

**Moody's: 'MIG1'**  
**Fitch: 'F1+'**  
**(See "Ratings" herein)**

**New Issue-Book-Entry**

In the opinion of Phillips Lytle LLP, Bond Counsel to the Authority ("Bond Counsel"), under existing law and assuming continuous compliance by the Authority and the County with certain tax covenants described herein (i) interest on the Notes is not includible in gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code") and (ii) interest on the Notes is not a specific preference item under Section 57 of the Code for purposes of the alternative minimum tax imposed on individuals and corporations under the Code. However, such interest is included in calculating the foreign branch profits tax under certain circumstances and to the tax on "excess net passive income" imposed on S corporation. In addition, in the opinion of Bond Counsel, under existing statutes, interest on the Notes is exempt from personal income taxes of New York State and its political subdivisions, including The City of New York. For a further discussion and other tax aspects see "TAX MATTERS".

**ERIE COUNTY FISCAL STABILITY AUTHORITY**

**(A Public Benefit Corporation of the State of New York)**

**\$64,805,000**

**Bond Anticipation Notes, Series 2009B**

**Dated: Date of Delivery**

**Due: July 30, 2010**

**Interest Rate: 1.25% Priced to Yield 0.57%**

The Bond Anticipation Notes, Series 2009B (the "Series B Notes" or the "Notes") are being issued as Senior Notes pursuant to an Indenture, dated as of May 1, 2009, as amended and supplemented from time to time (the "Indenture"), including as supplemented by the Second Supplemental Indenture, dated as of October 1, 2009 (the "Second Supplemental Indenture") each by and between the Erie County Fiscal Stability Authority (the "Authority"), a corporate governmental agency and instrumentality of the State of New York (the "State") constituting a public benefit corporation created pursuant to the Erie County Fiscal Stability Authority Act, as amended (the "Act"), and Manufacturers and Traders Trust Company, Buffalo, New York, as trustee (the "Trustee").

Provided certain statutory and contractual conditions are met, other series of bonds or notes on a parity with or subordinate to the Notes may be issued by the Authority under the Indenture (all series of bonds or notes hereafter issued under the Indenture, including the Notes, are referred to hereinafter as the "Bonds"). See "SOURCES OF PAYMENT AND SECURITY FOR THE NOTES—Additional Notes and Bonds."

Pursuant to the Indenture and the Act, the Notes are payable from the Revenues of the Authority, which are primarily derived from (i) County Sales Tax Revenues, which consist of the County of Erie, New York's share of the sales and compensating use taxes imposed by and within the County of Erie (the "County") pursuant to authorization of the State (the "Local Sales Tax") and (ii) State Aid Revenues, which consist of any aid appropriated by the State as local government assistance for the benefit of the County ("State Aid") and required by the Act to be paid to the Authority. Neither the State nor the County is prohibited from amending, modifying, repealing or otherwise altering existing sales and compensating use taxes, subject, with respect to the County, to limitations set forth in the Act as more fully described herein. The Act provides that the County will have no right, title or interest in or to County Sales Tax Revenues or State Aid required to be paid to the Authority under the Act, except after payment of debt service on Authority obligations to the extent determined necessary by the Authority at its sole discretion, replenishment of reserves, if any, and payment of operating expenses of the Authority and then as provided in the Authority's agreements with the County. See "SOURCES OF PAYMENT AND SECURITY FOR THE NOTES."

The Notes are dated the date of their delivery and will bear interest from that date until maturity at the annual rate or rates as set forth on the cover page hereof payable on July 30, 2010. The Notes are not subject to redemption prior to maturity.

The Series B Notes will be issued in fully registered form, and when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York. DTC will act as securities depository for the Notes. Individual purchases may be made in book-entry form only, in the principal amount of \$5,000 or any integral multiple thereof. Purchasers will not receive certificates representing their ownership interest in the Notes. Payment of the principal of and interest on the Notes will be made to DTC by the Trustee, which will in turn remit such principal and interest to its participants for subsequent disbursement to the beneficial owners of the Notes as described herein. See "THE NOTES—Book-Entry Only System".

**THE NOTES ARE PAYABLE SOLELY FROM AND SECURED BY A LIEN ON THE REVENUES OF THE AUTHORITY AND RELATED ACCOUNTS HELD BY THE TRUSTEE. THE NOTES ARE NOT A DEBT OF EITHER THE STATE OR THE COUNTY, AND NEITHER THE STATE NOR THE COUNTY SHALL BE LIABLE THEREON, NOR SHALL THE NOTES BE PAYABLE OUT OF ANY FUNDS OTHER THAN THOSE OF THE AUTHORITY.**

This cover page contains information for quick reference only. It is not a summary of this issue. Potential investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Notes are offered, subject to prior sale, when, as and if issued by the Authority and accepted by the Underwriter, subject to the approval of legality of the Notes and certain other matters by Phillips Lytle LLP, New York, New York, Bond Counsel to the Authority. Certain legal matters will be passed upon for the County by its Bond Counsel, Hawkins Delafield & Wood LLP, New York, New York. Certain legal matters will be passed upon for the Underwriter by its counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York. It is expected that the Series B Notes will be available for delivery in New York, New York, on or about October 27, 2009.

