Service Coverage (Line 16)

Debt service coverage is computed on the basis of Total Revenues Available for Debt Service (Line 12) divided by Total Debt Service (Line 15). Debt service coverage is required to be a minimum of 1.15 times total debt service under the Resolution.

4.4.20 Anticipated Water and Sewer Rate Increases (Line 17)

Line 17 illustrates the actual increase in water and sewer rates as adopted by the Board for 2021 and 2022 as well as the projected overall increases in water rates and sewer rates for 2023 through 2025.

APPENDIX B

**AUDITED FINANCIAL STATEMENTS OF THE BOARD
FOR FISCAL YEAR ENDED DECEMBER 31, 2020**

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NIAGARA FALLS WATER BOARD

**Financial Statements as of
December 31, 2020
Together with Independent
Auditor's Report**

Bonadio & Co., LLP
Certified Public Accountants

NIAGARA FALLS WATER BOARD

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INDEPENDENT AUDITOR'S REPORT

August 9, 2021

To the Board of Directors of
Niagara Falls Water Board

Report on the Financial Statements

We have audited the accompanying financial statements of the Niagara Falls Water Board (the Board) as of and for the year ended December 31, 2020, and the related notes to financial statements, which collectively comprise the Board's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Board, as of December 31, 2020, and the changes in its financial position and its cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Prior Period Information

The financial statements and other supplementary information of the Board as of December 31, 2019, were audited by other auditors whose report dated May 13, 2020, expressed an unmodified opinion on those financial statements.

Other Matters**Required Supplementary Information**

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, schedule of changes in total other postemployment benefit liability and related ratios, schedule of proportionate share of net pension liability (asset), and schedule of contributions - pension plans, as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise the Board's basic financial statements. The accompanying other information as listed in the table of contents of the Niagara Falls Water Authority (a blended component unit of the Board) is presented for purposes of additional analysis and is not a required part of the basic financial statements.

The 2020 other information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the other information is fairly stated, in all material respects, in relation to the basic financial statements for the year ended December 31, 2020 as a whole.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated August 9, 2021, on our consideration of the Board's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Board's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Board's internal control over financial reporting and compliance.

Bonadio & Co., LLP

NIAGARA FALLS WATER BOARD

Management's Discussion and Analysis (Unaudited) December 31, 2020

As management of the Niagara Falls Water Board (the Board), we offer readers of the Board's financial statements this narrative and analysis of the financial activities of the Board for the year ended December 31, 2020.

Following this Management's Discussion and Analysis (MD&A) are the financial statements of the Board together with the notes thereto. Please read the MD&A in conjunction with the Board's financial statements and the accompanying notes in order to obtain a full understanding of the Board's financial position and results of operations.

The Board was created by an Act of the State of New York, as more fully described in note 1 to the financial statements, and commenced operations on September 25, 2003. In accordance with an agreement with the City of Niagara Falls, New York (the City) the Board received all assets, liabilities and operating activities (including all personnel) of the City's former Water and Sewer Funds. In return, the Board issued debt, which was used to defease outstanding City bonded debt relating to its Water and Sewer Funds.

Financial Highlights

- The liabilities and deferred inflows of resources of the Board exceeded its assets and deferred outflows of resources by (\$5,009,060) and (\$4,328,324) (net position) at December 31, 2020 and 2019, respectively. At December 31, 2020 and 2019, (\$64,043,761) and (\$59,541,445) (unrestricted net position), respectively, may be used to meet the Board's ongoing obligations.
- The Board's operating income for the years ended December 31, 2020 and 2019 was \$1,302,070 and \$1,230,642, respectively.
- The Board's total bond indebtedness decreased by \$4,462,651 during the current fiscal year as a result of principal payments made of \$4,332,897 and premium amortization of \$129,754.
- The Board reflected a liability for postemployment benefits of \$94,980,144 and \$88,864,058 at December 31, 2020 and 2019, respectively.

Overview of the Financial Statements

This discussion and analysis is intended to serve as an introduction to the Board's basic financial statements which include the financial activities of the Board, the Niagara Falls Public Water Authority (the Authority) (a blended component unit), and the notes to financial statements. The reasons for blending the financial activities are explained in note 1 to the financial statements. An overview of the responsibilities of the Board and the Authority is presented as follows.

<u>Board</u>	<u>Authority</u>
* Owns the System	* Issues debt
* Operates and maintains the System	* Provides proceeds of debt for construction and improvements
* Responsible for System improvements	* Provides oversight regarding adequacy of revenues and System conditions
* Sets rates and collects revenues	
* Pays debt service on bonds	

NIAGARA FALLS WATER BOARD

Management's Discussion and Analysis (Unaudited) December 31, 2020

The financial statements are designed to provide readers with a broad overview of the Board's finances in a manner similar to a private-sector business, and are organized as follows:

- The statement of net position presents information on all of the Board's assets, deferred outflows of resources, liabilities and deferred inflows of resources, with the difference between the four reported as net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the Board is improving or deteriorating.
- The statement of revenue, expenses and changes in net position presents information on how the Board's net position changed during each reporting period. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenue and expenses are reported in this statement for some items that will result in cash flows for future fiscal periods (e.g., uncollected water and sewer rents, earned but unused vacation and postemployment benefits).
- The statement of cash flows presents information depicting the Board's cash flow activities for each reporting period and the effect that these activities had on the Board's cash and equivalent balances.
- The notes to the financial statements provide additional information that is essential to a full understanding of the data provided in the financial statements. The notes to the financial statements can be found on pages 16 through 40 of this report.

Financial Analysis

As noted earlier, net position may serve over time as a useful indicator of the Board's financial position. Liabilities and deferred inflows exceeded assets and deferred outflows by \$(5,009,060) at December 31, 2020, as compared to \$(4,328,324) at December 31, 2019, as presented as follows:

	Niagara Falls Water Board's Net Position			
	December 31,		Increase/(Decrease)	
	<u>2020</u>	<u>2019</u>	<u>Dollars</u>	<u>Percent</u>
Current assets	\$ 32,833,618	\$ 35,227,654	\$ (2,394,036)	-6.8%
Noncurrent assets	146,582,024	147,358,855	(776,831)	-0.5%
Total assets	<u>179,415,642</u>	<u>182,586,509</u>	<u>(3,170,867)</u>	-1.7%
Deferred outflows	<u>8,282,199</u>	<u>1,135,983</u>	<u>7,146,216</u>	629.1%
Current liabilities	11,441,663	11,861,344	(419,681)	-3.5%
Noncurrent liabilities	<u>180,187,819</u>	<u>174,851,266</u>	<u>5,336,553</u>	3.1%
Total liabilities	<u>191,629,482</u>	<u>186,712,610</u>	<u>4,916,872</u>	2.6%
Deferred inflows	<u>1,077,419</u>	<u>1,338,206</u>	<u>(260,787)</u>	-19.5%
Net investment in capital assets	35,841,765	29,053,483	6,788,282	23.4%
Restricted	23,192,936	26,159,638	(2,966,702)	-11.3%
Unrestricted	<u>(64,043,761)</u>	<u>(59,541,445)</u>	<u>(4,502,316)</u>	7.6%
Total net position	<u>\$ (5,009,060)</u>	<u>\$ (4,328,324)</u>	<u>\$ (680,736)</u>	15.7%

NIAGARA FALLS WATER BOARD

Management's Discussion and Analysis (Unaudited) December 31, 2020

The Board's net investment in capital assets, is a surplus net position of \$35,841,765 and \$29,053,483 at December 31, 2020 and 2019, respectively. This results from the timing of the amortization of the Board's capital debt, as outstanding principal for most of the Board's serial bonds is not paid until late into the life of the debt, while depreciation occurs annually.

The Board's unrestricted net position (deficit) was \$(64,043,761) and \$(59,541,445) at December 31, 2020 and 2019, respectively. The restricted debt service portion of the Board's net position, \$6,636,484 and \$5,754,527 at December 31, 2020 and 2019, respectively, represents funds that are set aside to be used towards debt service. The restricted capital projects portion of the Board's net position, \$2,786,581 and \$6,786,581 at December 31, 2020 and 2019, respectively, represents funds that are set aside for the reconstruction of the Falls Street Tunnel and capital projects. The restricted debt service reserve fund portion of the Board's net position, \$8,741,079 and \$8,389,738 at December 31, 2020 and 2019, respectively, represents funds for future debt service payments. The restricted operating and maintenance reserve fund portion of the Board's net position, \$5,028,792 and \$5,228,792 at December 31, 2020 and 2019, respectively, represents funds to pay the cost of extraordinary repairs to and maintenance of the system.

The Board's unrestricted net position is the remainder of total net position after taking net investment in capital assets, restricted for capital projects, restricted for operations and maintenance and restricted for debt related reserves into account. Unrestricted net position (deficit) increased in 2020 by \$4,502,316 because of an increase in net investment in capital assets of \$6,788,282, a decrease of \$2,966,702 in restricted net position and a loss of \$680,736.

A comparison of current assets to current liabilities of the Board at December 31, 2020 and 2019 follows:

	<u>2020</u>	<u>2019</u>
Current assets	\$ 32,833,618	\$ 35,227,654
Current liabilities	\$ 11,441,663	\$ 11,861,344
Ratio of current assets to current liabilities	2.87	2.97

The Board's total net position decreased by \$680,736 during the year ended December 31, 2020, as compared to a decrease of \$207,188 for the year ended December 31, 2019. Key elements of the current year's decrease in net position (deficit) are as follows:

Niagara Falls Water Board's Changes in Net Position

	<u>2020</u>	<u>2019</u>	Increase/ (Decrease)
Total operating revenue	\$ 32,492,767	\$ 31,188,271	\$ 1,304,496
Total operating expenses	(31,190,697)	(29,957,629)	(1,233,068)
Operating income	1,302,070	1,230,642	71,428
Total non-operating revenue (expenses)	(1,982,806)	(1,437,830)	(544,976)
Change in net position, before restatement	\$ (680,736)	\$ (207,188)	\$ (473,548)

The Board's major sources of operating revenue are charges for water and sewer services which comprise approximately 95% of total operating revenue. These revenues combined increased \$1,478,076 from 2019. These revenues are dependent upon rates charged for these services, with such rates being determined by the Board. Please see the section entitled "Economic Factors and Next Year's Rates" within this MD&A for a listing of the rates charged during 2020 and approved rates for 2021.

NIAGARA FALLS WATER BOARD

Management's Discussion and Analysis (Unaudited) December 31, 2020

The Board's largest operating expense area relates to its employees. Together, personnel costs (salaries) and employee benefits approximate 45% of total operating expenses. In 2020, these costs totaled approximately \$14.2 million as compared to \$13.1 million in 2019, representing an approximate \$1.1 million increase in this area. This increase is due to cost of living adjustments and the net impact of the increases in the total otherpostemployment benefits liability and the net pension liability in the current year.

Within the non-operating revenue (expenses) category, interest expense is by far the largest expense item and represents the cost of carrying serial bonds, which totaled \$84,967,489 and \$89,300,386, at December 31, 2020 and 2019, respectively.

The following is a summary of the Board's cash flow activities for the years ended December 31, 2020 and 2019:

	<u>2020</u>	<u>2019</u>
Cash flows provided by (used in):		
Operating activities	\$ 7,989,258	\$ 7,138,586
Capital and related financing activities	(13,931,424)	(11,222,319)
Investing activities	<u>3,611,399</u>	<u>6,882,645</u>
Change in cash and equivalents	(2,330,767)	2,798,912
Cash and equivalents at beginning of year	<u>24,190,490</u>	<u>21,391,578</u>
Cash and equivalents at end of year	<u>\$ 21,859,723</u>	<u>\$ 24,190,490</u>

The Board's available cash and equivalents decreased by \$2,330,767 during the year ended December 31, 2020, as compared to an increase of \$2,798,912 during the year ended December 31, 2019. Cash provided by operating activities reflected a positive balance of \$7,989,258 and \$7,138,586, respectively, for the years ended December 31, 2020 and 2019.

Capital Assets and Debt Administration

Capital Assets - The Board's investment in capital assets (net of accumulated depreciation) as of December 31, 2020, amounted to \$123,389,088, as compared to \$121,199,217 at December 31, 2019. This includes land, plant and transmission (infrastructure type assets), machinery and equipment, and construction in progress. The Board's greatest investment in capital assets comes in the form of infrastructure. Significant factors affecting capital assets during the reporting period include:

- The Board recorded total additions to capital assets of \$8,641,637.
- Additions to construction in progress totaled \$8,641,637. Completed capital projects transferred to depreciable asset categories totaled \$6,137,344.
- The Board recorded total depreciation of \$6,451,766 and \$6,891,972 for the years ended December 31, 2020 and 2019, respectively.

NIAGARA FALLS WATER BOARD

Management's Discussion and Analysis (Unaudited) December 31, 2020

A summary of capital assets, net of depreciation where applicable, is as follows:

	<u>2020</u>	<u>2019</u>
Nondepreciable assets:		
Land	\$ 463,713	\$ 463,713
Construction in progress	6,499,413	3,995,120
Depreciable assets:		
Plant and transmission assets (water system)	42,535,883	44,863,935
Plant and transmission assets (wastewater system)	67,887,109	65,906,055
Machinery and equipment	6,002,970	5,970,394
Total	<u>\$ 123,389,088</u>	<u>\$ 121,199,217</u>

Construction in progress represents ongoing capital construction which will be transferred to the appropriate asset category (and begin to be depreciated) upon completion.

More detailed information about the Board's capital assets is presented in the notes to financial statements.

Long-Term Debt - At December 31, 2020, the Board had outstanding bonds totaling \$84,967,489 as compared to \$89,300,386 at December 31, 2019. During the year ended December 31, 2020, the Board made principal payments of \$4,332,897 on these bonds.

The Board used bond debt to finance the original purchase of the assets (net of liabilities and including the water, sewer and storm water systems) from the City. The Board has and may do so in the future utilized bond debt issuances as a primary source of funds for construction, renovations and system improvements.

Postemployment Benefits - Upon retirement, the Board's employees are entitled to continuous health insurance coverage. At December 31, 2020 and 2019, the liability recorded for these benefits amounted to \$94,980,144 and \$88,864,058, respectively.

Compensated Absences - Upon separation, Board employees are entitled to payment of unused sick and vacation time. The total liability relating to these payments at December 31, 2020 is \$733,059, compared to December 31, 2019 is \$736,197. The timing of the payments relating to compensated absences is dependent upon many factors, including the retirement or separation from service, and is therefore difficult to predict; however, the Board estimates that \$36,653 of such liability is current at December 31, 2020.

Economic Factors and Next Year's Rates

As noted earlier, the Board's largest sources of operating revenues are water and sewer rents from customers. These revenues result from rates charged based on water usage by the individual customer. Rates can be adjusted accordingly in order to help meet the expenses of the Board. When considering rate changes, the Board utilizes the services of a rate consultant to help forecast the magnitude and effects of potential changes. As required by law, the general public's opinions are also taken into consideration, through public hearings, when contemplating a change in rates charged for services.

NIAGARA FALLS WATER BOARD

**Management’s Discussion and Analysis (Unaudited)
December 31, 2020**

Water rates charged for 2020 and approved rates to be charged for 2021 are as follows:

<u>Amount Consumed</u>	<u>2020</u>		<u>2021</u>	
	Amount to be charged (per 100 cubic feet)		Amount to be charged (per 100 cubic feet)	
	Inside city	Outside city	Inside city	Outside city
First 20,000 cubic feet per quarter	\$ 3.42	\$ 9.13	\$ 3.52	\$ 9.40
Next 60,000 cubic feet per quarter	\$ 2.96	\$ 7.97	\$ 3.05	\$ 8.21
Next 120,000 cubic feet per quarter	\$ 2.51	\$ 6.64	\$ 2.59	\$ 6.84
Over 200,000 cubic feet per quarter	\$ 2.08	\$ 5.59	\$ 2.14	\$ 5.76
Minimum charge for water consumption per quarter	\$ 44.40	\$ 118.68	\$ 45.73	\$ 122.23

In addition to the above schedule of rates for water consumed, a demand charge is assessed for each user’s meter, as set forth below:

<u>Size and Type</u>	<u>2020 Rate</u> (per quarter)	<u>2021 Rate</u> (per quarter)
Under 1” Disc	\$ 3.70	\$ 3.70
1” Disc	\$ 25.00	\$ 25.00
2” Disc	\$ 40.00	\$ 40.00
2” Compound	\$ 40.00	\$ 40.00
3” Compound	\$ 50.00	\$ 50.00
4” Compound	\$ 100.00	\$ 100.00
6” Compound	\$ 220.00	\$ 220.00
8” Compound	\$ 250.00	\$ 250.00
10” Compound	\$ 275.00	\$ 275.00
12” Compound	\$ 400.00	\$ 400.00

In addition to charging for water consumption and services, the Board also charges users with respect to sewer and wastewater services provided. All users have been divided into two “user classes” - Commercial/Small Industrial/Residential Users (CSIRU) and Significant Industrial Users (SIU).

Sewer rates for the CSIRU class are determined by the total metered water consumption in each quarter. Rates charged for 2020 and rates to be charged during 2021 are as follows:

<u>Amount Consumed</u>	<u>2020</u>	<u>2021</u>
Minimum charge per quarter (up to 1,300 cubic feet)	\$ 58.79	\$ 60.55
Additional usage in excess of 1,300 cubic feet (\$/cubic feet)	\$ 4.52	\$ 4.66

NIAGARA FALLS WATER BOARD

Management's Discussion and Analysis (Unaudited) December 31, 2020

Sewer rates for the SIU class are determined each quarter based on the actual measured quantities and composition of wastewater flow. Such rates are determined by the Board and are based upon five representative 24-hour composite samples taken quarterly. Rates for the SIU class for the year ended December 31, 2020 were \$3,176 per million gallons for wastewater flow; \$1.02 per pound for all suspended solids discharged; and \$1.76 per pound for all soluble organic carbon compounds discharged. Rates approved for the SIU class for 2021 are \$3,274.99 per million gallons for wastewater flow; \$1.05 per pound for all suspended solids discharged; and \$1.81 per pound for all soluble organic carbon compounds discharged. In addition, SIU's are charged fees, as needed, for certain other "substances of concern" which are discharged in their wastewater.

The United States is presently in the midst of a national health emergency related to the COVID-19 virus. The overall consequences of the COVID-19 virus on a national, regional and local level are unknown, but has the potential to result in a significant economic impact. The impact of this situation on the Board and its future results and financial position is not presently determinable.

Contacting the Board's Financial Management

This financial report is designed to provide taxpayers, customers, and creditors with a general overview of the Board's finances and to show the Board's accountability for the money it receives. If you have questions about this report or need additional financial information, contact Mr. Brian Majchrowicz, Michael O'Laughlin Municipal Water Plan, 5815 Buffalo Avenue, Niagara Falls, New York 14304.

NIAGARA FALLS WATER BOARD

Statement of Net Position

December 31, 2020

(With Comparative Totals for 2019)

	<u>2020</u>	<u>2019</u>
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 21,859,723	\$ 24,190,490
Accounts receivable, net of allowance for uncollectible accounts	8,387,002	8,800,667
Due from City of Niagara Falls, net of allowance for uncollectible accounts	1,647,914	1,184,940
Grants receivable	686,677	766,937
Prepaid expenses	252,302	284,620
Total current assets	<u>32,833,618</u>	<u>35,227,654</u>
NONCURRENT ASSETS:		
Restricted cash and investments -		
Capital projects	2,786,581	6,786,581
Debt service fund	6,636,484	5,754,527
Debt service reserve fund	8,741,079	8,389,738
Operating and maintenance reserve	5,028,792	5,228,792
Capital assets, net	<u>123,389,088</u>	<u>121,199,217</u>
Total noncurrent assets	<u>146,582,024</u>	<u>147,358,855</u>
Total assets	<u>179,415,642</u>	<u>182,586,509</u>
DEFERRED OUTFLOWS OF RESOURCES		
Pension related	3,492,526	1,135,983
Other postemployment benefits related	4,789,673	-
Total deferred outflows of resources	<u>8,282,199</u>	<u>1,135,983</u>
LIABILITIES		
CURRENT LIABILITIES:		
Accounts payable	2,440,543	2,582,753
Accrued liabilities	1,959,941	2,147,891
Overpayments	8,200	5,900
Current portion, compensated absences	36,653	36,810
Current portion, total other postemployment benefits obligation	2,530,010	2,771,796
Current portion, bonds payable	4,466,316	4,316,194
Total current liabilities	<u>11,441,663</u>	<u>11,861,344</u>
NONCURRENT LIABILITIES:		
Compensated absences	696,406	699,387
Total other postemployment benefit obligation	92,450,134	86,092,262
Bonds payable	82,306,914	86,919,687
Net pension liability	4,734,365	1,139,930
Total noncurrent liabilities	<u>180,187,819</u>	<u>174,851,266</u>
Total liabilities	<u>191,629,482</u>	<u>186,712,610</u>
DEFERRED INFLOWS OF RESOURCES		
Pension related	228,562	428,353
Gain on refunding	848,857	909,853
Total deferred inflows of resources	<u>1,077,419</u>	<u>1,338,206</u>
NET POSITION		
Net investment in capital assets	35,841,765	29,053,483
Restricted for capital projects	2,786,581	6,786,581
Restricted for debt service	6,636,484	5,754,527
Restricted for debt service reserve fund	8,741,079	8,389,738
Restricted for operating and maintenance	5,028,792	5,228,792
Unrestricted	<u>(64,043,761)</u>	<u>(59,541,445)</u>
Total net position	<u>\$ (5,009,060)</u>	<u>\$ (4,328,324)</u>

The accompanying notes are an integral part of these statements.

NIAGARA FALLS WATER BOARD

**Statement of Revenue, Expenses, and Change in Net Position
For the Year Ended December 31, 2020
(With Comparative Totals for 2019)**

	<u>2020</u>	<u>2019</u>
OPERATING REVENUES:		
Water rents and charges	\$ 9,984,043	\$ 10,106,620
Sewer rents and charges	21,005,502	19,404,849
Licenses and permits	237,179	243,507
Grants	1,242,976	1,261,101
Other services	<u>23,067</u>	<u>172,194</u>
 Total operating revenues	 <u>32,492,767</u>	 <u>31,188,271</u>
OPERATING EXPENSES:		
Personnel costs	6,398,779	6,140,679
Contractual expenses	10,551,050	9,990,533
Employee benefits	7,789,102	6,934,445
Depreciation expense	<u>6,451,766</u>	<u>6,891,972</u>
 Total operating expenses	 <u>31,190,697</u>	 <u>29,957,629</u>
 Total operating income	 <u>1,302,070</u>	 <u>1,230,642</u>
NON-OPERATING REVENUES (EXPENSES):		
Use of money and property	644,697	1,163,345
Gain on sale of property	308,397	290,485
Interest expense	<u>(2,935,900)</u>	<u>(2,891,660)</u>
 Total non-operating expenses, net	 <u>(1,982,806)</u>	 <u>(1,437,830)</u>
 CHANGE IN NET POSITION	 (680,736)	 (207,188)
 NET POSITION - beginning of year	 <u>(4,328,324)</u>	 <u>(4,121,136)</u>
 NET POSITION - end of year	 <u>\$ (5,009,060)</u>	 <u>\$ (4,328,324)</u>

The accompanying notes are an integral part of these statements.

NIAGARA FALLS WATER BOARD

Statement of Cash Flows

For the Year Ended December 31, 2020

(With Comparative Totals for 2019)

	<u>2020</u>	<u>2019</u>
CASH FLOW FROM OPERATING ACTIVITIES:		
Receipts from customers and users	\$ 32,526,018	\$ 30,427,792
Payments to suppliers	(12,620,781)	(11,771,953)
Payments to employees	(11,915,979)	(11,517,253)
	<u>7,989,258</u>	<u>7,138,586</u>
CASH FLOW FROM CAPITAL AND RELATED FINANCING ACTIVITIES:		
Purchases of capital assets	(6,681,798)	(6,313,541)
Proceeds from insurance recoveries	308,397	290,485
Repayments of capital debt	(4,332,897)	(4,269,607)
Issuance of capital debt	-	2,189,993
Interest paid on capital debt	(3,225,126)	(3,119,649)
	<u>(13,931,424)</u>	<u>(11,222,319)</u>
CASH FLOW FROM INVESTING ACTIVITIES:		
Interest received	644,697	1,163,345
Gains (losses) on restricted cash and investments -		
Capital projects	4,000,000	5,885,846
Debt service fund	(881,957)	(959,296)
Debt service reserve fund	(351,341)	792,750
Operating and maintenance reserve	200,000	-
	<u>3,611,399</u>	<u>6,882,645</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS	(2,330,767)	2,798,912
CASH AND CASH EQUIVALENTS - beginning of year	<u>24,190,490</u>	<u>21,391,578</u>
CASH AND CASH EQUIVALENTS - end of year	<u>\$ 21,859,723</u>	<u>\$ 24,190,490</u>

The accompanying notes are an integral part of these statements.

NIAGARA FALLS WATER BOARD

Statement of Cash Flows

For the Year Ended December 31, 2020

(With Comparative Totals for 2019)

	<u>2020</u>	<u>2019</u>
RECONCILIATION OF OPERATING INCOME TO NET CASH FLOW FROM OPERATING ACTIVITIES:		
Operating income	\$ 1,302,070	\$ 1,230,642
Adjustments to reconcile operating income to net cash flow from operating activities:		
Depreciation	6,451,766	6,891,972
Allowance for doubtful accounts	356,034	(278,241)
Changes in:		
Accounts receivable	57,631	218,366
Due from City of Niagara Falls	(462,974)	65,283
Grants receivable	80,260	(766,937)
Prepaid expenses	32,318	(187,698)
Accounts payable	(2,102,049)	(1,593,722)
Accrued liabilities	(89,474)	7,040
Overpayments	2,300	1,050
Compensated absences	(3,138)	26,786
Total OPEB liability	6,116,086	1,254,998
Net pension liability	3,594,435	664,822
Deferred outflows of resources - pension related	(2,356,543)	685,737
Deferred outflows of resources - total other postemployment benefits related	(4,789,673)	-
Deferred inflows of resources - pension related	(199,791)	(1,081,512)
Net cash flow from operating activities	<u>\$ 7,989,258</u>	<u>\$ 7,138,586</u>
SUPPLEMENTAL SCHEDULE OF CASH FLOW INFORMATION:		
Adjustment for capital assets financed by accounts payable	<u>\$ 1,959,839</u>	<u>\$ 1,580,759</u>
Disposal of fully depreciated capital assets	<u>\$ -</u>	<u>\$ 127,258</u>

The accompanying notes are an integral part of these statements.

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements December 31, 2020 (With Comparative Totals for 2019)

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The financial statements of the Niagara Falls Water Board (the Board) have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP) as applied to governmental units. Included in the Board's reporting entity is a blended component unit, the Niagara Falls Public Water Authority (the Authority).

Reporting Entity

The Board was created by Chapter 325 of the Laws of 2002 of the State of New York (the State), codified as Sections 1231-a of Title 10-C of Article 5 of the Public Authorities Law of the State, as amended (the Board Act). The Authority was created by Chapter 275 of the Laws of 2002 of the State, constituting the Niagara Falls Public Water Authority Act, codified as Sections 1230-a through 1230-aa of Title 10-B of Article 5 of the Public Authorities Law of the State, as amended (the Authority Act).

The Board is a corporate municipal instrument of the State consisting of five members primarily responsible for the jurisdiction, control, possession, supervision and use of water, wastewater and storm water systems within the City of Niagara Falls, New York (the City).

The Authority is a public benefit corporation consisting of three members and is primarily responsible for obtaining financing for water, wastewater and storm water systems within the City.

Board members for both the Board and Authority are appointed pursuant to the enabling legislation.

Pursuant to the Board Act and the Authority Act, the Board, the Authority and the City executed an acquisition agreement effective September 25, 2003 whereby the Authority issued bonds enabling the Board to purchase all of the assets, net of liabilities, of the City's public water, wastewater and storm water systems. The Board began operations of these systems on that date.

Currently there are approximately 18,282 residential, 331 commercial and 22 large industrial type customers. Total population served by the water system is 47,136. The average daily demand is 22.6 million gallons per day. The Board's wastewater system generally covers the same service area and customer base as the water system. The wastewater treatment plant processes approximately 24.1 million gallons of wastewater per day.

Blended Presentation of Component Unit - Although they are legally separate entities, blended component units are, in substance, part of the government's operations. The following is a brief description of the blended component unit included in the primary government:

Niagara Falls Public Water Authority - Among the powers given to the Authority is the ability to borrow money and issue negotiable or non-negotiable notes, bonds or other obligations for the acquisition, renovation and improvement to the regional water system.

The Authority may also apply for licenses, permits and approval of plans associated with the acquisition, renovation and improvement of the regional water system. In the process of borrowing funds to improve facilities, professional consultants may be retained to offer technical services and advice for the purpose and benefit of acquiring or improving the systems.

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements

December 31, 2020

(With Comparative Totals for 2019)

The Authority has entered into an agreement with the Board which requires the Board to make payments for the debt service required by these bonds. The Board is also required to make payments for Authority expenses. The obligation to make debt service payments is a general obligation to which its full faith and credit are pledged.

The Authority is considered a component unit since the Board is obligated to pay debt service and fund other accounts of the Authority. Thus, the Authority is “fiscally dependent” upon the Board to establish rates and collect fees necessary to pay these debts. Further, the Authority is “blended” with the Board in the financial statements because the Authority exists solely to provide services that predominantly benefit the Board. The Authority has no employees of its own.

Measurement Focus and Basis of Accounting

The financial statements of the Board have been prepared in accordance with GAAP as applied to governmental units. The Government Accounting Standards Board (GASB) is the accepted standard-setting body for establishing government accounting and financial reporting principles.

The activities of the Board are accounted for similar to those often found in the private sector using the flow of economic resources measurement focus and the accrual basis of accounting. All assets, liabilities, deferred outflows of resources, deferred inflows of resources, net position, revenues, and expenses are accounted for through a single enterprise fund with revenues recorded when earned and expenses recorded at the time liabilities are incurred.

Revenues from providing water and sanitary sewer services are reported as operating revenues and are recognized at the time of service delivery based on actual or estimated meter readings. Transactions which are capital, financing or investing related are reported as non-operating revenues. All expenses related to operating systems are reported as operating expenses. Interest expense and financing costs are reported as non-operating expenses.

Budgets

The annual budget is the financial plan for the effective operation of the Board and the Authority. The Board uses the budget as a management tool for internal control purposes and to assist in setting of appropriate user charges.

Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources and Net Position

- Cash and Equivalents - The Board’s cash and equivalents represent cash on hand, demand deposits, and short-term investments with original maturities of three months or less from the date of acquisition.
- Restricted Cash and Investments - Capital Projects - In 2007, the Board received \$19,000,000 from the New York State Power Authority (the Power Authority) which is restricted for capital improvement projects including, but not limited to, the Falls Street Tunnel. At December 31, 2020 and 2019, the total amount restricted for capital projects amounted to \$2,786,581 and \$6,786,581, respectively.
- Restricted Cash and Investments - Debt Service Fund - As a result of the purchase of the water and sewer systems from the City, certain bond covenants, as disclosed in note 5, were established requiring resources (consisting of cash and investments) to be maintained for specific purposes necessary to operate the water and sewer systems. At December 31, 2020 and 2019, the total amount restricted for debt service fund amounted to \$6,636,484 and \$5,754,527, respectively.

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements

December 31, 2020

(With Comparative Totals for 2019)

- Restricted Cash and Investments - Debt Service Reserve Fund - This fund was established to fulfill the debt service reserve requirements on the outstanding bonds as and when they become due. At December 31, 2020 and 2019, the total amount restricted for debt service reserve fund amounted to \$8,741,079 and \$8,389,738, respectively.
- Restricted Cash and Investments - Operating and Maintenance - This fund is restricted to pay the cost of extraordinary repairs to and maintenance of the system. At December 31, 2020 and 2019, the total amount restricted for operating and maintenance amounted to \$5,028,792 and \$5,228,792, respectively.

Cash has been deposited into various trust funds with a fiscal agent to satisfy certain covenants. Further, the amounts have been invested into various short-term investments in compliance with the Board's investment policy. Certain funds were used for their intended purposes and are no longer available for investment.

- Fair Value Measurements and Disclosures

A framework has been established for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are described below:

- Level 1 - Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Board has the ability to access.
- Level 2 - Inputs to the valuation methodology include:
 - Quoted prices for similar assets or liabilities in active markets;
 - Quoted prices for identical or similar assets or liabilities in inactive markets;
 - Inputs other than quoted prices that are observable for the assets or liabilities; and
 - Inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3 - Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

An asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs. There have been no changes in the methodologies used at December 31, 2020.

The following is a description of the valuation methodologies used for assets measured at fair value:

Mutual funds and equities - Valued at the closing price reported on the active market in which the individual securities are traded.

Corporate and government bonds - Valued at the closing price reported on the active markets in which the individual securities are traded.

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements

December 31, 2020

(With Comparative Totals for 2019)

The Board assesses the levels of the investments at each measurement date, and transfers between levels are recognized on the actual date of the event or change in circumstances that caused the transfer in accordance with its accounting policy regarding the recognition of transfers between levels of the fair value hierarchy.

- Accounts Receivable - All receivables, including accrued unbilled revenues, are reported at their gross values and, where appropriate, are reduced by the estimated portion that is expected to be uncollectible. The Board has adopted a policy of recognizing water and sewer revenues in the period in which the services are provided. Billings to customers generally consist of revenues earned from the prior three months for quarterly billed customers, and revenues earned from the prior month for monthly billed customers.

The collection of current water and sewer charges is performed by the Board. The City, acting as collecting agent for the Board, collects delinquent water and sewer charges, which become a lien upon the premises collected with City taxes.

- Prepaid Expenses - Prepaid expenses reflect costs applicable to future accounting periods and are recorded as prepaid items in the financial statements.
- Capital Assets - Capital assets acquired by the Board as part of the September 25, 2003 acquisition agreement with the City were reported at fair value on the acquisition date. Capital assets acquired by the Board subsequent to the initial acquisition are stated at cost including interest capitalized during construction, where applicable. Costs include material, direct labor and other items such as supervision, payroll taxes, employee benefits, transportation, and certain preliminary legal, engineering and survey costs. The costs of repairs and maintenance are expensed as incurred. Contributed fixed assets are recorded at fair market value at the date received.

Construction projects are conducted on a continuing basis in order to maintain or enhance the systems. Preliminary legal, engineering and survey costs include studies conducted prior to the actual construction period that directly result in specific construction projects. While capital projects are in process, all associated costs are recorded as construction in progress. Once completed, all costs, including legal, engineering, survey and construction costs, are reclassified to their respective asset categories and depreciated according to their useful lives.

Depreciation has been recorded using the straight-line method of depreciation. The estimated useful lives of the Board's major classes of depreciable assets are based on the utility of the respective assets. The estimated useful lives of depreciable fixed assets are as follows:

	<u>Years</u>
Land	N/A
Plant and transmission assets	25 - 50
Machinery and equipment	5 - 20

- Compensated Absences - Board employees are granted vacation and sick leave and earn compensatory absences in varying amounts. In the event of termination or upon retirement, all union employees are entitled to payment for accumulated vacation and compensatory time limited to amounts defined under their respective collectively bargained agreements. All non-union employees are entitled to similar benefits.

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements

December 31, 2020

(With Comparative Totals for 2019)

Payments of vacation and sick leave and compensatory time are dependent upon many factors; therefore, the timing of future payments is not readily determinable. However, management believes that sufficient resources will be available for the payments of vacation leave and compensatory time when such payments become due.

In addition to providing pension benefits, the Board provides postemployment health insurance coverage and survivor benefits to retired employees and their survivors in accordance with the provisions of various employment contracts in effect at the time of retirement. Substantially all of the Board's employees may become eligible for these benefits if they reach normal retirement age while working for the Board. Health care benefits are provided through the Board's self-insurance plan. The Board pays 100% of the cost for current retiree's health care insurance, excluding co-pays which are the sole responsibility of the retirees. Survivors of retirees hired prior to December 31, 2007 continue to receive healthcare coverage. Future retirees hired after December 31, 2007 will pay 20% of the premiums for their insurance coverage. They will be enrolled in a "Medicare Advantage Plan" at age 65. The Board recognizes the cost of providing health insurance by recording its share of insurance premiums as an expenditure.

- Bond and Note Discounts/Premiums - Discounts and premiums are presented as components of bonds or notes payable. The discounts/premiums are amortized over the life of the bonds and notes on a straight-line interest method.
- Long-term Obligations - Long-term debt obligations are reported as liabilities in the accompanying statements of net position.
- Pension Plan - The Board provides retirement benefits for substantially all of its regular, full-time employees through contributions to the New York State Employees' and Local Employees' Retirement System (ERS). The ERS provides various plans and options, some of which require employee contributions, as described in note 8.
- Deferred Outflows of Resources and Deferred Inflows of Resources - Deferred outflows of resources represents a consumption of net position that applies to a future period and so will not be recognized as an outflow of resources (expense/expenditure) until then. The Board has various items that qualify for reporting in this category. The first item is related to pensions and represents the effect of the net change in the Board's proportion of the collective net pension liability and difference during the measurement period between the Board's contributions and its proportionate share of total contributions to the pension system not included in pension expense. The second item is the Board contributions to the pension systems subsequent to the measurement date. Additionally, the actuarial differences resulting from the valuation of the other postemployment benefits liability are recognized in the category.

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements December 31, 2020 (With Comparative Totals for 2019)

Deferred inflows of resources represents an acquisition of net position that applies to future period(s) and so will not be recognized as an inflow of resources (revenue) until that time. The Board has two items that qualify for reporting in this category. The first is related to pensions and represents the effect of the net change in the Board's proportion of the collective net pension liability and difference during the measurement periods between the Board's contributions and its proportion share of total contributions to the pension systems not included in the pension expense. The second item is the deferred gain the Authority incurred on its debt refunding transaction.

Use of Estimates

The preparation of the financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Income Taxes

The Board is a public benefit corporation of the State of New York. As such, income earned in the exercise of its essential government functions is exempt from State and Federal income taxes.