**Roosevelt & Cross Incorporated**

Dated: October 20, 2009

*No dealer, broker, salesperson or other person has been authorized by the Authority or the Underwriter to give any information or to make any representations with respect to the Notes, other than the information and representations contained in this Official Statement. If given or made, such information or representations must not be relied upon as having been authorized by any of the foregoing.*

*This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be a sale of the Notes by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.*

*The Notes have not been registered under the Securities Act of 1933, as amended, and the Indenture has not been qualified under the Trust Indenture Act of 1939, as amended, in reliance upon exemptions contained in such acts. The registration or qualification of the Notes in accordance with applicable provisions of securities laws of the states in which the Notes have been registered or qualified and the exemption from registration or qualification in other states cannot be regarded as a recommendation thereof. Neither these states nor any of their agencies have passed upon the merits of the Notes or the accuracy or completeness of this Official Statement. Any representation to the contrary may be a criminal offense.*

*Certain information in this Official Statement has been supplied by the Authority, the County, and other sources that the Authority and the Underwriter believe are reliable. Neither the Authority nor the Underwriter guarantee the accuracy or completeness of such information, and such information is not to be construed as a representation of the Authority or the Underwriter. The information and expressions of opinions contained 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 County, since the date hereof.*

*The Underwriter has reviewed the information in this Official Statement in accordance with its responsibilities to investors under the securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guaranty the accuracy or completeness of such information.*

*References in this Official Statement to the Act, the Indenture, the Second Supplemental Indenture, and the Financing Agreement do not purport to be complete. Reference is made to the Act, the Indenture, the Second Supplemental Indenture, and the Financing Agreement for full and complete details of their respective provisions. Copies of the Indenture, the Second Supplemental Indenture, and the Financing Agreement are on file with the Trustee.*

*The order and placement of material in this Official Statement, including its appendices, are not to be deemed a determination of relevance, materiality or importance, and all material in this Official Statement, including the appendices, must be considered in its entirety.*

*The contents of this Official Statement are not to be construed as legal, business or tax advice. Prospective investors should consult their own attorneys and business and tax advisors as to legal, business and tax advice. In making an investment decision, prospective investors must rely on their own examination of the terms of the offering of the Notes, including the merits and risks involved. This Official Statement is not to be construed as a contract or agreement between the Authority and the purchasers or holders of any Notes.*

*This Official Statement contains forecasts, projections and estimates that are based on expectations and assumptions which existed at the time such forecasts, projections and estimates were prepared. In light of the important factors that may materially affect economic conditions in the State and the County and the amount of sales and use tax collected in the County and the aid paid to the Authority and the amount of State Aid paid to the Authority, the inclusion in this Official Statement of such forecasts, projections and estimates should not be regarded as a representation by the Authority or the Underwriter that such forecasts, projections and estimates will occur. Such forecasts, projections and estimates are not intended as representations of fact or guarantees of results.*

*If and when included in this Official Statement, the words “expects,” “forecasts,” “projects,” “intends,” “anticipates,” “estimates” and analogous expressions are intended to identify forward-looking statements and any such statements inherently are subject to a variety of risks and uncertainties that could cause actual results to differ materially from those projected. Such risks and uncertainties include, among others, general economic and business conditions, changes in political, social and economic conditions, regulatory initiatives and compliance with governmental regulations, litigation and various other events, conditions and circumstances, many of which are beyond the control of the Authority. These forward-looking statements speak only as of the date of this Official Statement. The Authority and the Underwriter disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement contained herein to reflect any change in the Authority’s expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.*

**IN CONNECTION WITH THE OFFERING OF THE NOTES, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICES OF THE NOTES AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

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**SUMMARY OF TERMS**

*The following is qualified in its entirety by reference to the information appearing elsewhere in this Official Statement. Terms used in this summary and not defined herein are defined in “APPENDIX C–SUMMARY OF INDENTURE AND FINANCING AGREEMENT.”*

Issuer ..... The Erie County Fiscal Stability Authority (the “Authority”) is a corporate governmental agency and instrumentality of the State of New York (the “State”) constituting a public benefit corporation created by the Erie County Fiscal Stability Authority Act, Chapter 182 of the Laws of 2005, as amended from time to time (the “Act”). See “APPENDIX A–INFORMATION REGARDING THE AUTHORITY.”

Securities Offered ..... Bond Anticipation Notes, Series 2009B (the “Series B Notes” or the “Notes”) are to be issued as Senior Notes pursuant to an Indenture, dated as of May 1, 2009, as amended and supplemented from time to time (the “Indenture”), including as supplemented by the Second Supplemental Indenture, dated as of October 1, 2009 (the “Second Supplemental Indenture”) by and between the Authority and Manufacturers and Traders Trust Company (the “Trustee”). See “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES.”

The Notes, along with any other series of bonds or notes hereafter issued under the Indenture (collectively referred to as the “Bonds”), will be payable from Revenues, which consist primarily of County Sales Tax Revenues and State Aid Revenues required by the Act to be paid to the Authority as described herein, or renewal obligations of the Authority or of the County.

As described herein, the Authority may apply other available monies to the payment of the Notes. The Authority expects to use proceeds from the maturity of a County revenue anticipation note issued simultaneously with the Series B Notes and purchased by the Authority with proceeds thereof to pay debt service on the Series B Notes. The Authority retains the right and option to instruct the Trustee to set aside Revenues to the extent necessary as well as the right and option to issue renewal bond anticipation notes, or under certain circumstances, bonds of the Authority to pay debt service on the Series B Notes. See “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES” and “SUMMARY OF COLLECTION AND APPLICATION OF REVENUES” and “AGREEMENTS OF THE STATE AND COUNTY – Certain Other Payments.”

Trustee ..... Manufacturers and Traders Trust Company, a state banking corporation duly organized and existing under the laws of the State of New York. See “TRUSTEE.”

Local Sales Tax Collection ..... The New York State Department of Taxation and Finance

collects Local Sales Tax Revenues, described below, and reports the amount of such collections to the State Comptroller. See “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES–Local Sales Tax Collection and Distribution.”

Disbursement of Revenues ..... Under the Act, net collections of Local Sales Tax Revenues are remitted to the State Comptroller and the State Comptroller holds the portion of such collections constituting County Sales Tax Revenues, together with any State Aid appropriated for the benefit of the County, in trust for the Authority. The State Comptroller will deposit such County Sales Tax Revenues and State Aid Revenues with the Trustee, in accordance with instructions from the Authority, for payment of Debt Service and other expenses of the Authority. Such Revenues are applied, in accordance with the Act, in the following general order of priority: (a) to cover payment obligations pursuant to the Authority’s contracts with bondholders and/or noteholders, including payment of Debt Service to the extent determined necessary by the Authority, (b) to replenish any reserve funds securing the obligations of the Authority, (c) to pay Authority expenses not otherwise provided for, and (d) pursuant to the Financing Agreement, dated as of May 1, 2009 (the “Financing Agreement”), between the Authority and the County, to the County, as frequently as practicable. For information regarding payment of Revenues to the Authority, see “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES–County Sales Tax Revenues” and “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES–State Aid Revenues.”

The Authority does not expect to require any such Revenues to be set aside to pay debt service on the Notes.

Not Debt of State or County ..... The Notes are not a debt of either the State or the County, and neither the State nor the County shall be liable thereon. The Notes are not payable out of any funds other than the Revenues of the Authority.

Bankruptcy Prohibition ..... The Authority is not authorized by State law to file a petition in bankruptcy pursuant to Title 11 (the “Bankruptcy Code”) of the United States Code. In addition, under the Act, the County and the Covered Organizations are prohibited from filing any petition with any United States district court or court of bankruptcy for the composition or adjustment of municipal indebtedness without the approval of the Authority and the State Comptroller, and no such petition may be filed while Authority bonds or notes remain Outstanding.

Purpose of Issue ..... The proceeds from the sale of the Notes will be a) paid directly to the Authority and/or b) deposited in the Bond Proceeds Fund established under the Financing Agreement hereinafter defined

and held by the Trustee to be used, along with other funds of the Authority, if any, to purchase revenue anticipation notes of the County in order to provide for the payment of Financeable Costs, consisting of certain cash flow needs of the County, and certain costs of issuance.

Revenues..... The Notes are payable from the Authority’s Revenues, which consist of (i) County Sales Tax Revenues, which are paid or payable to the Authority pursuant to Section 1261 of the State Tax Law, (ii) State Aid Revenues, which are paid or payable to the Authority pursuant to the Act, and (iii) all other aid, rents, fees, charges, gifts, payments and other income and receipts paid or payable to the Authority or a trustee for the account of the Authority, to the extent such amounts are pledged to Noteholders.

The Authority does not expect to require any such Revenues to be set aside to pay debt service on the Notes, to the extent the County complies with the requirements of Section 25.00 (g) of the State Local Finance Law. See “SUMMARY OF COLLECTION AND APPLICATION OF REVENUES – Certain Other Payments.”

The Authority expects to use proceeds from the maturity of a County revenue anticipation note issued simultaneously with the Series B Notes and purchased by the Authority with proceeds thereof to pay debt service on the Series B Notes. Set aside payments required to be made by the County will be deposited into a segregated blocked account (the “Blocked Account”). To the extent of any shortfall in such payments, the Authority shall instruct the Trustee to set aside revenues to the extent necessary to make up any such shortfall. The required set aside payments are expected to aggregate the principal amount of the County’s RANs. If required, the Notes shall also be payable from the proceeds of renewal notes either of the Authority or of the County.

County Sales Tax Revenues..... The Notes are payable from the Authority's Revenues. As described herein, the Authority may apply other available moneys to the payment of the Notes.

County Sales Tax Revenues are a portion of Local Sales Tax Revenues. Local Sales Tax Revenues are the net collections from sales and compensating use taxes, penalties and interest authorized by the State and imposed by the County, currently at the rate of 4 ¾%, on the sale and use of tangible personal property and services in the County (the “Local Sales Tax”). The Local Sales Tax rate of 4 ¾% consists of a 3% base rate and a 1 ¾% additional rate. County Sales Tax Revenues equal the sum of (a) 35.3055% of the Local Sales Tax Revenues derived from the 3% base Local Sales Tax rate, with the balance distributed to cities, towns, villages and school districts within the County

under a local sales tax sharing agreement authorized by Section 1262(c) of the State Tax Law, and (b) all of the Local Sales Tax Revenues derived from the 1 ¾% additional Local Sales Tax rate less \$12.5 million payable to cities and towns within the County pursuant to State law. See “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES–County Sales Tax Revenues.” The Act provides that the County has no right, title or interest in or to County Sales Tax Revenues, all of which are required to be paid to the Authority, until after application as needed by the Authority for (i) payment of debt service on bonds, notes and other obligations of the Authority, (ii) replenishment of reserves, and (iii) payment of operating expenses of the Authority pursuant to the Authority’s contracts with bondholders, and then only as provided in the Authority’s agreement with the County. County Sales Tax Revenues collected by the State Comptroller for transfer to the Authority are not subject to appropriation by the State or the County. The Act requires the County to impose the Local Sales Tax at a rate of no less than 3% for the period ending December 31, 2039.

State Aid Revenues..... State Aid Revenues are defined in the Act as aid and incentives for municipalities and any successor type of aid and any new aid appropriated by the State as local government assistance for the benefit of the County, which are paid or payable to the Authority pursuant to the Act. See “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES–State Aid Revenues.” The Act provides that the County has no right, title or interest in or to State Aid Revenues required to be paid to the Authority, until after application as needed by the Authority for (i) payment of debt service on bonds, notes and other obligations of the Authority, (ii) replenishment of reserves, and (iii) payment of operating expenses of the Authority pursuant to the Authority's contracts with bondholders, and then only as provided in the Authority's agreement with the County. Any provision of the Act with respect to State Aid or State Aid Revenues shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the State beyond the moneys available for that purpose. Any payment by the State Comptroller to the Authority of State Aid Revenues is subject to annual appropriation of State Aid by the State Legislature.