Reclassification

Certain amounts in 2019 have been reclassified to conform with the 2020 presentation.

2. CASH AND EQUIVALENTS AND INVESTMENTS

The Board's investment policies are governed by State statute. Board monies must be deposited in Federal Deposit Insurance Corporation (FDIC) insured commercial banks or trust companies located within the State. The Board is authorized to use demand accounts and certificates of deposit. Permissible investments include obligations of the U.S. Treasury and U.S. agencies, repurchase agreements, and obligations of the State or its localities.

Collateral is required for demand deposits and certificates of deposit in an amount equal to or greater than the amount of all deposits not covered by FDIC insurance coverage. Obligations that may be pledged as collateral are outlined in Chapter 623 of the laws of the State.

The Board's cash and equivalents at December 31, 2020 and 2019 include the following captions on the statements of net position:

	<u>2020</u>	<u>2019</u>
Cash and equivalents	\$ 21,859,723	\$ 24,190,490
Restricted cash and investments:		
Capital projects	2,786,581	6,786,581
Debt service fund	6,636,484	5,754,527
Debt service reserve fund	8,741,079	8,389,738
Operating and maintenance	5,028,792	5,228,792
Total	<u>\$ 45,052,659</u>	<u>\$ 50,350,128</u>

NIAGARA FALLS WATER BOARD

**Notes to Basic Financial Statements
December 31, 2020
(With Comparative Totals for 2019)**

Cash and equivalents are comprised of the following:

	<u>2020</u>	<u>2019</u>
Petty cash (uncollateralized)	\$ 100	\$ 100
Deposits	30,243,839	22,357,347
Investments	14,808,720	27,992,681
Total	<u>\$ 45,052,659</u>	<u>\$ 50,350,128</u>

Custodial Credit Risk - Deposits - In the case of deposits, this is the risk that, in the event of a bank failure, the Board's deposits may not be returned to it. As noted above, by State statute, all deposits in excess of FDIC insurance coverage must be collateralized. As of December 31, 2020 and 2019, all uninsured bank deposits were fully collateralized with securities held by the pledging financial institution's trust department or agent in the Board's name.

Custodial Credit Risk - Investments - For investments, this is the risk that, in the event of the failure of the counterparty, the Board will not be able to recover the value of its investments that are in the possession of an outside party. At December 31, 2020 and 2019, all of the Board's restricted cash in the form of investments was registered in the Board's name and was invested in U.S. Government backed securities.

The Board's investments at December 31, 2020, consist of the following:

<u>Investments</u>	<u>Maturity</u>	<u>Fair Value</u>
U.S. Treasuries	2/15/2021 - 11/1/2041	\$ 5,795,683
Federal Home Mortgage Corp.	1/14/2021	6,632,444
Certificates of deposit	1/14/2021 - 6/7/2021	2,380,593
Total investments		<u>\$ 14,808,720</u>

These investments are classified as Level 1.

Maturity Schedule

Less than one year	\$ 13,909,048
More than one year	899,672
	<u>\$ 14,808,720</u>

The Board's investments at December 31, 2019, consist of the following:

<u>Investments</u>	<u>Maturity</u>	<u>Fair Value</u>
U.S. Treasuries Notes	1/31/20 - 11/01/41	\$ 11,682,968
Federal Home Mortgage Corp.	1/14/20 - 11/17/20	12,297,445
Certificates of Deposit	1/24/20 - 12/02/20	4,012,268
Total investments		<u>\$ 27,992,681</u>

These investments are classified as Level 1.

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements December 31, 2020 (With Comparative Totals for 2019)

<u>Maturity Schedule</u>	
Less than one year	\$ 27,090,301
More than one year	902,380
	<u>\$ 27,992,681</u>

Concentration Credit Risk - For investments, this is the risk of loss attributable to the quantity of the government's investment in a single issuer. Investments in single issuers that equal or exceed 5% of total investments have a reportable concentration of credit risk. At December 31, 2020, the Board held 45%, 39% and 16% of its investment balance in Federal Home Mortgage Corp., U.S. Treasuries, and Certificates of Deposit, respectively.

3. RECEIVABLES

Major revenues accrued by the Board at December 31, 2020 and 2019 include the following:

Accounts Receivable

Accounts receivable primarily represents amounts due from customers for current and delinquent water and wastewater services provided, including penalties, unpaid bill charges, collection fees and shut-off charges.

Customers are billed either on a monthly or quarterly basis depending on the type of user (industrial or residential), and the level of water and sewer usage. Customers may make payments without penalty on current charges up until 20 days after receiving their bill. Any unpaid balances remaining after these 20 days are subject to a penalty of 6%, and those customers receive an unpaid bill notice. If balances still remain unpaid after 30 additional days, final unpaid notices are mailed. The customers are then given 10 days to remit payment, after which the property is tagged, and shut-off procedures begin.

During the first week of December of every year, unpaid balances are transferred to the City tax roll for collections through the subsequent year's tax levy or in-rem property sales. Any amounts relating to unpaid water and wastewater balances collected by the City through these means are delivered to the Board.

As of December 31, 2020, \$1,262,456 was included in allowance for uncollectible accounts to account for receivable balances that may not be collected. As of December 31, 2019, \$1,265,283 was included in allowance for uncollectible accounts to account for receivable balances that may not be collected.

Due from City of Niagara Falls

Due from City of Niagara Falls represents amounts due from the City for the tax transfer. Amounts accrued at December 31, 2020 and 2019, net of an allowance for uncollectible amounts consisted of \$1,647,914 and \$1,184,940, respectively.

NIAGARA FALLS WATER BOARD

**Notes to Basic Financial Statements
December 31, 2020
(With Comparative Totals for 2019)**

The tax transfer represents uncollected water and sewer charges that have been turned over to the City for collection in conjunction with the City's property tax levy. The City remits amounts to the Board each January and July for collections it receives for the previous six-month period. The due from City of Niagara Falls amount includes any collected but not yet remitted collections at year-end. Charges from all previous years' water and sewer operations transferred to the City that are not collected totaled \$6,807,362 and \$5,985,527 at December 31, 2020 and 2019, respectively. Management has recorded an allowance for uncollectible accounts with respect to these balances of \$5,159,448 and \$4,800,587 at December 31, 2020 and 2019, respectively.

4. CAPITAL ASSETS

The Board's capital asset activity for the years ended December 31, 2020 and 2019 is summarized as follows:

	Balance 1/1/2020	Increases	Decreases	Balance 12/31/2020
Capital assets, not being depreciated:				
Land	\$ 463,713	-	-	\$ 463,713
Construction in progress	3,995,120	8,641,637	(6,137,344)	6,499,413
Total capital assets not being depreciated	4,458,833	8,641,637	(6,137,344)	6,963,126
Capital assets, being depreciated:				
Plant and transmission costs:				
Water system	90,692,331	670,530	-	91,362,861
Wastewater system	94,066,814	4,691,065	-	98,757,879
Machinery and equipment	11,708,394	775,749	-	12,484,143
Total capital assets being depreciated	196,467,539	6,137,344	-	202,604,883
Less accumulated depreciation:				
Plant and transmission costs:				
Water system	(45,828,396)	(2,998,582)	-	(48,826,978)
Wastewater system	(28,160,759)	(2,710,011)	-	(30,870,770)
Machinery and equipment	(5,738,000)	(743,173)	-	(6,481,173)
Total accumulated depreciation	(79,727,155)	(6,451,766)	-	(86,178,921)
Total being depreciated, net	116,740,384	(314,422)	-	116,425,962
Capital assets, net	\$ 121,199,217	\$ 8,327,215	\$ (6,137,344)	\$ 123,389,088

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements December 31, 2020 (With Comparative Totals for 2019)

	Balance 1/1/2019	Increases	Decreases	Balance 12/31/2019
Capital assets, not being depreciated:				
Land	\$ 463,713	-	-	\$ 463,713
Construction in progress	<u>3,184,153</u>	<u>5,444,472</u>	<u>(4,633,505)</u>	<u>3,995,120</u>
Total capital assets not being depreciated	<u>3,647,866</u>	<u>5,444,472</u>	<u>(4,633,505)</u>	<u>4,458,833</u>
Capital assets, being depreciated:				
Plant and transmission costs:				
Water system	89,712,842	979,489	-	90,692,331
Wastewater system	89,979,411	4,087,403	-	94,066,814
Machinery and equipment	<u>10,079,046</u>	<u>1,756,606</u>	<u>(127,258)</u>	<u>11,708,394</u>
Total capital assets being depreciated	<u>189,771,299</u>	<u>6,823,498</u>	<u>(127,258)</u>	<u>196,467,539</u>
Less accumulated depreciation:				
Plant and transmission costs:				
Water system	(42,837,407)	(2,990,989)	-	(45,828,396)
Wastewater system	(25,156,868)	(3,003,891)	-	(28,160,759)
Machinery and equipment	<u>(4,968,166)</u>	<u>(897,092)</u>	<u>127,258</u>	<u>(5,738,000)</u>
Total accumulated depreciation	<u>(72,962,441)</u>	<u>(6,891,972)</u>	<u>127,258</u>	<u>(79,727,155)</u>
Total being depreciated, net	<u>116,808,858</u>	<u>(68,474)</u>	<u>-</u>	<u>116,740,384</u>
Capital assets, net	<u>\$ 120,456,724</u>	<u>\$ 5,375,998</u>	<u>\$ (4,633,505)</u>	<u>\$ 121,199,217</u>

5. INDEBTEDNESS

The Authority issues debt to provide for the acquisition of the water and sewer systems and for the initial funding of operating and maintenance and debt reserves.

The proceeds (\$6,607,122) of the Series 2012B Clean Water Bonds issuance were used to payoff the EFC Note used to fund North Gorge Interceptor Capacity Restoration Project. These bonds are due in 2041 and bear interest at rates between 0.26-4.27%.

In 2013, the Authority issued \$74,240,000 in general obligation bonds with an average interest rate of 4.72% and received an additional premium of \$142,002. The bonds were used for an advanced refunding of \$63,535,000 of the 2003 Bonds with an average interest rate of 3.79%. The net proceeds of approximately \$64 million were deposited in a trust to provide for future debt service payments on the bonds. As a result, the bonds are considered defeased and the liability for those bonds has been removed from the Board's financial statements. The economic gain on the transaction (the difference between the present values of the debt service payments on the old and new debt) was approximately \$1.7 million.

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements

December 31, 2020

(With Comparative Totals for 2019)

During 2014 net proceeds of the Series B bonds were used to entirely refund the Series 2004 Serial Bonds of \$4,095,000, specifically reducing the interest to be paid by approximately \$610,000.

During 2015, net proceeds of the Series D bonds were used to entirely advance refund the Series 2005 A&B Serial Bonds of \$4,380,000 specifically reducing the interest to be paid by approximately \$550,000. As a result, the bonds are considered defeased and the liability for these bonds has been removed from the Board's financial statements. The economic gain on the transaction (the difference between the present values of the debt service payments on the old and new debt) was approximately \$450,000.

During 2016, net proceeds of the Series A bonds were used to entirely advance refund the Series 2005 bonds of \$23,115,000 specifically reducing the interest to be paid by approximately \$4,100,000. As a result, the bonds are considered defeased and the liability for these bonds has been removed from the Board's financial statements. The economic gain on the transaction (the difference between the present values of the debt service payments on the old and new debt) was approximately \$4.1 million. The accounting gain on this refunding was originally \$1,097,923 which is being amortized through 2034. The unamortized gain on refunding amounted to \$848,857 and \$909,853 at December 31, 2020 and 2019, respectively.

During 2019, the Authority received proceeds of \$2,189,993 from the New York State Power Authority Mortgage Loan for the Energy Efficiency Program at an interest rate of 2.79%.

Indebtedness activity for the year ended December 31, 2020 is as follows:

	Year of Issue	Year of Maturity	Interest Rate %	Original Amount	Principal Outstanding 1/1/2020	Issued	Paid	Principal Outstanding 12/31/2020
New York State Environmental Facilities Corporation Water Revolving Funds Revenue Bonds - Direct Borrowings:								
Series 2012B								
- Clean Water								
	2012	2041	0.26 - 4.27	6,607,122	5,200,000	-	(180,000)	5,020,000
Series 2013B								
- Clean Water								
	2013	2033	3.88 - 5.05	14,030,000	10,695,000	-	(610,000)	10,085,000
Series 2013B								
- Drinking Water								
	2013	2023	4.75 - 4.91	5,580,000	5,580,000	-	-	5,580,000
Series 2014B								
- Drinking Water								
	2014	2021	5.40	4,095,000	3,520,000	-	(2,175,000)	1,345,000
Series 2015D								
- Drinking Water								
	2015	2034	3.81 - 4.57	<u>4,380,000</u>	<u>3,710,000</u>	<u>-</u>	<u>(175,000)</u>	<u>3,535,000</u>
Total NYS EFC Water Revolving Funds Revenue Bonds - Direct Borrowings				<u>34,692,122</u>	<u>28,705,000</u>	<u>-</u>	<u>(3,140,000)</u>	<u>25,565,000</u>

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	Year of Issue	Year of Maturity	Interest Rate %	Original Amount	Principal Outstanding 1/1/2020	Issued	Paid	Principal Outstanding 12/31/2020
Niagara Falls Public Water Authority Bonds:								
Series 2013A								
Bonds	2013	2034	3.0 - 5.0	\$36,060,000	\$34,575,000	\$ -	\$ (200,000)	\$34,375,000
Series 2013B								
Bonds	2013	2024	4.309	8,415,000	3,915,000	-	(795,000)	3,120,000
Series 2016A								
Bonds	2016	2034	3.13 - 5.0	20,130,000	20,130,000	-	-	20,130,000
Unamortized premium on bonds								
	2016	2034	N/A	2,335,569	1,935,495	-	(129,754)	1,805,741
Total Niagara Falls Public Authority Bonds				<u>66,940,569</u>	<u>60,555,495</u>	<u>-</u>	<u>(1,124,754)</u>	<u>59,430,741</u>
New York State Power Authority - Direct Borrowing:								
Series 2019								
Mortgage	2019	2028	2.79	2,189,993	1,975,386	-	(197,897)	1,777,489
Total NYS Power Authority - Direct Borrowing				<u>2,189,993</u>	<u>1,975,386</u>	<u>-</u>	<u>(197,897)</u>	<u>1,777,489</u>
Totals				<u>\$ 103,822,684</u>	<u>\$ 91,235,881</u>	<u>\$ -</u>	<u>\$ (4,462,651)</u>	<u>\$ 86,773,230</u>

The annual maturities of long-term debt as of December 31, 2020 are as follows:

Serial Bonds

Year	Premium on Bonds	Principal	Interest	Total
2021	\$ 129,754	\$ 1,025,000	\$ 2,532,403	\$ 3,687,157
2022	129,754	1,125,000	2,486,474	3,741,228
2023	129,754	1,160,000	2,441,270	3,731,024
2024	129,754	3,900,000	2,394,068	6,423,822
2025	129,754	4,090,000	2,202,869	6,422,623
2026-2030	648,769	23,450,000	7,908,850	32,007,619
2031-2035	<u>508,202</u>	<u>22,875,000</u>	<u>2,520,213</u>	<u>25,903,415</u>
	<u>\$ 1,805,741</u>	<u>\$57,625,000</u>	<u>\$22,486,147</u>	<u>\$81,916,888</u>

NIAGARA FALLS WATER BOARD

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NYS EFC State Revolving Fund Revenue Bonds - Direct Borrowings

Year	Principal	Interest	Total
2021	\$ 3,255,000	\$ 1,186,509	\$ 4,441,509
2022	3,305,000	1,029,482	4,334,482
2023	3,415,000	874,774	4,289,774
2024	1,080,000	712,085	1,792,085
2025	1,110,000	663,618	1,773,618
2026-2030	6,095,000	2,517,637	8,612,637
2031-2035	5,325,000	1,007,319	6,332,319
2036-2040	1,250,000	317,801	1,567,801
2041	<u>730,000</u>	<u>31,164</u>	<u>761,164</u>
Total	<u>\$25,565,000</u>	<u>\$ 8,340,389</u>	<u>\$33,905,389</u>

The Board's direct borrowings with NYS EFC contain a provision that in the event of default, NYS EFC may take whatever action at law or in equity may appear necessary or desirable to remedy such default. These remedies include, but are not limited to, mandatory redemption, acceleration, requiring the Board to immediately redeem the bonds in whole together with all other sums due to NYS EFC. The Board may also owe to NYS EFC interest accrued on the overdue balance.

New York State Power Authority - Direct Borrowing

Year	Principal	Interest	Total
2021	\$ 186,316	\$ 47,475	\$ 233,791
2022	208,755	41,738	250,493
2023	214,654	35,838	250,492
2024	220,720	29,772	250,492
2025	226,958	23,535	250,493
2026-2030	<u>720,086</u>	<u>31,392</u>	<u>751,478</u>
Total	<u>\$ 1,777,489</u>	<u>\$ 209,750</u>	<u>\$ 1,987,239</u>

Interest on long-term debt for the year was composed of:

	<u>2020</u>	<u>2019</u>
Interest paid	\$ 3,225,126	\$ 3,119,649
Plus: Interest accrued in the current year	1,355,787	1,454,263
Less: Interest accrued in the prior year	(1,454,263)	(1,491,502)
Less: Amortization of gain on refunding	(60,996)	(60,996)
Less: Amortization of bond premium	<u>(129,754)</u>	<u>(129,754)</u>
Total interest expense	<u>\$ 2,935,900</u>	<u>\$ 2,891,660</u>

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Financing Agreement Covenants

The financing agreement between the Authority and the Board relating to all current and future bonding contain various covenants pertaining to the use and maintenance of the trust funds established from the proceeds of each bond. At December 31, 2020, the Board was in compliance with the following loan covenants:

The Board is required to establish and collect rates, fees and charges sufficient in each fiscal year at least equal to the sum of:

- (1) 115% of the estimated aggregate debt service and projected debt service payable in such fiscal year;
- (2) 100% of Board operating expenses and Authority expenses payable in such fiscal year; and
- (3) 100% of the amount necessary to pay the required deposits for such fiscal year.

The Board shall review the adequacy of fees, rates and charges at least semi-annually.

The Board shall enforce the payment of any and all amounts owed for the use of the systems.

The Board shall (unless required by law) not furnish or supply, or cause to be furnished or supplied, any product, use or service of the systems, free of charge.

The debt service fund balance, beginning with the first day of each calendar month, shall receive all revenues until the balance in the debt service fund equals the minimum monthly balance. The minimum monthly balance is defined as an amount equal to the sum of the aggregate amounts of debt service that have accrued with respect to all series of bonds, calculating the debt service that has accrued as an amount equal to the sum of:

- (1) The interest on the bonds that has accrued and is unpaid and that will have accrued by the end of the then calendar month; and
- (2) The portion of the next due principal installment for the bonds that would have accrued (as deemed to accrue in the manner interest accrues) by the end of the then calendar month.

NIAGARA FALLS WATER BOARD

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Remedies for Default

In the event that the Board shall default in the payment of principal of, or interest on, any issue of bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the Board shall fail or refuse to comply with the provisions of this title or shall default in any agreement made with the holders of any issue of bonds, the holders of twenty-five percent in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the offices of the clerk of the City, secretary of the Board and the Authority and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purpose herein provided.

6. COMPENSATED ABSENCES

The Board reports the value of compensated absences as a liability. The annual budgets of the operating funds provide funding for these benefits as they become payable. The payment of compensated absences is dependent on many factors; therefore, the timing of future payments is not readily determinable. The current portion payable is estimated at 5% of the total compensated absences liability. The current portion of the liability amounted to \$36,653 and \$36,810 at December 31, 2020 and 2019, respectively. The long-term portion of the liability amounted to \$696,406 and \$699,387 at December 31, 2020 and 2019, respectively.

	Balance <u>12/31/2019</u>	Additions	Deletions	Balance <u>12/31/2020</u>	Current	Long-Term
Compensated Absences	\$ 736,197	\$ -	\$ (3,138)	\$ 733,059	\$ 36,653	\$ 696,406

7. OTHER POSTEMPLOYMENT BENEFITS (OPEB)

Plan Description and Benefits

The Board provides continuation of medical, prescription drug, dental, vision and chiropractic coverage for employees who retire and are at least age 50 and have an age, plus years of service, of at least 70. All retirees and future retirees hired prior to December 31, 2007 have no contribution requirements for both individual and family coverage. All future retirees hired after December 31, 2007 are required to pay 20% of the individual and family premiums. The Board currently pays for postemployment health care benefits on a pay-as-you-go basis. These financial statements assume that pay-as-you-go funding will continue.

The Board provides certain health care benefits for retired employees. Substantially all of the employees may become eligible for these benefits if they reach the normal retirement age and have the required minimum age plus years of service working for the Board. At December 31, 2020 and 2019, the current portion of the postemployment benefits liability was \$2,530,010 and \$2,771,796, respectively. The noncurrent portion of the postemployment benefits liability amounted to \$92,450,134 and \$86,092,262 at December 31, 2020 and 2019, respectively.

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements December 31, 2020 (With Comparative Totals for 2019)

Employees covered by benefit terms

At December 31, 2020, the following employees were covered by the benefit terms:

Retirees	99
Actives	<u>87</u>
Total participants	<u><u>186</u></u>

Total OPEB Liability

The Board's total OPEB liability of \$94,980,144 and \$88,864,058 was measured as of December 31, 2020 and 2019, respectively, and was determined by an actuarial valuation as of January 1, 2020 and 2018, respectively.

Actuarial Assumptions and Other Inputs

The total OPEB liability in the January 1, 2020 actuarial valuation was determined using the following actuarial assumptions and other inputs, applied to all periods included in the measurement, unless otherwise specified:

Inflation	1.3 percent per year
Salary increases	3.0%
Discount rate	2.0%
Healthcare cost trend rates	7.0% for 2020, decreasing to an ultimate rate of 4.5% for 2032

Mortality rates were based on the Society of Actuaries Mortality Improvement Scale MP-2019.

Changes in the Total OPEB Liability

	<u>2020</u>	<u>2019</u>
Total OPEB liability as of beginning of year	\$88,864,058	\$87,609,060
Changes for the year:		
Service cost	1,349,028	556,876
Interest	1,769,731	3,280,087
Changes in assumptions	5,504,550	-
Benefit payments	<u>(2,507,223)</u>	<u>(2,581,965)</u>
Total changes	<u>6,116,086</u>	<u>1,254,998</u>
Total OPEB liability as of end of year	<u><u>\$94,980,144</u></u>	<u><u>\$88,864,058</u></u>

Sensitivity of the Total OPEB Liability to Changes in the Discount Rate

The following presents the total OPEB liability of the Board, as well as what the Board's total OPEB liability would be if it were calculated using a discount rate that is 1-percentage point lower (1.02%) or 1-percentage point higher (3.02%) than the current discount rate:

	1% Decrease (1.02%)	Current Discount Rate (2.02%)	1% Increase (3.02%)
Total OPEB liability	<u>\$ 114,758,444</u>	<u>\$ 94,980,144</u>	<u>\$ 80,055,565</u>

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Sensitivity of the Total OPEB Liability to Changes in the Healthcare Cost Trend Rates

The following presents the total OPEB liability of the Board, as well as what the Board's total OPEB liability would be if it were calculated using a discount rate that is 1-percentage point lower (6.0%) or 1-percentage point higher (8.0%) than the current discount rate:

	Healthcare		
	1% Decrease (6.0%)	Current Trend Rate (7.0%)	1% Increase (8.0%)
Total OPEB liability	\$ 79,249,333	\$ 94,980,144	\$ 115,799,147

OPEB Expense and Deferred Outflows of Resources and Deferred Inflows of Resources Related to OPEB

For the year ended December 31, 2020 and 2019, the Board recognized OPEB expense of \$3,833,636 and \$3,836,963, respectively. At December 31, 2020, the Board reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ -	\$ -
Changes of assumptions	4,789,673	-
Benefit payments subsequent to measurement date	-	-
Total	<u>\$ 4,789,673</u>	<u>\$ -</u>

Amounts reported as deferred outflows of resources and deferred inflows of resources related to OPEB will be recognized in OPEB expense as follows:

<u>Fiscal Year Ending December</u>	<u>Amount</u>
2021	\$ 714,877
2022	714,877
2023	714,877
2024	714,877
2025	714,877
Thereafter	<u>1,215,288</u>
	<u>\$ 4,789,673</u>

NIAGARA FALLS WATER BOARD

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8. PENSION PLANS

New York State and Local Employees' Retirement System Plan Description

The Board participates in the New York State Employees' Retirement System (NYSERS) also referred to as New York State and Local Retirement System (the System). This is a cost-sharing, multiple employer public employee retirement system, providing retirement benefits as well as death and disability benefits. The net position of the System is held in the New York State Common Retirement Fund (the Fund), established to hold all net position and record changes in plan net position allocated to the System. System benefits are established under the provisions of the New York State Retirement and Social Security Law (NYS RSSL). Once an employer elects to participate in the System, the election is irrevocable. The New York State Constitution provides that pension membership is a contractual relationship and plan benefits cannot be diminished or impaired. Benefits can be changed for future members only by enactment of a State statute. The Board also participates in the Public Employees' Group Life Insurance Plan (GLIP), which provides death benefits in the form of life insurance. The System is included in the State's financial report as a pension trust fund. That report, including information with regard to benefits provided, may be found at www.osc.state.ny.us/retire/publications/index.php or obtained by writing to the New York State and Local Retirement System, 110 State Street, Albany, New York 12244.

The System is noncontributory for the employees who joined prior to July 27, 1976. For employees who joined the System after July 27, 1976, and prior to January 1, 2010, employees contribute 3% of their salary. Employees in the System more than ten years are no longer required to contribute. For employees who joined after January 1, 2010 and prior to April 1, 2012, employees in NYSERS contribute 3% of their salary throughout their active membership. For employees who joined after April 1, 2012, employees contribute 3% of their salary until April 1, 2013 and then contribute 3% to 6% of their salary throughout their active membership. The Comptroller annually certifies the actuarially determined rates expressly used in computing the employers' contributions based on salaries paid during the System's fiscal year ending March 31. Contributions for the current year and two preceding years were equal to 100 percent of contributions required, and were as follows:

	<u>NYSERS</u>
2020	\$ 566,475
2019	\$ 583,405
2018	\$ 659,383

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Pension Liability, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of

At December 31, 2020 and 2019, the Board reported the following liability for its proportionate share of the net pension liability for ERS. The net pension liability was measured as of March 31, 2020 and 2019. The total pension liability used to calculate the net pension liability was determined by an actuarial valuation. The Board's proportionate share of the net pension liability was based on a projection of the Board's long-term share of contributions to the System relative to the projected contributions of all participating members, actuarially determined. This information was provided by ERS in reports provided to the Board. At December 31, 2020, the Board's proportion was 0.0178786%, which was an increase of 0.00179% from its proportion measured as of March 31, 2019.

	<u>2020</u>	<u>2019</u>
Measurement date	3/31/2020	3/31/2019
Board's proportionate share of the net pension liability	\$ 4,734,365	\$ 1,139,930
Board's proportion of the Plan's net pension liability	0.0178786%	0.0160886%

For the year ended December 31, 2020 and 2019, the Board recognized pension expense of \$1,660,939 and \$835,523 for ERS, respectively. At December 31, 2020 and 2019 the Board's reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	<u>2020</u>		<u>2019</u>	
	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ 278,636	\$ -	\$ 224,476	\$ 76,521
Changes of assumptions	95,328	82,314	286,532	-
Net difference between projected and actual earnings on pension plan investments	2,427,065	-	-	292,569
Changes in proportion and differences between the Board's contributions and proportionate share of contributions	211,096	146,248	197,658	59,263
Contributions subsequent to the measurement date	<u>480,401</u>	<u>-</u>	<u>427,317</u>	<u>-</u>
Total	<u>\$3,492,526</u>	<u>\$ 228,562</u>	<u>\$1,135,983</u>	<u>\$ 428,353</u>

NIAGARA FALLS WATER BOARD

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Board contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the subsequent year. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

Plan's Year Ended March 31:

2021	\$	503,349
2022		705,675
2023		872,691
2024		701,848
	\$	<u>2,783,563</u>

Actuarial Assumptions

The total pension liability at March 31, 2020 was determined by using an actuarial valuation as of April 1, 2019, with update procedures used to roll forward the total pension liability to March 31, 2020. The total pension liability for the March 31, 2019 measurement date was determined by using an actuarial valuation as of April 1, 2018, with update procedures to roll forward the total pension liability to March 31, 2019.

The actuarial valuation used the following actuarial assumptions for both years:

Actuarial cost method	Entry age normal
Inflation	2.50%
Salary scale	4.2% indexed by service
Projected COLAs	1.3% compounded annually
Decrements	Developed from the Plan's 2015 experience study of the period April 1, 2010 through March 31, 2015
Mortality improvement	Society of Actuaries Scale MP-2014
Investment Rate of Return	6.8% compounded annually, net of investment

The long-term rate of return on pension plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation.

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The target allocation and best estimates of arithmetic real rates of return for each major asset class are summarized below:

Asset Type	Target Allocations in %	Long-Term expected real rate of return in %
Domestic equity	36	4.05
International equity	14	6.15
Private equity	10	6.75
Real estate	10	4.95
Absolute return strategies	2	3.25
Opportunistic portfolio	3	4.65
Real assets	3	5.95
Bonds and mortgages	17	0.75
Cash	1	0.00
Inflation-indexed bonds	4	0.50
	<u>100%</u>	

Discount Rate

The discount rate used to calculate the total pension liability in 2020 and 2019 was 6.8% and 7.0%, respectively. The projection of cash flows used to determine the discount rate assumes that contributions from plan members will be made at the current contribution rates and that contributions from employers will be made at statutorily required rates, actuarially. Based upon the assumptions, the Plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

NIAGARA FALLS WATER BOARD

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Sensitivity of the Proportionate Share of the Net Pension Liability to the Discount Rate

The following presents the Board’s proportionate share of the net pension liability calculated using the discount rate, as well as what the Board’s proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower or 1-percentage point higher than the current rate:

	2020		
	1% Decrease (5.8%)	Current Assumption (6.8%)	1% Increase (7.8%)
	Proportionate Share of Net Pension liability (asset)	<u>\$ 8,688,896</u>	<u>\$ 4,734,365</u>

	2019		
	1% Decrease (6%)	Current Assumption (7%)	1% Increase (8%)
	Proportionate Share of Net Pension liability (asset)	<u>\$ 4,983,954</u>	<u>\$ 1,139,930</u>

Pension Plan Fiduciary Net Position

The components of the current year net pension liability of all participating employers as of the respective measurement dates, were as follows:

Measurement date	(Dollars in Millions)	
	3/31/2020	3/31/2019
Employers’ total pension liability	\$ 194,596	\$ 189,803
Plan fiduciary net position	168,115	182,718
Employers’ net pension liability	<u>\$ 26,481</u>	<u>\$ 7,085</u>
Ratio of plan fiduciary net position to the employers’ total pension liability	86.39%	96.27%

9. NET POSITION

The Board’s financial statements utilize a net position presentation. Net position is categorized as net investment in capital assets, restricted for debt service, restricted for capital projects, restricted for operations and maintenance and unrestricted.

Net Investment in Capital Assets - This category groups all capital assets into one component of net position. Accumulated depreciation and the outstanding balances of debt that are attributable to the acquisition, construction or improvement of these assets reduce the balance in this category.

Restricted Net Position - This category represents external restrictions imposed by creditors, grantors, contributors, or laws and regulations of other governments and restrictions imposed by law through constitutional provisions or enabling legislation.

NIAGARA FALLS WATER BOARD

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Restricted for Capital Projects:

Amounts restricted for capital projects is \$2,786,581 and \$6,786,581 at December 31, 2020 and 2019, respectively. In 2007, the Board received \$19,000,000 from the Power Authority under a "Relicensing Settlement Agreement." The Agreement provided for the creation of a "Niagara Falls Water Board Capital Improvement Fund." These funds are restricted for future use related to capital improvements of the Board including but not limited to any specific project including the Falls Street Tunnel project.

Restricted for Debt Service Fund:

Board restrictions at December 31, 2020 and 2019 of \$6,636,484 and \$5,754,527, respectively, are for debt service.

Restricted for Debt Service Reserve Fund:

Amounts restricted for the debt service reserve fund were \$8,741,079 and \$8,389,738 at December 31, 2020 and 2019, respectively. These funds are controlled by bond trustee. The required minimum balance is the lesser of the maximum future annual debt service requirement or 125% of the average future annual debt service requirements for all outstanding bonds. The required minimum balance was \$6,786,698 and \$6,829,344 at December 31, 2020 and 2019, respectively. This resulted in excess reserves of \$1,954,381 and \$1,560,394 at December 31, 2020 and 2019, respectively.

Restricted for Operations and Maintenance:

Amounts restricted for operations and maintenance were \$5,028,792 and \$5,228,792 at December 31, 2020 and 2019, respectively. These reserves may be used to pay the cost of extraordinary repairs to and replacements of the system. Surplus amounts on deposit at the end of the fiscal year may be used for any purpose determined by the Board to be beneficial for the system unless the Authority notifies the Board that it does not concur with such application of surplus and expenditures. The required minimum balance is 1/6th of prior year operating expenses which equates to \$4,992,938 and \$4,868,438 at December 2020 and 2019, respectively. At December 31, 2020 and 2019, there was excess reserves of \$35,854 and \$360,354, respectively.

Unrestricted Net Position - This category represents net position of the Board not restricted for any project or other purpose. Additions of \$6,788,282 to net investment in capital assets and decreases of \$2,966,702 to restricted net position combined with the total loss for the year of \$680,736 increased the unrestricted net position deficit by \$4,502,316.

When both restricted and unrestricted resources are available for use, it is the Board's policy to use restricted resources first, and then unrestricted resources as they are needed.

NIAGARA FALLS WATER BOARD

Notes to Basic Financial Statements December 31, 2020 (With Comparative Totals for 2019)

10. LABOR RELATIONS

The majority of the Board's employees are represented by various unions under four collective bargaining unit agreements, with the balance governed by Board policies. Contracts for all of the bargaining units are covered with a seven-year term which expires on May 31, 2024.

11. RISK MANAGEMENT AND CONTINGENT LIABILITIES

Risk management and contingent liabilities at December 31, 2020 and 2019 are detailed as follows:

Insurance

The Board is exposed to various risks of losses related to torts; theft of, damage to and destruction of assets; injuries to employees; and natural disasters, for which the Board carries commercial insurance. There were no settlements that significantly exceeded insurance coverage for the years ended December 31, 2020 and 2019.

Litigation

The Board is a defendant in a number of lawsuits that have arisen in the normal course of business. While substantial damages are alleged in some of these actions, their outcome cannot be predicted with certainty. In the opinion of the Board, these actions when finally adjudicated will not have a material adverse effect on the financial position of the Board.

12. SIGNIFICANT EVENTS

As a result of alleged discharges from the waste water treatment plant during the summer of 2017, the New York State Department of Environmental Conservation (NYSDEC) and the Board entered into a Consent Order on December 19, 2017 (R9-20170906-129). This Consent Order required the Board to pay a civil penalty in the amount of \$50,000 and to implement a schedule of enumerated actions over the following fifteen (15) months and then construct various capital improvements in the following years. The Board is now in the process of implementing these actions under the supervision of the NYSDEC.

13. COVID-19

The United States is presently in the midst of a national health emergency related to a virus, commonly known as Novel Coronavirus (COVID-19). The overall consequences of COVID – 19 on a national, regional and local level are unknown, but it has the potential to result in a significant economic impact. The impact of this situation on the Board and its future results and financial position is not presently determinable.

**REQUIRED SUPPLEMENTARY INFORMATION
(UNAUDITED)**

NIAGARA FALLS WATER BOARD

**Schedule of Changes in Total OPEB Liability and Related Ratios (Unaudited)
For the year ended December 31, 2020**

	Last 10 Fiscal Years (Dollar amounts displayed in thousands)									
	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Total OPEB Liability										
Service cost	\$ 1,349,028	\$ 556,876	\$ 540,656							
Interest	1,769,731	3,280,087	3,234,085							
Changes of benefit terms	-	-	-							
Differences between expected and actual experience	-	-	-							
Changes in assumptions	5,504,550	-	-							
Benefit payments	(2,507,223)	(2,581,965)	(2,546,361)							
Total change in total OPEB liability	6,116,086	1,254,998	1,228,380							
Total OPEB liability - beginning	88,864,058	87,609,060	86,380,680							
Total OPEB liability - ending	<u>\$ 94,980,144</u>	<u>\$ 88,864,058</u>	<u>\$ 87,609,060</u>							
Covered-employee payroll	\$ 4,310,662	\$ 3,900,691	\$ 3,900,691							
Total OPEB liability as a percentage of covered-employee payroll	2203.4%	2278.2%	2246.0%							

Information for the periods prior to implementation of GASB 75 is unavailable and will be completed for each year going forward as they become available.

Notes to schedule:

Changes of assumptions. Changes in assumptions and other inputs reflect the effects of changes in the discount rate each period. In the current year, this liability increase was partially offset by liability reductions due to changes in plan cost (i.e., favorable premium rate increases) and trend changes since the prior valuation. The following reflects the discount rate used each period:

Discount rate	2.02%	3.80%	3.80%
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Information for the periods prior to implementation of GASB 75 is unavailable and will be completed for each year going forward as they become available.

Plan Assets. No assets are accumulated in a trust that meets the criteria in GASB 75, paragraph 4, to pay related benefits:

- Contributions from the employer and any nonemployer contributing entities, and earnings thereon, must be irrevocable.
- Plan assets must be dedicated to providing OPEB to Plan members in accordance with the benefit terms.
- Plan assets must be legally protected from the creditors of the employer, nonemployer contributing entities, the Plan administrator, and Plan members.

NIAGARA FALLS WATER BOARD

**Schedule of Proportionate Share of Net Pension Liability (Asset) - (Unaudited)
For the Year Ended December 31, 2020**

NEW YORK STATE EMPLOYEES' RETIREMENT	Last 10 Fiscal Years (Dollar amounts displayed in thousands)									
	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Proportion of the net pension liability (asset)	0.0178786%	0.0160886%	0.0147209%	0.0137476%	0.0134405%	0.0141606%				
Proportionate share of the net pension liability (asset)	\$ 4,734,365	\$ 1,139,930	\$ 475,108	\$ 1,291,751	\$ 2,157,242	\$ 478,381				
Covered-employee payroll	\$ 5,463,366	\$ 4,917,159	\$ 4,374,241	\$ 4,719,361	\$ 4,397,005	\$ 4,082,614				
Proportionate share of the net pension liability (asset) as a percentage of its covered-employee payroll	86.66%	23.18%	10.86%	27.37%	49.06%	11.72%				
Plan fiduciary net position as a percentage of the total pension liability (asset)	86.39%	96.27%	98.29%	94.70%	90.70%	97.95%				

Information for the periods prior to implementation of GASB 68 is unavailable and will be completed for each year going forward as they become available.

NIAGARA FALLS WATER BOARD

**Schedule of Contributions - Pension Plans (Unaudited)
For the Year Ended December 31, 2020**

NEW YORK STATE EMPLOYEES' RETIREMENT SYSTEM PLAN	Last 10 Fiscal Years (Dollar amounts displayed in thousands)									
	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Contractually required contribution	\$ 640,535	\$ 566,475	\$ 583,405	\$ 659,383	\$ 646,238	\$ 725,071	\$ 864,054	\$ 900,289		
Contributions in relation to the contractually required contribution	<u>640,535</u>	<u>566,475</u>	<u>583,405</u>	<u>659,383</u>	<u>646,238</u>	<u>725,071</u>	<u>864,054</u>	<u>900,289</u>		
Contribution deficiency (excess)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>		
Covered-employee payroll	\$ 5,463,366	\$ 4,917,159	\$ 4,374,241	\$ 4,719,361	\$ 4,397,005	\$ 4,082,614	\$ 4,483,962	\$ 4,442,277		
Contributions as a percentage of covered-employee payroll	11.72%	11.52%	13.34%	13.97%	14.70%	17.76%	19.27%	20.27%		

Information for the periods prior to implementation of GASB 68 is unavailable and will be completed for each year going forward as they become available.

**OTHER SUPPLEMENTARY INFORMATION
(UNAUDITED)**

Other Supplementary Information
Niagara Falls Public Water Authority (a Blended Component Unit of the Niagara Falls Water Board)
Statement of Net Position
December 31, 2020
(With Comparative Totals for 2019)

	<u>2020</u>	<u>2019</u>
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 133,829	\$ 133,829
Total current assets	<u>133,829</u>	<u>133,829</u>
NONCURRENT ASSETS:		
Due from Water Board	<u>87,882,921</u>	<u>92,406,568</u>
Total noncurrent assets	<u>87,882,921</u>	<u>92,406,568</u>
Total assets	<u>88,016,750</u>	<u>92,540,397</u>
LIABILITIES		
CURRENT LIABILITIES:		
Current portion, bonds payable	<u>4,466,316</u>	<u>4,316,194</u>
Total current liabilities	<u>4,466,316</u>	<u>4,316,194</u>
NONCURRENT LIABILITIES:		
Bonds payable	<u>82,306,914</u>	<u>86,919,687</u>
Total noncurrent liabilities	<u>82,306,914</u>	<u>86,919,687</u>
Total liabilities	<u>86,773,230</u>	<u>91,235,881</u>
DEFERRED INFLOWS OF RESOURCES		
Gain on refunding	<u>848,857</u>	<u>909,853</u>
Total deferred inflows of resources	<u>848,857</u>	<u>909,853</u>
NET POSITION		
Unrestricted	<u>394,663</u>	<u>394,663</u>
Total net position	<u>\$ 394,663</u>	<u>\$ 394,663</u>

The accompanying notes are an integral part of these statements.

Other Supplementary Information
Niagara Falls Public Water Authority (a Blended Component Unit of the Niagara Falls Water Board)
Statement of Revenue, Expenses, and Change in Net Position
For the Year Ended December 31, 2020
(With Comparative Totals for 2019)

	<u>2020</u>	<u>2019</u>
OPERATING REVENUE:		
Operating transfers in	\$ <u>2,935,900</u>	\$ <u>2,891,660</u>
Total operating revenue	<u>2,935,900</u>	<u>2,891,660</u>
Total operating income	<u>2,935,900</u>	<u>2,891,660</u>
NON-OPERATING REVENUE (EXPENSES):		
Interest expense	<u>2,935,900</u>	<u>2,891,660</u>
Total non-operating expenses, net	<u>2,935,900</u>	<u>2,891,660</u>
CHANGE IN NET POSITION	-	-
NET POSITION - beginning of year	<u>394,663</u>	<u>394,663</u>
NET POSITION - end of year	<u>\$ 394,663</u>	<u>\$ 394,663</u>

The accompanying notes are an integral part of these statements.

INDEPENDENT AUDITOR’S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

August 9, 2021

To the Board of Directors of
Niagara Falls Water Board

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the Niagara Falls Water Board (the Board), as of and for the year ended December 31, 2020, and the related notes to financial statements, which collectively comprise the Board’s basic financial statements, and have issued our report thereon dated August 9, 2021.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Board's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Board's internal control. Accordingly, we do not express an opinion on the effectiveness of the Board's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented or detected and corrected on a timely basis. *A significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that have not been identified. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Board's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards* and which are described in the accompanying schedule of findings and questioned costs below.

Finding 2020-001: Compliance with the Public Authorities Reform Act of 2009

Condition/Criteria : Members of the Water Authority board did not complete the necessary training and two (2) of the Authority board members did not complete the Certificate of Independence or the Signed Acknowledgement of Fiduciary Activities. Additionally, performance measures have not been established and adopted by the Niagara Falls Water Board (the Board). The Board and the Authority should ensure that all Public Authorities Reform Act requirements are being met.

Cause : Members of the Board and the Authority have not adhered to the minimum compliance requirements.

Effect : The Board and the Authority were not in compliance with the Public Authorities Reform Act of 2009.

Recommendation : We recommend that the Board and the Authority review the compliance requirements and ensure that all requirements are being met.

Management Response : Management concurs and will ensure compliance going forward.

Niagara Falls Water Board's Response to Findings

The Niagara Falls Water Board's response to the finding identified in our audit is described in the accompanying schedule of findings and questions costs. The Niagara Falls Water Board's response was not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Bonadio & Co., LLP

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APPENDIX C

PROPOSED FORM OF OPINION OF BOND COUNSEL

March 15, 2022

Niagara Falls Public Water Authority
Niagara Falls, New York

Re: Niagara Falls Public Water Authority
Water and Sewer System Revenue Refunding Bonds, Series 2022A
(Federally Taxable)

Ladies and Gentlemen:

We have acted as bond counsel with respect to the issuance by the Niagara Falls Public Water Authority (the “Authority”), a body corporate and politic constituting a public benefit corporation of the State of New York (the “State”), of its \$35,930,000 Water and Sewer System Revenue Refunding Bonds, Series 2022A (Federally Taxable) (the “Series A Bonds”). The Series A Bonds are authorized to be issued pursuant to (i) the Niagara Falls Public Water Authority Act, being Title 10-B of Article 5 of the Public Authorities Law of the State (which, together with the Niagara Falls Water Board Act, being Title 10-C of Article 5 of the Public Authorities Law of the State, are herein collectively referred to as the “Act”), (ii) the Authority’s System General Revenue Bond Resolution dated as of May 1, 2003, as amended (the “General Resolution”) by and between the Authority and Manufacturers and Traders Trust Company, as trustee (the “Trustee”), and the Authority’s Twelfth Supplemental Resolution (the “Twelfth Supplemental Resolution”) dated as of January 15, 2022. All capitalized terms used herein and not otherwise defined shall have the respective meanings prescribed thereto in either the General Resolution or in the Twelfth Supplemental Resolution.

In such connection, we have reviewed the Constitution and statutes of the State of New York, an executed counterpart of the General Resolution and the Twelfth Supplemental Resolution, opinions of counsel to the Authority and the Trustee, certificates of the Authority, the Trustee and others and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

The opinions expressed herein are based on any analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this opinion speaks only as of its date and is not intended to, and may not, be relied upon in connection with any such actions, events or matters. Our engagement with respect to the Series A Bonds has concluded with their issuance, and we disclaim any obligation to update this

letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Authority.

We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents referred to in the second paragraph hereof. We call attention to the fact that the rights and obligations under the Series A Bonds, the General Resolution, the Twelfth Supplemental Resolution, and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against entities such as the Authority in the State of New York. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, waiver or severability provisions contained in the documents described in the second paragraph hereof. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering materials relating to the Series A Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinion:

1. The Series A Bonds constitute the valid and binding special obligations of the Authority.
2. The General Resolution and the Twelfth Supplemental Resolution have each been duly executed and delivered by, and constitute the valid and binding obligations of the Authority. The General Resolution creates valid pledges to secure the payment of the principal of and interest on the Series A Bonds, of the Revenues and any other amounts held by the Trustee in any fund or account established pursuant to the General Resolution, except the Rebate Fund, subject to the provisions of the General Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the General Resolution.
3. All conditions precedent to the issuance of the Series A Bonds pursuant to the Act, the General Resolution and the Twelfth Supplemental Resolution have been satisfied and it is proper for the Trustee to authenticate the Series A Bonds.
4. Interest on the Series A Bonds is not excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, and is exempt from personal income taxes imposed by the State or any political subdivision thereof (including The City of New York). We express no opinion regarding other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Series A Bonds.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

APPENDIX D

GLOSSARY AND SUMMARY OF THE RESOLUTION AND AGREEMENTS

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Glossary

In addition to the other terms defined in this Official Statement, when used herein and in the summaries of the provisions of the Resolution and the Agreements, the following terms have the meanings ascribed to them below.

“Accountant” means such independent certified public accountant or accounting firm as will at the time be employed by the Authority for the purpose of performing the functions and duties of the independent certified public accountant under the Resolution or the Act.

“Accreted Value” means at any particular time, the value of any Capital Appreciation Indebtedness used for the purpose of determining any required principal amount for Bondholders’ consents or approvals, the amount of Bonds Outstanding, the redemption price of such Indebtedness or the priority of any claim for payment of interest or principal upon the occurrence of an Event of Default, all as provided in the Supplemental Resolution authorizing the issuance of any such Capital Appreciation Indebtedness.

“Accrued Debt Service” means for any calendar month, the sum of Accrued Interest and Accrued Principal for that month for all Outstanding Bonds.

“Accrued Interest” means for any calendar month, the interest component of Debt Service Requirements which has accrued or will accrue on any particular series of Outstanding Bonds during that month less (i) any interest component which accrues during such period, which is to be paid from money or Investment Securities or the earnings thereon, which money or Investment Securities are on deposit in a separate fund or account, such as a capitalized interest sub-account, or are otherwise segregated for such purpose, and (ii) any interest which has accrued but is not due and payable within the twelve (12) month period immediately following such accrual. For purposes of this definition the interest component which has accrued but is not due and payable within the twelve (12) month period immediately following such accrual will be included as Accrued Interest in twelve (12) equal consecutive monthly installments commencing on the twelfth month preceding the payment date.

“Accrued Principal” means for any calendar month, the principal component of Debt Service Requirements which has “accrued” or will “accrue” on a particular series of Outstanding Bonds during that month less any principal component which accrues during such period but is to be paid from money or Investment Securities or the earnings thereon which money or Investment Securities are on deposit in a separate fund or account or are otherwise segregated for such purpose. For purposes of this definition, it will be assumed that the principal component accrues in twelve (12) equal monthly installments commencing on the twelfth month preceding the date on which payment is due, except that (i) with respect to the principal component of a series of Bonds which is payable more frequently than annually, the principal component will accrue in equal monthly installments from one payment date to the next; (ii) if the first principal payment date on a series of Bonds is less than twelve (12) months after the issuance of such series of Bonds, the principal component due on such first payment date will accrue in equal monthly installments from the date of issuance to the first payment date, and (iii) with respect to Balloon Indebtedness, the principal component maturing or payable on one date will be deemed to accrue in the month in which such component matures or is payable and not in monthly installments prior to such date. In all events, principal will be determined to accrue in monthly amounts sufficient to assure the full amount due on any principal payment date and to be paid from the Debt Service Fund will be on deposit in the Debt Service Fund on the payment date. If an Event of Default occurs and Bonds have been declared to be due and payable as provided in the Resolution, then, in each calendar month, the entire unpaid principal of all Bonds which have been accelerated will be deemed to have accrued in that calendar month.

“Acquisition Agreement” means the Acquisition Agreement dated as of April 1, 2003 by and between the City and the Board as the same may be from time to time amended and supplemented.

“Acquisition Date” means the date of issuance of the 2003 Bonds.

“Act” means collectively (i) the Niagara Falls Public Water Authority Act, being Title 10-B of Article 5 of the Public Authorities Law as enacted by Chapter 275 of the Laws of 2002 of the State, as it may from time to time be amended, (ii) the Niagara Falls Water Board Act, as enacted by Chapter 325 of the Laws of 2002 of the State, as it

may from time to time be amended, and (iii) any rules or regulations promulgated by the Authority or the Board pursuant to the Act as the same may from time to time be modified or amended.

“Act of Bankruptcy” means with respect to any Person the occurrence of one of the following events: (a) the Person becomes insolvent or fails to pay its debts generally as they become due, or admits in writing its inability to pay any of its indebtedness; (b) the Person files a case under the Federal Bankruptcy Code to be declared a bankrupt or for reorganization; (c) the Person consents to, or petitions or applies to any authority for the appointment of a receiver, liquidator, trustee or similar official for itself or for all or any part of its properties; (d) any such receiver, liquidator, trustee or similar official will otherwise have been appointed and will not have been removed, dismissed or stayed within sixty (60) days of such appointment; or (e) insolvency, reorganization, arrangement, or liquidation proceedings (or similar proceedings) are instituted by or against the Person, and if instituted against the Person, will not have been dismissed within sixty (60) days of being instituted.

“Additional Indebtedness” means any Indebtedness incurred by the Authority and issued under the Resolution subsequent to the issuance of the 2003 Bonds. Additional Indebtedness may constitute Additional Parity Indebtedness, Subordinated Indebtedness, Credit Notes or any combination thereof.

“Additional Parity Indebtedness” means any Indebtedness of the Authority incurred pursuant to Article III of the Resolution secured by a Lien on the Trust Estate on a parity basis with the 2003 Bonds.

“Advance-Refunded Municipal Bonds” means obligations the interest on which is excluded from gross income for purposes of federal income taxation that have been advance-refunded prior to their maturity and that are fully and irrevocably secured as to principal and interest by Government Obligations described in subparagraphs (a), (b) or (n) of the definition of Investment Securities held in trust for the payment thereof, which Advance-Refunded Municipal Bonds are rated in the highest rating category by each Rating Agency that, pursuant to the request of the Authority, maintains a credit rating with respect to such Advance-Refunded Municipal Bonds.

“Annual Budget” means the budget or amended budget for a fiscal year, as adopted by the Board in accordance with the Agreement.

“Authority” means the Niagara Falls Public Water Authority, a body corporate and politic constituting a public benefit corporation created and existing under and by virtue of the Act.

“Authority Budget” means the annual budget of the Authority, as amended or supplemented, adopted or in effect for a particular Fiscal Year, as provided in the Resolution.

“Authority Expenses” means all reasonable or necessary expenses of the Authority, including all salaries, administrative, general, commercial, engineering, advertising, auditing, accounting and legal expenses, insurance and surety bond premiums, fees paid to banks, insurance companies or other financial institutions for the issuance of Credit Facilities, fees payable to EFC in connection with loans from EFC to Authority, consultants’ fees and charges, payments to pension, retirement, health and hospitalization funds, costs of public hearings and public notices, ordinary and current rentals of equipment and other property, lease payments for real property or interests therein, expenses, liabilities and compensation of any Fiduciary and all other expenses necessary, incidental or convenient for the efficient operation of the Authority.

“Authority Expense Fund” means the fund created pursuant to Article V of the Resolution to pay Authority Expenses.

“Authorized Denominations” means (i) with respect to the 2003 Bonds, a minimum denomination of \$5,000 and integral multiples thereof and (ii) with respect to any Additional Indebtedness, a minimum denomination specified in the Supplemental Resolution under which such Additional Indebtedness is issued.

“Authorized Newspaper” means a newspaper selected by the Trustee printed in the English language and customarily published at least five (5) days each week and generally circulated within the Borough of Manhattan, City

and State of New York, and when successive publications in an Authorized Newspaper are required, they may be made in the same or different Authorized Newspapers.

“Authorized Representative” or “Authorized Officer” means, with respect to the Authority, the Chairperson, Vice Chairperson, Treasurer or Secretary thereof, or any other officer or person authorized to perform specific acts or duties by resolution duly adopted by the Governing Board of the Authority and in the case of any Credit Facility Provider, the President or any Vice President of the Credit Facility Provider, or any other officer authorized to perform specific acts or duties by resolution duly adopted by the Board of Directors, or relevant committee thereof, of the Credit Facility Provider.

“Balloon Indebtedness” means Indebtedness fifty percent (50%) or more of the initial principal amount of which matures or is payable at the option of the holders thereof on the same date, which portion of the principal is not required by the documents governing such Indebtedness to be amortized by redemption prior to such date. In calculating the Debt Service Requirement for purposes of determining the Debt Service Reserve Requirement or compliance with Additional Parity Indebtedness requirements, the Debt Service Requirement for such Indebtedness during such Fiscal Year will be determined in accordance with the provisions of the Supplemental Resolution authorizing the issuance of such Balloon Indebtedness.

“Beneficial Owners” means purchasers of Bonds whose ownership interest is evidenced only in the Book-Entry System maintained by the Depository.

“Board” means the Niagara Falls Water Board, a body corporate and politic constituting a corporate municipal instrumentality of the State authorized to be created by the Act and created by a special act of the State Legislature.

“Bond” or “Bonds” means the 2003 Bonds and any Additional Parity Indebtedness issued pursuant to the Resolution.

“Bond Anticipation Note” means Indebtedness identified as such pursuant to a Supplemental Resolution.

“Bond Counsel” means Orrick, Herrington & Sutcliffe LLP or any other nationally recognized counsel experienced in matters of municipal law and the tax-exempt status of obligations under the Code, acceptable to the Authority.

“Bondholder,” “Holder,” “holder” and “Registered Owner” means the Depository or its nominee, if the Book-Entry System maintained by the Depository pursuant to the Resolution is in effect, or the person in whose name any Bond is registered in the Bond Register System maintained by the Trustee pursuant to the Resolution.

“Bond Redemption and Accumulated Surplus Fund” means the fund so designated which is created by the Resolution.

“Bond Register System” means a system of Ownership and transfer of Bonds registered on the registration books of the Authority kept for that purpose by the Trustee, as Bond register.

“Book-Entry System” means a system for clearing and settlement of securities transactions among participants of a Depository (and other parties having custodial relationships with such participants) through electronic or manual book-entry changes in accounts of such participants maintained by the Depository for recording ownership of the Bonds by Beneficial Owners and transfers of ownership interests in the Bonds.

“Business Day” or “business day” means any day (other than Saturday or Sunday) during which (i) commercial banks located in the State or in any of the cities in which the Principal Office of the Trustee or the office of any then current Credit Facility Provider at which a draw or claim on the Credit Facility is to be made are located are not required or authorized by law to close; and (ii) The New York Stock Exchange, Inc. is not closed.

“Capital Appreciation Indebtedness” means any Additional Indebtedness with a stated value at maturity, the interest on which is not payable until maturity or earlier redemption. In calculating the Debt Service Requirement in any Fiscal Year for Capital Appreciation Indebtedness for purposes of determining the Debt Service Reserve Requirement or compliance with Additional Parity Indebtedness requirements, the Debt Service Requirement for such Indebtedness during such Fiscal Year will be determined in accordance with the provisions of the Supplemental Resolution authorizing the issuance of such Capital Appreciation Indebtedness.

“Code” means the Internal Revenue Code of 1986, as amended, and with respect to a specific section thereof, such reference is deemed to include (i) the regulations promulgated under such section, (ii) any successor provision of similar import enacted, (iii) any corresponding provisions of any subsequent Internal Revenue Code, (iv) the regulations prescribed under the provisions described in (ii) and (iii), and (v) any published revenue rulings applicable thereto.

“Construction Fund” means the fund so designated which is established pursuant to the Resolution.

“Cost” or “Costs” or “Costs of the Project” means “Cost” as defined in the Financing Agreement.

“Costs of Issuance” means any costs relating to the issuance of Bonds of any series of Bonds, including, without limitation, costs pertaining to credit enhancement, underwriting or placement fees, expenses and discounts, attorneys’ fees and expenses, printing and advertising expenses, fees and expenses of consultants and governmental or administrative fees and expenses.

“Counsel” means an attorney at law or law firm (who may be counsel for the Authority, the Trustee or a Credit Facility Provider).

“City” means the City of Niagara Falls, Niagara County, New York, a municipal corporation of the State of New York, or its successors or assigns.

“Credit Agreement” means any agreement pursuant to which a Credit Facility is issued or provided for.

“Credit Facility” or “Credit Facilities” means any credit enhancement, guaranty, letter of credit, insurance policy, surety bond, standby bond purchase agreement or other credit facility or liquidity facility, and any extension or renewal thereof which is delivered to the Trustee as security or liquidity for the payment of the principal or purchase price of or interest on any series of Bonds or any portion thereof, and includes any Reserve Fund Credit Facility.

“Credit Facility Bonds” means those Bonds which are purchased from funds drawn under a Credit Facility by the Trustee during the period of time that such Bonds are not remarketed and are held by or for the account of any Credit Facility Provider.

“Credit Facility Default” means either (i) failure by the Credit Facility Provider to pay any claim or draw under the Credit Facility when due in accordance with its terms or (ii) Act of Bankruptcy of the Credit Facility Provider.

“Credit Facility Provider” means the provider of any Credit Facility, and includes any Reserve Fund Credit Facility Provider.

“Credit Note” means the promissory note or other instrument or agreement evidencing or setting forth the Authority’s obligations to a Credit Facility Provider pursuant to a Credit Agreement.

“Debt Service Fund” or “Reserve Fund” means the fund which is established pursuant to the Resolution.

“Debt Service Requirements” means, with reference to any specified period, the amounts required to be paid by the Authority to the Trustee for the holders of all Indebtedness (or any trustee or paying agent for such holders) in respect of the principal of all Indebtedness (including mandatory redemptions or prepayments) and the interest thereon,

and the amounts required to be paid by the Authority as lease rentals in respect of Indebtedness in the form of capitalized leases provided that, for the purposes of the foregoing:

(a) The amount deemed payable by the Authority in respect of interest on any Indebtedness will not include interest funded and available from the proceeds thereof, any interest subsidy or corpus allocation percentage reasonably anticipated by the Authority to be available under any Project Financing and Loan Agreement, or similar agreement, executed with EFC, or any successor thereof or any similar State agency or instrumentality, or, upon initial issuance, any accrued interest; and

(b) The amount deemed payable by the Authority in respect of the principal of and interest on any Balloon Indebtedness, Capital Appreciation Indebtedness, or Variable Rate Indebtedness will be calculated and, to the extent required, recalculated as provided in the Resolution.

“Debt Service Reserve Fund” means the fund so designated which is established pursuant to the Resolution.

“Debt Service Reserve Requirement” means with respect to a particular date, the lesser of: (a) the maximum annual Debt Service Requirements with respect to the Outstanding Bonds in the then current and all future Fiscal Years (for the purposes of which calculation any Variable Rate Indebtedness will be calculated pursuant to the Supplemental Resolution pursuant to which the Indebtedness has been issued); (b) 125% of the average annual Debt Service Requirements with respect to the Outstanding Bonds in the then current and all future Fiscal Years (for the purposes of which calculation any Variable Rate Indebtedness will be calculated pursuant to the Supplemental Resolution pursuant to which the Indebtedness has been issued); and (c) the maximum amount that may be held in the Debt Service Reserve Fund, in the opinion of Bond Counsel to the Authority, with respect to a series of Bonds intended to be tax-exempt without adversely affecting the Tax-Exempt status of such Bonds. The Debt Service Reserve Requirement may be satisfied in whole or in part by a Reserve Fund Credit Facility. For purposes of calculating the Debt Service Reserve Requirement, the cost of any applicable Credit Facility will be included as if it were interest on the Bonds of the related series of Bonds.

“Depository” means The Depository Trust Company, New York, New York, or any other entity performing substantially the same function under a Book-Entry System, and any successor depository designated pursuant to the Resolution.

“Disbursement Request” means a request for disbursement from the Construction Fund made in accordance with the Resolution.

“Eastern Time” means the prevailing local time in the City of New York, New York.

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

“Engineer” means such engineer or firm of engineers of recognized standing having skill and experience with respect to the design, construction or operation of a facility similar to and having like characteristics as the System, registered in the State as will be at the time employed by the Authority for the purpose of performing the function and duties of an engineer under the Resolution or the Act, and selected in consultation with the Board and not unsatisfactory to the Trustee or any Credit Facility Provider. Except as otherwise expressly provided in the Resolution, the Engineer will be Independent of the Authority.

“Event of Default” means any of the events described in the Resolution.

“Federal Bankruptcy Code” means Title 11 of the United States Code.

“Financing Agreement” or “Agreement” means the Financing Agreement dated as of April 1, 2003 entered into pursuant to the Act, by and between the Authority and the Board as the same may be from time to time amended and supplemented.

“First Supplemental Resolution” means the Supplemental Resolution by and between the Authority and the Trustee that is supplemental to the Resolution and relates to the 2003 Bonds.

“Fiscal Year” means the period of twelve months beginning January 1 of each year and ending on December 31 of that year, or any other twelve (12) month period adopted from time to time by the Authority and the Board as its fiscal year for accounting purposes.

“Fitch” means Fitch Ratings, Inc. New York, New York, its successors and assigns, or if such corporation dissolves or no longer performs the functions of a securities rating agency, such other nationally recognized securities rating agency designated by the Authority and not unacceptable to either the Trustee or any Remarketing Agent.

“Generally Accepted Accounting Principles” means those accounting principles applicable in the preparation of financial statements of municipalities, authorities, or corporations as appropriate, as promulgated by the Financial Accounting Standards Board or such other body recognized as authoritative by the American Institute of Certified Public Accountants or any successor body.

“Governing Board” means the members of the Authority constituting and acting as the governing body of the Authority.

“Government Obligations” means United States Treasury bills or other interest-bearing direct obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the principal and interest of which are unconditionally guaranteed as to full and timely payment by, the United States of America, but not mutual funds (including unit investment trusts)) investing in such obligations other than money market funds that are rated in the highest category by Moody’s, S & P and Fitch.

“Indebtedness” means, as to the Authority, at a particular time, all items which would, in conformity with Generally Accepted Accounting Principles, be classified as liabilities on a balance sheet of the Authority at such time, but in any event including without limitation (a) indebtedness arising under acceptance facilities or in respect of all letters of credit issued for the account of the Authority and, without duplication, all drafts drawn thereunder, (b) obligations under leases which have been, or under Generally Accepted Accounting Principles are required to be, capitalized, and (c) all indebtedness secured by (or for which the holder of such indebtedness has the right to be secured by) any mortgage, deed of trust, pledge, security interest or other lien, charge or encumbrance upon property owned or acquired subject to such mortgage, deed of trust, pledge, security interest, lien, charge or encumbrance, whether or not the liabilities secured thereby have been assumed. Indebtedness will not in any event include (a) current obligations payable from current revenue, including current payments for the funding of pension or other employee benefit plans (which will be considered Operating Expenses) but will include the current portion of Indebtedness classified as a current obligation under Generally Accepted Accounting Principles; (b) obligations under contracts for supplies, services and pensions, allocable to current operating expenses of future years in which the supplies are to be furnished, the services rendered or the pension benefits paid (which will be considered Operating Expenses in such future years); and (c) rentals payable in future years under leases, other than leases properly capitalized under Generally Accepted Accounting Principles (which will be considered Operating Expenses in such future years).

“Independent” means a Person who is not an officer, director or employee of a Credit Facility Provider or a member, officer or employee of the Authority or the Board; provided, however, that the fact that such Person is retained regularly by or transacts business with the Authority or the Board or the Credit Facility Provider will not make such Person an employee within the meaning of this definition.

“Interest Payment Date” means for Bonds of a series of Bonds the date on which interest on such Bonds is payable according to the Supplemental Resolution pursuant to which such Bonds were issued.

“Investment Securities” means and includes any of the following:

- (c) Government Obligations;

(d) Government Obligations which have been stripped of their unmatured interest coupons and interest coupons stripped from either Government Obligations or obligations of the Resolution Trust Company, which interest coupons are guaranteed by the United States of America;

(e) Bonds, debentures, notes or other evidence of indebtedness issued by any of the following: Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, Bank for Cooperatives, Federal Intermediate Credit Banks, Federal Financing Bank, Export-Import Bank of the United States, or Federal Land Banks, or of the Resolution Trust Company;

(f) All other obligations issued or unconditionally guaranteed as to the timely payment of principal and interest by an agency or person controlled or supervised by and acting as an instrumentality of the United States government pursuant to authority granted by Congress;

(g) (i) Interest-bearing time or demand deposits, certificates of deposit, or other similar banking arrangements with any government securities dealer, bank, trust company, savings and loan association, national banking association or other savings institution (including the Trustee), provided that such deposits, certificates, and other arrangements are fully insured by the Federal Deposit Insurance Corporation or any successor federal deposit insurance corporation or entity or (ii) interest-bearing time or demand deposits or certificates of deposit with any bank, trust company, national banking association or other savings institution (including the Trustee), provided such deposits and certificates are in or with a bank, trust company, national banking association or other savings institution which either (A) has an unsecured, uninsured and unguaranteed obligation rated "Prime-1" or "A3" or better by Moody's and "A-111" or "A-" or better by S & P or (B) is the lead bank of a parent bank holding company with an unsecured, uninsured and unguaranteed obligation meeting the rating requirements in (e)(ii)(A) above, and provided further that with respect to (i) and (ii) any such obligations are held by the Trustee or a bank, trust company or national banking association other than the issuer of such obligations (unless the issuer is the Trustee);

(h) Repurchase agreements or investment agreements collateralized by securities described in subparagraphs (a), (b), (c) or (d) above or (l) or (m) below, to the extent that any municipal bonds are rated in the highest rate category of one or more Rating Agency, with any registered broker/dealer subject to the Securities Investors' Protection Corporation or that is an approved Federal Reserve Bank primary dealer or with any commercial bank (including the Trustee), provided that (1) a specific written repurchase agreement or investment agreement governs the transaction, (2) the securities, free and clear of any lien, are held by the Trustee or an independent third party acting solely as agent for the Trustee, and such third party is (a) a Federal Reserve Bank, or (b) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$25 million, and the Trustee will have received written confirmation from such third party that it holds such securities, free and clear of any lien, as agent for the Trustee, (3) a perfected first security interest under the Uniform Commercial Code, or book entry procedures described in 31 CFR 306.1 et seq. or 31 CFR 350. et seq., in such securities is created for the benefit of the Trustee, (4) the Trustee will value the collateral securities no less frequently than monthly and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two (2) Business Days of such valuation, or, in the case of a repurchase agreement, the agreement has a term of thirty (30) days or less, (5) the fair market value of the collateral securities in relation to the amount of the repurchase obligation or the payment obligation, depending on whether it is a repurchase agreement or an investment agreement, including principal and interest, is equal to at least 100% and (6) the collateral was not acquired by the broker/dealer pursuant to a repurchase agreement or reverse repurchase agreement;

(i) Uncollateralized investment agreements issued or guaranteed by entities with debt obligations of comparable or longer maturity that are rated "Aa3" or better by Moody's and "AA-" or better by S & P;

(j) Money market funds rated "Am" or "Am-G" or better by Moody's and S & P;

(k) Commercial paper rated "Prime-1" or better by Moody's and "A-1" or better by S & P;

(l) Obligations rated "A3" or better by Moody's and "A-" or better by S & P;

(m) Shares of investment companies or cash equivalent investments which are authorized to invest only in assets or securities described in subparagraphs (a), (b), (c) and (d) above; provided, however, that investment in obligations described in this clause (k) will not exceed \$500,000;

(n) Advance-Refunded Municipal Bonds;

(o) Tax-Exempt Obligations that are rated “A-3” or better or V-MIG 1 by Moody’s and “A-“ or better or A-1 by S & P, or shares of investment companies that invest only in such obligations;

(p) Certificates that evidence ownership of the right to payments of principal of or interest on Government Obligations, provided that (1) such obligations will be held in trust by a bank or trust company or national banking association meeting the requirements for a successor Trustee under the agreement, (2) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying Government Obligations, and (3) the underlying Government Obligations are held in a special account separate from the custodian’s general assets, and are not available to satisfy any claim of the custodian, any person claiming through the custodian or any person to whom the custodian may be obligated; and

(q) The Trustee’s “cash sweep account” or other short term investment fund of the Trustee, the assets of which consist of other Investment Securities defined above.

“Lien” means any sale, transfer, assignment, disposition, mortgage, pledge, security interest, lien, judgment lien, easement or other encumbrance on title, excluding Permitted Encumbrances.

“Local Water Fund” means the special fund by that name established by the Act in the custody of the Board.

“Minimum Monthly Balance” shall be an amount equal to the sum of the aggregate amounts of Debt Service that have accrued with respect to all Series of Bonds, calculating the Debt Service that has accrued with respect to each Series of Bonds as an amount equal to the sum of (A) the interest on the Bonds of such Series that has accrued and is unpaid and that will have accrued by the end of the then current calendar month, reduced by the amount, if any, then on deposit in the Capitalized Interest Account in the Debt Service Fund, and (B) that portion of the next due Principal Installment for the Bonds of such Series that would have accrued (as deemed to accrue in the manner interest accrues) by the end of the then current calendar month.

“Moody’s” means Moody’s Investors Service, Inc., New York, New York, its successors and assigns, or if such corporation dissolves or no longer performs the functions of a securities rating agency, such other nationally recognized securities rating agency designated by the Authority and not unacceptable to either the Trustee or any Remarketing Agent.

“Municipality” means any county, city, town, village, or improvement district under the Town Law of the State, any other such instrumentality, including any agency, or public corporation of the State, or any of the foregoing or any combination thereof.

“Non-Purpose Obligations” has the meaning given such term under Section 1.148-1(b) of the Income Tax Regulations of the United States Department of the Treasury.

“Officer’s Certificate” means a certificate or statement signed by an Authorized Representative or Authorized Officer of the Authority, or, as the context may require, of the Credit Facility Provider.

“Operating Expenses” means all reasonable or necessary current expenses of the Board for operating, maintaining, repairing, and managing the System, including all salaries, administrative, general, commercial, architectural, engineering, advertising, public notices, auditing, billing, collection and enforcement and legal expenses, insurance and surety bond premiums, consultants fees and charges, payments to pension, retirement, health and hospitalization funds, any taxes or assessments which may lawfully be imposed on the System or the income or operation thereof, costs of public hearings, ordinary and current rentals of equipment or other property, lease payments for real property or interest therein, usual expenses of maintenance and repair (including replacements), expenses,

liabilities and compensation of the Bank or any other depository of Board funds, the amount of any judgment or settlement arising out of a tort claim related to the ownership, construction, repair, administration, operation or maintenance of the System, payments to independent contractors of the Board related to the operation, maintenance, repair (including replacements), administration and management of the System and all other expenses necessary, incidental or convenient for the operation of the System, but only to the extent properly attributable to the Board or the System, including but not limited to all amounts payable pursuant to the Operation Agreement.

“Operating Revenues” means for any period the Revenues of the Board derived from the operation of the System, excluding any extraordinary gain or loss resulting from the extinguishment of Indebtedness, the sale of capital assets, the proceeds of insurance claims, except business interruption insurance, and settlements and of condemnation awards or payments in lieu thereof, and the proceeds of any Indebtedness, all determined in accordance with Generally Accepted Accounting Principles.

“Operation Agreement” means the Operation Agreement dated as of April 1, 2003 entered into pursuant to the Act, by and between the Board, the Authority and the City, as the same may be from time to time amended and supplemented.

“Outstanding,” when used with reference to a series of Bonds, will, subject to the provisions of the Resolution, mean as of any particular time all of the Bonds authenticated and delivered by the Trustee under the Resolution, except:

(r) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(s) Bonds for the payment or redemption of which money in the necessary amount will have been deposited with the Trustee, and with respect to Bonds to be redeemed prior to maturity, notice of such redemption will have been given or provided for as provided in the Resolution;

(t) Bonds in substitution for which other Bonds will have been authenticated and delivered pursuant to the terms of the Resolution; and

(u) Bonds which are deemed to have been paid pursuant to the provisions of Article XIV of the Resolution.

“Paying Agent” means the Trustee or any other or successor Paying Agent appointed in accordance with any Supplemental Resolution.

“Payment Date” or “payment date” means, (a) with respect to payments of principal or interest on any Additional Indebtedness, including upon the redemption of any of the same, such dates as may be specified in the applicable Supplemental Resolution and (b) in the case of payments to Bondholders after the occurrence of an Event of Default, such other date or dates as the Trustee will establish for the payment of principal or interest.

“Payment Obligations” means all amounts due and owing to a Credit Facility Provider under a Credit Agreement.

“Permitted Encumbrances”, when used with reference to the System, means (A) any and all liens, encumbrances, security interests or other defects in or clouds on the title which may exist on the Acquisition Date, (B) utility, access and other easements, rights of way and exceptions which do not materially impair the operation or maintenance of the System or the Revenues therefrom, (C) mechanics', materialmen's, warehousemen's, carriers' and other similar liens, to the extent permitted by law, and liens for taxes at the time not delinquent or being contested, and (D) any lien or security interest which the Board grants with the written consent of the Authority.

“Person” means any natural person, firm, trustee, executor, personal representative, partnership, association, limited partnership, limited liability company, limited liability partnership, joint venture or corporation, or other legal entity whatsoever, including a public corporation as defined pursuant to Article Two-A of the General Construction

Law. The masculine gender will include the feminine, the singular will include the plural where indicated by the context.