Enabling Legislation ..... The Act provides for the issuance of bonds, notes and other evidence of indebtedness by the Authority; the payment of such bonds, notes and other obligations from the Revenues; the execution by the Authority of swap contracts; and certain statutory and contractual covenants of the Authority, the County, and the State.

Agreement of the State..... The Act and the Indenture contain the covenant of the State with the Noteholders (the “State Covenant”) that the State shall not limit, alter or impair the rights vested in the Authority by the Act to fulfill the terms of the Indenture, or in any way impair the rights and remedies of such holders of the Notes or the security for the Notes until such Notes, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders of the Notes, are fully paid and discharged.

The State Constitution allows the State to amend, repeal, modify or otherwise alter statutes imposing or relating to the Local Sales Tax. County Sales Tax Revenues collected by the State Comptroller for transfer to the Authority are not subject to appropriation by the State or the County.

The Act does not restrict any right of the State to amend, repeal, modify or otherwise alter Section 54 of the State Finance Law or any other provision of State law relating to State Aid to municipalities. Any payment by the State Comptroller to the Authority of State Aid Revenues is subject to annual appropriation of State Aid by the State Legislature.

The State is not obligated to make any additional payments, or impose any taxes to satisfy the debt service obligations of the Authority. For more information regarding the State Covenant, see “AGREEMENTS OF THE STATE AND THE COUNTY.”



Agreement of the County ..... The Act, the Financing Agreement and the Indenture contain the covenant of the County with the Authority’s Noteholders (the “County Covenant”) that the County will not limit, alter or impair the rights vested in the Authority by the Act to fulfill the terms of the Indenture, or in any way impair the rights and remedies of such holders of the Notes or the security for the Notes until the Notes, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders of the Notes, are fully paid and discharged. Except as set forth below, nothing contained in the Act restricts any right the County may have to amend, modify, repeal or otherwise alter local laws, ordinances or resolutions affecting or relating to the Local Sales Tax, so long as, after giving effect to such amendment, modification or other alteration, the aggregate amount projected by the Authority of County Sales Tax Revenues to be available to the Authority during each of its fiscal years following the effective date of such amendment, modification or other alteration is not less than 200% of maximum annual debt service on all bonds and notes then outstanding.

The Act requires the County to impose the Local Sales Tax at a rate of no less than 3% for the period ending December 31, 2039. For more information regarding the County Covenant, see “AGREEMENTS OF THE STATE AND THE COUNTY.”

Other Series of Bonds and Notes ..... Other Series of bonds and notes may be issued from time to time by the Authority. See “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES–Additional Notes and Bonds.”

The Authority currently has \$102,675,000 in bond anticipation notes outstanding, which will mature on May 19, 2010.

The Act authorizes the issuance by the Authority of bonds, notes and other obligations to finance (a) the refunding, repayment or restructuring of a portion of the County’s outstanding indebtedness or that of any Covered Organization, (b) cash flow needs of the County or any Covered Organization, (c) any object or purpose of the County or any Covered Organization for which a period of probable usefulness is prescribed in Section 11.00 of the State Local Finance Law, (d) amounts necessary to finance a portion of the operating costs of the County or any Covered Organization, as provided under the Act and approved by the Authority, (e) debt service reserve funds in connection with such bonds, notes and other obligations, and (f) incidental costs in connection with such issuance; provided, however, that the aggregate principal amount of such bonds, notes or other obligations outstanding at any one time may not exceed \$700,000,000. The Authority may also issue bonds, notes or other obligations to refund obligations previously issued by the Authority. Bonds, notes or other obligations of the Authority issued (i) to pay reasonable costs of issuance, (ii) to establish

debt service reserve funds, (iii) to refund or advance refund any outstanding bonds or notes of the County or the Authority, or (iv) as Cash Flow Borrowings will not count against the \$700,000,000 limitation described above. In any event, however, the Act limits to \$250,000,000 the aggregate principal amount of Cash Flow Borrowings that may be outstanding at any one time. No bond, note or other obligation of the Authority may mature later than December 31, 2039, or more than 30 years from its date of issue, which ever date is earlier.

The Indenture provides that (i) Series of bonds or notes other than the Notes may be issued under the Indenture: (A) as Senior Bonds or Senior Notes on a parity with other Series of Senior Bonds or Senior Notes (such as the Notes), or (B) as Subordinate Bonds or Subordinate Notes, but (ii) no Series of Senior Bonds or Senior Notes on a parity with other Series of Senior Bonds and Senior Notes shall be authenticated and delivered unless the amount of County Sales Tax Revenues received by the Trustee (or by the Authority or County, as applicable) for the twelve consecutive calendar months ended not more than three months prior to the calculation date is at least two(2) times the amount of annual Debt Service, including Debt Service on the Series of Senior Bonds or Senior Notes proposed to be issued, for each fiscal year such Bonds or Notes will be Outstanding.

Upon the issuance of additional Senior Bonds or Senior Notes, under the circumstances and in the amounts described herein under “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES–Additional Notes and Bonds,” the Authority may be required to deposit amounts in the Debt Service Reserve Account, which amounts will be available to pay Debt Service on all Senior Bonds or Senior Notes. See “APPENDIX C–SUMMARY OF INDENTURE.” **However, the Debt Service Reserve Account Requirement with respect to the Notes is zero.**

- Interest and Principal ..... Interest on the Notes will accrue from their dated date at the rate set forth on the cover page hereof and will be payable at maturity. The record date for payment of payment of and interest on the Notes will be the last business day of the calendar month preceding the due date.
- Redemption..... The Notes are not subject to redemption prior to maturity.
- Form and Denomination ..... The Notes will be issued in book-entry form and will be denominated in principal amounts of \$5,000 and integral multiples thereof.