“PILOT Payments” means those payments in lieu of taxes to be paid by the Board as set forth in the Financing Agreement.

“PILOT Payment Account” means the account by that name established by the Board pursuant to the Financing Agreement.

“Pledged Revenues” means all Revenues which have been pledged to the Trustee under the Resolution by the Granting Clauses of the Resolution, whether or not they are held by the Trustee or its agent.

“Prime Rate” means the rate of interest publicly announced from time to time in The Wall Street Journal as the “prime rate” for major commercial banks, with the Prime Rate for any given calendar month being calculated by using the Prime Rate in effect as of the first day of such month.

“Principal Installment” means for any Fiscal Year and any series of Bonds, the principal amount thereof payable including principal subject to mandatory redemption pursuant to the Resolution.

“Principal Office,” when referring to the Trustee or any Paying Agent, means the office where any such institution maintains its principal corporate trust office, and when referring to a Credit Facility Provider means the office at which a demand for payment must be made.

“Project” means any project as such term is defined in the Act.

“Project Budget” means a statement, and any amendments thereof, of the estimated Costs of a Project, as set forth in an Officer’s Certificate of the Board, setting forth the Costs in such categories and reasonable detail as will be determined by the Board.

“Rate Consultant” means an Independent Accountant or firm of independent accountants, a management consultant or firm of management consultants, or independent engineer or firm of independent engineers (and who may be then serving as the Engineer) selected by the Board in consultation with the Authority.

“Rate Covenant” means the covenant of the Board contained the Financing Agreement to establish and collect rates, rents, fees and other charges in each Fiscal Year so that Revenues collected in such Fiscal Year, together with other available funds, will be at least equal to certain specified amounts as therein provided.

“Rating Agencies” means S & P, Fitch, or any other nationally recognized credit rating agency, to the extent that such entity then maintains a credit rating with respect to the relevant security.

“Rebate Amount” means all interest income and profits earned on the investment of the proceeds of Tax-Exempt Bonds which is required to be paid to the United States under Section 148 (f) of the Code, calculated and determined in accordance with the Regulations in effect from time to time under that Section.

“Rebate Fund” means the separate fund created under the Resolution.

“Record Date” means, as the case may be, (i) the Record Date for payment of the purchase price, principal of or interest on a series of Bonds as provided in the Supplemental Resolution pertaining to such series of Bonds or (ii) the record date established by the Authority in accordance with the Resolution for obtaining consents from bondholders.

“Refundable Principal Installment” means the principal component of Bonds which are to be refunded by the Authority.

“Registered Owner” means the Depository or its nominee, if the Book-Entry System maintained by the Depository pursuant to the Resolution is in effect, or the person in whose name any Bond is registered, if the Bond Register System maintained by the Trustee pursuant to the Resolution is in effect.

“Remarketing Agent” means the person or entity appointed as such under any Supplemental Resolution with respect to the Bonds of the series of Bonds authorized thereunder.

“Reserve Fund Credit Facility” means the letter of credit, insurance policy or surety bond, together with any substitute or replacement therefor, if any, complying with the provisions of the Resolution, thereby fulfilling all or a portion of the Debt Service Reserve Requirement.

“Reserve Fund Credit Facility Provider” means any provider of a Reserve Fund Credit Facility.

“Revenues” means (a) all rates, rents, fees, charges, payments, fines and other income and receipts derived by the Board from Users of the System, (b) all monies derived from investments, including but not limited to, interest earnings and proceeds of insurance, condemnation, sale or other disposition of the System or any part thereof received by the Board (other than the proceeds of insurance with respect to the damage or destruction of all or any portion of the System), together with all operating aid with respect to the System from any governmental entity, Federal, State or local, to the Board, (c) amounts from the use of water, wastewater or stormwater to generate electricity, (d) any amounts from the granting of easements, licenses, rights of way or other interests in property constituting a part of the System, (e) revenues from any other source however described or derived; but will not include (1) amounts required to be refunded because of billing or payment errors, and (2) any amount attributable to any of the foregoing sources described in clause (a) which is expressly excluded by the Financing Agreement.

“Revenue Fund” means the fund so designated which is described in the Resolution.

“Secured Obligations” means the various obligations secured by the Resolution as described in the granting clauses to the Resolution.

“S & P” means Standard & Poor’s Ratings Services, a Division of Standard & Poor’s Financial Services LLC, its successors and assigns, or if such corporation dissolves or no longer performs the functions of a securities rating agency, such other nationally recognized securities rating agency designated by the Authority and not unacceptable to either the Trustee or the remarketing agent, if any.

“Sinking Fund Installments” means for any Fiscal Year and any series of Bonds, the principal amount thereof subject to mandatory redemption pursuant to the Resolution.

“Special Operating Fund” means the fund so designated which is described in the Resolution.

“State” means the State of New York.

“Stated Amount” means the amount set forth in any Credit Facility as the maximum amount the Trustee is permitted to draw from said Credit Facility, in respect of both principal and interest, as such amount is reduced and reinstated from time to time in accordance with the terms of the Credit Facility.

“Subordinated Indebtedness” means any Indebtedness of the Authority secured by a Lien on the Pledged Revenues that is by its terms expressly subordinated to the Lien on the Pledged Revenues securing the Bonds.

“Subordinated Indebtedness Fund” means any fund so designated as established pursuant to a Supplemental Resolution to pay Subordinated Indebtedness.

“Supplemental Resolution” means any Resolution amending, modifying or supplementing the Resolution made, signed and becoming effective in accordance with the terms of the Resolution.

“System” means the entirety of all water, wastewater and stormwater Facilities and Properties of the Board or the Authority as so defined and described in the Acquisition Agreement.

“Tax-Exempt” means, with respect to interest on any obligations of a state or local government or public instrumentality, including Bonds, that such interest is excluded from gross income for federal tax purposes (other than for an owner who is a “substantial user” of the project being financed or a “related person” within the meaning of Section 147(a) of the Code), whether or not such interest is includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating other tax liabilities, including any alternative minimum tax or environmental tax under the Code. The Trustee may conclusively rely on an opinion of Independent Counsel experienced in the field of Tax-Exempt obligations to the effect that a particular series of Bonds is Tax-Exempt.

“Tender Agent” means the person or entity designated as such in a Supplemental Resolution.

“Trust Estate” means the revenues, receipts, property, and rights and interests of the Authority which are subject to the Lien of the Resolution.

“Trustee” means Manufacturers and Traders Trust Company, in its capacity as trustee under the Resolution, or its successors in the trust.

“2003 Bonds” means the Authority’s original principal amount of System Revenue Bonds, Series 2003 issued to EFC pursuant to the Resolution as further provided in the First Supplemental Resolution.

“Variable Rate Indebtedness” means any Bond, the rate of interest on which is subject to change prior to maturity and which cannot be determined in advance of such change, including but not limited to Bonds in a commercial paper mode. In calculating the Debt Service Requirement for purposes of compliance with Additional Parity Indebtedness requirements, such Variable Rate Indebtedness will be deemed to be Indebtedness bearing interest calculated pursuant to the Supplemental Resolution pursuant to which the Indebtedness has been issued. Any ongoing liquidity activity charges and remarketing agent fees imposed in connection with such Variable Rate Indebtedness will be deemed to be Operating Expenses.

SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION

Authority for the Resolution (Section 1.1)

The Resolution is entered into by virtue of the Act and pursuant to its provisions, and the Authority has ascertained and determined that each and every matter and thing as to which provision is made in the Resolution is necessary in order to further secure the payment of the Secured Obligations and to carry out and effectuate the purposes of the Authority in accordance with the Act.

Resolution to Constitute Contract (Section 1.2)

In consideration of the purchase and acceptance of the Secured Obligations and, without limitation, the Bonds by the Beneficial Owners in the case of Bonds issued pursuant to the Book Entry System and Registered Owners in the case of Bonds issued in certificated form from time to time, the provisions of the Resolution shall be deemed to be and shall constitute a contract between the Authority, the Trustee and Holders of the Secured Obligations, and, without limitation, the Registered Owners from time to time of the Bonds and the covenants and agreements set forth in the Resolution to be performed on behalf of the Authority shall be for the equal benefit, protection and security of the Registered Owners of the Bonds, all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in the Resolution.

Scope of the Resolution (Section 1.3)

Nothing in the Resolution shall limit the power of the Authority to issue obligations of the Authority outside the Resolution for any lawful purpose of the Authority or from granting liens on the Pledged Revenues which are expressly subordinate to the Lien of the Resolution or from granting liens of any priority on revenues of the Authority which are not Revenues as defined in the Resolution.

Authorization of 2003 Bonds (Section 2.1)

(a) There shall be initially issued under the Resolution the 2003 Bonds as more particularly described in the First Supplemental Resolution. The 2003 Bonds (or any amendment, modification, replacement, reissuance or refunding of the 2003 Bonds) shall each be issued for such purposes, shall be in such form and denomination, shall bear such dates, shall be numbered, shall mature and bear interest and shall have such other terms and provisions (including the application of any Credit Facility) permitted under the Act and not contrary to the terms of the Resolution as shall be provided in the First Supplemental Resolution.

(b) Additional Parity Indebtedness may also be issued under the Resolution pursuant to and subject to the terms and conditions of Article III of the Resolution. The Additional Parity Indebtedness shall be issued in such aggregate principal amounts, for such purposes, shall be in such form and denomination, shall bear such dates, shall be numbered, shall mature and bear interest and shall have such other terms and provisions (including the application of any Credit Facility) permitted under the Act and not contrary to the terms of the Resolution (including particularly but without limitation Article II and Article III of the Resolution) as shall be provided in the Supplemental Resolution executed in connection with the issuance thereof.

(c) Bonds may be issued under the Resolution in exchange for bonds issued by the City to EFC relating to the system.

(d) Bonds may also be issued under the Resolution pursuant to the Resolution in lieu of Bonds theretofore issued which have been mutilated, lost, destroyed or stolen.

Bonds Are Negotiable Instruments (Section 2.5)

The Bonds shall have the qualities of negotiable instruments under the merchant law and the negotiable instruments law of the State, as well as the Uniform Commercial Code as adopted by the State, subject to the provisions for registration and transfer contained in the Resolution and in the Bonds.

Purposes of Additional Parity Indebtedness (Section 3.1)

The Authority may issue from time to time, and the Trustee shall authenticate, Additional Parity Indebtedness for any lawful corporate purpose, including but not limited to providing all or part of the funds necessary (i) to refinance or refund all or any portion of any Indebtedness of the Authority, including accrued and unpaid interest and redemption premium, if any; (ii) to plan, develop, construct, acquire, complete, restore or replace any Project or any portion thereof, including studies, planning and design and other preliminary costs and expenses in connection therewith; or (iii) to provide working capital for the Authority; including in each case the costs and expenses of the financing, any increase in the Debt Service Reserve Requirement incidental thereto and the funding of any reserves.

Conditions Precedent to the Issuance of Additional Parity Indebtedness (Section 3.2)

The Trustee shall not authenticate or deliver to the Authority on its order any Additional Parity Indebtedness unless theretofore or simultaneously therewith there shall have been delivered or paid to the Trustee the following:

- (a) a certified copy of a resolution or resolutions of the Governing Board of the Authority authorizing the issuance of such Additional Parity Indebtedness, stating the purpose or purposes for the issuance of such Additional Parity Indebtedness, describing in brief and general terms the Projects to be financed by the issuance of such Additional Parity Indebtedness, if any, authorizing the execution and delivery of the Supplemental Resolution, and fixing the terms of such Additional Parity Indebtedness.
- (b) a Supplemental Resolution executed by the Authority providing for the issuance of the Additional Parity Indebtedness, and containing such other necessary or proper terms, requirements and provisions which shall not be inconsistent with the Resolution or any previous Supplemental Resolution, unless all Bonds, the Registered Owners of which are entitled to the protection of the provision or provisions with which the Supplemental Resolution is inconsistent, have been paid or redeemed or provision therefor duly made. The provisions of Article II of the Resolution shall apply to any Additional Parity Indebtedness unless the relevant Supplemental Resolution explicitly provides otherwise.
- (c) a written opinion or opinions of Bond Counsel to the effect that: (i) all conditions precedent to the issuance of the Additional Parity Indebtedness pursuant to the Act, the Resolution and any relevant Supplemental Resolution have been satisfied; (ii) the Additional Parity Indebtedness, when issued, will be valid and binding obligations of the Authority in accordance with their terms; (iii) it is proper for the Trustee to authenticate the Additional Parity Indebtedness; and (iv) if the Additional Parity Indebtedness is intended to be Tax-Exempt, an opinion to the effect that interest on the Additional Parity Indebtedness is Tax-Exempt.
- (d) the written order of the Authority, signed by the Chairperson or Vice Chairperson of the Authority, ordering the Trustee to authenticate and deliver such Additional Parity Indebtedness, stating the amount of the proceeds of sale thereof and directing the application of such proceeds.
- (e) the proceeds of the Additional Parity Indebtedness in the amounts stated in the order of the Authority described above, to be applied as described in such order.
- (f) any additional deposit to the Debt Service Reserve Fund required with respect to the Additional Parity Indebtedness.
- (g) a certificate duly executed by the Accountant (or an Authorized Representative of the Authority, to the extent permitted by the Resolution) stating that, based upon a review of the books and records of the Authority and the Board, for any twelve (12) consecutive month period of the eighteen (18) calendar months

immediately preceding the month during which the Additional Parity Indebtedness is to be issued, or such shorter period if this much time has not yet elapsed, (i) the Board has complied with the Rate Covenant, (ii) all deposits required to be paid into the Debt Service Fund were made, and (iii) the Debt Service Reserve Fund Requirement was maintained in accordance with the Resolution.

(h) a certificate duly executed by an Engineer (or an Authorized Representative of the Authority, to the extent permitted by the Resolution) setting forth in detail and based upon reasonable assumptions set forth therein (1) his or her estimate of the Operating Expenses for each of the five (5) Fiscal Years following the issuance of such series of Bonds, plus the Fiscal Year in which such Bonds are issued; and (2) the Debt Service Requirements for each such Fiscal Year.

(i) a Certificate of the Rate Consultant setting forth his or her opinion that the amount of estimated Operating Revenues for each such Fiscal Year as described above will be sufficient, together with amounts capitalized, and to be capitalized, from proceeds of the Additional Parity Indebtedness or otherwise made available and reserved, or to be made available and reserved in connection with the issuance of the Additional Parity Indebtedness, and not already taken into account by reduction of the obligation which Operating Revenues must cover, to satisfy the Rate Covenant for each such Fiscal Year.

(j) if the Additional Parity Indebtedness is being issued to finance Projects, a certificate duly executed by an Engineer (or an Authorized Representative of the Authority, to the extent permitted by the Resolution) (1) stating that such Projects will be useful or desirable in connection with the operation of the System, will be technically feasible and are in compliance with the Authority's approved System plan, as the same may be amended from time to time, (2) setting forth in detail and based upon reasonable assumptions set forth therein the estimated Costs of the acquisition or construction of such Projects including any financing expenses and, if judged necessary, a balance for contingencies, the sources of funds expected to be applied to finance such Costs, and the time period which will be required for completion of the acquisition or construction of such Projects, (3) his or her opinion that the net proceeds of the Additional Parity Indebtedness, together with other moneys which are then available or are reasonably expected to be available therefor, will be sufficient to pay the Costs of the acquisition or construction of such Projects, and (4) his or her opinion as to the date when such Projects will be placed in commercial operation.

(k) if the Additional Parity Indebtedness is being issued to finance a refunding, the Authority may provide, in lieu of the certificate described in paragraph (i) of this section, a certificate duly executed by an Accountant (or an Authorized Representative of the Authority, to the extent permitted by the Resolution) stating that for the then current and each future Fiscal Year, the Debt Service Requirements for the refunding Bonds will be no more than ten per centum (10 %) more than the Debt Service Requirements that would have existed for that Fiscal Year with respect to the portion of the Bonds being refunded.

(l) if the Additional Parity Indebtedness is being issued to finance a refunding (1) executed counterparts of such documents as are necessary or appropriate for the purposes of the refunding, including, specifically, an escrow deposit agreement providing for the deposit and application of funds for any refunding other than a refunding which occurs on the same day as the issuance of such Additional Indebtedness, (2) unless all refunded Indebtedness is to be redeemed or otherwise retired on the date of settlement for the refunding Bonds, such schedules, verified as to their mathematical accuracy by an Accountant, as are necessary to demonstrate the adequacy of funds deposited for the refunding and the income thereon for the purpose of paying, when due, the principal or redemption price of and interest on the refunded Indebtedness, and (3) evidence satisfactory to the Trustee that notice of any necessary redemption has been properly given, or that provisions satisfactory to the Trustee have been made therefor, or that sufficient waivers of such notice have been duly filed with the Trustee.

The opinion(s) of Bond Counsel described in paragraph (c) above may be accepted by the Trustee as conclusive evidence that the requirements of this section have been complied with, and the Trustee shall thereupon be authorized to execute said Supplemental Resolution, to authenticate the Additional Parity Indebtedness and to deliver the same to or upon the order of the Chairperson or Vice Chairperson of the Authority.

Exceptions for Certain Additional Parity Indebtedness (Section 3.3)

(a) Notwithstanding anything to the contrary in paragraphs (g), (h), (i), and (j) of the section above, the requirements of those paragraphs may be met by providing certificates as described in those paragraphs executed by an Authorized Representative of the Authority, so long as the aggregate principal amount of Additional Parity Indebtedness being issued pursuant to this section does not exceed either \$2,000,000 or is for completion of a Project, provided, with respect to Bonds to be issued for completion of a Project, that the Engineer certifies that such funds are sufficient to complete the Cost of the construction of such Project.

(b) Furthermore, notwithstanding anything to the contrary in paragraphs (g), (h), (i), (j) and (k) of the section above, the Authority may issue Additional Parity Indebtedness without satisfying paragraphs (g), (h), (i), (j) and (k) of Section 3.2 above in any authorized amount if (i) all Outstanding Bonds are secured as to the payment of the principal of and interest due on such Bonds by a Credit Facility or Credit Facilities and issued concurrently with the delivery of each series of Bonds and being security for each series of Bonds, or any replacement thereof permitted in accordance with any Supplemental Resolution pursuant to which the applicable Bonds were issued and no such Credit Facility Provider has wrongfully dishonored a draw request for payment under such Credit Facility, which wrongful dishonor remains uncured, and (ii) the Credit Facility Provider or Credit Facility Providers, as the case may be, of each series of such Bonds and EFC, if EFC or its assigns are the registered holders of any Outstanding Bonds, consents to the issuance of the Additional Parity Indebtedness without satisfaction of such paragraphs or (iii) if the proceeds of such Additional Parity Indebtedness will be expended on a Project required to be constructed to comply with any State or federal law, rule or regulation.

Application of Proceeds of Additional Parity Indebtedness (Section 3.4)

The proceeds of the Additional Parity Indebtedness issued for the purpose of acquiring, constructing, completing, restoring or replacing Projects, after paying the costs and expenses of the financing and making any other payments and setting aside any reserves authorized by the Governing Board of the Authority, shall be deposited with the Trustee in a separate account within the Construction Fund. Any capitalized interest funded from the proceeds of such Additional Parity Indebtedness shall be deposited with the Trustee in the Special Operating Fund.

The Trustee shall be authorized to disburse the money in the Construction Fund from time to time for the purpose of paying or reimbursing the Authority for the Costs of construction, acquisition, completion, restoration or replacement of Projects upon submission of requisitions of the Authority of the character contemplated by in the Resolution, upon which the Trustee may conclusively rely, or as otherwise provided in the pertinent Supplemental Resolution. In the case of payments for the purchase price of lands, rights of way or easements, or for any Project which is to be situated on lands, rights of way or easements for which the Authority has not previously received the opinion of Counsel hereinafter described, the Authority shall also furnish to the Trustee an opinion of Counsel, upon which the Trustee may conclusively rely, that the Authority has acquired title or such appropriate interest thereto, which opinion may be based and rely upon title insurance, provided that if all Bonds then Outstanding shall have the benefit of one or more Credit Facilities, such opinion shall not be required if the Credit Facility Provider or Providers shall state that the opinion is not required in a writing delivered to the Trustee before any such payment.

The proceeds of Additional Parity Indebtedness issued for refunding purposes shall, after paying all costs and expenses incidental to the redemption and to the financing, be directly or indirectly applied by the Trustee to the payment or redemption of the Indebtedness to be refunded pursuant to the written order of the Authority described in the Resolution.

The proceeds of Additional Parity Indebtedness issued for a purpose other than acquiring, constructing, completing, restoring or replacing Projects or to accomplish a refunding program of the Authority shall, except as otherwise provided in a supplemental resolution, after paying all costs and expenses incidental to the financing, be deposited in the Construction Fund and disbursed to the Authority as provided in the Article IV of the Resolution, unless otherwise prescribed by the Supplemental Resolution authorizing the Additional Parity Indebtedness.

Additional Parity Indebtedness on Parity (Section 3.5)

All Additional Parity Indebtedness issued from time to time under Article III shall be on a parity with the 2003 Bonds and with all other Additional Parity Indebtedness issued under the Resolution, except as expressly provided or permitted by the Resolution.

Subordinated Indebtedness (Section 3.6)

The Authority may issue from time to time one or more series of Subordinated Indebtedness pursuant to the terms of a Supplemental Resolution for any lawful purpose of the Authority (including the provision of working capital of the Authority), such Subordinated Indebtedness to be in substantially such form as may be approved by the Authority and specified in the Supplemental Resolution authorizing the same. The priority of payments of principal or redemption price and interest on such Subordinated Indebtedness and the security therefor shall be as provided in the applicable Supplemental Resolution, which shall make such provisions for payment of the Debt Service Requirements of the Subordinated Indebtedness from Revenues held in the Revenue Fund in a manner consistent with Article V of the Resolution.

Credit Notes (Section 3.7)

The Authority may issue from time to time one or more Credit Notes pursuant to the provisions of a Supplemental Resolution. Any Credit Note that secures a Credit Facility with respect to any series of Bonds shall be subordinate only to the Bonds of the series of Bonds to which the Credit Facility relates. Therefore, a Credit Facility Provider shall be entitled to share in the Trust Estate under and according to the Resolution only when all amounts due and payable on the Bonds of the series of Bonds to which the Credit Facility it has issued relates have been fully paid. Any Credit Note that secures a Credit Facility with respect to Subordinated Indebtedness shall be likewise subordinated to such Subordinated Indebtedness. Furthermore, notwithstanding anything to the contrary contained in the Resolution, the Authority shall not be obligated to establish or fund a Debt Service Reserve Requirement with respect to any Credit Note, nor include any contingent payments under Debt Service Requirements.

Establishment of Construction Fund (Section 4.1)

The Trustee shall establish and maintain a Construction Fund, which shall consist of separate accounts or sub-accounts for each Project or portion thereof the construction or acquisition of which is to be financed, or refinanced, with Bonds and which shall be held separate and apart from all other funds and accounts established under the Resolution and from all other money of the Trustee. No disbursements of funds held from time to time in the Construction Fund shall be made except as permitted in Article IV. Any amounts on deposit in any account or sub-account for any Project subsequent to the date on which the Authority shall have certified to the Trustee that construction or acquisition, as the case may be, of such Project is complete, as provided in the Resolution, shall be transferred to the Bond Redemption and Accumulated Surplus Fund. The Trustee shall invest the money on deposit in the Construction Fund pursuant to the Resolution and shall apply the income from such investments as provided therein.

Any State, federal or municipal aid provided to the Authority for the construction or acquisition Costs of a Project shall be deposited by the Authority in the Construction fund.

Payments from Construction Fund (Section 4.2)

Projects to Be Constructed. The Trustee shall make payments from the Construction Fund with respect to Projects to be constructed only (i) upon the prior receipt of a requisition, signed on behalf of the Authority by an Authorized Representative, and if with respect to construction costs, approved by the Engineer, stating (a) the date, (b) the name of the Person to whom the payment is to be made (which may be the Authority if it is to be reimbursed for advances made or obligations incurred by it and properly chargeable against the Construction Fund), (c) the amount to be paid, (d) in reasonable detail and if appropriate by reference to Cost categories in the Project Budget, the purpose for which the payment is to be made, (e) that the obligation was properly incurred and is a Cost of the Project, (f) that the amount requisitioned is due and unpaid, and has not been the subject of any previously paid requisition, (g) that

following the payment the amount remaining on deposit in the Construction Fund either (i) is estimated to be sufficient to pay the remaining Cost of completing the Project or repair for which the payment was made or (ii) the Authority has certified to the Trustee that it is taking appropriate steps either to reduce the Cost or raise additional moneys (whether through increasing Revenues or through the issuance of debt) so that the amount remaining or deposited in the Construction Fund is estimated to be sufficient to pay the remaining Costs of completing the Project or repair, and (h) that with respect to items covered in the requisition, the signer has no knowledge of any vendors', mechanics' or other liens, conditional sales contracts, chattel mortgages, leases of personalty, title retention agreements or security interests which should be satisfied or discharged before the payments as requisitioned therein are made or which will not be discharged by such payment or (ii) as otherwise provided in a Supplemental Resolution. If the costs of the Project or repair in question are in aggregate less than \$5,000,000, the approving Engineer need not be Independent of the Authority.

Projects to Be Acquired. In the event that proceeds of Bonds are, intended to be used in whole or in part to acquire a Project, whether or not the Project is completely or partly constructed, such proceeds shall be disbursed from the Construction Fund to or upon the order of the Authority for the payment of the purchase price of the Project upon the terms and conditions specified in the Supplemental Resolution authorizing the series of Bonds. In cases where the Project is intended to be acquired and construction may remain to be done following acquisition by the Authority, the Authority may direct the Trustee as to the amount of money held in the account established therefor in the Construction Fund that is to be allocated the purchase price of the Project and the remaining construction cost of the Project at the time of its acquisition.

The Trustee agrees that it shall hold all requisitions, affidavits, certificates and other documents delivered to the Trustee pursuant to paragraph A above for a period of at least seven (7) years after the date of receipt thereof. The Authority, the Engineer, Bondholders, and their agents and representatives shall have the right to inspect such requisitions, affidavits, certificates and other documents at the Trustee's Principal Office at reasonable times and upon reasonable notice.

Whenever disbursements are to be made to reimburse the Authority for advances or to discharge indebtedness of the Authority, the requisition shall relate to the underlying obligation for which the Authority is being reimbursed or for the payment of which the indebtedness of the Authority was incurred.

Costs of Issuance Fund (Section 4.3)

The Trustee shall create, at a minimum, one separate fund, entitled the "Costs of Issuance Fund," to be held separate from all other funds and accounts of the Trustee.

The Authority shall transfer to the Trustee for deposit in the Costs of Issuance Fund any proceeds of Bonds or other amounts designated by the Authority. The Trustee shall apply the amounts on deposit in the Costs of Issuance Fund to the payment of Costs of Issuance of Bonds of the related series of Bonds. Any amounts on deposit therein that are not so applied within one year of deposit shall be applied to any fund created or established under the Resolution in which there is a deficiency, and, to the extent not so required, transferred to the Bond Redemption and Accumulated Surplus Fund. Costs of Issuance, including without limitation the Cost of any Credit Facility, shall be paid by the Trustee from the Costs of Issuance Fund without need of prior invoice from the Credit Facility Provider.

Amounts held in the Costs of Issuance Fund shall be invested by the Trustee solely in Investment Securities, subject to the limitations imposed thereon by the Act at the written direction of the Authority.

Sale of Property (Section 4.4)

The Board may, from time to time, except as provided in, and subject to the terms and conditions of, the "Project Finance Agreement" between the Authority and EFC relating to the 2003 Bonds, as such quoted terms are defined in the First Supplemental Resolution, sell or permit the sale of any machinery, fixtures, apparatus, tools, instruments, or movable property or any materials used in connection therewith which are no longer needed or useful in connection with the operation of the System, provided that if the fair market value of such machinery, fixtures, apparatus, tools, instruments, or movable property or any materials used in connection therewith is reasonably

expected to be in excess of \$100,000 an Engineer shall concur in writing with such declaration, and the proceeds thereof shall be applied to the replacement of the property so sold or disposed of or shall be deposited in the Bond Redemption Fund. The Board may also from time to time sell or convey such real property as the Authority by resolution shall declare to be no longer necessary or useful in connection with the operation of the System, provided that if the fair market value of such real property is reasonably expected to be in excess of \$500,000 an Engineer shall concur in writing with such declaration. The proceeds of any sale of real property shall be deposited in the Bond Redemption and Accumulated Surplus Fund.

Pledge of Revenues; Security Interest (Section 5.1)

As security for its obligation to make payments and to secure the performance and observance of all the covenants and conditions contained in the Resolution, and in confirmation of and subject to the Granting Clauses of the Resolution, the Authority pledges and grants to the Trustee, subject to the uses and applications authorized or required by the Resolution, a Lien on and security interest in the Trust Estate. The pledge made by the Resolution shall be valid and binding from the time such pledge is made, and the covenants and agreements set forth in the Resolution to be performed by or on behalf of the Authority shall be for the benefit, protection and security of the Registered Owners of the Bonds and Subordinated Indebtedness with priority and distinction as expressly provided herein or permitted by the Resolution. The Trust Estate shall immediately be subject to the Lien of the pledge without any physical delivery thereof or further act, and, except as otherwise provided in the Resolution, shall be held by the Trustee until disbursed as authorized by the Resolution in trust for the benefit of the Registered Owners from time to time of the Bonds, and Subordinated Indebtedness issued and Outstanding under the Resolution.

Notwithstanding the above pledge, money from time to time deposited and held in the Debt Service Fund for the payment of particular Bonds shall be held in trust by the Trustee for payment to the respective Registered Owners from time to time of the particular Bonds for the payment of which said money has been deposited in said Fund, and whenever Bonds shall be selected for redemption out of money on deposit in the Bond Redemption and Accumulated Surplus Fund, the money in such Fund to the amount necessary to pay principal, redemption premium, if any, and interest to the date fixed for redemption on the Bonds selected for redemption, shall be held by the Trustee in trust for the payment to the respective Registered Owners of the particular Bonds so selected for redemption.

Revenue Fund; Application of Revenues. (Section 5.2)

(a) There is established a special fund, designated as the "Revenue Fund", to be held by the Trustee in trust separate and apart from the other funds and accounts of the Trustee.

(b) The Authority shall cause all Revenues received from the Board pursuant to the Financing Agreement to be deposited into such funds and on such dates as follows:

Commencing on the first day of each Fiscal Year and on each day thereafter, the Board has agreed to make the following payments in the following order of priority:

FIRST: To the Trustee, for deposit in the Debt Service Fund, beginning with the first day of each calendar month, all Revenues in the Board's Local Water Fund, until the balance in the Debt Service Fund equals the Minimum Monthly Balance as defined in the Financing Agreement, for each Series of Bonds in such month and to the Authority Expense Fund for all Authority Expenses attributable to the Fiscal Year in accordance with the Authority Budget;

SECOND: Beginning with the first day of each calendar month, until paid in each calendar month, to the Board Expense Account, one-twelfth (or, with respect to the first Fiscal Year, a fraction, the numerator of which is one and the denominator of which is the number of calendar months or portions thereof in such first Fiscal Year) of the Board Expenses, including the amount certified to the Board pursuant to the Operation Agreement, for the then current Fiscal Year as shown in the Annual Budget, or the Board may establish with its Annual Budget an alternative payment schedule, concurred in by the Rate Consultant, for the upcoming Fiscal Year which equitably reflects both the timing of the Board's incurrence of Board Expenses and the timing of Board revenues and fund balances, but in no event shall the establishment of such

alternative payment schedule be deemed to affect in any manner the relative priority of the accounts or sub-funds established by items FIRST through SIXTH;

THIRD: From the balance, if any, in the Board's General Account of the Local Water Fund after making the deposits required by the preceding paragraphs, to the Debt Service Reserve Fund and the Subordinated Indebtedness Fund in amounts required by the Resolution or otherwise to be deposited in such funds and to the Operation and Maintenance Reserve Account, all such Revenues until the total of the amounts so paid equals the amount, if any, required to be deposited therein pursuant to the Financing Agreement;

FOURTH: From the balance in the General Account of the Local Water Fund after making the deposits required by the preceding paragraphs, to the PILOT Payment Account until the balance therein equals the total amount budgeted for deposit therein in such Fiscal Year in the Annual Budget;

FIFTH: From the balance, if any, in the Board's General Account in the Local Water Fund after making the deposits required by the preceding paragraphs, to the Construction Account until the balance therein equals the total amount budgeted for deposit therein in such Fiscal Year in the Annual Budget; and

SIXTH: The balance, if any, in the General Account in the Local Water Fund after making the deposits required by the preceding paragraphs, to the Operation and Maintenance Reserve Account.

In making the payments required pursuant to paragraph FIRST of this section, the Board shall be entitled to rely on the Certificate of an Authorized Representative of the Authority described in the following paragraph.

On the first day of each month, the Authority, or the Trustee as the Authority's agent, shall deliver to the Board a Certificate, setting forth the Authority's calculations of the Minimum Monthly Balance for each Series of Outstanding Bonds for such month and the amounts required to be deposited in the Authority Expense Fund, Debt Service Reserve Fund and Subordinated Indebtedness Fund in such month.

Special Operating Fund (Section 5.3)

There is created a special fund known as the Special Operating Fund which shall be held in trust by the Trustee until applied as provided in the Resolution. Within the Special Operating Fund there shall be established the Capitalized Interest Account. Within the Capitalized Interest Account there shall be established a separate sub-account for each series of Bonds for which there is to be a deposit of capitalized interest. The Authority shall pay to the Trustee for deposit in the Special Operating Fund such amounts as the Authority shall determine from the proceeds of Bonds for allocation to the various accounts according to the terms of the applicable Supplemental Resolution of the Authority. Amounts held in the Special Operating Fund shall be invested solely by the Trustee as directed in writing by an Authorized Representative of the Authority in Investment Securities.

The Trustee shall transfer automatically on each Interest Payment Date from the Capitalized Interest Account of the Special, Operating Fund to the Debt Service Fund an amount equal to the interest component of the Debt Service Requirements for Bonds that has accrued through the last day of the immediately preceding Interest Payment Date on each series of Bonds for which there has been a deposit of capitalized interest in the Capitalized Interest Account of the Special Operating Fund. Such amounts, to the extent available, shall be taken from the sub-account of the Capitalized Interest Account established with respect to the series of Bonds for which the transfer is made and shall be credited to the sub-account for such series of Bonds in the Debt Service Fund. The Authority may also withdraw upon written requisition filed with the Trustee identifying the purpose thereof from the sub-account of the Capitalized Interest Account relating to a series of Bonds amounts needed to pay the costs and fees of any Credit Facility or remarketing service in effect with respect to Bonds of such series of Bonds.

Debt Service Fund (Section 5.4)

There is created a special fund known as the Debt Service Fund which shall be held in trust by the Trustee until applied as provided in the Resolution. The Debt Service Fund shall include a separate account for each series of Bonds issued under the Resolution.

The Authority shall pay to the Trustee from available Revenues (after the deposit described in the section above) for deposit in the relevant account of the Debt Service Fund on or before the first Business Day of each calendar month an amount equal, in the aggregate, to Accrued Debt Service for all Bonds issued under the Resolution. In the event moneys are not sufficient for the payment of Debt Service on a payment Date, the Trustee shall, without instruction or further direction from the Authority, promptly transfer the requisite amounts from the Debt Service Reserve Fund to the relevant accounts of the Debt Service Fund to make good any such deficiency.

The money held from time to time in the Debt Service Fund shall be applied by the Trustee without further direction from the Authority to the payment of the Debt Service Requirements on the Bonds as and when the same shall become due and payable; provided that if the same shall have been paid under a Credit Facility (other than municipal bond insurance) relating to the series of Bonds on which the payments were due, including in those instances where Debt Service Requirements on a series of Bonds has been paid in the first instance from the proceeds of a Credit Facility, amounts equal to such payments on deposit in the account of the Debt Service Fund established with respect to Bonds of such series of Bonds shall be paid to the Credit Facility Provider as reimbursement. If a Supplemental Resolution provides that Debt Service Requirements on Bonds of a series of Bonds issued thereunder are to be paid in the first instance from the proceeds of a Credit Facility, the Trustee shall comply with the terms of such Supplemental Resolution in that regard and draw upon the Credit Facility to pay Debt Service Requirements on Bonds of such series of Bonds.

Debt Service Reserve Fund (Section 5.5)

There is created a special fund known as the Debt Service Reserve Fund which shall be held in trust by the Trustee until applied as provided in the Resolution.

The Trustee shall be authorized, without further direction from the Authority, to apply the money in the Debt Service Reserve Fund toward the payment of the Debt Service Requirements from time to time becoming due and payable upon a series of Bonds, to the extent that the Debt Service Fund shall at any time be insufficient with respect to such series of Bonds.

In the event of any deficiency in the Debt Service Reserve Fund, the Authority shall thereafter make monthly transfers from the Revenue Fund, (after the deposits described in the second preceding section), until the amount in the Debt Service Reserve Fund in cash or investments shall equal the Debt Service Reserve Requirement. Amounts held in the Debt Service Reserve Fund shall be restored to the Debt Service Reserve Requirement within twelve (12) months after the occurrence of any deficiency therein. The investments of the Debt Service Reserve Fund shall, for the purpose of determining the amount from time to time in the Debt Service Reserve Fund, be valued annually by the Trustee at amortized cost. The investments of the Debt Service Reserve Fund shall include (i) investments that at the time of acquisition would constitute Investment Securities if the stated level of required ratings, if any, for Investment Securities were at least the second highest whole rating category (without regard to pluses or minuses) for the type of rating in question (e.g. short-term or long-term) and (ii) investments which can be liquidated by or on behalf of the Trustee not later than ten (10) years from the date of their acquisition for an amount at least equal to the principal thereof and all accrued interest (or amortized discount) thereon to the liquidation date, whether by maturity, redemption, tender or otherwise.

Upon written instructions of an Authorized Officer of the Authority during the twelve (12) month period prior to the final maturity date of outstanding Bonds, money held in the Debt Service Reserve Fund shall be credited against the amount otherwise transferable from the Revenue Fund to the Debt Service Fund in respect of Debt Service Requirements for such Bonds and shall be transferred to the Debt Service Fund for the payment of such Debt Service Requirements; provided, however, that no such credit shall be given and no such transfer shall be made if, immediately prior to such crediting and transfer, the amount on deposit in the Debt Service Reserve Fund is not at least equal to (i) the Debt Service Reserve Requirement less (ii) the amounts previously transferred to the Debt Service Fund for

payment of Bonds during such twelve (12) month period pursuant to this section, and any amounts which are currently payable to the Rebate Fund.

Reserve Fund Credit Facility (Section 5.6)

The Authority may elect to satisfy in whole or in part the Debt Service Reserve Requirement by means of a letter of credit, insurance policy or surety bond (together with any substitute or replacement therefor, the "Reserve Fund Credit Facility"), subject to the following requirements:

(A) The Reserve Fund Credit Facility Provider must have a credit rating issued by a Rating Agency not less than the then current rating on the related series of Bonds and in any event equal to one of the Rating Agency's three highest long-term rating categories;

(B) The Authority shall not secure any obligation to the Reserve Fund Credit Facility Provider by a Lien on the Trust Estate superior to the Lien on the Trust Estate granted to the Bondholders;

(C) Each Reserve Fund Credit Facility shall have a term of at least one (1) year (or, if less, the remaining term of the related series of Bonds) and shall entitle the Trustee to draw upon or demand payment at such times and for such purposes as the Trustee would be entitled to claim the funds and investments that would be on deposit in the Debt Service Reserve Fund were there no such Reserve Fund Credit Facility and receive the amount so requested in immediately available funds not later than five (5) Business Days after such draw or demand. To assure a timely draw on any Reserve Fund Credit Facility and timely payment of funds in the Debt Service Fund as provided in the Resolution, any Supplemental Resolution providing for a Reserve Fund Credit Facility shall provide that the date for deposit in the applicable account of the Debt Service Fund for a series of Bonds for which a Reserve Fund Credit Facility has been provided shall be no later than five days prior to the first Business Day of each calendar month in which an Accrued Debt Service payment is due;

(D) The Reserve Fund Credit Facility shall permit a drawing by the Trustee for the full Stated Amount in the event (i) the Reserve Fund Credit Facility expires or terminates for any reason prior to the final maturity of the related series of Bonds, and (ii) the Authority fails to satisfy the Debt Service Reserve Requirement by the delivery to the Trustee of cash, obligations, a substitute Reserve Fund Credit Facility, or any combination thereof, for deposit in the related account in the Debt Service Reserve Fund on or before the date of such expiration or termination;

(E) If the rating issued by the Rating Agencies to the Reserve Fund Credit Facility Provider is withdrawn or reduced below the rating assigned to that of the related series of Bonds immediately prior to such action by the Rating Agencies, the Authority shall provide a substitute Reserve Fund Credit Facility within sixty (60) days after said rating change, and, if no substitute Reserve Fund Credit Facility is delivered to the Trustee by such date, shall fund the Debt Service Reserve Requirement in not more than forty-eight (48) equal monthly payments commencing not later than the first day of the month immediately succeeding the date representing the end of said sixty (60) day period; and

(F) If the Reserve Fund Credit Facility Provider commences any insolvency proceedings or is determined to be insolvent or fails to make payments when due on its obligations, the Authority shall provide a substitute Reserve Fund Credit Facility within sixty (60) days thereafter, and, if no substitute Reserve Fund Credit Facility is delivered to the Trustee by such date, shall fund the Debt Service Reserve Requirement in not more than forty-eight (48) equal monthly payments commencing not later than the first day of the month immediately succeeding the date representing the end of said sixty (60) day period.

If the events described in either (E) or (F) above occur, the Trustee shall not relinquish the Reserve Fund Credit Facility at issue until after the Debt Service Reserve Requirement is fully satisfied by the provision of cash, obligations, or a substitute Reserve Fund Credit Facility or any combination thereof. In the event a Reserve Fund Credit Facility is delivered to the Trustee, the Trustee shall transfer the money and securities held in the related account of the Debt Service Reserve Fund, to the extent not needed to comply with the Debt Service Reserve Requirement, to the Bond Redemption and Accumulated Surplus Fund. The Trustee is authorized and directed to draw upon or demand payment from any such Reserve Fund Credit Facility in accordance with its terms in the event funds are needed from

the Debt Service Reserve Fund in accordance with the Resolution. Any amount received from the Reserve Fund Credit Facility shall be deposited directly into the Debt Service Fund and such deposit shall constitute the application of amounts in the Debt Service Reserve Fund. If amounts held in an account of the Debt Service Reserve Fund containing a Reserve Fund Credit Facility are less than the related Debt Service Reserve Requirement because the Reserve Fund Credit Facility has been drawn upon and has not been reinstated, the Authority shall transfer from the Revenue Fund, (after the deposits required by the Resolution, in amounts sufficient to reinstate said Reserve Fund Credit Facility, and the Trustee shall pay such amounts to the Reserve Fund Credit Facility Provider. Upon the reinstatement of the Reserve Fund Credit Facility, said payment shall constitute the replenishment of said account.

Bond Redemption and Accumulated Surplus Fund (Section 5.7)

There is created a special fund to be known as the Bond Redemption and Accumulated Surplus Fund which shall be held in trust by the Trustee until applied as provided in the Resolution. At the end of each Fiscal Year the Authority shall deposit in the Bond Redemption and Accumulated Surplus Fund all Revenues then on hand and not otherwise on deposit in a fund or account, the net proceeds from the sale of any Project as well as insurance and condemnation proceeds received as a result of damage, destruction or condemnation of any Project in accordance with the Resolution. Any such sale, insurance or condemnation proceeds shall be applied solely for the purpose of purchasing or redeeming Bonds as described below.

Whenever there shall be a deficiency in any other fund or account under the Resolution, the Trustee shall forthwith and without instructions from the Authority, make good such deficiency from moneys, except sale, insurance or condemnation proceeds on deposit in the Bond Redemption and Accumulated Surplus Fund. If there shall be no such deficiency in any of said funds or accounts, the money in the Bond Redemption and Accumulated Surplus Fund shall be paid out from time to time by the Trustee upon requisitions or letters of instruction indicating in reasonable detail the purpose of the payment and signed on behalf of the Authority by its Chairperson or Vice-Chairperson.

The money on deposit in the Bond Redemption and Accumulated Surplus Fund may be used upon the written request of the Authority to purchase or redeem any Bonds of any series at a price not greater than 100 % of the principal amount thereof (or, to the extent permitted by law, the then current optional redemption price for such series of Bonds) plus accrued interest.

Rebate Fund (Section 5.8)

(a) There is created and established with the Trustee a special fund to be known as the Rebate Fund which shall be used for the deposit of the Rebate Amount, and shall not be subject to the lien of the Resolution.

(b) The Authority covenants to determine the Rebate Amount or cause the same to be determined in the manner provided in Section 148(f) of the Code, the Treasury Regulations promulgated thereunder and any other rules which may be promulgated thereafter by the Treasury Department or Internal Revenue Service (the "Rules") and to transfer or cause to be transferred to Trustee such determination for purposes of paragraph (c) below.

(c) Records of each of the determinations required to be made pursuant to paragraph (b) above and the Rules shall be retained by the Trustee until a date which is six (6) years after the retirement of the last Bond.

(d) The Trustee shall deposit in the Rebate Fund the Rebate Amount which may be from deposits by the Authority or from available investment earnings on amounts held in the Construction Fund, the Debt Service Reserve Fund, the Special Operating Fund or the Bond Redemption and Accumulated Surplus Fund, as directed in writing by the Authority. If the Authority fails to make any payment to the Trustee, the Trustee may, but shall not be required to, transfer money without requisition first from the Construction Fund and then from the Bond Redemption and Accumulated Surplus Fund to the Rebate Fund so that such payment can be made.

(e) If any amount shall remain in the Rebate Fund after the Trustee has made the final payment to the United States in accordance with the Rules, such amount shall be deposited in the Bond Redemption and Accumulated Surplus Fund.

(f) Any money held as a part of the Rebate Fund shall be invested or reinvested by the Trustee, as directed in writing by the Authority, in Investment Securities, subject to the restrictions set forth in the Rules. The Trustee may make any and all such investments through its own investment department. In making investments, the Trustee may rely upon the directions of the Authority as to the investments purchased and shall be and is relieved of all liability with respect to making, holding, redeeming or selling such investments in accordance with the foregoing.

(g) Any and all money held as part of the Rebate Fund shall be considered proceeds of the Bonds for all purposes including, but not limited to, the limitations on investments in Nonpurpose Obligations.

(h) The Rebate Amount shall be paid to the United States by the Trustee on behalf of and at the written direction of the Authority in installments as provided in the Rules. Each payment of an installment of the amount required to be paid to the United States shall be paid at the time and in the manner provided in the Rules. The duty of the Trustee to make payments to the United States pursuant to the Resolution and the Rules shall be expressly limited to funds available in the Rebate Fund at the times such payments are required to be made (including all, investment earnings on funds theretofore deposited by the Trustee in the Rebate Fund), and any other funds actually provided to the Trustee by the Authority for such payments. The Trustee shall not be under any duty to pay any amounts in excess of the amount available in the Rebate Fund, if any, or actually provided to it by the Authority. The Trustee shall not have any duty to determine the Rebate Amount or expend its own funds with respect to the determination that any amounts are rebatable or the calculation thereof.

Transfer to Bond Redemption and Accumulated Surplus Fund (Section 5.9)

The Trustee shall on the last business day of each Fiscal Year, so long as any Bond is outstanding, transfer to the Bond Redemption and Accumulated Surplus Fund (a) any funds remaining in the Debt Service Fund not required to pay or provide for the payment of Debt Service Requirements for the Bonds, and (b) any funds remaining in each account of the Debt Service Reserve Fund not required to maintain the Debt Service Reserve Requirement for said account. The Trustee shall also deposit in the Bond Redemption and Accumulated Surplus Fund any amounts otherwise directed or required to be transferred thereto pursuant to the terms of the Resolution and the Financing Agreement. The Trustee shall account for deposits into and transfers out of any account or fund on a first-in, first-out accounting basis.

Additional Funds or Accounts (Section 5.11)

(a) The Authority or the Trustee at the direction of the Authority may create such additional funds or accounts (or additional accounts or sub-accounts within existing funds or accounts) as the Authority deems necessary or desirable, including, without limitation, such funds or accounts relating to Subordinated Indebtedness. Any Supplemental Resolution may provide for additional amounts to be paid into any of the funds or accounts established under the Resolution and the manner of making payments into and disbursements from such funds or accounts not materially inconsistent with the provisions of the Resolution.

(b) The Authority may create, outside of the Trust Estate, additional funds or accounts funded solely with moneys not subject to the Lien of the Resolution.

Deposits and Security Therefor (Section 6.1)

All money received by the Trustee under the Resolution for deposit in any fund established under the Resolution shall, except as provided in the Resolution, be deposited in interest bearing accounts in the commercial or trust department of the Trustee, until or unless invested or deposited as provided in the Resolution. All deposits in the commercial department of the Trustee (whether original deposits under the Resolution or deposits or redeposits in time accounts under the Resolution) in excess of the amount covered by insurance by the Federal Deposit Insurance Corporation, shall be secured by a pledge of Government Obligations having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance so deposited, or secured as required by applicable law. If at any time the commercial or trust department of the Trustee is unwilling to accept such deposits or unable to secure them as provided above, the Trustee may deposit such money with any other depository which is authorized to receive them and is subject to supervision by public authorities. All deposits in any other depository (whether under the

Resolution) in excess of the amount covered by insurance by the Federal Deposit Insurance Corporation shall to the extent permitted by law, be secured by a pledge of Government Obligations having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance so deposited. Such security shall be deposited with a Federal Reserve Bank or with a bank or trust company having a combined capital and surplus of not less than \$20,000,000.

Notwithstanding the foregoing, or anything else to the contrary in the Resolution, the proceeds of any payments under a Credit Facility and the proceeds of any remarketing of Bonds pursuant to a Supplemental Resolution shall be held by the Trustee or a Tender Agent, as the case may be, separate and apart from any other funds of the Authority, the Trustee or the Tender Agent and from any other funds held under the Resolution for the exclusive benefit of the parties to be paid therefrom and may be invested only in Government Obligations maturing coming due by the earlier of thirty (30) days following investment on the date needed for the purposes of the Resolution.

Investment of Funds (Section 6.2)

The Trustee shall, pursuant to written or oral (promptly confirmed in writing) investment instructions from an Authorized Representative of the Authority, invest and reinvest money held in any fund or account held by the Trustee under the Resolution in Investment Securities. Such instructions may authorize specific transactions with respect to the deposits to be made or the Investment Securities to be purchased and the prices to be paid, and may include general instructions for future reinvestments of cash as and when such obligations are paid or redeemed. The scope of such general instructions shall be satisfactory to the Trustee which may, if it deems it advisable, from time to time require specific instructions or general instructions within defined limits. All investments shall mature or be subject to redemption at not less than the principal amount thereof or the cost of acquisition, whichever is lower, and all deposits in time accounts shall be subject to withdrawal, not later than the date when the amounts will foreseeably be needed for purposes of the Resolution.

The interest and income received upon such investments and any interest paid by the Trustee or any other depository of any fund or account and any profit or loss resulting from the sale of any investment shall be added or charged to the fund or account in question, provided, however, that the Trustee shall credit any investment income or loss with respect to any fund or account established under the Resolution to any other fund or account, as directed in writing by the Authority. Subject to the requirements of the Resolution, investment earnings on amounts held in the Debt Service Reserve Fund shall be transferred to the Debt Service Fund unless the Authority otherwise directs in writing.

Upon request of the Authority, whenever a payment is to be made out of any fund or account the Trustee shall sell such Investment Securities as may be requested or required to make the payment and restore the proceeds to the fund or account in which the Investment Securities were held. The Trustee shall not be accountable for any depreciation in the value of or the selection of any such Investment Security or for any loss resulting from the sale thereof.

Valuation of Funds (Section 6.3)

To the extent the Trustee holds amounts in any fund or account established under the Resolution, and at the direction of the Authority, the Trustee shall compute the value of the assets of each such fund or account after taking into account any payments required to be made to Bondholders on such dates and any transfers required to be made under the Resolution. In computing the value of any fund or account, investments and accrued interest thereon shall be deemed a part thereof. Such investments shall be valued at the face value or the current market value thereof, whichever is the lower, or at the redemption price thereof, if then redeemable at the option of the owner, provided, however, that the value of investments with respect to the Debt Service Reserve Fund shall be calculated in accordance the Resolution.

Notice of Redemption (Section 7.2)

Whenever the Authority shall, by Resolution of the Authority, determine to redeem Outstanding Bonds in accordance with the right reserved to do so, the Authority shall give the Trustee not more than sixty (60) days' and at

least forty-five (45) days' notice of the date fixed for redemption. When Bonds are called for redemption, whether at the option of the Authority or pursuant to mandatory redemption, the Trustee shall cause a notice to be deposited in the United States mail first class, postage prepaid, not more than sixty (60) days and at least thirty (30) days prior to the redemption date addressed to the Registered Owners of the Bonds called for redemption, at the addresses appearing in the records kept by the Trustee. Such Notice shall be given in the name of the Authority, shall identify the Bonds to be redeemed by certificate number, CUSIP number, date of issue, interest rate, maturity date and any other identifying information (and in the case of a partial redemption of any Bonds, the respective principal amounts thereof to be redeemed and the numbers, including CUSIP numbers if applicable, of the Bonds to be redeemed which may, if appropriate, be expressed in designated blocks of numbers) shall specify the redemption date, the redemption price, and the Trustee's name and address and shall state that on the redemption date the Bonds called for redemption will be payable at the principal corporate trust office of the Trustee and that from the date of redemption interest will cease to accrue provided, however, that the Registered Owners of all Bonds to be redeemed may file written waivers of notice with the Trustee, and if so waived, such Bonds may be redeemed and all rights and liabilities of the Owners shall mature and accrue on the date set for such redemption, without the requirement of written notice. Any defect in or failure to give such notice with respect to any particular Bond or Bonds shall not affect the validity of any such redemption of other Bonds.

In addition, the Trustee shall cause copies of such notice of redemption to be sent by registered mail, certified mail, overnight delivery service or confirmed telecopy (or other similarly secure service acceptable to the Trustee) to the Depository and to two or more national information services that disseminate redemption information. Unless otherwise waived by the Depository, the notice to the Depository shall be sent at least two (2) business days in advance of the date notices addressed to registered owners and national information services are deposited in the United States mail. The Trustee shall not be required to advertise said notice of redemption.

The Trustee shall send a second copy of said redemption notice by registered or certified mail, postage prepaid, to all registered bond owners that do not present their Bonds for payment within thirty (30) days following the Redemption Date.

If at the time of the notice of redemption the Authority shall not have deposited with the Trustee money sufficient to redeem all the Bonds called for redemption and the Trustee shall not otherwise hold such money for such purpose, such notice may state that it is conditional, that is, subject to the deposit of the redemption money with the Trustee not later than the opening of business on the redemption date, and such notice shall be of no effect unless such moneys are so deposited.

Payment of Redemption Price (Section 7.3)

Notice having been given in the manner provided in the Resolution, or written waivers of notice having been filed with the Trustee prior to the date set for redemption, the Bonds so called for redemption shall become due and payable on the redemption date so designated and, if an amount sufficient to pay the Redemption Price is on deposit with the Trustee for such purpose on such date, interest on such Bonds shall cease to accrue from the redemption date whether or not the Bonds shall be presented for payment. The principal amount of all Bonds or portions thereof so called for redemption, together with the accrued and unpaid interest thereon to the date of redemption shall be paid by the Trustee or the Paying Agent, if any, mentioned in the Bond called for redemption, upon presentation and surrender thereof in negotiable form. If any Outstanding Bond is redeemed in part, the Trustee shall authenticate and deliver to the Registered Owner thereof, a new Bond or Bonds of any authorized denomination as requested by such Registered Owner in an aggregate principal amount equal to the principal amount of the Outstanding Bond not called for redemption.

Damage or Destruction of the System; Application of Insurance Proceeds (Section 8.1)

The Board has covenanted in the Financing Agreement to insure or cause to be insured the System as therein set forth and to file with the Trustee policies and endorsements or memoranda of such insurance. In the event that any of the buildings, structures, additions or improvements of the System shall be wholly or partially destroyed by fire or other casualty covered by permanent insurance, the Board has covenanted in the Financing Agreement to take all such actions and do all such things as may be necessary to enable recovery to be made upon the policy or policies of insurance covering the risk to the end that all proceeds of insurance may be expeditiously collected.

The proceeds of permanent insurance shall be paid by the Authority to the Trustee and applied, subject to the provisions of this section, to the reconstruction, restoration, replacement or repair of the damaged or destroyed property, or to the acquisition or construction of Projects or to the redemption or purchase of Bonds as follows:

(a) *Deposit in Construction Fund.* If the Board shall by resolution determine to apply all or part of said proceeds to the reconstruction, restoration or repair of the damaged property or to the construction or acquisition of Projects, an Authorized Representative of the Board shall provide a written authorization to the Trustee directing the Trustee to deposit such proceeds in the Construction Fund. Disbursements may be made from the Construction Fund by the Trustee from time to time upon requisitions made by an Authorized Representative of the Board, stating the amount to be paid and designating the payee and certifying that the payment is due and payable for the reconstruction, restoration, replacement or repair of the damaged or destroyed property or for the construction or acquisition of a Project, and, if the Engineer is employed to supervise the work, upon submission of certificates of the Engineer in form satisfactory to the Trustee approving such payment; provided, however, that if the Board shall certify to the Trustee that the amount to be so applied from said insurance proceeds is not more than \$1,000,000, then the Board may retain said insurance proceeds for application toward the reconstruction, restoration, replacement or repair of the damaged or destroyed property or toward the construction or acquisition of Projects.

(b) *Deposit in Bond Redemption and Accumulated Surplus Fund.* All proceeds of permanent insurance not applied as authorized above shall be transferred to the Trustee for deposit in the Bond Redemption and Accumulated Surplus Fund and applied by the Trustee to redeem or purchase Bonds in accordance with the Resolution.

Nothing in this section shall be construed to relieve the Board under the Financing Agreement from its obligation to maintain the System in good repair, working order and condition, excepting only that to the extent that the proceeds of insurance shall be applied to the reconstruction, restoration, replacement or repair of damaged or destroyed property, or to the construction or acquisition of Projects, or shall be applied toward the purchase, redemption, or defeasance of Bonds, then and to such extent the Board shall be relieved of such obligation with respect to the damaged or destroyed property.

Payment of Bonds and Other Indebtedness (Section 9.1)

The Authority covenants that it will promptly pay from the Trust Estate the Debt Service Requirements for every Bond issued and to be issued under the Resolution and secured thereby, and all other Indebtedness secured thereby, including without limitation Credit Notes at the place and on the dates and in the manner specified in the Resolution and in said Bonds, or therein, according to the true intent and meaning thereof. The Authority further covenants that it will pay as and when due from sources legally available therefor the Debt Service Requirements on all other Indebtedness.

No Impairment of Bondholders' Rights (Section 9.2)

The Authority covenants and agrees that so long as any of the Bonds secured by the Resolution are Outstanding, none of the Pledged Revenues shall be used for any purpose other than as provided in the Resolution, and that no contract or contracts shall be entered into or amended or any action taken by which the rights or security of the Trustee or of the Bondholders may be impaired or diminished.

Creation of Liens on Pledged Revenues (Section 9.4)

Except as provided in Article III of the Resolution and the next ensuing sentence, the Authority shall not incur any Indebtedness which is secured by a pledge of or other Lien on the Secured Obligations and shall not create or cause to be created any Lien on the Pledged Revenues or any other part of the Trust Estate or on any amounts which are held by the Trustee or by any Paying Agent under the terms of the Resolution, other than Permitted Encumbrances or Liens which are expressly made subordinate to the lien of the Resolution. Notwithstanding the prior sentence, the Authority may from time to time borrow an amount outside the Resolution which shall not exceed \$500,000 in principal amount in the aggregate at any one time for working capital purposes and secure the repayment of the same by granting a Lien on Pledged Revenues that is on a parity with the Lien thereon securing the Bonds if the Authority presents to the Trustee a certificate of an Authorized Officer of the Authority to the effect that (i) the Authority needs

the proceeds of the borrowing to operate the System properly and (ii) the Authority reasonably believes that it will meet its obligations on such borrowing and under the Resolution as and when the same come due.

No Extension of Time for Payment of Interest (Section 9.5)

In order to prevent any accumulation of claims for interest after maturity, the Authority covenants and agrees that it will not directly or indirectly extend or assent to the extension of time of payment of any claim for interest on any of the Bonds and will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding such claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, such claim for interest shall not be entitled in case of any default under the Resolution, to the benefit or security of the Resolution except subject to the prior payment in full of the principal of all Bonds issued and Outstanding under the Resolution, and of all claims for interest which shall not have been so extended or funded.

Accounts and Periodical Reports and Certificates (Section 9.6)

The Authority shall keep or cause to be kept proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions under the Resolution and which, together with all other books and papers of the Authority, shall at all reasonable times be subject to the inspection of the Trustee or the representative, duly authorized in writing, of the holder or holders of not less than 25 % in principal amount of the Bonds then Outstanding.

Authority Budget (Section 9.7)

The Authority covenants that it will adopt by resolution and file with the Trustee for each Fiscal Year, an Authority Budget or Budgets setting forth the estimated monthly Operating Expenses, Debt Service Requirements, and other expenses, if any. Any Authority Budget may be amended or supplemented at any time, but such amended or supplemented Authority Budget shall not supersede any prior Authority Budget until it shall have been authorized by a certified resolution of the Authority. The Authority Budget may authorize certain variances for various line items at the discretion of Authority officers, as the Governing Board of the Authority deems prudent, and amounts expended within such authorized variances shall be deemed to be within the amount provided for in the Authority Budget.

Engineer (Section 9.8)

The Board has covenanted in the Financing Agreement that it shall, until the Bonds and the interest thereon shall have been paid or provision for such payment shall have been made, for the purpose of performing and carrying out the duties imposed on the Engineer by the Resolution or the Financing Agreement, employ an Independent Engineer or engineering firm having a favorable repute for skill and experience in such work and, except in the case of the firm serving as Engineer at the time of the adoption of the Resolution, who shall be acceptable to the Trustee; provided, however that the acceptance of the Trustee shall not be unreasonably withheld, and if the Trustee shall fail to so accept, it shall deliver to the Authority a statement of its reasons for such failure. In rendering any report, certificate or opinion required pursuant to the Resolution or the Financing Agreement, the Engineer may rely upon information, certificates, opinions or reports required to be provided by others pursuant to the Resolution, and upon other sources which the Engineer considers reliable, and other considerations and assumptions as deemed appropriate by the Engineer.

Rate Consultant (Section 9.9)

The Authority shall, until the Bonds and the interest thereon shall have been paid or provision for such payment shall have been made, for the purpose of performing and carrying out the duties, imposed on the Rate Consultant by the Resolution or the Financing Agreement, employ an Independent Accountant or firm of independent accountants, or a management consultant or management consulting firm, or independent engineer or engineering firm, having, in any case, a nationwide and favorable repute for skill and experience in such work and, except in the case of the firm serving as the Rate Consultant at the time of the adoption of the Resolution, who shall be acceptable to the Trustee; provided, however, that the acceptance of the Trustee shall not be unreasonably withheld, and if the Trustee shall fail to so accept it shall deliver to the Authority a statement of its reasons for such failure. In rendering

any report, certificate or opinion required pursuant to the Resolution or the Agreement the Rate Consultant may rely upon information, certificates, opinions or reports required to be provided by others pursuant to the Resolution, and upon other sources which the Rate Consultant considers reliable, and other considerations and assumptions as deemed appropriate by the Rate Consultant.

Federal Tax Covenants (Section 9.11)

The Authority covenants not to take or omit to take any action so as to cause interest on any Tax-Exempt Bonds to be no longer excluded from gross income for the purposes of federal income taxation and to otherwise comply with the requirements of Section 103 and Sections 141 through 150 of the Code, and all applicable regulations promulgated with respect thereto, throughout the term of such Tax-Exempt Bonds. The Authority further covenants that it will make no investments or other use of the proceeds of any Tax-Exempt Bonds which would cause such Tax-Exempt Bonds to be “arbitrage bonds” as defined in Section 148 of the Code. The Authority further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code and any regulations promulgated thereunder, including the payment of any Rebate Amount, to the extent applicable, and to pay any interest or penalty imposed by the United States for failure to comply with said rebate requirements, to the extent applicable.

Maintenance of the Financing Agreement (Section 9.12)

The Authority covenants and agrees to take all steps legally within its power to maintain in full force and effect, for its part, the Financing and Operation Agreement, if any, to comply with its obligations under each of the foregoing and to enforce each of the foregoing against the other parties thereof.

Issuance of Obligations (Section 9.13)

The Authority covenants not to issue any Indebtedness, or other obligations of any type with a maturity maturing on a date, or permit the same to remain outstanding beyond a date, that would cause the term of the Financing Agreement to exceed the term allowed by law.

Events of Default Defined (Section 10.1)

Each of the following shall be an “Event of Default” under the Resolution:

Payment of the principal of any Bond is not made when it becomes due and payable at maturity or upon redemption, or otherwise or if payment of any installment of interest on any Bond is not made when it becomes due and payable; or

If the Authority defaults in the due and punctual performance of any other covenant in the Bonds or in the Resolution, and such default continues for thirty (30) days after written notice requiring the same to be remedied shall have been given to the Authority by the Trustee; provided that if any such default cannot be cured within thirty (30) days the period shall be extended for such period as is reasonable to cure the same with due diligence if the Authority commences the cure within thirty (30) days and proceeds diligently; or

A default under the Financing Agreement by the Board shall have occurred and be continuing after any permitted period of cure therein provided for a period of forty-five days after written notice thereof stating that such notice is a “Notice of Default” to the Authority and the Board by the Trustee, or to the Authority, the Board, and the Trustee by the holders of not less than twenty-five percent (25%) in principal amount of Bonds Outstanding; or

The occurrence of any Act of Bankruptcy with respect to the Authority; or

The failure of timely payment of the purchase price of any tendered Bond required to be paid according to the Supplemental Resolution authorizing such Bond; or

Such additional Events of Default as may be set forth in a Supplemental Resolution duly executed in connection with the issuance of any Bonds.

The Trustee shall give written or telephonic (promptly confirmed in writing or by confirmed telecopy) notice of any Event of Default to the Authority and any Credit Facility Provider as soon as practicable after the occurrence of such Event of Default becomes known to the Trustee.

Notwithstanding the foregoing provisions, Additional Parity Indebtedness in the form of capitalized leases may provide for grace periods of up to twelve (12) months before the occurrence of a default under the lease shall constitute an Event of Default.

Bonds Declared Due and Payable (Section 10.2)

Upon the happening and continuance of any Event of Default specified in the Resolution, then and in every such case the Trustee may, and upon the written request of the Registered Owners of not less than twenty-five percent (25 %) in principal amount of the Bonds Outstanding shall (but in all events only after giving thirty (30) days' notice in writing to the Authority), declare the principal of all the Bonds Outstanding (if not then due and payable) to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything contained in the Bonds or in the Resolution to the contrary notwithstanding; provided, however, that if at any time after the principal of the Bonds shall have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under the Resolution, money shall have accumulated in the Debt Service Fund sufficient to pay the principal of all Bonds which have matured and which should have been called for redemption from money in the Debt Service Fund and all matured Bonds, if any, and all arrears of interest, if any, upon all the Bonds Outstanding (except the principal of any Bonds not then due by their terms except as provided above and the interest accrued on such Bonds since the last interest payment date), and the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee, and all other amounts then payable by the Authority under the Resolution shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee, and every other default known to the Trustee in the observance or performance of any covenant, condition or agreement contained in the Bonds or in the Resolution (other than a default in the payment of the principal of such Bonds) then due only because of a declaration under this section shall have been remedied to the satisfaction of the Trustee, then and in every such case the Trustee may, and upon the written request of the Registered Owners of not less than twenty-five percent (25 %) in principal amount of the Bonds not then due by their terms and then Outstanding shall, by written notice to the Authority, rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

Enforcement of Remedies by Trustee (Section 10.3)

Upon the happening and continuance of any Event of Default specified in the Resolution then and in every such case the Trustee may, and upon the written request of the Registered Owners of not less than twenty-five percent (25 %) in principal amount of the Bonds then Outstanding, shall:

By mandamus or other suit, action or proceeding at law or in equity enforce all rights of the Registered Owners, including the right (i) to require the Board to collect Rates adequate to carry out any agreement as to, or pledge of, such Rates, (ii) to demand all moneys and securities then held by the Board in the Local Water Fund and in all "Accounts" credited thereunder and all Revenues be promptly paid to the Trustee for deposit in the Revenue Fund, and (iii) to require the Authority to carry out any other agreements with the Board under the Financing Agreement or the Registered Owners of such Bonds and to perform its duties under the Resolution and the Act; and/or

Bring suit upon such Bonds; and/or

By action or suit in equity, require the Authority to account as if it were the trustee of an express trust for the Registered Owners of such Bonds; and/or

Make demand for payment, or draw under, any Credit Facility that may be available for the payment of the Debt Service Requirements of Bonds of any series of Bonds; and/or

By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Registered Owners of such Bonds; and/or

Enforce the Financing Agreement, as assignee of the Authority; and/or

Perform the Authority's obligations under the Financing Agreement.

The Trustee shall proceed in accordance with the Act, subject to the provisions of the Resolution, to protect and enforce its rights and the rights of the Registered Owners under the laws of the State or under the Resolution by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained in the Resolution or in aid or execution of any power granted in the Resolution or for the enforcement of any proper legal or equitable remedy as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce such rights. In the enforcement of any remedy under the Resolution the Trustee shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming and at any time remaining due from the Authority for principal, interest or otherwise under any of the provisions of the Resolution or of the Bonds and unpaid, with interest on overdue payments at the rate or rates of interest specified in such Bonds, together with any and all costs and expenses of collection and of all proceedings under the Resolution and under such Bonds, without prejudice to any other right or remedy of the Trustee or of the Registered Owners, and to recover and enforce any judgment or decree against the Authority, but solely as provided in the Resolution and in such Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect (but solely from money in the Debt Service Fund, Debt Service Reserve Fund, Bond Redemption and Accumulated Surplus Fund and any other money available for such purpose) in any manner provided by law, the money adjudged or decreed to be payable.

Any suit, action or proceeding by the Trustee on behalf of Registered Owners shall be heard or maintained in a court of competent jurisdiction. The Trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth in the Act or incident to the general representation of Registered Owners in the enforcement and protection of their rights as mandated in Section 1230-j of the Act. All rights of action under the Resolution or under any of the Bonds secured by the Resolution, enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds or the production thereof at the trial or other proceeding relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the benefit of all the Registered Owners of such Bonds, subject to the provisions of the Resolution.

Effect of Discontinuance of Action (Section 10.4)

In case any proceeding taken by the Trustee on account of any default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then and in every such case the Authority, the Trustee and the Registered Owners shall be restored to their former positions and rights under the Resolution, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no such proceeding had been taken.

Control of Proceedings (Section 10.5)

Anything in the Resolution to the contrary notwithstanding, the Registered Owners of not less than twenty-five percent (25 %) in principal amount of the Bonds then Outstanding shall have the right, subject to the provisions of the Resolution, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee under the Resolution, provided that such direction shall not be otherwise than in accordance with law or the provisions of the Resolution.

Restriction on Bondholder's Action (Section 10.6)

No Registered Owner of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust under the Resolution or for any other remedy under the Resolution unless (i) any Registered Owner previously shall have given to the Trustee written notice of the Event of Default on account of which such suit, action or proceeding is to be instituted which specifically refers to such event as an "Event of Default", (ii) the Registered Owners of not less than twenty-five percent (25 %) in principal amount of the Bonds then Outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers granted or to institute such action, suit or proceeding in its or their name; (iii) there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; (iv) the Trustee shall have refused or neglected to comply with such request within a reasonable time. Such notification, request and offer of indemnity are declared, in every such case at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of the Resolution or for any other remedy under the Resolution. It is understood and intended that no one or more Registered Owners of the Bonds secured by the Resolution shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Resolution, or to enforce any right under the Resolution except in the manner provided in the Resolution, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner provided in the Resolution and for the benefit of all Registered Owners of such Outstanding Bonds.

Nothing contained in the Resolution, however, shall affect or impair the right of any Registered Owner to enforce the payment of the principal of and interest on his Bonds, or the obligation of the Authority to pay the principal of, interest on and premium, if any, on each Bond issued under the Resolution to the Registered Owners thereof at the time and place expressed in said Bond.

Appointment of Receiver (Section 10.7)

Upon the happening and continuance of any Event of Default specified in the Resolution, the Trustee, whether or not the issue of Bonds represented by such Trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the properties the Revenues of which are pledged for the security of the Bonds of such issue and such receiver may enter and take possession of such part or parts of the properties and, subject to any pledge or agreement with Bondholders, shall take possession of all money and other property derived from such part or parts of the properties and proceed with any construction thereon or the acquisition of any property, real or personal, in connection therewith which the Authority is under obligation to do, and to operate, maintain and reconstruct such part or parts of the properties and collect and receive all Revenues thereafter arising therefrom subject to any pledge thereof or agreement with Bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the Authority under the direction of the court. In any suit, action or proceeding by the Trustee the fees, counsel fees and expenses of the Trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any Revenues from the properties.

Extension of Maturity of Bonds (Section 10.8)

In case the maturity of any of the Bonds or the time for payment of any installments of interest shall be extended by mutual agreement between the Authority and the Registered Owner of any such Bonds, such Bonds or claims for interest shall not be entitled in case of any default under the Resolution to the benefit of the Resolution or to any payment out of any assets of the Authority or the funds (except funds held in trust by the Trustee for the payment of particular Bonds or claims for interest pursuant to the Resolution) held by the Trustee, subject to the prior payment of the principal of all Bonds issued and outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Bonds as shall not be represented by such extended claims for interest.

Modifications with Respect to Credit Facilities Pursuant to Supplemental Resolutions (Section 10.9)

If so specified in the Supplemental Resolution relating to a particular series of Bonds, any action that may be taken by and any consent that must be received from the Registered Owners of all or some lesser percentage of the Bonds Outstanding of such series of Bonds under Article X of the Resolution shall instead and in lieu thereof be taken

by or received from the Credit Facility Provider of a Credit Facility under which Debt Service Requirements for Bonds of such series of Bonds are payable if and when there does not exist a Credit Facility Default with respect to such Credit Facility. If any such action or consent requires a vote by the Registered Owners of the Bonds of such series of Bonds because there are then Outstanding Bonds of more than one series of Bonds, the Supplemental Resolution may also specify that the Credit Facility Provider shall have the right to vote with respect to the action or consent fully as if it were the Registered Owner of all of the Bonds of the series of Bonds unless there shall then exist a Credit Facility Default with respect to the Credit Facility.

Priority of Payments After Default (Section 10.10)

Notwithstanding any other provisions of the Resolution other than those contained in the Resolution, in the event that, subsequent to the occurrence of an Event of Default, the funds held by the Trustee shall be insufficient for the payment of interest and principal then due on the Bonds, such funds (other than funds held for the payment or redemption of particular Bonds or installments of interest which have theretofore become due at maturity or otherwise) and any other money received or collected by the Trustee, after making provision for the payment of any expenses necessary in its opinion to preserve the continuity of the Revenues or to provide for the continued operation of the System or otherwise to protect the interests of the Registered Owners of the Bonds, and for the payment of the charges, expenses (including those of its counsel) and liabilities incurred and advances made by the Trustee in the performance of its duties under the Resolution, shall be applied as follows:

- (a) If the principal of all of the Bonds shall not have become or have been declared due and payable,

First: To the payment to the persons entitled thereto all installments of interest then due on Bonds (with interest on overdue installments of interest then due on such Bonds, to the extent permitted by law, at the rate per annum borne by such Bonds) in the order of the maturity of such installments and, if the amount available shall not be sufficient to pay in full any installment then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference, except as to the difference, if any, in the respective rates of interest specified in the Bonds; and

Second: To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due (with interest on such Bonds at their rate from the respective dates upon which they became due) whether at maturity or by call for redemption, in the order of their due dates and, if the amount available shall not be sufficient to pay in full all the Bonds due on any date, together with such interest, then to the payment ratably, according to the amounts of principal and interest due on such dates, to the persons entitled thereto, without any discrimination or preference except as to the difference, if any, in the respective rates of interest on the Bonds.