Indenture ..... The Indenture provides for the issuance of the Notes pursuant to the Act, including the Authority’s pledge to the Trustee of the Revenues, accounts and statutory and contractual covenants contained therein. The Trustee is authorized to enforce the Indenture and such covenants against the Authority, the County and the State.

Financing Agreement..... The Financing Agreement, dated as of May 1, 2009, between the Authority and the County (the “Financing Agreement”) provides for the application of the proceeds of the Notes to pay Financeable Costs, in this case funding cash flow needs of the County, and includes covenants of the County pledged to the benefit of Noteholders.

Collection Account ..... The State Comptroller is required by the Act, on or before the twelfth day of each month, to pay County Sales Tax Revenues collected during the next preceding calendar month (with partial payments to be made on or before the last day of June and December consisting of collections made during the first 25 days of such months) to the Authority for application in accordance with the Act. The State Comptroller is also required to pay State Aid Revenues to the Authority pursuant to the Act. The Authority will instruct the State Comptroller to pay County Sales Tax Revenues and State Aid Revenues directly to the Trustee for application in accordance with the Act and the Indenture. See “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES–Application of Revenues”.

All Revenues received by the Authority are deposited immediately into the Collection Account.

Bond Account ..... The Bond Account is held by the Trustee in accordance with the terms of the Indenture. The Trustee shall deposit amounts from the Collection Account into the Bond Account (i) in accordance with the procedures described below for the payment of Debt Service, and (ii) to provide for the payment of Senior Notes and Senior Agreements, if any, that are to be paid out of the Bond Account on a parity with the Senior Bonds. Currently the Authority is not a party to any Senior Agreements.

Set Aside Subaccount. An ECFSA Series 2009B Set Aside Subaccount will be established with the Trustee as a subaccount of the Bond Account pursuant to the Second Supplemental Indenture. Moneys on deposit in the ECFSA Series 2009B Set Aside Subaccount shall be held in trust and, except as otherwise provided therein, shall be applied solely to remedy any shortfall in the Bond Account in amounts due with respect to Debt Service on the Notes.

The County has agreed to establish with Manufacturers and Traders Trust Company (“M&T”) an account (the “Blocked Account”) into which the County will deposit all setaside

payments (as required under Section 25.00 of the Local Finance Law) according to a schedule provided herein. See "SOURCES OF PAYMENT AND SECURITY FOR THE NOTES" herein.

If the County fails to make a required Set Aside Payment within three (3) business days of the due date thereof, the Authority shall immediately give the Trustee notice of such failure and the Accrued Debt Service shall be the amount specified in such notice as the shortfall between the required Set Aside Payment and the Set Aside Payment actually made by the County, if any. The Trustee shall thereafter transfer into the ECFSA Series 2009B Set Aside Subaccount such Accrued Debt Service pursuant to the provisions of Section 501(b) of the Indenture. At maturity, amounts in the ECFSA Series 2009B Set Aside Subaccount shall be transferred to the Bond Account and applied as set forth in Section 502 of the Indenture.

If, after the Trustee makes any transfer as set forth in the immediately preceding paragraph above, the County makes an additional Set Aside Payment into the Blocked Account in order to fund all or a portion of such shortfall, then the Authority shall give the Trustee prompt written notice of such payment and the Trustee shall thereafter promptly transfer an amount equal to such payment from the ECFSA Series 2009B Set Aside Subaccount to or at the direction of the County.

Application of Revenues..... All Revenues in the Collection Account shall be applied upon receipt by the Trustee in the following order of priority: first, to the Bond Account or Redemption Account to pay Debt Service in accordance with the Retention Procedures described in the paragraph below and the amount, if any, necessary to replenish the Debt Service Reserve Account to the extent of any withdrawal therefrom; second, to pay debt service on any Subordinate Bonds or Subordinate Notes and the amount, if any, necessary to replenish any reserve accounts established in connection therewith, and any other amounts pursuant to supplemental indentures for the benefit of Subordinate Noteholders, Subordinate Bondholders and parties to Subordinate Agreements; third, to the Authority's Operating Expenses, including deposits to the Redemption Account for optional redemption of the Senior Bonds, if any, and any reserves held by the Authority for payment of Operating Expenses; and fourth, to the County, as soon as practicable, free and clear of the lien of the Indenture.

Retention Procedures ..... At the beginning of each calendar month, the Trustee will first transfer Revenues from the Collection Account to the Bond

Account in an amount equal to Accrued Debt Service. In order to provide for the timely payment of Debt Service on each payment date, Accrued Debt Service has been defined under the Indenture to account for a number of variables, such as: any accrued or capitalized interest deposited in the Bond Account and available for the payment of Debt Service on a given payment date; any other amounts held by the Trustee and irrevocably pledged to the payment of Debt Service; actual rates of interest on Senior Notes or Senior Bonds; any interim purchase or redemption of Senior Notes or Senior Bonds that reduces the amount of Debt Service payable on the next payment date; and other similar factors. In addition, the Indenture provides that sufficient moneys will in any event be retained in the Bond Account to ensure that the amount of moneys required to pay Debt Service on the next succeeding payment date will be available for such purpose two months prior to such payment date; provided, however, that any failure so to retain sufficient moneys will not constitute an Event of Default under the Indenture.

**Under the Second Supplemental Indenture, if the County fails to make a required Set Aside Payment within three (3) business days of the due date thereof, the Authority shall then immediately give the Trustee notice of such failure and the Accrued Debt Service shall be the amount specified in such notice as the shortfall between the required Set Aside Payment and the Set Aside Payment actually made by the County, if any. The Trustee shall thereafter transfer into the ECFSA Series 2009B Set Aside Subaccount such Accrued Debt Service pursuant to the provisions of Section 501(b) of the Indenture. At maturity, amounts in the ECFSA Series 2009B Set Aside Account shall be transferred to the Bond Account and applied as set forth in Section 502 of the Indenture.**

Tax Matters ..... In the opinion of Phillips Lytle LLP, Bond Counsel to the Authority, under existing law, interest on the Notes is exempt from personal income taxes imposed by the State and its political subdivisions, and, assuming compliance with the tax covenants referred to herein, interest on the Notes is not includible in gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended. See “TAX MATTERS.”

Ratings ..... Moody’s Investors Service, Inc. and Fitch Ratings have assigned the Notes a rating of “MIG1” and “F1+”, respectively.

There can be no assurance that such rating will continue for any specified period of time or that such rating will not be revised or withdrawn, if in the judgment of the particular rating agency circumstances so warrant. Any change or withdrawal of a rating

may have an adverse effect on the market price of the Authority's outstanding debt, including the Notes, or the availability of a secondary market for such debt, including the Notes. See "RATINGS."

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**ERIE COUNTY FISCAL STABILITY AUTHORITY**  
**\$64,805,000**  
**BOND ANTICIPATION NOTES, SERIES 2009B**

**INTRODUCTION**

This Official Statement of the Erie County Fiscal Stability Authority (the “Authority”) sets forth information concerning the Authority in connection with the sale of the Authority’s Bond Anticipation Notes, Series 2009B (the “Series B Notes” or the “Notes”). The Authority is a corporate governmental agency and instrumentality of the State of New York (the “State”) constituting a public benefit corporation created by the Erie County Fiscal Stability Authority Act, Chapter 182 of the Laws of 2005, as amended from time to time (the “Act”). See “APPENDIX A–INFORMATION REGARDING THE AUTHORITY.”

The Notes are being issued as Senior Notes pursuant to an Indenture, dated as of May 1, 2009, as amended and supplemented from time to time (the “Indenture”), including as supplemented by the Second Supplemental Indenture, dated as of October 1, 2009 (the “Second Supplemental Indenture”), by and between the Authority and Manufacturers and Traders Trust Company, as trustee (the “Trustee”). See “TRUSTEE.” The Authority and Erie County, New York (the “County”) have entered into a Financing Agreement, dated as of May 1, 2009 (the “Financing Agreement”), which provides, among other things, for the application of Note proceeds. A summary of certain provisions of the Indenture and the Financing Agreement, together with certain defined terms used therein and in this Official Statement, are contained in “APPENDIX C–SUMMARY OF INDENTURE AND FINANCING AGREEMENT.”

The proceeds of the Notes will be deposited in the Bond Proceeds Fund established under the Financing Agreement and held by the Trustee to be used, along with other moneys of the Authority, if any, to provide for the payment of certain Financeable Costs, consisting of cash flow needs of the County (which are to be paid by the Authority through the purchase of related County obligations) and certain costs of issuance.

The Notes are payable solely from the Authority’s Revenues which consist primarily of County Sales Tax Revenues and State Aid Revenues (each as defined herein). In accordance with the Act, Revenues are applied in the following general order of priority: first, pursuant to the Authority’s contracts with bondholders or noteholders, including for the payment of Debt Service and to replenish any reserve funds securing the obligations of the Authority, then, in the order of priority provided in the Indenture and the Financing Agreement, to pay Authority expenses not otherwise provided for, and then to the County as frequently as practicable. The Notes will be payable from renewal notes of the Authority or of the County. See “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES” herein for a detailed discussion of these repayment options.

On July 12, 2005, the Governor of the State signed into law the Act creating the Authority. Under the Act, the Authority has a broad range of financial control and oversight powers with respect to the County’s finances and the finances of any non-exempted covered organizations (“Covered Organizations”). Under the Act, the Authority began its existence during a County “advisory period”, which means that the Authority commenced operation with advisory and oversight powers. On November 3, 2006, the Authority imposed a “control period” on the County, which authorized the maximum complement of financial control and oversight powers. The “control period” continued until June 2, 2009. Prior to June 2, 2009, the Authority was required to review and comment on the terms of each proposed borrowing of the County, including the prudence of each proposed issuance of bonds or notes to be issued by the County, and no such borrowing can be undertaken unless first reviewed, commented upon and approved by the Authority. In addition, following a declaration of need by the County, the Act authorizes

the Authority to issue its own bonds, notes and other obligations on behalf of the County to pay Financeable Costs, all as more fully described below. See “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES–Additional Notes and Bonds.”

The Act authorizes the issuance by the Authority of bonds, notes and other obligations to finance (a) the refunding, repayment or restructuring of a portion of the County’s outstanding indebtedness or that of any Covered Organization; (b) cash flow needs of the County or any Covered Organization; (c) any object or purpose of the County or any Covered Organization for which a period of probable usefulness is prescribed in Section 11.00 of the State Local Finance Law; (d) amounts necessary to finance a portion of the operating costs of the County or any Covered Organization, as provided under the Act and approved by the Authority; (e) debt service reserve funds in connection with such bonds, notes and other obligations; and (f) incidental costs in connection with such issuance; provided, however, that the aggregate principal amount of such bonds, notes or other obligations outstanding at any one time may not exceed \$700,000,000. The Authority may also issue bonds, notes or other obligations to refund obligations previously issued by the Authority. Bonds, notes or other obligations of the Authority issued (i) to pay reasonable costs of issuance, (ii) to establish debt service reserve funds, (iii) to refund or advance refund any outstanding bonds or notes of the County or the Authority, or (iv) as Cash Flow Borrowings will not count against the \$700,000,000 limitation described above. In any event, however, the Act limits to \$250,000,000 the aggregate principal amount of Cash Flow Borrowings that may be outstanding at any one time. No bonds, notes or other obligations of the Authority may mature later than December 31, 2039, or more than 30 years from its date of issue, whichever date is earlier. For additional information regarding the issuance of parity or subordinate obligations of the Authority, see “SOURCES OF PAYMENT AND SECURITY FOR THE NOTES–Additional Notes and Bonds.” The Act also provides for the execution of swap contracts by the Authority; the issuance of obligations of the County to the Authority in connection with the issuance of the Authority’s bonds, notes or other obligations for purposes other than deficit financing; and the statutory and contractual covenants of the Authority, the County, and the State.