- (b) If the principal of all the Bonds shall have become or have been declared due and payable, to the payment of the principal and interest then due and unpaid upon the Bonds with interest on overdue interest and principal as provided above, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due, respectively, for any principal and interest, to the persons entitled thereto without any discrimination or preference, except as to the difference, if any, in the respective rates of interest specified in the Bonds.

- (c) Payments of debt service on any Subordinated Indebtedness shall be made in accordance with the provisions of the Supplemental Resolution authorizing the issuance of such Subordinated Indebtedness.

Whenever money is to be applied pursuant to the provisions of this section, such money shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such money available for application and the likelihood of additional money becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be the earliest practicable date it deems suitable and which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such money and

of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

The Trustee may, in its sole discretion, hire one or more consultants experienced in the operation of water supply, transmission and distribution facilities for the purpose of determining what expenses are necessary to preserve the continuity of the Revenues or to provide for the continued operation of the System. The fees and expenses of any such consultant shall be considered expenses incurred by the Trustee in the performance of its duties for purposes of the Resolution. Subject to the Resolution, the Trustee may conclusively rely on any determination made by such consultant.

Notwithstanding anything to the contrary in the Resolution, the proceeds of any Credit Facility that are intended to pay the Debt Service Requirements of a particular series of Bonds shall be applied exclusively to the payment of such Debt Service Requirements and for no other purpose. Until the Credit Facility Provider shall have been reimbursed through the Resolution for the payment of such Debt Service Requirements, the Debt Service Requirements shall not be deemed to have been discharged. Furthermore, in the event that the Credit Facility Provider of any such Credit Facility shall have paid all Debt Service Requirements of the applicable series of Bonds as and when due, such Credit Facility Provider shall be subrogated to the Registered Owners of the Bonds of such series of Bonds with respect to all rights such Registered Owners may have under the Resolution, including without limitation the rights to payment under the Resolution.

Acceptance of Trust; Abrogation of Right to Appoint Trustee (Section 11.1)

The Trustee accepts and agrees to execute the trust created by the Resolution, but only upon the terms set forth in the Resolution, to all of which the parties to the Resolution and the respective holders of the Bonds agree. The Trustee shall perform only such duties as are specifically set forth in the Resolution, and no implied covenants or obligations shall be read into the Resolution against the Trustee. The right of the holders of Bonds to appoint a trustee under the Act is abrogated as permitted by the Act.

Power to Act Through Agents; Liability Limited (Section 11.3)

The Trustee may execute any of the trusts or powers of the Resolution and perform the duties required by it, by or through attorneys, agents, receivers, or employees, and shall be entitled to advice of counsel concerning all matters of trust of the Resolution and its duty under the Resolution, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent, or employees selected by it with reasonable care. The Trustee shall not be answerable for the exercise of any discretion or power under the Resolution or under any Supplemental Resolution, nor for anything whatever in connection with the trust, except only its own misconduct or negligence.

Obligation to Act on Defaults (Section 11.7)

If any Event of Default of which the Trustee is deemed to have knowledge according to the Resolution shall have occurred and be continuing, the Trustee shall exercise such of the rights and remedies vested in it by the Resolution and shall use the same degree of care in their exercise as a prudent man would exercise or use in the circumstances in the conduct of his own affairs; provided that, if in the opinion of the Trustee such action may tend to involve expense or liability, it shall not be obligated to take such action unless it is furnished with indemnity satisfactory to it.

Resignation of Trustee (Section 11.13)

The Trustee may resign and be discharged of the trusts created by the Resolution by written resignation filed with the Chairperson of the Authority not less than sixty (60) days before the date when it is stated to take effect; provided notice of such resignation is given to the Bondholders in the same manner as notice of redemption. Such resignation shall take effect on the day specified therein unless a successor Trustee is previously appointed, in which event the resignation shall take effect immediately on the appointment of such successor, and unless no successor has been appointed as of the day specified therein, in which event the resignation shall not take effect until the successor

is in fact appointed. Simultaneously with the effectiveness of the appointment of a successor Trustee, the former Trustee shall transfer to the successor Trustee any existing Credit Facility then in favor of the former Trustee.

Removal of Trustee (Section 11.14)

Any Trustee may be removed at any time upon thirty (30) days' written notice to the Trustee and, with regard to clause (i) of the Resolution, to the Authority by an instrument appointing a successor to the Trustee so removed, executed by either (i) the Registered Owners of a majority in principal amount of the Bonds then Outstanding or (ii) so long as no Event of Default has occurred and is continuing, by an Authorized Representative of the Authority. Such Trustee shall continue to act as Trustee until the successor is in fact appointed. Simultaneously with the effectiveness of the appointment of a successor Trustee, the former Trustee shall transfer to the successor Trustee any existing Credit Facility then in favor of the former Trustee.

Appointment of Successor Trustee (Section 11.15)

In case at any time the Trustee, or any Trustee hereinafter appointed, shall resign, or shall be removed, or be dissolved, or its property or affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy, or for any other reason, a vacancy shall forthwith and ipso facto exist in the office of Trustee and a successor may be appointed, (i) so long as no Event of Default has occurred and is continuing, by the Authority by an instrument authorized by resolution of the Governing Board of the Authority and signed by an Authorized Representative of the Authority or (ii) if an Event of Default has occurred and is continuing, by the Registered Owners of a majority in principal amount of the Bonds then Outstanding, by an instrument or instruments in writing filed with the Chairperson of the Authority, signed by such Bondholders or by their attorneys in fact duly authorized. Copies of each instrument shall be promptly delivered by the Authority to the predecessor Trustee and to the Trustee so appointed.

Until a successor Trustee shall be appointed by the Bondholders as authorized pursuant to the Resolution, the Authority, by an instrument authorized by resolution of its Governing Board, may appoint a Trustee to fill such vacancy. After any appointment by the Authority, it shall deposit written notice of such appointment in the United States mail, first-class, postage prepaid, addressed to each Registered Owner of Bonds at the addresses appearing upon the Bond register. Any new Trustee so appointed by the Authority shall immediately and without further act be superseded by a Trustee appointed by the Bondholders in the manner above provided. In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of Article XI prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the retiring Trustee or any Bondholder may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor Trustee.

Qualification of Successor Trustee (Section 11.16)

Every successor in the trust appointed in pursuance of the provisions of Article XI shall be any trust company or a state or national bank with trust powers, within or without the State, having capital and paid in surplus of at least \$50,000,000, if there be such a trust company or bank willing and able to accept the trust on reasonable and customary terms.

Supplemental Resolutions Without Bondholders' Consent (Section 13.1)

The Authority and the Trustee from time to time, and at any time, subject to the conditions and restrictions of the Resolution may enter into supplemental Resolutions hereto, which Resolutions thereafter shall form a part of the Resolution, for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Authority under the Resolution or to surrender any right or power reserved or conferred upon the Authority and which shall not adversely affect the interests of the Registered Owners of the Bonds;

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provisions contained in the Resolution, or in regard to matters or questions arising under the Resolution, or to include provisions relating to the administration of any Credit Facility or the funds and accounts established under the Resolution or under any Supplemental Resolution, as the Authority and the Trustee may deem necessary or desirable and which shall not adversely affect the interests of the Registered Owners of the Bonds, or for other purposes as the Authority and the Trustee may deem desirable but only if and to the extent that such Supplemental Resolution does not in any manner adversely affect or impair the rights of the Bondholders under the Resolution;

(c) to subject, describe or redescribe any property subjected or to be subjected to the lien of the Resolution;

(d) to provide for the issuance of the 2003 Bonds or Additional Indebtedness (or any amendment, modification, replacement, reissuance or refunding of the 2003 Bonds or Additional Indebtedness) pursuant to Article III of the Resolution or the issuance of a Credit Facility;

(e) to modify, amend or supplement the Resolution or any supplemental Resolution in such manner as to permit the qualification of the Resolution and thereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect, and if they so determine, to add to the Resolution or any supplemental Resolution hereto such other terms, conditions and provision as may be required by said Trust Indenture Act of 1939, as amended, or similar Federal statute; provided, however, that no such modification shall adversely affect or impair the rights of the Bondholders or permit the creation of any lien prior to or on a parity with the lien of the Resolution (except as expressly permitted) or deprive the Bondholders of the lien created by the Resolution;

(f) to modify, amend or supplement the Resolution in such manner as may be necessary to obtain or maintain from the Rating Agencies a securities rating on the 2003 Bonds or any Additional Indebtedness; and

(g) to make any other change to the Resolution that affects one or more particular series of Bonds if notice by registered or certified mail, return receipt requested, of such change, including a copy of the proposed Supplemental Resolution, is given to each Holder of a Bond of such series at least thirty (30) days prior to the effective date of the Supplemental Resolution and if each such Holder shall have had at least one opportunity to require the purchase of such Bond pursuant to the terms of the Supplemental Resolution under which the particular Bonds were issued during a period beginning thirty (30) days after the giving of such notice and ending on the effective date of the Supplemental Resolution.

Any Supplemental Resolution authorized by the provisions of this section may be executed by the Authority and the Trustee without the consent of the Registered Owners of any of the Bonds at the time Outstanding, but the Trustee shall not be obligated to enter into any such Supplemental Resolutions which affect the Trustee's rights, duties or immunities under the Resolution or otherwise.

Supplemental Resolutions with Bondholders' Consent (Section 13.2)

With the consent of the Registered Owners of a majority in aggregate principal amount of Bonds as of the relevant Record Date, the Authority and the Trustee, may from time to time and at any time enter into an Resolution or supplemental Resolutions for the purpose of adding any provisions or changing in any manner or eliminating any of the provisions of the Resolution or of any Supplemental Resolution; provided, however, that no such supplemental Resolution shall (a) extend the fixed maturity of the Bonds or reduce the rate of interest thereon or extend the time of payment of interest, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Registered Owner of each Bond so affected or (b) reduce the aforesaid percentage of Registered Owners of Bonds required to approve any such Supplemental Resolution. Upon receipt by the Trustee of certified resolutions authorizing the execution of any such Supplemental Resolutions, and upon the filing with the Trustee of evidence of the consent of Bondholders, as aforesaid, the Trustee shall join with the Authority in the execution of such Supplemental Resolution unless such Supplemental Resolution will affect the Trustee's own rights, duties and immunities under the Resolution or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such Supplemental Resolution.

The Authority shall in its sole discretion select a Record Date in connection with obtaining the consent of Registered Owners to supplemental Resolutions. Only Registered Owners as of the close of business on said Record Date shall be entitled to consent to any such supplemental Resolution. Any such consent shall be irrevocable and binding on all subsequent transferees, whether or not such supplemental Resolution has been executed or approved by the requisite number of Registered Owners at the time of any such consent or subsequent transfer. For the purpose of determining consents, any Bond in a denomination other than the minimum Authorized Denomination for that series shall be treated as representing such number of separate Bonds of that series as is obtained by dividing the actual principal amount of such Bond by the minimum Authorized Denomination of that series. The Registered Owner of more than one Bond shall be entitled to consent or disapprove of any supplemental Resolution as holder of any Bond independent of the consent or disapproval given as holder of any other Bonds.

It shall not be necessary for the consent of the Bondholders under this section to approve the particular form of any proposed supplemental Resolution, but it shall be sufficient if such consent shall approve the substance of the Resolution.

Voting Rights of Credit Facility Provider (Section 13.5)

As long as the Credit Facility Provider has not failed to comply with its payment obligations under the Credit Agreement, the Credit Facility Provider shall have all rights and privileges of the Holders of the Credit Facility Bonds to exercise rights of approval, consent, discretionary waiver and make all requests on behalf of and in place of such Holders. For purposes of computing applicable percentages of Bondholders under the Resolution, actions taken by such Credit Facility Provider shall be treated as action taken by the Holder of such Credit Facility Bonds.

Defeasance (Section 14.1)

Subject to provisions of a Supplemental Resolution that may modify the Resolution insofar as it governs the Bonds authorized by such Supplemental Resolution, if the Authority shall pay or cause to be paid, in accordance with the provisions of the Resolution, to the Registered Owners of any Bond, the principal and interest and premium, if any, to become due thereon, at the times and in the manner stipulated therein and in the Resolution, then the pledge of the Trust Estate and any other money and securities pledged by the Resolution and all other rights granted thereby shall be discharged and satisfied with respect to such Bond. In the event the Authority so provides for all Outstanding Bonds issued under the Resolution, the Trustee shall, upon the request of the Authority, execute and deliver to the Authority, all such instruments as may be desirable to evidence such discharge and satisfaction and the Trustee shall pay over or deliver, first to each Credit Facility Provider to the extent of any unreimbursed Payment Obligations, and then to the Authority, all money or securities held by it pursuant to the Resolution which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

Notwithstanding the release and discharge of the Lien of the Resolution as provided above, those provisions of the Resolution and any applicable Supplemental Resolution relating to the maturity of the Bonds, interest payments and dates thereof, tender and purchase provisions, exchange and transfer of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, the holding of moneys in trust, and the duties of the Trustee, Tender Agent and Remarketing Agent in connection with all of the foregoing, remain in effect and shall be binding upon the Trustee, Tender Agent, Remarketing Agent, Issuer and the Bondholders.

Any Bond for the payment or redemption of which funds shall have been set aside and shall be held in trust by the Trustee (through deposit of funds for such payment or redemption or otherwise) whether at or prior to the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in the first sentence of this section. Subject to provisions of a Supplemental Resolution that may modify the Resolution insofar as it governs the Bonds authorized by such Supplemental Resolution, any Outstanding Bond shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in the first sentence of this section if (i) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Authority shall have given to the Trustee in form satisfactory to it irrevocable instructions to give notice of redemption of such Bonds on said date as provided in the Resolution, (ii) there shall have been deposited with the Trustee either money in an amount which shall be sufficient, or noncallable Investment Securities of the type listed in subparagraphs (a), (b), or (n) of the definition of Investment Securities, the principal of and the interest on

which when due will provide money which, together with the money, if any, deposited with the Trustee at the same time, shall be sufficient to pay when due the principal, premium, if applicable, and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be, and (iii) if said Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days and such Bonds are to be redeemed the Authority shall have given the Trustee in form satisfactory to it irrevocable instructions to give notice to the Registered Owners of such Bonds that the deposit required by (ii) above has been made in accordance with this section and stating such maturity or redemption date upon which money is to be available for the payment of the principal and premium, if applicable, on said Bonds. Neither Investment Securities or money deposited with the Trustee pursuant to this section, nor principal or interest payable on any such Investment Securities, shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or premium, if applicable, and interest on said Bonds; provided that any cash received from such principal or interest payments on such Investment Securities deposited with the Trustee, if not then needed for such purpose, shall, at the written direction of the Authority and to the extent practicable, be reinvested in Investment Securities of the type described in this paragraph maturing at times and in amounts sufficient, together with other money available for the purpose, to pay when due the principal, premium, if applicable, and interest to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Authority, as received by the Trustee, free and clear of any trust, lien or pledge, provided, further that any Investment Securities may be sold, transferred, redeemed or otherwise disposed of, and the proceeds thereof applied to the purchase of other Investment Securities of the type permitted for this purpose, the principal of and interest on which, when due, together with money and other Investment Securities then held by the Trustee for such purpose shall be sufficient to pay when due the principal, premium, if applicable, and interest due and to become due on said Bonds on or prior to the redemption date or maturity date thereof, as the case may be.

Anything in the Resolution to the contrary notwithstanding and except as the escheat laws of the State may otherwise provide, any money held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for four years after the date when all of the Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such money were held by the Trustee at such date, or for four years after the date of deposit of such money if deposited with the Trustee after the said date when all of the Bonds become due and payable, shall, at the written request of the Authority, be repaid by the Trustee to the Authority, as its or their absolute property and free from trust, and the Trustee shall thereupon be released and discharged; provided, however, that before being required to make any such payment, the Trustee shall, at the expense of the Authority, cause to be published once in an Authorized Newspaper, notice that said money remains unclaimed and that, after a date named in said notice, which date shall be not less than ten (10) nor more than twenty (20) days after the date of first publication of such notice, the balance of such money then unclaimed will be returned to the Authority as provided above.

Surplus Funds (Section 14.2)

Any surplus money held by the Trustee after all obligations arising under the Bonds and the Resolution have been paid shall be transferred to the Authority.

Agreement of the State (Section 15.13)

There is incorporated in the Resolution by this reference, fully as if set forth therein at length, the agreement of the State with the Registered Owners of Bonds set forth in Section 1199-n of the Act.

Governing Law (Section 15.14)

The Resolution shall be governed exclusively by the provisions of the Resolution and by the applicable laws of the State without reference to conflict of law provisions.

SUMMARY OF THE FINANCING AGREEMENT

Agreement With Bondholders

Subject in all respects to the provisions of the Financing Agreement, the Authority and the Board agree that the Financing Agreement is executed in part to induce the purchase of the bonds, notes and other evidences of indebtedness of the Authority (including the Bonds) issued from time to time, and all representations, warranties, covenants and agreements contained in the Financing Agreement are declared to be for the benefit of the holders thereof.

Agreement to Finance Projects; Description (Section 2.1)

The Authority shall use its best efforts to finance all or a part of the Cost of the Projects described in Appendix A to the Financing Agreement by the issuance of Bonds from time to time in accordance with the Resolution. The total Cost of said Projects shall be financed in accordance with the description set forth in Appendix A and the Capital Improvement Plan. Appendix A and the Capital Improvement Plan may, from time to time, upon approval by resolution of the Authority and the Board, be amended to add a Project or to delete or change a Project listed thereon or to change the scope or cost of a Project listed thereon, without the consent of the Trustee or the Bondholders. The financing by the Authority of any Project added or changed by such amendment shall be governed by the terms and conditions of the Financing Agreement and the Resolution.

No Indebtedness of Board or City (Section 2.2)

Nothing contained in the Financing Agreement, the Acquisition Agreement, the Operation Agreement, the Resolution or any other document or instrument executed and delivered in connection with any of them, shall be construed as creating an indebtedness of the Board or the City within the meaning of any constitutional or statutory provision.

Agreement of Authority and Board as to Projects (Section 2.3)

The Authority and the Board agree that the management, operation, maintenance and repair of any Projects financed in whole or in part pursuant to the Financing Agreement shall be carried out by the Board in accordance with the provisions of the Act and pursuant to the terms of the Financing Agreement and the Operation Agreement.

Grant of Revenues to Authority (Section 2.4)

In consideration of the promises and agreements of the Authority contained in the Financing Agreement and in consideration of the issuance of the Bonds by the Authority to finance Projects, the Board pledges, gives, grants a security interest in, conveys and transfers to the Authority all of its right, title and interest in the Revenues, including, without limiting the generality of the foregoing, all of its rights to collect and receive the same, subject only to the provisions of the Financing Agreement and the Resolution permitting the application thereof for or to the purposes and on the terms and conditions in the Financing Agreement and therein set forth.

Agreement of the State (Section 2.5)

Pursuant to Section 1230-r of the Act, the State has pledged and agreed that it will not alter or limit the rights vested by the Act in the Authority or the Board to fulfill the terms of any agreement made with or for the benefit of the Bondholders, or in any way impair the rights and remedies of Bondholders, until the Bonds, together with the interest thereon, with interest on any unpaid installment of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The Authority and the Board for the purpose of effectuating such pledge of the State do certify that the Financing Agreement, the Resolution, the Operation Agreement and the Acquisition Agreement are all intended to be for the benefit of the Bondholders.

TRANSFER OF FUNDS

Application of Bond Proceeds to Pay Costs (Section 3.1)

The proceeds of the issuance of each Series of Bonds shall be deposited by the Authority with the Trustee and disbursed by the Trustee in accordance with the provisions of the Resolution and the applicable provisions of the Supplemental Resolution authorizing such Series of Bonds.

Payments From Construction Account (Section 3.2)

(A) The Costs incurred with respect to Projects shall be evidenced to the Authority by a certificate signed by an Authorized Representative of the Board. Each such certificate shall contain the information required to be set forth in a Disbursement Request. Upon receipt of such certificate, the Authority shall pay or submit a Disbursement Request for such costs to the Trustee to pay the Persons entitled thereto, in accordance with the provisions of the Resolution. The Authority may by resolution authorize the Trustee to disburse funds from the Construction Account to an account of the Board to pay for Costs of Projects.

(B) Moneys may be withdrawn from the Construction Account for the purpose of paying an amount equal to any final judgment arising out of claims against the Authority or the Board in any action, if the payment of such claims would constitute, a Cost of a Project. Withdrawals may be similarly made with respect to the settlement of any such action.

Payments From Local Water Fund (Section 3.3)

(A) Moneys in the Construction Account in the Local Water Fund may be utilized to fund ongoing Projects undertaken by the Board in accordance with the provisions of the Operation Agreement.

(B) Moneys in the Board Expense Account in the Local Water Fund may also be utilized to fund ongoing Projects undertaken by the Board in accordance with the Capital Improvement Plan.

PAYMENTS BY THE BOARD

Local Water Fund (Section 4.1)

All Revenues, as promptly as practicable after receipt thereof by the Board, shall be deposited by the Board into the General Account within the Local Water Fund at the Bank. There shall also be deposited in the General Account within the Local Water Fund all amounts received by the Board from the Trustee pursuant to the Resolution. All amounts in the Local Water Fund shall be held in trust by the Board and applied only as provided in the Financing Agreement, in the Act or in the Resolution.

Establishment of Accounts; Application of Revenues in Local Water Fund (Section 4.2)

- (A) The Board shall establish the following special accounts or sub-funds within the Local Water Fund:
- (1) the Niagara Falls Water Board Expense Account (the “Board Expense Account”);
 - (2) the Niagara Falls Water Board Operation and Maintenance Reserve Account (the “Operation and Maintenance Reserve Account”);
 - (3) the Niagara Falls Water Board Construction Account (the “Construction Account”);
 - (4) the Niagara Falls Water Board General Account (the “General Account”); and

(5) the Niagara Falls Water Board PILOT Payment Account (the “PILOT Payment Account”);

each of which shall be held by the Board at the Bank in one or more Bank Accounts as the Board may determine.

(B) Such accounts shall be held by the Board as trust funds and the amounts on deposit therein shall be applied solely for the purposes provided in the Financing Agreement and in the Operation Agreement.

(c) Commencing on the first day of each Fiscal Year and on each day thereafter, the Board shall make the following payments from the General Account within the Local Water Fund in the following order of priority:

FIRST: to the Trustee, for deposit in the Debt Service Fund, beginning with the first day of each calendar month, all Revenues in the Local Water Fund, until the balance in the Debt Service Fund equals the Minimum Monthly Balance for each Series of Bonds in such month and to the Authority Expense Fund for all Authority Expenses attributable to the Fiscal Year in accordance with the Authority Budget;

SECOND: beginning with the first day of each calendar month, until paid in each calendar month, to the Board Expense Account, one-twelfth (or, with respect to the first Fiscal Year, a fraction, the numerator of which is one and the denominator of which is the number of calendar months or portions thereof in such first Fiscal Year) of the Board Expenses, including the amount certified to the Board pursuant to the Operation Agreement, for the then current Fiscal Year as shown in the Annual Budget, or the Board may establish with its Annual Budget an alternative payment schedule, concurred in by the Rate Consultant, for the upcoming Fiscal Year which equitably reflects both the timing of the Board’s incurrence of Board Expenses and the timing of Board Revenues and fund balances, but in no event shall the establishment of such alternative payment schedule be deemed to affect in any manner the relative priority of the accounts or sub-funds established by items FIRST through SIXTH;

THIRD: from the balance, if any, in the General Account of the Local Water Fund after making the deposits required by the preceding paragraphs, to the Debt Reserve Fund and the Subordinated Indebtedness Fund in amounts required by the Resolution or otherwise to be deposited in such funds and to the Operation and Maintenance Reserve Account, all such Revenues until the total of the amounts so paid equals the amount, if any, required to be deposited therein;

FOURTH: from the balance in the General Account in the Local Water Fund after making the deposits required by the preceding paragraphs, to the PILOT Payment Account until the balance therein equals the total amount budgeted for deposit therein in such Fiscal Year in the Annual Budget;

FIFTH: from the balance, if any, in the General Account in the Local Water Fund after making the deposits required by the preceding paragraphs, to the Construction Account until the balance therein equals the total amount budgeted for deposit therein in such Fiscal Year in the Annual Budget; and

SIXTH: the balance, if any, in the General Account in the Local Water Fund after making the deposits required by the preceding paragraphs, to the Operation and Maintenance Reserve Account.

(D) In making the payments required pursuant to paragraph FIRST above, the Board shall be entitled to rely on the Certificate of an Authorized Representative of the Authority described in subsection (E).

(E) On the first day of each month, the Authority, or the Trustee as the Authority’s agent, shall deliver to the Board a Certificate, setting forth the Authority’s calculations of the Minimum Monthly Balance for each Series of Bonds outstanding for such month and the amounts required to be deposited in the Authority Expense Fund, Debt Service Reserve Fund and Subordinated Indebtedness Fund in such month.

Minimum Monthly Balance (Section 4.3)

The Minimum Monthly Balance to be satisfied pursuant to paragraph FIRST of the section above shall be an amount equal to the sum of the aggregate amounts of Debt Service that have accrued with respect to all Series of Bonds, calculating the Debt Service that has accrued with respect to each Series of Bonds as an amount equal to the sum of (A) the interest on the Bonds of such Series that has accrued and is unpaid and that will have accrued by the end of the then current calendar month, reduced by the amount, if any, then on deposit in the Capitalized Interest Account in the Debt Service Fund, and (B) that portion of the next due Principal Installment for the Bonds of such Series that would have accrued (as deemed to accrue in the manner interest accrues) by the end of the then current calendar month.

Deposits Into Operation and Maintenance Reserve Account (Section 4.4)

(A) There shall be deposited in the Operation and Maintenance Reserve Account in each Fiscal Year from the sources described in (B) below the amount required, if any, so that the amounts on deposit therein shall at least equal the amount of the deposit to the Operation and Maintenance Reserve Account set forth in the Board's Annual Budget for such Fiscal Year.

(B) In addition to the deposits made to the Operation and Maintenance Reserve Account pursuant to the Financing Agreement, additional deposits to the Operation and Maintenance Reserve Account may be made from monies remaining on deposit in the Local Water Fund after the payments provided for in the Financing Agreement have been made, including any accrued surplus on deposit in the Board Expense Account at the end of any Fiscal Year, or any other monies lawfully available therefor.

(C) The Board may establish sub-accounts in the Operation and Maintenance Reserve Account as the Board may deem appropriate.

Application of Monies in the Operation and Maintenance Reserve Account (Section 4.5)

(A) (1) The amounts on deposit in the Operation and Maintenance Reserve Account may be used to pay the cost of extraordinary repairs to and replacements of the System, and (2) if there are insufficient funds in the Board Expense Account to pay the City the requisite amounts (as such amounts are certified to the Board pursuant to the Operation Agreement) for Operating Expenses, the Board shall withdraw from the Operation and Maintenance Reserve Account and pay to the City, on demand, an amount equal to the amount required to be so paid, or the entire balance in the Operation and Maintenance Reserve Account if less than sufficient.

(B) After any payments and transfers required or permitted by the Financing Agreement are made, the amounts on deposit in the Operation and Maintenance Reserve Account may also be applied or transferred, as the case may be, by the Board as it determines in the best interest of the System, including but not limited to the following:

(1) on any date that there are insufficient funds in the Board Expense Account to pay Board Expenses then due and owing, to the Board Expense Account the amount of such deficiency;

(2) to pay, when due, the principal of and interest on bonds, notes or other obligations of the Authority (other than Bonds, Bond Anticipation Notes and Subordinated Indebtedness), together with all other amounts, certified by the Authority to the Board as necessary to make the required deposits, if any, to the reserve and other funds and accounts established for such bonds, notes or other obligations pursuant to the Resolution, trust indenture or other instrument under which such bonds, notes or other obligations were issued;

(3) to pay for Projects undertaken by the Board, including but not limited to procurement of vehicles and equipment for the System.

(C) If there is surplus on deposit in the Operation and Maintenance Reserve Account at the end of any Fiscal Year, then during the ensuing Fiscal Year, the Board may expend the portion of such surplus in any manner

that the Board determines most beneficial for the System, unless the Authority notifies the Board that it does not concur with such application of the surplus and expenditure thereof.

Pilot Payment Account (Section 4.6)

Except as otherwise provided in the Financing Agreement, the Board shall annually make the PILOT payment as defined and provided for in the Operation Agreement to the City after the annual budgeted amounts have been deposited in full into the following accounts: Debt Service Fund, Authority Expense Account Board Expense Account, the Debt Service Reserve Fund, Subordinated Debt Service Fund, the Operation and Maintenance Reserve Account and other required deposits. Partial payments of the PILOT payment may be made if the amount on deposit in the PILOT Payment Account exceeds the remaining amounts to be deposited in the above funds and accounts to satisfy the annual budget requirements and the partial payment amount will result in a balance in the PILOT Payment Account that still exceeds the remaining amounts to be deposited in the above funds and accounts to satisfy the annual budget requirements. The Board and Authority, at their joint discretion, may elect to prepay one or more years of PILOT payments through the proceeds of Bonds or funds other than System Revenues. Pursuant to the Operation Agreement, monies in the PILOT Payment Account can be used to pay Debt Service, Operating Expenses or make other required deposits only in the event of a shortfall of Board funds in a given year. Budgeted or estimated deposits to the Construction Account are not considered required deposits for purposes of this section.

Construction Account (Section 4.7)

(A) As the Board may determine, the amounts on deposit in the Construction Account shall be applied to ongoing Projects undertaken by the Board. Any request for payment of such costs by the Board shall be in writing and, if requested by the Authority, accompanied by bills or other evidences of such costs.

(B) The amounts on deposit in the Construction Account may also be applied to pay the principal of and interest on bonds, notes or other obligations of the Authority (other than Bonds, Bond Anticipation Notes and Subordinated Indebtedness), together with all other amounts, certified by the Authority to the Board as necessary to make the required deposits, if any, to the reserve and other funds and accounts established for such bonds, notes or other, obligations pursuant to the resolution, trust indenture or other instrument under which such bonds, notes or other obligations were issued.

Application of Revenues After Default (Section 4.8)

Anything in the Financing Agreement to the contrary notwithstanding, the Board covenants that, if an “Event of Default”, as defined in the Resolution, shall occur and be continuing, the Board, upon demand of the Trustee, shall pay over or cause to be paid over to the Trustee all moneys and securities then held by the Board in the Local Water Fund and all Accounts created thereunder, and thereafter, as promptly as practical, the Revenues, for application in accordance with the provisions of the Resolution dealing with the application of moneys during the continuance of an Event of Default thereunder.

Amounts Remaining (Section 4.9)

After all Bonds (and all other bonds, notes or other evidences of indebtedness) have been paid in full or are no longer outstanding pursuant to the provisions of the Resolution (or under any other resolution, trust indenture or similar document), and after payment of all other obligations and expenses of the Authority or provision for payment thereof has been made in accordance with the provisions of the Resolution (or under any other resolution, trust indenture or similar document), any amounts received or held by the Authority or the Trustee pursuant to the provisions of the Resolution (or under any other resolution, trust indenture or similar document) or the Financing Agreement shall be paid to the Board.

Representations and Warranties (Section 5.1)

(A) The Board makes the following representations and warranties as the basis for the undertakings on its part:

(1) It is a body corporate and politic constituting a corporate municipal instrumentality duly organized and validly existing under the Constitution and the laws of the State, including the Act, and has full power and authority to (a) acquire the System pursuant to the Act and to carry out its purposes in the manner proposed to be conducted pursuant to the Financing Agreement, the Operation Agreement and the Acquisition Agreement; and (b) execute, deliver and to perform and observe all of the terms and provisions of the Financing Agreement, the Operation Agreement and the Acquisition Agreement.

(2) The execution, delivery and performance of the Financing Agreement have been duly authorized by all necessary action on the part of the Board.

(3) All by-laws and rules and regulations adopted by the Board relating to the Board and the System were duly adopted in conformity with the Act.

(B) The Authority makes the following representations and warranties as the basis for the undertakings on its part:

(1) It is a body corporate and politic constituting a public benefit corporation duly organized and validly existing under the constitution and the laws of the State, including the Act, and has full power and authority to (a) issue its Bonds pursuant to the Act and the Resolution and to carry out its purposes in the manner proposed to be conducted pursuant to the Financing Agreement and the Resolution; and (b) execute, deliver and to perform and observe all of the terms and provisions of the Financing Agreement.

(2) The execution, delivery and performance of the Financing Agreement have been duly authorized by all necessary action on the part of the Authority.

(3) All by-laws and resolutions adopted by the Authority relating to the Authority and the Bonds were duly adopted in conformity with the Act.

Consent to Assignment (Section 5.2)

The lien on the Revenues created pursuant to the Act and the Financing Agreement is made for the benefit of the Authority and the Bondholders. The Board consents to the assignment by the Authority to the Trustee for the benefit of the Bondholders of the benefits and rights of the Authority provided by the Financing Agreement, including, without limitation, the lien upon the Revenues created pursuant to the Act and the Financing Agreement and the pledge and agreement of the State included therein, pursuant to Section 1230-r of the Act and set forth in the Financing Agreement, to the extent set forth in the Resolution.

Indemnification (Section 5.3)

(A) The Authority agrees to keep, save and hold harmless the Board and its members, officers, employees and agents from any and all liability, loss or damage from or in connection with any act done or omitted by the Authority at any time after the Acquisition Date with respect to or in connection with the System which was or is taken or omitted. The Board agrees to keep, save and hold harmless the Authority and its members, officers, employees and agents from any and all liability, loss or damage from or in connection with any act done or omitted by the Board at any time after the Acquisition Date with respect to or in connection with the System which was or is taken or omitted.

(B) The right to indemnification set forth above is expressly subject to satisfaction of the following conditions:

(1) The Board or the Authority, as the case may be, shall promptly forward to the indemnifying party all summonses or notices pertaining to claims received or served upon the Board or the Authority, as the case may be, and their respective members, officers, employees. or agents, together with a written request for indemnification;

(2) The Board or the Authority, as the case may be, and their respective members, officers and employees shall cooperate in aiding the indemnifying party to investigate, adjust, settle or defend each claim, action or proceeding.

Rate Covenant (Section 6.1)

(A) The Board covenants and agrees to establish, fix and revise, from time to time, fees, rates, rents or other charges for the use of, or services furnished, rendered or made available by the System adequate, together with any other available funds, to provide for (1) the timely payment of the Principal Installments of and interest on all Bonds and the principal of and interest on any other indebtedness of the Authority payable from Revenues, (2) the proper operation and maintenance of the System, (3) all other payments required for the System not otherwise provided for and (4) all other payments required pursuant to the Financing Agreement and the Operation Agreement.

(B) Without limiting the generality of subsection (A) above, the Board shall establish and collect rates, fees and charges sufficient in each Fiscal Year so that Revenues (net of non-recurring items) collected in such Fiscal Year will be at least equal to the sum of (1) one hundred fifteen percent (115%) of estimated Aggregate Debt Service and Projected Debt Service payable in such Fiscal Year, (2) one hundred percent (100%) of the Operating Expenses and Authority Expenses payable in such Fiscal Year and (3) one hundred percent (100%) of the amount necessary to pay the Required Deposits for such Fiscal Year; provided, however, that any Principal Installment which is a Refundable Principal Installment may be excluded from Aggregate Debt Service for purposes of the foregoing but only to the extent that such Principal Installment is payable from funds specifically held in trust therefor and which were derived from sources other than Revenues. A failure to generate Revenues in accordance with the Financing Agreement shall not constitute an "event of default", if the Board takes timely action to correct any such deficit under subsection (C) below.

(C) The Board shall review the adequacy of fees, rates and charges at least semi-annually. If such semi-annual review, or the report of the Rate Consultant, indicates that the rates, fees and charges are, or will be, insufficient to meet the requirements of this section, the Board shall promptly take the necessary action to cure or avoid any such deficiency. The Board agrees that it will diligently pursue the actions necessary to cure or avoid any such deficiency.

(D) Except (1) to the extent required by law, and (2) as otherwise provided, the Board will not furnish or supply or cause to be furnished or supplied any product, use or service of the System, free of charge (or at a nominal charge) to any Person, public or private, and the Board will enforce (or cause the City to enforce) the payment of any and all amounts owing to the Board for use of the System in accordance with the Financing Agreement.

(E) In estimating Aggregate Debt Service for purposes of subsection (B) above, the Board shall be entitled to assume that variable rate Bonds will bear such interest rate or rates as the Authority shall determine; provided, however, that the interest rate or rates assumed shall not be less than the interest rate borne by such variable rate Bonds at the time of determination of Aggregate Debt Service.

Consulting Engineer and Rate Consultant (Section 6.2)

(A) The Authority shall retain annually a Consulting Engineer for a term of one year and the Board shall retain annually a Rate Consultant for a term of one year whose duties, respectively, shall be to make any certificates and perform any other acts required or permitted of the Consulting Engineer and the Rate Consultant under the Financing Agreement, under the Operation Agreement or under the Resolution. The same person or firm may perform the duties and functions of the Consulting Engineer and the Rate Consultant.

(B) In every other Fiscal Year, the Consulting Engineer and, in every Fiscal Year, the Rate Consultant shall make an examination of, and shall report on, the properties and operations of the System. Such report shall be submitted to the Authority, the Board, the Mayor, and the Trustee no later than November 1 of each such year (commencing November 1, 2004 with respect to the Rate Consultant and November 1, 2003 with respect to the Consulting Engineer) and shall, at a minimum, set forth the following:

(1) the Consulting Engineer's advice and recommendation as to the proper operation, maintenance and repair of the System during the ensuing two Fiscal Years, and an estimate of the amounts of money necessary for such purposes and the amounts required for the operation and maintenance reserve account (in an amount at least equal to two months of Operating Expenses, but not including debt service on the City's outstanding bonds, if any);

(2) the Consulting Engineer's advice and recommendations as to improvements which should be made during the ensuing five Fiscal Years, and an estimate of the amounts of money necessary for such purposes, showing the amount to be expended during each of such Fiscal Years from the proceeds of Bonds issued under the provisions of the Resolution and the amount recommended to be expended during such Fiscal Year from the amounts held in the Construction Account;

(3) the Rate Consultant's recommendation as to any necessary or advisable revisions of rates, fees and charges and such other advice and recommendation as it may deem desirable; and

(4) the Consulting Engineer's findings whether the System has been maintained in good repair and sound operating condition, and its estimate of the amount, if any, required to be expended to place such properties in such condition and the details of such expenditures and the approximate time required therefor.

(C) The Board covenants that, if any such report shall set forth that the Properties of the System have not been maintained in good repair and sound operating condition, the Board shall take all necessary action as will promptly restore the Properties to good repair and sound operating condition with all expedition practicable.

(D) The Board further covenants that (1) the Consulting Engineer and the Rate Consultant shall at all times have free access to all properties of the System and every part thereof and the records, maps, diagrams and other drawings thereof for the purposes of inspection and examination, and (2) their books, records and accounts may be examined by the Consulting Engineer and the Rate Consultant at all reasonable times.

Operation and Maintenance (Section 6.3)

The Board covenants as follows:

(A) the Board shall at all times operate the System, and in a sound and economical manner and shall maintain, preserve, and keep the System with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make, or cause to be made, all necessary and proper repairs, so that at all times the operation of the System may be properly and advantageously conducted in accordance with Industry Standards.

(B) nothing contained in the Financing Agreement shall require the Board to operate, maintain, preserve, repair replace, renew or reconstruct any part of the System if there shall be filed with the Board, the Authority and the Trustee (1) a certificate of an Authorized Representative of the Board stating that in the opinion of the Board abandonment of operation of such part of the System will not adversely affect the operation of the System or the amount of Revenues derived therefrom and is not prejudicial to the interests of the Board, the Authority or the Bondholders and (2) a certificate of the Consulting Engineer concurring with such statement;

(C) the Board shall enforce the rules and regulations governing the operation, use and services of the System established from time to time by the Board, and the Board shall observe and perform all of the terms and conditions contained in the Act, and comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body having, competent jurisdiction of the Board or the System; provided, however, that the failure of the Board to comply with the covenant contained in this subsection (C) for any period shall not constitute an event of default on its part so long as the Board (1) is taking reasonable and timely steps to permit compliance and (2) the Board shall have delivered to the Authority a certificate of the Consulting Engineer which (a) sets forth in reasonable detail the facts and circumstances attendant to such noncompliance, (b) sets forth the steps being taken by the Board to permit compliance, (c) sets forth the estimated date on which the Board will be

in compliance and (d) states that in the opinion of the Consulting Engineer such noncompliance during the period described will not adversely affect the operation of the System or the amount of Revenues to be derived therefrom;

(D) the Board shall not create or suffer to be created any lien or charge upon the System or any part thereof, except for Permitted Encumbrances;

(E) the Board shall, within the limits of funding provided by the Authority or from any governmental grants or other sources and in accordance with the provisions of the Operation Agreement and Article II of the Financing Agreement, undertake and complete such improvements to the System, including but not limited to capital improvements, replacements, renewals, alterations, increases, enlargements, extensions and additions, whether structural, non-structural, ordinary or extraordinary, and such planning, studies, designs and surveys as are necessary or appropriate to effect such improvements and the Construction of such Projects as the Board, based upon recommendations from the Consulting Engineer, shall determine, together with such terms and conditions, to be necessary and appropriate to preserve and keep the System in good working and safe order and condition. Any such improvements so undertaken by the Board pursuant to funding: (i) if provided by the Board shall be owned by the Board, and (ii) if provided by the Authority, may be conveyed to the Board, and in either case by lease or other conveyance upon such terms as the Board and the Authority may agree; and

(F) Nothing contained in the Operation Agreement or in the Financing Agreement shall be construed as preventing the Board from undertaking, to the extent permitted by law, improvements to the System (including the acquisition of equipment therefor), on its own initiative from revenues available to the Board pursuant to Section 1230-j of the Act, or from funds other than the proceeds of obligations issued by the Authority to finance same or from funds available from the Financing Agreement.

Annual Budget (Section 6.4)

(A) Sixty (60) days before the commencement of the Fiscal Year, (or on such later date as the Authority and the Board may agree) the Authority shall deliver to the Board a certified copy of the Authority Budget for the ensuing Fiscal Year showing the Authority Expenses and the Debt Service and Projected Debt Service for all Series of Bonds and all Projected Series of Bonds for such Fiscal Year.

(B) Based upon the information contained in (1) the Authority Budget, (2) the City's certification pursuant to the Operation Agreement, (3) the certificate delivered to the Board pursuant to the Operation Agreement and (4) the report of the Consulting Engineer described in the Financing Agreement (collectively, the "Budget Documents"), the Board in consultation with the Authority shall prepare the Annual Budget for the ensuing Fiscal Year. In addition to the information contained in the Budget Documents, the Board shall also make provision in the Annual Budget (i) for Board Expenses for the ensuing Fiscal Year, (ii) for the amount, if any, required to be deposited in the Operation and Maintenance Reserve Account in accordance with the Financing Agreement and (iii) after consultation with the Consulting Engineer, for the amount to be deposited in the Construction Account. Thereafter, the Board shall adopt such Annual Budget.

(C) Promptly after adoption of the Annual Budget, and in no event later than January 31 (or such other date as the Authority and the Board may agree) of each year, the Board shall establish the rates, fees and charges for the use of the System for the ensuing Fiscal Year. The Board may from time to time, either before or after commencement of the Fiscal Year to which it relates, amend the Annual Budget, but (except for its own expenses) only in accordance with and after receipt of amended Budget Documents. If, as of the first day of any Fiscal Year an Annual Budget has not been adopted, the Annual Budget for the immediately preceding Fiscal Year shall be the Annual Budget for such Fiscal Year until a new Annual Budget is adopted. The Annual Budget for Fiscal Years 2003 and 2004 adopted by the Board by resolution on or prior to the date of adoption of the Resolution shall be deemed to satisfy all the procedural requirements of this section.

Compliance With Agreements; Tax Exemption (Section 6.5)

(A) The Authority and the Board each covenant one with the other that each of them shall take all such actions or refrain from taking all such actions, as the case may be, so as to comply with the terms and provisions of the Acquisition Agreement, the Operation Agreement and the Financing Agreement.

(B) The Authority covenants with the Board that it shall take all such actions or refrain from taking all such actions, as the case may be, so as to comply with the terms and provisions of the Resolution and the Financing Agreement.

(C) The Authority further agrees that it will take no action to amend or supplement the Resolution in any way which would adversely affect the interest of the Board without the prior written consent to such amendment or supplement by those parties thereby affected.

(D) The Authority and the Board each covenant one with the other that, so long as any Bonds shall be outstanding under the Resolution, each will (1) not take any action, or fail to take any action, which, if taken or not taken, as the case may be, would adversely affect the tax-exempt status of the interest payable on the Bonds then outstanding and (2) consent to any amendments to the Financing Agreement, the Operation Agreement and the Resolution required, in the opinion of Bond Counsel, to maintain such tax exemption. Such amendments may be made without the consent of any Bondholders.

Compliance With Resolution (Section 6.6)

The Board shall take all such actions and refrain from taking all such actions, as the case may be, and otherwise shall operate the System as shall ensure its compliance, and the compliance of the Authority, with the terms and provisions of the Resolution, or any other agreement approved by the Board entered into by the Authority in connection with the undertaking or financing of a Project and which shall, by its terms, directly or indirectly apply to the Board.

Enforcement of Rules and Regulations (Section 6.7)

In accordance with Section 1230-i of the Act, the Board shall enforce the rules and regulations providing for discontinuance of or disconnection from the supply of water for nonpayment of fees, rates, rents or other charges imposed by the Board, provided that such discontinuance or disconnection shall not be carried out except in the manner and upon the notice as is required of a waterworks corporation pursuant to the Public Service Law of the State.

Governmental Approvals (Section 6.8)

The Board represents to the Authority that, with respect to the Projects listed on or subsequently added to Appendix A and the Capital Improvement Plan, the State Department of Health and the State Department of Environmental Conservation have completed (or, with respect to Projects to be added to such Appendix A and Capital Improvement Plan, will have completed) all statutory reviews and approvals with respect to such Projects required to be completed prior to the date any such Projects are published by the Board for competitive bids or entry into any contracts therefor, as the case may be.

Books, Records, Accounts and Audits (Section 6.9)

(A) If the Authority so requests pursuant to Section 1230-i of the Act, the Board shall provide to the Authority such reports concerning Projects as may be required by the Authority.

(B) Each of the Authority and the Board shall keep, or cause to be kept, proper books of record and account in, which complete and correct entries shall be made of all transactions relating to their corporate purposes under the Act. In accordance with the Act and Section 2800 of Title 1 of Article 9 of the Public Authorities Law of the State, the Authority and the Board shall each annually prepare a detailed report concerning their activities for the Fiscal Year which shall comply with the Act and Section 2800 of Title 1 of Article 9 of the Public Authorities Law of

the State and submit same to the Mayor, the Director of the Budget of the City, the Controller, the Governor, the State Legislature and the State Comptroller, which report shall set forth: (1) their respective operations and accomplishments; (2) their respective receipts and disbursements, or revenues and expenses, during such Fiscal Year in accordance with the categories or classifications established by them for their own operating and capital outlay purposes; (3) their respective assets and liabilities at the end of their respective Fiscal Year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds; and (4) a schedule of the Authority's bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year. Such reports shall be submitted within one hundred twenty (120) days of the end of each Fiscal Year.

(C) The accounts of the Authority and the Board shall be subject to the review of the Controller, and he or his legally authorized representatives are authorized and empowered from time to time- to examine the accounts and books of the Authority and the Board, including their respective receipts, disbursements, contracts, sinking funds, investments and any other matters relating to their respective financial standing and fiscal affairs.

Liens (Section 6.10)

Until the Bonds (or any other bonds, notes or other evidences of indebtedness issued by the Authority for its purposes under the Act) have been paid in full or provision has been made therefor in accordance with the Resolution (or such other resolution, trust indenture or similar document), the Board shall not create, and, to the extent it has the power to do so, shall not permit to be created, any lien upon or pledge of the Revenues, except the lien and the pledge thereon created by the Act, the Resolution and the Financing Agreement.

Limitations on Officers and Employees (Section 6.14)

The Authority may not employ any paid officers or employees. The Board and the Authority may engage the services of independent contractors, including those independent contractors reasonably required in connection with the issuance of Bonds, or required by the Trustee, or reasonably required in the performance of, and subject to the terms of the Operation Agreement or the Financing Agreement, as they may deem appropriate, including legal counsel, and upon such terms and conditions as they may deem appropriate.

Permanent Insurance (Section 7.1)

The Board covenants that so long as any of the Bonds shall remain outstanding, it will insure or cause to be insured any at or above ground physical structures of the System against loss or damage by fire and such other risks as are generally included in extended coverage insurance, excepting only during the periods and to the extent that the Board or contractors shall carry builders' risk or other insurance during construction. The policy or policies of such permanent insurance shall be issued by a responsible insurance company or companies authorized and qualified to do business under the laws of the State, in such reasonable amounts as are usually carried for like properties and as may be recommended by the Consulting Engineer or an independent insurance consultant retained by the Board.

The Board covenants that it will file promptly with the Trustee either the policies and endorsements from time to time issued by the insurance company or companies, or proper memoranda of insurance, and as policies or endorsements are renewed from time to time, the new policies or renewal endorsements, or memoranda thereof. The Authority will cause the Trustee to notify the Board if it becomes aware that said policies, endorsements, or other evidences of permanent insurance do not comply with these requirements. If the Board shall at any time fail to maintain the required permanent insurance upon lapse of builders' risk or other insurance carried during Construction, or upon lapse of any permanent insurance or otherwise, the Trustee may, but shall be under no duty to do so, contract for the required insurance and require the Authority to pay the insurance premiums.

Insurance During Construction (Section 7.2)

The Board covenants to maintain or to require the contractors to maintain during the Construction of Projects, insurance against loss or damage by fire and lightning and other risks included in extended coverage, under separate insurance policies with builders' risk and extended coverage endorsements, issued by responsible insurance companies

authorized and qualified to do business in the State. Such policies shall be issued in such reasonable amounts as are usually carried for like work and materials covered by the Construction contracts and as may be recommended by the Consulting Engineer or an independent insurance consultant retained by the Board. The Board covenants to file each such policy, or a proper memorandum of insurance, with the Trustee prior to submission of the first requisition for a payment for insurable work or materials to each contractor. If any such insurance shall expire prior to completion and the maintenance of permanent insurance, the Board covenants to file with the Trustee a proper renewal endorsement or memorandum thereof. In the event that the proceeds of permanent insurance shall be applied as provided in the Financing Agreement without additional financing, the Board shall maintain, or cause contractors to maintain, insurance during Construction as above provided.

Damage or Destruction of the System; Application of Insurance Proceeds (Section 7.3)

In the event that any of the buildings, structures, additions or improvements of the System shall be wholly or partially destroyed by fire or other casualty covered by permanent insurance, the Board covenants and agrees to take all such actions and do all such things as may be necessary to enable recovery to be made upon the policy or policies of insurance covering the risk to the end that all proceeds of insurance may be expeditiously collected.

The proceeds of permanent insurance shall be applied, subject to the provisions of this section, to the reconstruction, restoration, replacement or repair of the damaged or destroyed property, or to the acquisition or construction of Projects for the operation of the System or to the redemption or purchase of Bonds as follows:

(A) **Deposit in Construction Account.** If the Board shall by resolution determine to apply all or part of said proceeds to the reconstruction, restoration or repair of the damaged property or to the Construction or acquisition of a Project, said proceeds or the portion thereof to be so applied shall be transferred to the Trustee for deposit in the Ongoing Project Account and disbursed by the Trustee from time to time upon requisitions signed by an Authorized Representative of the Board, stating the amount to be paid and designating the payee and certifying that the payment is due and payable for the reconstruction, restoration, replacement or repair of the damaged or destroyed property or for the Construction or acquisition of a Project, and, if the Consulting Engineer is employed to supervise the work, upon submission of certificates of the Consulting Engineer in form satisfactory to the Trustee approving such payment; provided, however, that if the Board shall certify to the Authority and the Trustee that the amount to be so applied from said insurance proceeds is not more than \$1,000,000, then the Board may retain said insurance proceeds for application toward the reconstruction, restoration, replacement or repair of the damaged or destroyed property or toward the Construction or acquisition of a Project.

(B) **Deposit of Funds.** All proceeds of permanent insurance not applied as hereinabove authorized shall be transferred to the Trustee for deposit in the General Account and applied by the Trustee to redeem or purchase Bonds in accordance with the Resolution.

Nothing in this section shall be construed to relieve the Board under the Financing Agreement from its obligation to maintain the System in good repair, working order and condition, excepting only that to the extent that the proceeds of insurance shall be applied to the reconstruction, restoration, replacement or repair of damaged or destroyed property, or to the Construction or acquisition of a Project, or shall be applied to the purchase, redemption or defeasance of Bonds, then and to such extent the Board shall be relieved of such obligation with respect to the damaged or destroyed property.

Other Insurance (Section 7.4)

The Board covenants that it will at all times cause its chief financial officer and all other officers and employees handling its funds to be bonded in adequate amounts by responsible bonding companies. The Board further covenants that so long as any of the Bonds are outstanding, it will maintain public liability, including bodily injury and property damage insurance, with responsible insurance companies in such amounts as may be recommended by a Consulting Engineer or an independent insurance consultant retained by the Board.

Alternative Insurance (Section 7.6)

Notwithstanding the foregoing provisions of this Article, if at any time the Board determines that such insurance is not obtainable at a reasonable cost with reasonable terms, or the Board determines that such insurance is not commercially available, or the Board determines that a Qualified Self-Insurance Program is in the best interests of the Board, and the Authority concurs, it will not constitute an Event of Default under the provisions of this Agreement, if the Board shall carry or cause to be carried such insurance through Qualified Self Insurance, provided that the requirements hereinafter set forth in this paragraph and the next two succeeding paragraphs are satisfied. "Qualified Self Insurance" means insurance maintained through a program of self insurance or, to the extent permitted by law, insurance maintained with an association in which the Board has a material interest or of which the Board has control, either singly or with others.

Prior to the participation in any plan of Qualified Self Insurance, the Board shall deliver to the Authority and the Trustee (i) a copy of the proposed plan, and (ii) a written report from a Consulting Engineer containing an evaluation of the proposed plan together with an opinion to the effect that (A) the proposed Qualified Self Insurance will provide the coverage otherwise required by this section, and (B) the proposed Qualified Self Insurance plan provides reserves in accordance with Industry Standards.

Each plan of Qualified Self Insurance shall be in written form, shall provide that upon the termination of such plan reserves will be established or insurance acquired in amounts adequate to cover any potential retained risk in respect of the period of self insurance, and shall be reviewed annually by the Consulting Engineer who shall deliver to the Board a report on the adequacy of the reserves established thereunder in light of risks incurred. If the Consulting Engineer determines that such reserves are inadequate in light of the risks incurred, he shall make recommendations as to the amount of reserves that should be established and maintained, and the Board shall comply with such recommendations. A copy of each Qualified Self Insurance Plan and of each annual report thereon shall be delivered to the Trustee.

Events of Default (Section 8.1)

An "event of default" or a "default" shall mean, whenever they are used in the Financing Agreement, any one or more of the following events:

(A) failure by the Board to make the payments required to be made to the Authority pursuant to the Financing Agreement;

(B) failure of the Authority or the Board to observe any covenant, term or condition of the Financing Agreement, other than as referred to in clause (A) of this section, provided, however, that such failure shall have continued for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, is given to the Board, or both, as the case may be, by the Authority, unless the Authority shall agree in writing to an extension of such time prior to its expiration and provided further, that if the failure stated in the notice cannot be remedied within the applicable period, the Authority shall not unreasonably withhold its consent to an extension of such time if corrective action has been instituted by the Board, within such period and is being diligently pursued;

(C) the Authority shall file a petition or otherwise seek relief under any federal or State bankruptcy or similar law; or

(D) the respective provisions of the Act pursuant to which the Resolution has been adopted or the Bonds have been issued, including, without limitation, those provisions pursuant to which the lien upon the Revenues of the Board has been created pursuant to the Financing Agreement and the Resolution and those provisions establishing the powers and obligations of the Board and the relationship of the Authority to the Board as contemplated by the Act, shall be materially and adversely limited, altered or impaired by any legislative action or any final judgment or the terms, conditions and security provided under the Financing Agreement and the Resolution shall be materially and adversely limited, altered or impaired by any legislative action or any final judgment.

Remedies (Section 8.2)

(A) Whenever any event of default shall have occurred and be continuing, and written notice of the default, if required, shall have been given to the Board by the Authority or by the Trustee and the default shall not have been cured within any curative period provided therefor, the Authority and the Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and as they thereafter become due, and the Authority and the Trustee, so long as any Bonds are outstanding, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Board under the Financing Agreement.

(B) In addition, if there is any default by the Board in the making of payments to the Authority or to the Trustee for the benefit of the Authority required under the Financing Agreement, as a result of the failure by the Board to impose sufficient fees, rates, rents or other charges, the Authority may, pursuant to Section 1230-j of the Act, petition for the appointment by any court having jurisdiction in any proper action of a receiver to administer on behalf of the Board, under the direction of said court, the affairs of the Board in order to achieve Revenues at least sufficient to make such payments, and by and with the approval of said court, to establish, fix and revise, from time to time, fees, rates, rents or other charges at least sufficient therefor.

Remedies Not Exclusive (Section 8.3)

(A) The remedies conferred upon or reserved to the Authority in respect of any event of default are not intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Financing Agreement or now or hereafter existing at law or in equity or by statute.

(B) No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in the Financing Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

Force Majeure (Section 8.4)

Each party's performance under the Financing Agreement will be excused if the party is unable to perform because of Force Majeure. In the event of any such Force Majeure, the party unable to perform its obligations hereunder shall notify the other party within twenty-four (24) hours of the existence of such Force Majeure and shall be required to resume performance of its obligations under the Financing Agreement upon the termination of the aforementioned Force Majeure. During any such Force Majeure, the affected party shall continue to fulfill its obligations under the Financing Agreement on a best-efforts basis.

Termination (Section 9.1)

The Financing Agreement shall terminate, and the covenants and other obligations in the Financing Agreement shall be discharged and satisfied, when (1) payment of all indebtedness of the Authority has been made or provided for in accordance with the Resolution (or such other resolution, trust indenture or similar document securing such indebtedness) and (2) either all payments required under the Financing Agreement have been made in full, or provision for such payments satisfactory to the Authority has been made, or the City pays or assumes all liabilities, obligations, duties, rights and powers of the Authority under the Financing Agreement.

Amendments to Financing Agreement; Consents (Section 11.1)

(A) No amendment to the Financing Agreement shall be effective unless it is in writing, signed by each of the parties and, except for an amendment to Appendix A, consented to in writing by the Trustee.

(B) Except as hereinafter expressly provided, the parties may enter into any amendment, change or modification of the Financing Agreement, including without limitation amendments to Appendix A; provided, however, that except as provided in the Financing Agreement, the parties shall not enter into, or consent to, any amendment, change or modification of the provisions of the Financing Agreement, without first obtaining the consent of the Bondholders in accordance with the provisions of the Resolution, if such amendment, modification or change would materially adversely affect the rights of the Bondholders by modifying or revoking the provisions of the Financing Agreement with respect to: (1) the grant of Revenues to the Authority; (2) the application of the proceeds of Bonds to pay the Costs of Projects; (3) the deposit or application of the Revenues in the Local Water Fund; (4) the representations and warranties of the Board; (5) the consent to assignment by the Authority; (6) the covenants relating to the establishment and collection of rates and charges, appointment of the Consulting Engineer and the Rate Consultant, operation and maintenance, adoption of the Annual Budget, compliance with law, the Financing Agreement, the Acquisition Agreement and the Resolution, enforcement of rules and regulations, the obtaining of governmental approvals, maintenance of books, records and accounts, the creation of liens on or security interests in the Revenues or the System and further assurances; (7) the agreement of the State; (8) events of default and remedies; (9) termination; (10) the controlling effect of the Resolution and the Bonds; (11) severability of invalid provisions; or (12) governing law.

Amendments to Acquisition Agreement and the Operation Agreement; Consents (Section 11.2)

(A) The Board further covenants and agrees that it will not enter into nor consent to any amendment, change or modification of the Acquisition Agreement or Operation Agreement, without first obtaining the consent of the Bondholders in accordance with the provisions of the Resolution, if such amendment, modification or change would materially adversely affect the rights of the Bondholders by modifying or revoking the provisions of the Acquisition Agreement or the Operation Agreement with respect to: (1) the term of the Operation Agreement; (2) the right of the Board to restrict entry to or use of the System; (3) the payments by the Board relating to operation and maintenance of the System and construction of improvements thereto; (4) the right of the Board to the Revenues; (5) the obligation of the City to indemnify the Board and the Authority; (6) the obligation of the Board to operate and maintain the System; (7) the agreements of the Board as to care of the System; (8) compliance with applicable law, rules and regulations as to the use of the System; (9) billing and collection of rates and charges; (10) covenants as to the disposition of real and personal property constituting a portion of the System, encumbrances and further, assurances; (11) termination; or (12) severability of invalid provisions.

(B) The Board and the Authority agree to make amendments to the Financing Agreement, the Operation Agreement and the Acquisition Agreement which are required by any rating agency to obtain or maintain a rating on the Bonds. Notwithstanding anything in the Financing Agreement to the contrary, the consent of the Trustee or the Bondholders shall not be required for any such amendment.

Consent of Trustee (Section 11.3)

In consenting to any amendment referred to in the Financing Agreement, the Trustee shall be fully protected in relying on an opinion of Bond Counsel, satisfactory to the Trustee, that such amendment is authorized or permitted by the terms of the Financing Agreement.

Assignment (Section 12.2)

The Authority may, pursuant to the Resolution, pledge and assign to the Trustee certain of its rights and interests in and to the Financing Agreement, including, without limitation, its rights and interests in and to all amounts payable to the Authority under the Financing Agreement, as security for the payment of the principal of, premium, if any, and interest on the Bonds. The Board consents to such pledge and assignment and to the enforcement of such rights and interests by the Trustee.

SUMMARY OF THE OPERATION AGREEMENT

Revenues of the Board (Section 2.1)

All Revenues received by the Board shall belong to the Board, and shall be applied as provided in the Financing Agreement and the Resolution.

Substitution of Board for City (Section 2.2)

As provided in Section 1230-h (7) of the Act, where necessary or desirable and to the extent permitted by any State or Federal law, the City and the Board shall use their best efforts to substitute the Board for the City as the party in interest concerning any applications heretofore or hereafter filed or proceedings heretofore or hereafter commenced in relation to the System with the State Department of Environmental Conservation, the State Department of Health or any other agency of the State or with the United States Environmental Protection Agency or any other Federal agency or instrumentality. To the extent permitted by law, the City and the Board agree any such application or proceeding shall inure to and be for the benefit of the Board and shall be binding upon the Board to the same extent and in the same manner as if the Board had been a party to such application or proceeding from its inception, and the Board shall be deemed a party thereto. To the extent permitted by the approving or licensing party, all licenses, approvals, permits or decisions heretofore or hereafter issued or granted pursuant to or as a result of any such application or proceeding, shall inure to the benefit of and be binding upon the Board, and the same shall be assigned and transferred by the City to the Board to the extent such assignment and transfer is not prohibited by State or Federal law.

Contractor Indemnification (Section 2.5)

The Board shall cause all Persons, (public or private), however described, with whom it contracts to perform any of the duties assigned to or assumed by the Board for the operation, maintenance, repair and management of the System, to keep, save, defend and hold harmless the Board, the Authority and the City and its respective elected officials, members, officers, employees and agents from any and all liability, loss or damage (including attorneys' fees, court costs and expenses) arising from or in connection with any act done or omitted by such Persons and their employees, officers or agents in connection with the operation, maintenance, repair and management of the System under such contract(s), upon such terms and conditions as the Board may determine from time to time. The indemnification required may be accomplished through a policy of insurance, in such amounts, terms and conditions satisfactory to the Board. The Board shall require that any insurance or performance bonds provided by any such contractor shall also name the Board, the Authority and the City as additional insured parties.

Use of City Property (Section 2.6)

The City grants the Board the right, privilege and easement to maintain, operate, use, construct, reconstruct, repair, remove and/or replace any or all of the Board's Facilities that are now or may become part of the Board's System, and that are now or may in the future be located in, on, under or above any City property, including but not limited to, City streets, roads, rights-of-way, easement areas. The Board and the City shall cooperate with each other, and shall cause their respective contractors to cooperate with each other, in the planning and implementation of all public works and Projects, to the maximum extent possible so as to minimize or avoid disruption or interference with City and/or Board services to the public and to protect and preserve the property and or facilities of the City and the Board. By way of example and not as a limitation, the parties shall provide advance notice to each other, or cause their respective contractors to provide advance notice of any Construction that will result in the cutting, excavation or opening of any street, and the Person performing such Construction shall use best construction practices, as are generally acceptable to construction contractors, to maintain public safety, preserve and/or protect property from damage. Such Board's facilities include, but are not limited to, pipes, conduits, pumps, water and sewer lines, receivers, and catch basins. The City shall not charge or impose any fees on the Board or its contractors for the use of City property, including but not limited to curb-cuts, street closings or openings. If the exercise of the foregoing easement shall result in damage to the physical property of the City, the Board, upon the City's demand, shall cause such damaged property to be repaired and the City's property to be restored to substantially the condition existing immediately before such damage shall have been sustained. In the event the City repairs, restores, replaces or otherwise improves any City property where Board Facilities are located, the Board will not be responsible or liable

for the cost of any such repairs, restoration, replacement or improvement, unless the Board elects to repair, restore, replace or otherwise improve such Board Facilities and such work affects City property. In such event, the Board's costs with respect to such City property shall be limited to the cost of restoration thereof to substantially the condition of such City property prior to commencement of such work.

The Board to Operate and Maintain the System (Section 3.1)

(A) By virtue of the Operation Agreement and pursuant to the terms of the Financing Agreement, the Board shall manage, operate, maintain and repair the System.

(B) Pursuant to the Operation Agreement and the Act, the City agrees that the Board shall be entitled to advise and consult with the City and appropriate officers and employees thereof, in all substantially material decisions affecting the operation and management of the System. Such decisions shall include, but are not necessarily limited to, capital planning for the City and the Board, and the preparation, development and formulation of an annual budget of the City with respect to services to be provided by the City to the Board pursuant to the Operation Agreement. The Board and the City shall provide to each other copies of reports, budgets, studies that relate to the System as they become available, are requested by the other party and are not classified as confidential.

(C) Except as provided in the Operation Agreement, and subject to the limitations contained in the Operation Agreement, the Board shall, within the limits of funding provided by the Board and the Authority, manage, administer, operate and maintain the System in good and safe order and condition and make all repairs that are appropriate or necessary in connection therewith in accordance with Industry Standards. As used in this section, "maintain" and "repair" shall include all necessary repairs, replacements, renewals, alterations and additions, whether structural, non-structural, ordinary or extraordinary and "administer" shall include, without limitation, the enforcement of regulations of the Board relating to the use of the System, and "operate" shall include, without limitation, the engagement of employees, including City employees, and engagement of independent contractors for the fulfillment of the Board's duties and obligations with respect to the System. Except as specifically provided in or pursuant to the Operation Agreement, nothing contained in this section shall be construed to impose any obligation or liability upon the City for the administration, operation, maintenance and repair of the System.

(D) In the event the City determines any deficiency in the Board's management, operation, maintenance or repair of the System, or in the performance of the Operation Agreement, the City, the Authority and the Board shall proceed as follows:

(1) The City shall first deliver a written notice to the Board and to the Authority, stating with specificity, the basis for such deficiency, including written reports, correspondence and/or resolutions of the City Council.

(2) If the Board concurs that such a deficiency exists, it shall advise the City and the Authority in writing, not more than ten (10) days after receipt of such notice, as to how and when it will correct or remedy such deficiency and undertake such corrective or remedial action as soon as practicable.

(3) If the Board does not concur with the City that such a deficiency exists, it shall so advise the City and the Authority in writing, not more than ten (10) days after receipt of such notice, and provide a reasoned elaboration in support of its position. After receipt of the Board's written response, if the City does not accept the Board's position or if the Board fails to perform any corrective and/or remedial action with respect to such notice of deficiency, the City may petition the Authority for a determination as to whether an "event of default" has occurred under Article 8 of the Financing Agreement. The Authority's determination as to whether an event of default has occurred shall be final and binding upon the City and the Board.

(E) The Board shall, within the limits of funding provided by the Authority, the City or from any governmental grants or other sources, and in accordance with the provisions of the Operation Agreement, undertake and complete such improvements to the System, including but not limited to capital improvements, replacements, renewals, alterations, increases, enlargements, extensions and additions, whether structural, non-structural, ordinary or extraordinary, and such planning, studies, designs and surveys as are necessary or appropriate to effect such

improvements and Projects recommended by the Consulting Engineer to be necessary and appropriate to preserve and keep the System in good working and safe order and condition. Any such improvements so undertaken by the Board pursuant to funding: (i) if provided by the Authority, shall be owned by the Board, and (ii) if provided by the City or any other Person, may be conveyed to the Board, and in either case by lease or other conveyance upon such terms as the Board, the City, the Authority or such Person may agree.

(F) Subject to the requirements of the Financing Agreement, nothing contained in the Operation Agreement or in the Financing Agreement shall be construed as preventing the Board from undertaking, to the extent permitted by law, improvements to the System (including the acquisition of equipment therefor) on its own initiative from Revenues available to the Board pursuant to Section 1230-j, or from funds other than the proceeds of obligations issued by the City or the Authority to finance same. In addition, the Board may, with the concurrence of the City, undertake other improvements that are financed either out of proceeds of obligations issued by the City to finance same, or from other funds of the City available therefor. Notwithstanding any other provision in the Operation Agreement, the City will not issue any bonds or other indebtedness attributable to the System, or incur any debt to be repaid by the Board or the Authority, without the express written consent of the Board and the Authority, by resolution adopted by the Board and the Authority.

(G) The City shall not make any improvements or otherwise modify, change, expand, upgrade, repair or alter the System or any part thereof, without the prior written approval of the Board. Such approval shall be at the sole discretion of the Board, and upon terms and conditions acceptable to the Board.

Agreement as to System (Section 3.2)

The Board shall not commit nor suffer, and the Board shall use all reasonable care, within the funding provided by or to the Board, to prevent, waste, damage or injury to the System.

Compliance With Regulations (Section 3.3)

The System shall be used, managed, operated and maintained in accordance with all applicable laws, including the applicable rules and regulations of the Board. The Board shall exercise its powers pursuant to the laws of the United States, the State, local law, and its rules and regulations, to administer, operate, maintain and regulate the use of the System. Notwithstanding any other provision in the Operation Agreement or in the Financing Agreement, no permit, license or similar approval from the City, nor any fee, bond or insurance otherwise required by the City shall be required of the Board to manage, operate, maintain, repair or improve the System or any part thereof in furtherance of the public purpose of the Board and the Authority or the Board's performance of the Operation Agreement. The City shall not impose or require any fee, charge or other imposition of any independent contractor of the Authority or the Board in the award or performance of any contract, or otherwise.

Establishment of Rules and Regulations (Section 3.4)

The Board shall establish and promulgate rules and regulations for the administration, management, use and operation of the System and shall be entitled to enforce such rules and regulations, in accordance with the Act, with respect to all Users of the System. The City shall not establish or enforce any ordinance, local law or regulation in contravention of the Board's rules and regulations as provided in the Operation Agreement or in the Act.

Force Majeure (Section 3.5)

Each party's performance under the Operation Agreement will be excused if the party is unable to perform because of Force Majeure. In the event of any such Force Majeure, the party unable to perform its obligations under the Operation Agreement shall notify the other party within twenty-four (24) hours of the existence of such Force Majeure and shall be required to resume performance of its obligations under the Operation Agreement upon the termination of the aforementioned Force Majeure. During any such Force Majeure, the affected party shall continue to fulfill its obligations under the Operation Agreement on a best-efforts basis.

Capital Costs Incurred by Board (Section 4.1)

The Board may incur Costs for the Construction, effectuation and financing of Projects in accordance with a written five-year Capital Improvement Plan mutually agreed to by the Authority and the Board. The initial Capital Improvement Plan shall be established within one hundred twenty (120) days after the Acquisition Date and shall be revised annually, or as necessary or appropriate, thereafter in conjunction with the Annual Budget. The Board shall provide a copy of such Capital Improvement Plan to the City and the Authority.

Property Acquisition (Section 4.2)

Nothing contained in the Operation Agreement shall limit the City's right and power of eminent domain and condemnation, except that the City will not condemn any Property owned or leased by the Board, or in which the Board holds legal or equitable interest, or otherwise take any action that may be materially adverse to the Board or the Bondholders. The Board shall acquire all Property or any interest therein necessary or useful for the Construction or effectuation of a Project, and if the Board so acquires any such Property by eminent domain or condemnation, it shall take title to such property (or interest therein, as the case may be) in its own name.

Billing and Collection (Section 5.1)

(A) Subject to the terms of the Operation Agreement, for a period of not less than five (5) years from the Acquisition Date, the Board hires, retains and employs the City, and the City agrees, to render billing services for the Board, including but not limited to, notification to Users of the System of the Water Charges levied by the Board, collection thereof, and maintenance of the books, records and accounts of such billing and collection; provided, however, that the Board reserves to itself the power to (1) resolve billing disputes and other disputes regarding the levy of Water Charges not resolved at the administrative level and (2) delegate all or a portion of such powers to the City.

(B) The Board will take all actions necessary to adopt and implement (1) Water Charges for the System in conformance with Section 1230-j of the Authority Act and (2) a procedure for the discontinuance of water service in conformance with the provisions of Section 1230-j(2) of the Authority Act. The City and the Board shall, in cooperation with each other, develop and implement a plan for the effective management and enforcement of all collections of Water Charges, including, but not limited to, timely notices of arrears to Users and actual shut-off of services to Users who are delinquent in the payment of their Water Charges or otherwise violate the regulations of the Board.

(C) The City shall promptly implement a billing and collection program for all Board Water Charges in accordance with a schedule and scope of services to be established by the Board, in consultation with the Rate Consultant. Pending the establishment of such program, the City shall bill and collect Water Charges as it has historically done so prior to the Acquisition Date. The City shall deposit all Water Charge collections in the Board's Local Water Fund within two (2) business days of receipt thereof. Subject to the Operation Agreement, the City shall incur all costs and expenses, including but not limited to City employee compensation, postage, handling, computer hardware and software, etc. to perform such billing and collection services. The City acknowledges that a goal of the Board is to stabilize Water Charges to Users of the System, while maintaining adequate cash flow for the efficient operation, maintenance and repair of the System, together with capital improvements. The City acknowledges that all monies collected as Water Charges are the property of the Water Board. The City will use its best efforts to maintain an average annual collection rate for all Water Charges (including the collection of delinquent accounts as of the Acquisition Date) of not less than the average annual collection rate of the City during the ten (10) year fiscal period prior to the Acquisition Date. The City shall provide the Board with at least the following information: (i) current year percentage of collections of Water Charges in relation to current year billings of such Water Charges, (ii) total collections (including delinquent accounts) of Water Charges, as a percentage of current year billings of such Water Charges, and (iii) information, as requested by the Board, to provide a reasonable opportunity of due diligence, so that the Board will know the history of such billings and collections over the most recent five (5) years.