The Authority currently has \$102,675,000 in bond anticipation notes outstanding, which will mature on May 19, 2010.

## **SOURCES OF PAYMENT AND SECURITY FOR THE NOTES**

### **General**

The Act authorizes the Authority to issue debt and to secure the repayment of such debt with a pledge of the Authority’s right, title and interest in the Revenues of the Authority, which are required by the Act to be paid to the Authority. In accordance with the Act, Revenues are applied in the following general order of priority: first, pursuant to the Authority’s contracts with bondholders and noteholders, including for the payment of Debt Service and to replenish any reserve funds securing the obligations of the Authority, then, in the order of priority provided in the Indenture and the Financing Agreement, to pay Authority expenses not otherwise provided for, and then to the County, as frequently as practicable. The Authority’s Revenues, which consist primarily of County Sales Tax Revenues, which are paid or payable to the Authority pursuant to Section 1261 of the State Tax Law, State Aid Revenues which are payable to the Authority pursuant to the Act, and investment earnings on money and investments on deposit in the Accounts established under the Indenture, are the only source of payment for the holders of obligations of the Authority, including the Notes. See “–County Sales Tax Revenues” and “–State Aid Revenues.” Pursuant to the Act and the Indenture, the Authority has pledged the Revenues to the Trustee for payment of the Notes. The Act provides that the Authority’s pledge of its Revenues represents a perfected first security interest on behalf of the holders of the Notes and any other Notes and Bonds. The lien of the Indenture on the Revenues for the security of the Notes is prior to all other liens thereon.



In addition the Authority may apply other available moneys of the Authority for the payment of the Notes as described below under “Certain Other Payments.”

The Authority is also authorized by the Act to issue renewal notes and/or bonds to provide funds to redeem the Notes.

The financial condition of the County as well as the market for the Notes could be affected by a variety of factors, some of which are beyond the Authority's control. There can be no assurance that adverse events in the State and in other jurisdictions of the country, including, for example, the seeking by a municipality or large taxable property owner of remedies pursuant to the Federal Bankruptcy Code or otherwise, will not occur which might affect the market price of and the market for the Notes. If a significant default or other financial crisis should occur in the affairs of the State or any of its agencies or political subdivisions thereby further impairing the acceptability of obligations issued by borrowers within the State, both the ability of the County and/or the Authority to arrange for additional borrowings, including refinancing if necessary of the Series B Notes, and the market for and market value of outstanding debt obligations, including the Notes, could be adversely affected. Similar events in other states could have such impacts as well.

The Authority does not have, nor is it expected to have, any significant assets or sources of funds other than County Sales Tax Revenues, State Aid Revenues and amounts on deposit pursuant to the Indenture and Second Supplemental Indenture. Neither the County, the State, nor the Trustee will insure or guarantee the Notes. The State is not obligated to make any additional payments or impose any taxes to satisfy the Debt Service obligations of the Authority. The County is obligated to impose the Local Sales Tax (defined below) at a rate of no less than 3% for the period ending December 31, 2039.

Under the Act, the Authority is not authorized to file a petition in bankruptcy pursuant to Title 11 (the “Bankruptcy Code”) of the United States Code. The Act also prohibits the County and the Covered Organizations from filing any petition with any United States district court or court of bankruptcy for the composition or adjustment of municipal indebtedness without the approval of the Authority and the State Comptroller, and no such petition may be filed while Authority bonds or notes remain Outstanding. Under the Act, the term “Covered Organizations” means any governmental agency, public authority or public benefit corporation which receives or may receive moneys directly, indirectly or contingently from the County (other than the Authority, any other governmental agency, public authority or public benefit corporation specifically exempted from the Act by order of the Authority upon a finding by the Authority that such exemption does not materially affect the ability of the County to adopt and maintain a budget pursuant to the provisions of the Act and any State public authority defined in Section 201 of the State Civil Service Law). The Act also provides that no municipality or school district shall be treated as a Covered Organization solely because it shares sales and compensating use tax revenue with the County. The Act also provides that the Authority may terminate any exemption granted by it upon a determination that the circumstances upon which the exemption was granted are no longer applicable.

*Pursuant to a separate agreement between Manufacturers and Traders Trust Company (“M&T”) and the County, the County has agreed to deposit certain “set aside” payments required to be made by the County pursuant to Section 25.00(g) of the Local Finance Law into a special segregated and blocked account (the “Blocked Account”) maintained by the County with M&T in the amounts and on the dates set forth in the Second Supplemental Indenture and included below (the “Set Aside Payments”). Moneys on deposit in the Blocked Account are not subject to the Indenture, are not subject to a security interest in favor of Trustee and are not held in trust by M&T for the benefit of any person other than the Authority, as holder of the County Notes. Moneys in the Blocked Account shall be held and disposed of in accordance with the terms of agreements between M&T and the County.*

*ECFSA Series 2009B Set Aside Subaccount.* An ECFSA Series 2009B Set Aside Subaccount will be established with the Trustee as a subaccount of the Bond Account pursuant to the Second Supplemental Indenture. Moneys on deposit in the ECFSA Series 2009B Set Aside Subaccount shall be held in trust and, except as otherwise provided therein, shall be applied solely to remedy any shortfall in the Bond Account in amounts due with respect to Debt Service on the Series B Notes.