(D) The Board shall provide the City with timely meter readings, and other data for significant industrial users ("SIU's") and other Users to enable the City to bill Users of the System. The City shall provide the Board with monthly reports, not later than the fifteenth (15th) day of each month, that fully advises the Board of all bills for Water

Charges that have been issued and collected during the prior month, together with such other reports as the Board may request. The City shall provide the Board with such reports in a form and content as the Board may reasonably request. The City and the Board acknowledge that timely and accurate preparation and delivery of meter readings and related User information, and reports on bills and collections is essential to the operation and management of the System.

Levy of Water Charges (Section 5.2)

In accordance with Section 1230-j of the Act, the Board directs the City to levy the amount of any delinquent Water Charges levied by the Board or by the City against the Users liable therefor and authorizes the City to exercise all of its powers pursuant to the provisions of the laws of the State covering enforcement and collection of unpaid taxes of the City and to enforce and collect such Water Charges. The City and Board shall establish and amend, as appropriate, a schedule for pro rata application of collections that are received for less than payment in full in accordance with experience of the City with other tax jurisdictions and in accordance with all applicable laws.

Late Payments (Section 5.3)

All late payments of Water Charges shall be the property of the Board, and shall be collected by the City through any applicable remedy available under current law on behalf of the Board in accordance with procedures established pursuant to the Operation Agreement. The City shall advise the Board, in writing, no later than July 31 and January 31 of each year of Water Charges that it has collected during the prior six (6) month period that were delinquent and collected with general City tax collections. The City shall provide such reports in form and content as the Board may reasonably request.

Discontinuance of Billing Services (Section 5.4)

In the event that either the Board or the City determines in its sole discretion that the City discontinue providing such billing and collection services, the party making such determination and said party's desire to terminate such services under the Operation Agreement shall give written notice of such fact to the other party not less than two years prior to the date of the termination of such services. Notwithstanding the termination of billing services by the City pursuant to the Operation Agreement shall remain in full force and effect, and in such event the Board shall pay to the City the cost of services provided to the Board pursuant to Section 1230-j of the Act.

Other City Services (Section 5.5)

In addition to the services provided by the City pursuant to the Operation Agreement, the City shall also provide the Board with general overhead, support services and facilities, as the Board determines necessary and appropriate to perform its duties and obligations, including but not limited to, use of City officers, employees, agents and contractors for payroll, personnel, auditing, accounting, purchasing, legal and other administrative matters and the use of the City's facilities for meetings and other administrative functions.

Discontinuance of Other City Services (Section 5.6)

In the event that either the Board or the City, in its sole discretion, determines that the City discontinue providing any services described in the Operation Agreement, the party making such determination and said party's desire to terminate such services the Operation Agreement shall give written notice of such fact to the other party not less than one (1) year prior to the date of the termination of such services. In the event any such services are terminated by either party, the Board will only be responsible to pay for those services actually requested by the Board in writing and actually performed by the City.

Payments by the Board (Section 6.1)

(A) As consideration for (1) the performance by the City of its obligations and agreements set forth in the Operation Agreement, and (2) the City's provision to the Board with general overhead and support services and facilities, including the services of the City's officers and employees for billing, personnel, collection, auditing, purchasing, legal and other administrative matters, the use of City's facilities for meetings and other administrative

functions, the Board agrees, pursuant to the Act, including but not limited to Section 1230-j thereof, and otherwise as permitted by law, to make the payments to the City described in subsection (B) below.

(B) Subject to the statutory lien created by Section 1230-j(6) of the Authority Act, to the Operation Agreement and to the provisions of the Financing Agreement, the Board shall make the following payments to the City:

(1) all expenses requested by the Board and incurred by the City for services described in the Operation Agreement, including, but not limited to, salaries, wages and fringe benefits of City employees, direct expenses without any markup or additions and costs of independent contractors engaged by the City, where such independent contracts are approved in advance by the Board. The categories of such expenses for such City services during the first year of the Operation Agreement and the estimated costs for the first year of such services shall be set forth in a certificate to be delivered by the City to the Board on the Acquisition Date;

(2) the amount of any judgment or claim paid by the City (and not otherwise reimbursed) arising out of a tort claim that relates to the Board's management, operation, maintenance or repair of the System, where such claim was for events or action occurring after the Acquisition Date and the cost of such judgment or claim against the City is not paid directly to such claimant by the Board;

(3) an amount sufficient to reimburse the City for Construction Costs incurred by the City that are (i) related to the System, and (ii) approved, in writing, in advance by the Board and the Authority, including but not limited to, the Board's share of City street and right of way improvement costs wherein Board Facilities are replaced, repaired or otherwise improved as certified by the City to the Board.

(4) Subject to the provisions of payment as set forth in the Operation Agreement, a payment in lieu of taxes ("PILOT payment") will be due and payable by the Board to the City each year beginning in 2008. The Base PILOT payment shall be \$700,000. The Actual PILOT payment amount to be paid by the Board to the City for the years 2008 through 2012 shall be determined in the following manner:

No later than July 30, 2007, the Board shall provide the City with a summary of annual metered water consumption by all water Users for the prior four-year period of 2003 through 2006. If the total water consumption for the last two years of this period (2005 and 2006) exceeds the total annual water consumption for the first two years of this period (2003 and 2004), consumption will be deemed to have increased and the Base PILOT payment to the City will be increased to an Actual PILOT payment which shall be a fixed amount for each year of the next five years (2008 through 2012) in accordance with the formula presented below:

$$\text{Base PILOT payment} \times \frac{\text{total annual water consumption for 2005 and 2006}}{\text{water consumption for 2003 and 2004}} = \text{Actual PILOT Payment}$$

In the event that the total annual water consumption for 2005 and 2006 is equal to or less than the total annual water consumption for 2003 and 2004, consumption will have deemed to have stayed the same or decreased and the PILOT payment to the City will remain the same at the Base PILOT payment of \$700,000 for each year of the next five years (2008 through 2012).

Adjustments to the PILOT payment in 2013 and subsequent years will be determined every five years in a similar manner.

No later than July 30, 2012 and every five years thereafter, the Board shall provide the City with a summary of annual metered water consumption by all water Users for the prior five-year period. If the total water consumption for the last two and one-half years of this five-year period exceeds the total annual water consumption for the first two and one-half years of this same period, consumption will be deemed to have increased and the Actual PILOT payment to the City will be increased to a new fixed amount for each year of the next five years in accordance with the formula presented below:

Previous Actual PILOT payment X total annual water consumption for the last 2.5 years divided by the total annual water consumption for the first 2.5 years of the period equals the New Actual PILOT payment

In the event that the total annual water consumption for the last two and one-half years of any five-year period is equal to or less than the total annual water consumption for the first two and one-half years of the five-year period, consumption will have deemed to have stayed the same or decreased and the Actual PILOT payment to the City will remain the same for the next five years at the amount set for the previous period.

(C) The Board and the City acknowledge that the receipt of the PILOT payment is important to the City, and the City anticipates receiving the PILOT payment from the Board each Fiscal Year beginning in 2008 in the amount determined by the formula set forth in the Operation Agreement. The Board will include the PILOT payment in its Annual Budget each Fiscal Year and will establish its Water Charges such that the Board can pay the City the full amount of the PILOT payment and still achieve the required debt service coverage and make other deposits as required. If an event or series of events (an "Event") occurs during a Fiscal Year that could not have been reasonably foreseen by the Board, wherein the Board does not have sufficient funds to pay part or all of the PILOT payment to the City, the Board will take the following actions: (1) the Board will notify the City within ten (10) calendar days of such Event stating the nature of the Event and the estimated impacts on the Board's Annual Budget; (2) the Board will pay the City as much of the scheduled PILOT payment as it can reasonably afford within the Fiscal Year in which such Event occurs; (3) to the extent practical, the Board will amend its Annual Budget and Water Charges for the Fiscal Year in which an Event occurs to minimize or eliminate any difference between the Board's budgeted and actual PILOT payments to the City in the fiscal year (the "shortfall"); (4) the Board will pay the City any shortfall amount within the first one hundred eighty (180) calendar days of the Fiscal Year following the Event, plus interest on the shortfall amount with interest computed based on the City's cost of borrowing for the actual period of time regardless of whether or not the City actually borrowed funds during such period; and (5) the Board will include in its Annual Budget and Water Charges for the year following an Event sufficient funds to pay the PILOT payment for such year. Notwithstanding any other provision in the Operation Agreement, the Board may prepay all or any portion of the PILOT payment to the City, as it deems appropriate, and in its sole discretion.

Method of Payment (Section 6.2)

(A) Amounts payable shall be paid as follows:

(1) No later than five (5) business days after passage of the City's Budget for the ensuing Fiscal Year, the City, acting by its Budget Director or such other person as the City shall designate, shall certify to the Board, with regard to such Fiscal Year, the amount, as included in the City's Budget, which the City reasonably anticipates it will expend in connection with each of the costs in the ensuing Fiscal Year. Such certification shall also include an approximate monthly breakdown of expenses to be incurred in such Fiscal Year and an estimated schedule of payments to be made by the Board to the City consistent therewith.

(2) Prior to making payments pursuant to paragraph (B)(1) above, the Board shall have received, together with the certifications described in paragraph (1) above, a certificate of the Consulting Engineer or the Rate Consultant, in such form and with such exhibits as may be agreed upon by the City and the Board, to the effect that such amounts certified by the City for costs to be incurred in connection with paragraph (B)(1) are reasonable and appropriate.

(3) The Board shall commence payment of amounts in respect of expenses certified by the City pursuant to section (2) above upon receipt of a written request therefor delivered by the City.

(4) The Board shall commence payment of amounts in respect of Construction Costs certified by the City pursuant to paragraph (B)(3) upon receipt of a written request therefor delivered by the City.

(5) In the event that in any Fiscal Year, the City determines that its prior estimate of amounts it reasonably anticipates it will incur within such Fiscal Year in connection with each of the costs described in Section 6.1(B)(1), was incorrect, it shall deliver to the Board a supplemental certificate stating its new estimate of all such

costs and evidence that such increased or decreased costs have been reflected in the City's Budget for such Fiscal Year by amendment or otherwise. In connection with the delivery of the certificate described in this paragraph, the City shall also deliver to the Board a certificate described in section (A)(2) above. The City and the Board shall reconcile actual and estimated costs and payments each year, as soon as practicable, after the audit of the accounts and records of the Board and the City, respectively. The City or the Board shall pay any amount due to the other under the Operation Agreement, after a reconciliation of accounts, as the case may be, within thirty (30) days of receipt of such reconciliation statement.

Procedures for Determining Operation Payments for Fiscal Year 2003 (Section 7.1)

Notwithstanding any other provisions herein:

(A) For Fiscal Year 2003, the actions to be taken pursuant to the Operation Agreement shall be taken as follows: the certification required pursuant to the Operation Agreement shall be made not later than the Acquisition Date and the certification of the Consulting Engineer or Rate Consultant described in the Operation Agreement shall not be required for Fiscal Year 2003.

(B) When an action required to be taken under the Operation Agreement cannot be timely performed during Fiscal Year 2003 because the specified time for such action is (1) prior to the Acquisition Date or (2) so soon after the Acquisition Date that the action could be timely taken only with extreme hardship to the City or the Board, then such action shall be deemed timely taken for purposes of this Operation Agreement if taken as soon as practicable after the Acquisition Date.

(C) For Fiscal Year 2003, the Board will pay *pro rata* the amounts the City has set forth in its annual budget for Fiscal Year 2003 with respect to the services described in Article V attributable to the System.

Officers and Employees (Section 8.1)

As of the Acquisition Date, in accordance with all applicable laws, the Board shall employ such officers and employees as may be required by the Board to manage, operate and maintain the System and to perform the Operation Agreement.

Disposition of Property (Section 9.1)

(A) Other than Permitted Encumbrances, the Board will not sell, lease, sublease, assign, transfer, encumber or otherwise dispose of all or any part of the System, or any Property which may be acquired by the Board that it acquired from the City, or its interest in the Operation Agreement, without the prior written approval of the Authority and the City, which approval shall not be unreasonably denied, withheld or delayed. The Board shall provide the City with a written notice of its intention to sell, lease, sublease, transfer, encumber, or otherwise dispose of any such Property. Such notice shall include a full description of such Property, together with the terms and price, if any, of such disposition. The City may elect to acquire such Property upon the same terms and price in such notice, or if after sixty (60) days the City fails to respond to such notice, the City shall be deemed to have granted its consent thereto, and forever waived any future right to such Property. The Board will not be required to obtain any consent from the City with respect to any Property it acquires from Persons other than the City, prior to any sale, lease, sublease, assignment, transfer, encumbrance or disposition thereof. The Board shall not approve any sale, lease, sublease, assignment, transfer, encumbrance or other disposition of all or any part of the System or any Property, or its interest in the Operation Agreement without first obtaining a certificate of the Consulting Engineer that such sale, lease, sublease, assignment, transfer, encumbrance or other disposition will not materially adversely affect the System or the Revenues of the Board. The proceeds from any such disposition shall constitute Revenues which shall be deposited by the Board in the Local Water Fund as promptly as practicable after receipt thereof by the Board.

(B) The Board, without the prior written consent of the City, may grant Permitted Encumbrances of or on the System which, in the reasonable judgment of the Board, do not interfere with the operation and maintenance of the System and the collection of the Revenues.

Encumbrances (Section 9.2)

Other than pursuant to Permitted Encumbrances, the Board may not authorize any use of, or grant any lien, encumbrance, security interest, license, easement or right-of-way affecting, the System without the prior written approval of the Authority.

Covenant of City as to Rates and Charges (Section 9.3)

The City covenants that, upon the issuance of the Bonds by the Authority, the City will not thereafter levy fees, rents and other Charges (except for delinquent Charges) on any Users with respect to the System until all Bonds are paid or such Bonds are otherwise defeased in accordance with the terms of the Resolution.

Reconveyance (Section 10.2)

The City may require the Board to, and the Board shall, notwithstanding any provision contained in the Operation Agreement to the contrary, reconvey the System to the City upon ninety (90) days written notice to the Board and the Authority; provided, however, no such reconveyance shall take effect unless and until (a) the date of which all Bonds are paid in full or provision therefor shall have been made in accordance with the Resolution, trust indenture or other instrument under which they were issued and (b) the City shall have paid or assumed all other liabilities and obligations of the Board and the Authority.

Governing Law (Section 10.10)

The Operating Agreement shall be governed by and construed in accordance with the Constitution and the laws of the State.

SUMMARY OF THE ACQUISITION AGREEMENT

Sale of Certain Premises (Section 1.01)

Pursuant to the terms of the Acquisition Agreement, the City sold to the Board, and the Board purchased from the City all right, title and interest of the City in certain assets that formed the entirety of the City's waste, wastewater and stormwater facilities and properties comprising the System.

Purchase Price (Section 2.01)

The aggregate purchase price paid by the Board to the City for the assets comprising the System was paid to the City or applied as follows:

(A) The Board paid the City the sum of Four Million Dollars (\$4,000,000), together with funds in an amount sufficient for the City to defease, refund or otherwise eliminate the outstanding debt of the City that relates to the System. Included within such funds were the amounts necessary to effect an exchange of outstanding City debt for Authority debt in connection with loans provided by the New York State Environmental Facilities Corporation; and

(B) The Board paid the City an amount equal to the cash payments made by the City from sources other than the City's Water Enterprise Fund and the Sewer Enterprise Fund to pay the debt service or expenses of the System (excluding any stormwater-related costs) in 2002 and in 2003 through the closing date.

Indemnification (Section 5.05)

(A) The City expressly acknowledges and agrees that it will reimburse, defend, indemnify and hold the Authority and the Board and their respective officers, members, agents, servants and employees harmless from and against any and all liabilities, claims, or damages (including reasonable attorneys fees and litigation expenses), which may now or in the future, be undertaken, suffered, paid, awarded, assessed, or otherwise incurred as a result of any

misrepresentation or breach of any warranty contained the Acquisition Agreement, or as a result of any contamination or release of Hazardous Materials existing on, above or under the Property and/or Additional Property, at the time of the Closing.

(B) The foregoing indemnity shall survive the closing and shall be for the exclusive benefit of the Authority and the Board and their respective officers, members, agents, servants and employees and shall not be for the benefit of any subsequent purchaser of the System assets or any other party.

Conditions (Section 5.06)

The right to indemnification of the Authority and the Board and their respective members, officers, employees and agents by the City is expressly subject to satisfaction of the following conditions:

(A) The Authority and the Board shall promptly forward to the City's Corporation Counsel all notices of a claim under the Acquisition Agreement and all summonses or notices pertaining to claims received or served upon the Authority or the Board and their members, officers, employees or agents, together with a written request for indemnification pursuant to the Acquisition Agreement;

(B) The Authority and/or the Board and their respective members, officers and employees shall cooperate in aiding the City to investigate, adjust, settle or defend each claim, action or proceeding; and

(C) The defense of all claims, actions and proceedings shall be conducted by, or under the supervision of, the City. Unless the City shall determine otherwise, the Corporation Counsel of the City shall be the attorney of record on behalf of the Authority and the Board and their respective members, officers, employees or agents, in all actions and proceedings for which indemnification is requested by the Authority and the Board.

(4) Subject to the provisions of payment as set forth in the Operation Agreement, a payment in lieu of taxes (“PILOT payment”) will be due and payable by the Board to the City each year beginning in 2008. The Base PILOT payment shall be \$700,000. The Actual PILOT payment amount to be paid by the Board to the City for the years 2008 through 2012 shall be determined in the following manner:

No later than July 30, 2007, the Board shall provide the City with a summary of annual metered water consumption by all water Users for the prior four-year period of 2003 through 2006. If the total water consumption for the last two years of this period (2005 and 2006) exceeds the total annual water consumption for the first two years of this period (2003 and 2004), consumption will be deemed to have increased and the Base PILOT payment to the City will be increased to an Actual PILOT payment which shall be a fixed amount for each year of the next five years (2008 through 2012) in accordance with the formula presented below:

$$\text{Base PILOT payment} \times \frac{\text{total annual water consumption for 2005 and 2006}}{\text{total annual water consumption for 2003 and 2004}} = \text{Actual PILOT Payment}$$

In the event that the total annual water consumption for 2005 and 2006 is equal to or less than the total annual water consumption for 2003 and 2004, consumption will have deemed to have stayed the same or decreased and the PILOT payment to the City will remain the same at the Base PILOT payment of \$700,000 for each year of the next five years (2008 through 2012).

Adjustments to the PILOT payment in 2013 and subsequent years will be determined every five years in a similar manner.

No later than July 30, 2012 and every five years thereafter, the Board shall provide the City with a summary of annual metered water consumption by all water Users for the prior five-year period. If the total water consumption for the last two and one-half years of this five-year period exceeds the total annual water consumption for the first two and one-half years of this same period, consumption will be deemed to have increased and the Actual PILOT payment to the City will be increased to a new fixed amount for each year of the next five years in accordance with the formula presented below:

$$\text{Previous Actual PILOT payment} \times \frac{\text{total annual water consumption for the last 2.5 years}}{\text{total annual water consumption for the first 2.5 years of the period}} = \text{New Actual PILOT payment}$$

In the event that the total annual water consumption for the last two and one-half years of any five-year period is equal to or less than the total annual water consumption for the first two and one-half years of the five-year period, consumption will have deemed to have stayed the same or decreased and the Actual PILOT payment to the City will remain the same for the next five years at the amount set for the previous period.

(C) The Board and the City acknowledge that the receipt of the PILOT payment is important to the City, and the City anticipates receiving the PILOT payment from the Board each Fiscal Year beginning in 2008 in the amount determined by the formula set forth in the Operation Agreement. The Board will include the PILOT payment in its Annual Budget each Fiscal Year and will establish its Water Charges such that the Board can pay the City the full amount of the PILOT payment and still achieve the required debt service coverage and make other deposits as required. If an event or series of events (an “Event”) occurs during a Fiscal Year that could not have been reasonably foreseen by the Board, wherein the Board does not have sufficient funds to pay part or all of the PILOT payment to the City, the Board will take the following actions: (1) the Board will notify the City within ten (10) calendar days of such Event stating the nature of the Event and the estimated impacts on the Board’s Annual Budget; (2) the Board will pay the City as much of the scheduled PILOT payment as it can reasonably afford within the Fiscal Year in which such Event occurs; (3) to the extent practical, the Board will amend its Annual Budget and Water Charges for the Fiscal Year in which an Event occurs to minimize or eliminate any difference between the Board’s budgeted and actual PILOT payments to the City in the fiscal year (the “shortfall”); (4) the Board will pay the City any shortfall amount within the first one hundred eighty (180) calendar days of the Fiscal Year following the Event, plus interest on the shortfall amount with interest computed based on the City’s cost of borrowing for the actual period of time regardless of whether or not the City actually borrowed funds during such period; and (5) the Board will include in its

Annual Budget and Water Charges for the year following an Event sufficient funds to pay the PILOT payment for such year. Notwithstanding any other provision in the Operation Agreement, the Board may prepay all or any portion of the PILOT payment to the City, as it deems appropriate, and in its sole discretion.

Method of Payment (Section 6.2)

(A) Amounts payable shall be paid as follows:

(1) No later than five (5) business days after passage of the City's Budget for the ensuing Fiscal Year, the City, acting by its Budget Director or such other person as the City shall designate, shall certify to the Board, with regard to such Fiscal Year, the amount, as included in the City's Budget, which the City reasonably anticipates it will expend in connection with each of the costs in the ensuing Fiscal Year. Such certification shall also include an approximate monthly breakdown of expenses to be incurred in such Fiscal Year and an estimated schedule of payments to be made by the Board to the City consistent therewith.

(2) Prior to making payments pursuant to paragraph (B)(1) above, the Board shall have received, together with the certifications described in paragraph (1) above, a certificate of the Consulting Engineer or the Rate Consultant, in such form and with such exhibits as may be agreed upon by the City and the Board, to the effect that such amounts certified by the City for costs to be incurred in connection with paragraph (B)(1) are reasonable and appropriate.

(3) The Board shall commence payment of amounts in respect of expenses certified by the City pursuant to section (2) above upon receipt of a written request therefor delivered by the City.

(4) The Board shall commence payment of amounts in respect of Construction Costs certified by the City pursuant to paragraph (B)(3) upon receipt of a written request therefor delivered by the City.

(5) In the event that in any Fiscal Year, the City determines that its prior estimate of amounts it reasonably anticipates it will incur within such Fiscal Year in connection with each of the costs described in Section 6.1(B)(1), was incorrect, it shall deliver to the Board a supplemental certificate stating its new estimate of all such costs and evidence that such increased or decreased costs have been reflected in the City's Budget for such Fiscal Year by amendment or otherwise. In connection with the delivery of the certificate described in this paragraph, the City shall also deliver to the Board a certificate described in section (A)(2) above. The City and the Board shall reconcile actual and estimated costs and payments each year, as soon as practicable, after the audit of the accounts and records of the Board and the City, respectively. The City or the Board shall pay any amount due to the other under the Operation Agreement, after a reconciliation of accounts, as the case may be, within thirty (30) days of receipt of such reconciliation statement.

Procedures for Determining Operation Payments for Fiscal Year 2003 (Section 7.1)

Notwithstanding any other provisions herein:

(A) For Fiscal Year 2003, the actions to be taken pursuant to the Operation Agreement shall be taken as follows: the certification required pursuant to the Operation Agreement shall be made not later than the Acquisition Date and the certification of the Consulting Engineer or Rate Consultant described in the Operation Agreement shall not be required for Fiscal Year 2003.

(B) When an action required to be taken under the Operation Agreement cannot be timely performed during Fiscal Year 2003 because the specified time for such action is (1) prior to the Acquisition Date or (2) so soon after the Acquisition Date that the action could be timely taken only with extreme hardship to the City or the Board, then such action shall be deemed timely taken for purposes of this Operation Agreement if taken as soon as practicable after the Acquisition Date.

(C) For Fiscal Year 2003, the Board will pay *pro rata* the amounts the City has set forth in its annual budget for Fiscal Year 2003 with respect to the services described in Article V attributable to the System.

Officers and Employees (Section 8.1)

As of the Acquisition Date, in accordance with all applicable laws, the Board shall employ such officers and employees as may be required by the Board to manage, operate and maintain the System and to perform the Operation Agreement.

Disposition of Property (Section 9.1)

(A) Other than Permitted Encumbrances, the Board will not sell, lease, sublease, assign, transfer, encumber or otherwise dispose of all or any part of the System, or any Property which may be acquired by the Board that it acquired from the City, or its interest in the Operation Agreement, without the prior written approval of the Authority and the City, which approval shall not be unreasonably denied, withheld or delayed. The Board shall provide the City with a written notice of its intention to sell, lease, sublease, transfer, encumber, or otherwise dispose of any such Property. Such notice shall include a full description of such Property, together with the terms and price, if any, of such disposition. The City may elect to acquire such Property upon the same terms and price in such notice, or if after sixty (60) days the City fails to respond to such notice, the City shall be deemed to have granted its consent thereto, and forever waived any future right to such Property. The Board will not be required to obtain any consent from the City with respect to any Property it acquires from Persons other than the City, prior to any sale, lease, sublease, assignment, transfer, encumbrance or disposition thereof. The Board shall not approve any sale, lease, sublease, assignment, transfer, encumbrance or other disposition of all or any part of the System or any Property, or its interest in the Operation Agreement without first obtaining a certificate of the Consulting Engineer that such sale, lease, sublease, assignment, transfer, encumbrance or other disposition will not materially adversely affect the System or the Revenues of the Board. The proceeds from any such disposition shall constitute Revenues which shall be deposited by the Board in the Local Water Fund as promptly as practicable after receipt thereof by the Board.

(B) The Board, without the prior written consent of the City, may grant Permitted Encumbrances of or on the System which, in the reasonable judgment of the Board, do not interfere with the operation and maintenance of the System and the collection of the Revenues.

Encumbrances (Section 9.2)

Other than pursuant to Permitted Encumbrances, the Board may not authorize any use of, or grant any lien, encumbrance, security interest, license, easement or right-of-way affecting, the System without the prior written approval of the Authority.

Covenant of City as to Rates and Charges (Section 9.3)

The City covenants that, upon the issuance of the Bonds by the Authority, the City will not thereafter levy fees, rents and other Charges (except for delinquent Charges) on any Users with respect to the System until all Bonds are paid or such Bonds are otherwise defeased in accordance with the terms of the Resolution.

Reconveyance (Section 10.2)

The City may require the Board to, and the Board shall, notwithstanding any provision contained in the Operation Agreement to the contrary, reconvey the System to the City upon ninety (90) days written notice to the Board and the Authority; provided, however, no such reconveyance shall take effect unless and until (a) the date of which all Bonds are paid in full or provision therefor shall have been made in accordance with the Resolution, trust indenture or other instrument under which they were issued and (b) the City shall have paid or assumed all other liabilities and obligations of the Board and the Authority.

Governing Law (Section 10.10)

The Operating Agreement shall be governed by and construed in accordance with the Constitution and the laws of the State.

SUMMARY OF THE ACQUISITION AGREEMENT

Sale of Certain Premises (Section 1.01)

Pursuant to the terms of the Acquisition Agreement, the City sold to the Board, and the Board purchased from the City all right, title and interest of the City in certain assets that formed the entirety of the City's waste, wastewater and stormwater facilities and properties comprising the System.

Purchase Price (Section 2.01)

The aggregate purchase price paid by the Board to the City for the assets comprising the System was paid to the City or applied as follows:

(A) The Board paid the City the sum of Four Million Dollars (\$4,000,000), together with funds in an amount sufficient for the City to defease, refund or otherwise eliminate the outstanding debt of the City that relates to the System. Included within such funds were the amounts necessary to effect an exchange of outstanding City debt for Authority debt in connection with loans provided by the New York State Environmental Facilities Corporation; and

(B) The Board paid the City an amount equal to the cash payments made by the City from sources other than the City's Water Enterprise Fund and the Sewer Enterprise Fund to pay the debt service or expenses of the System (excluding any stormwater-related costs) in 2002 and in 2003 through the closing date.

Indemnification (Section 5.05)

(A) The City expressly acknowledges and agrees that it will reimburse, defend, indemnify and hold the Authority and the Board and their respective officers, members, agents, servants and employees harmless from and against any and all liabilities, claims, or damages (including reasonable attorneys fees and litigation expenses), which may now or in the future, be undertaken, suffered, paid, awarded, assessed, or otherwise incurred as a result of any misrepresentation or breach of any warranty contained the Acquisition Agreement, or as a result of any contamination or release of Hazardous Materials existing on, above or under the Property and/or Additional Property, at the time of the Closing.

(B) The foregoing indemnity shall survive the closing and shall be for the exclusive benefit of the Authority and the Board and their respective officers, members, agents, servants and employees and shall not be for the benefit of any subsequent purchaser of the System assets or any other party.

Conditions (Section 5.06)

The right to indemnification of the Authority and the Board and their respective members, officers, employees and agents by the City is expressly subject to satisfaction of the following conditions:

(A) The Authority and the Board shall promptly forward to the City's Corporation Counsel all notices of a claim under the Acquisition Agreement and all summonses or notices pertaining to claims received or served upon the Authority or the Board and their members, officers, employees or agents, together with a written request for indemnification pursuant to the Acquisition Agreement;

(B) The Authority and/or the Board and their respective members, officers and employees shall cooperate in aiding the City to investigate, adjust, settle or defend each claim, action or proceeding; and

(C) The defense of all claims, actions and proceedings shall be conducted by, or under the supervision of, the City. Unless the City shall determine otherwise, the Corporation Counsel of the City shall be the attorney of record on behalf of the Authority and the Board and their respective members, officers, employees or agents, in all actions and proceedings for which indemnification is requested by the Authority and the Board.

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APPENDIX E

MUNICIPAL BOND INSURANCE AND SPECIMEN POLICY

BOND INSURANCE

BOND INSURANCE POLICY

Concurrently with the issuance of the Bonds, Build America Mutual Assurance Company (“BAM”) will issue its Municipal Bond Insurance Policy for the Bonds (the “Policy”). The Policy guarantees the scheduled payment of principal of and interest on the Bonds when due as set forth in the form of the Policy included as an exhibit to this Official Statement.

The Policy is not covered by any insurance security or guaranty fund established under New York, California, Connecticut or Florida insurance law.

BUILD AMERICA MUTUAL ASSURANCE COMPANY

BAM is a New York domiciled mutual insurance corporation and is licensed to conduct financial guaranty insurance business in all fifty states of the United States and the District of Columbia. BAM provides credit enhancement products solely to issuers in the U.S. public finance markets. BAM will only insure obligations of states, political subdivisions, integral parts of states or political subdivisions or entities otherwise eligible for the exclusion of income under section 115 of the U.S. Internal Revenue Code of 1986, as amended. No member of BAM is liable for the obligations of BAM. The address of the principal executive offices of BAM is: 200 Liberty Street, 27th Floor, New York, New York 10281, its telephone number is: 212-235-2500, and its website is located at: www.buildamerica.com.

BAM is licensed and subject to regulation as a financial guaranty insurance corporation under the laws of the State of New York and in particular Articles 41 and 69 of the New York Insurance Law.

BAM’s financial strength is rated “AA/Stable” by S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC (“S&P”). An explanation of the significance of the rating and current reports may be obtained from S&P at www.standardandpoors.com. The rating of BAM should be evaluated independently. The rating reflects the S&P’s current assessment of the creditworthiness of BAM and its ability to pay claims on its policies of insurance. The above rating is not a recommendation to buy, sell or hold the Bonds, and such rating is subject to revision or withdrawal at any time by S&P, including withdrawal initiated at the request of BAM in its sole discretion. Any downward revision or withdrawal of the above rating may have an adverse effect on the market price of the Bonds. BAM only guarantees scheduled principal and scheduled interest payments payable by the issuer of the Bonds on the date(s) when such amounts were initially scheduled to become due and payable (subject to and in accordance with the terms of the Policy), and BAM does not guarantee the market price or liquidity of the Bonds, nor does it guarantee that the rating on the Bonds will not be revised or withdrawn.

Capitalization of BAM

BAM’s total admitted assets, total liabilities, and total capital and surplus, as of December 31, 2021 and as prepared in accordance with statutory accounting practices prescribed or permitted by the New York State Department of Financial Services were \$481.5 million, \$183.4 million and \$298.1 million, respectively.

BAM is party to a first loss reinsurance treaty that provides first loss protection up to a maximum of 15% of the par amount outstanding for each policy issued by BAM, subject to certain limitations and restrictions.

BAM’s most recent Statutory Annual Statement, which has been filed with the New York State Insurance Department and posted on BAM’s website at www.buildamerica.com, is incorporated herein by reference and may be obtained, without charge, upon request to BAM at its address provided above (Attention: Finance Department). Future financial statements will similarly be made available when published.

BAM makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, BAM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or

completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding BAM, supplied by BAM and presented under the heading “BOND INSURANCE”.

Additional Information Available from BAM

Credit Insights Videos. For certain BAM-insured issues, BAM produces and posts a brief Credit Insights video that provides a discussion of the obligor and some of the key factors BAM’s analysts and credit committee considered when approving the credit for insurance. The Credit Insights videos are easily accessible on BAM's website at www.buildamerica.com/videos. (The preceding website address is provided for convenience of reference only. Information available at such address is not incorporated herein by reference.)

Credit Profiles. Prior to the pricing of bonds that BAM has been selected to insure, BAM may prepare a pre-sale Credit Profile for those bonds. These pre-sale Credit Profiles provide information about the sector designation (e.g. general obligation, sales tax); a preliminary summary of financial information and key ratios; and demographic and economic data relevant to the obligor, if available. Subsequent to closing, for any offering that includes bonds insured by BAM, any pre-sale Credit Profile will be updated and superseded by a final Credit Profile to include information about the gross par insured by CUSIP, maturity and coupon. BAM pre-sale and final Credit Profiles are easily accessible on BAM's website at www.buildamerica.com/credit-profiles. BAM will produce a Credit Profile for all bonds insured by BAM, whether or not a pre-sale Credit Profile has been prepared for such bonds. (The preceding website address is provided for convenience of reference only. Information available at such address is not incorporated herein by reference.)

Disclaimers. The Credit Profiles and the Credit Insights videos and the information contained therein are not recommendations to purchase, hold or sell securities or to make any investment decisions. Credit-related and other analyses and statements in the Credit Profiles and the Credit Insights videos are statements of opinion as of the date expressed, and BAM assumes no responsibility to update the content of such material. The Credit Profiles and Credit Insight videos are prepared by BAM; they have not been reviewed or approved by the issuer of or the underwriter for the Bonds, and the issuer and underwriter assume no responsibility for their content.

BAM receives compensation (an insurance premium) for the insurance that it is providing with respect to the Bonds. Neither BAM nor any affiliate of BAM has purchased, or committed to purchase, any of the Bonds, whether at the initial offering or otherwise.



MUNICIPAL BOND INSURANCE POLICY

ISSUER: [NAME OF ISSUER]

Policy No: _____

MEMBER: [NAME OF MEMBER]

BONDS: \$ _____ in aggregate principal
amount of [NAME OF TRANSACTION]
[and maturing on]

Effective Date: _____

Risk Premium: \$ _____
Member Surplus Contribution: \$ _____
Total Insurance Payment: \$ _____

BUILD AMERICA MUTUAL ASSURANCE COMPANY ("BAM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") for the Bonds named above (as set forth in the documentation providing for the issuance and securing of the Bonds), for the benefit of the Owners or, at the election of BAM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the first Business Day following the Business Day on which BAM shall have received Notice of Nonpayment, BAM will disburse (but without duplication in the case of duplicate claims for the same Nonpayment) to or for the benefit of each Owner of the Bonds, the face amount of principal of and interest on the Bonds that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by BAM, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of such principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in BAM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by BAM is incomplete, it shall be deemed not to have been received by BAM for purposes of the preceding sentence, and BAM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, any of whom may submit an amended Notice of Nonpayment. Upon disbursement under this Policy in respect of a Bond and to the extent of such payment, BAM shall become the owner of such Bond, any appurtenant coupon to such Bond and right to receipt of payment of principal of or interest on such Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under such Bond. Payment by BAM either to the Trustee or Paying Agent for the benefit of the Owners, or directly to the Owners, on account of any Nonpayment shall discharge the obligation of BAM under this Policy with respect to said Nonpayment.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent (as defined herein) are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless BAM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration) and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment made to an Owner by or on behalf of the Issuer of principal or interest that is Due for Payment, which payment has been recovered from such Owner pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means delivery to BAM of a notice of claim and certificate, by certified mail, email or teletype as set forth on the attached Schedule or other acceptable electronic delivery, in a form satisfactory to BAM, from and signed by an Owner, the Trustee or the Paying Agent, which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount, (d) payment instructions and (e) the date such claimed amount becomes or became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer, the Member or any other person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

BAM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee, the Paying Agent, the Member and the Issuer specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee, the Paying Agent, the Member or the Issuer (a) copies of all notices required to be delivered to BAM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to BAM and shall not be deemed received until received by both and (b) all payments required to be made by BAM under this Policy may be made directly by BAM or by the Insurer's Fiscal Agent on behalf of BAM. The Insurer's Fiscal Agent is the agent of BAM only, and the Insurer's Fiscal Agent shall in no event be liable to the Trustee, Paying Agent or any Owner for any act of the Insurer's Fiscal Agent or any failure of BAM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, BAM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to BAM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy. This Policy may not be canceled or revoked.

This Policy sets forth in full the undertaking of BAM and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. THIS POLICY IS ISSUED WITHOUT CONTINGENT MUTUAL LIABILITY FOR ASSESSMENT.

In witness whereof, BUILD AMERICA MUTUAL ASSURANCE COMPANY has caused this Policy to be executed on its behalf by its Authorized Officer.

BUILD AMERICA MUTUAL ASSURANCE COMPANY

By: _____
Authorized Officer

SPECIMEN

Notices (Unless Otherwise Specified by BAM)

Email:

claims@buildamerica.com

Address:

1 World Financial Center, 27th floor

200 Liberty Street

New York, New York 10281

Telecopy:

212-962-1524 (attention: Claims)

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