*If the County fails to make a required Set Aside Payment within three (3) business days of the due date thereof, the Authority shall then immediately give the Trustee notice of such failure and the Accrued Debt Service shall be the amount specified in such notice as the shortfall between the required Set Aside Payment and the Set Aside Payment actually made by the County, if any. The Trustee shall thereafter transfer into the ECFSA Series 2009B Set Aside Subaccount such Accrued Debt Service pursuant to the provisions of Section 501(b) of the Indenture. At maturity, any amounts in the ECFSA Series 2009B Set Aside Subaccount shall be transferred to the Bond Account and applied as set forth in Section 502 of the Indenture.*

*If, after the Trustee makes any transfer as set forth in the immediately preceding paragraph above, the County makes an additional Set Aside Payment into the Blocked Account in order to fund all or a portion of such shortfall, then the Authority shall give the Trustee prompt written notice of such payment and the Trustee shall thereafter promptly transfer an amount equal to such payment from the ECFSA Series 2009B Set Aside Subaccount to or at the direction of the County.*

*The “set aside” payments which will be made into the “Blocked Account” by the County for the benefit of the Authority, as holder of the County Notes, are as follows:*

<u>Deposit Amount</u>	<u>Deposit By</u>
\$16,800,000	2/28/10
\$14,000,000	3/31/10
\$5,700,000	4/30/10
\$16,000,000	5/31/10
<u>\$12,500,000</u>	6/30/10
\$65,000,000	

**Revenues**

The Notes are payable from the Authority’s Revenues, which consist of (i) County Sales Tax Revenues, which consist of the County’s share of Local Sales Tax Revenues, all of which share are required to be paid to the Authority pursuant to Section 1261 of the State Tax Law, (ii) State Aid Revenues paid or payable to the Authority pursuant to the Act, and (iii) all other aid, rents, fees, charges, gifts, payments and other income and receipts paid or payable to the Authority or a trustee for the account of the Authority, to the extent such amounts are pledged to Noteholders.

The Notes shall also be payable from the proceeds of renewal notes and or serial bonds either of the Authority or of the County.

**County Sales Tax Revenues**

As used herein, “Local Sales Tax Revenues” means the net collections from sales and compensating use taxes, penalties and interest authorized by the State and imposed by the County, currently at a rate of 4 ¾%, on the sale and use of tangible personal property and services in the County (the “Local Sales Tax”). The Local Sales Tax Rate of 4 ¾% consists of a 3% base rate and a 1 ¾% additional rate. “County Sales Tax Revenues” equal the sum of (a) 35.3055% of the Local Sales Tax

Revenues derived from the 3% base Local Sales Tax rate and (b) all of the Local Sales Tax Revenues derived from the 1 ¾% additional Local Sales Tax rate less \$12.5 million. Under a 1977 agreement among the County and the cities of Buffalo, Lackawanna, and Tonawanda authorized by Section 1262(c) of the State Tax Law (the “Local Sales Tax Agreement”) (i) an amount equal to 10.0087% of the net collections from such 3% is payable to the cities of Buffalo, Lackawanna, and Tonawanda; (ii) an amount equal to 25.6858% of the net collections from such 3% is shared among the cities of Buffalo, Lackawanna, Tonawanda and the towns and villages within the County; and (iii) an amount equal of 29.0000% of the net collections from such 3% is shared among the school districts within the County, with the balance (35.3055%) being payable to the County. Under State law, \$12.5 million of the Local Sales Tax Revenues generated from the additional 1% Local Sales Tax rate is payable to the cities and towns within the County.

The Act requires the County to impose the Local Sales Tax at a rate of no less than 3% for the period ending December 31, 2039. The Act provides that the County has no right, title or interest in or to County Sales Tax Revenues required to be paid to the Authority, until after payment of debt service, replenishment of reserves and payment of operating expenses of the Authority pursuant to the Authority’s contracts with bondholders and then as provided in the Authority’s agreement with the County. The portion of Local Sales Tax Revenues collected by the State Comptroller for transfer to the Authority as County Sales Tax Revenues are not subject to appropriation by the State or the County. The County’s share of Local Sales Tax Revenues is one of the major sources of revenue for the County, accounting for approximately 32% of County revenues in the County’s General Fund for the fiscal year ending December 31, 2006. The current total sales tax rate in the County is 8 ¾%, of which 4% is the State’s share and 4 ¾% is the Local Sales Tax. For a description of the servicing and application of Local Sales Tax Revenues, see “–Local Sales Tax Collection and Distribution” and “–Application of Revenues”.

Pursuant to authorizing legislation enacted by the State in 1965, the County has imposed a Local Sales Tax since August 1, 1965, at a base rate initially of 2%, which base rate was increased to 3% in 1972. The revenues derived from the 3% rate portion of Local Sales Tax is not retained entirely by the County and is distributed in accordance with the Local Sales Tax Agreement, effective January 1, 1978. The Local Sales Tax Agreement provides that any party thereto may terminate the agreement upon one year’s prior written notice. As of the date hereof, no such written notice has been given.

In addition, since 1984, with the exception of a nine-day period in January 1988, enabling legislation has been enacted periodically by the State permitting the County to increase the Local Sales Tax rate by at least one percent, from the base rate of 3% to initially 4%, and then 4 ¼% and currently 4 ¾%. The additional revenues from the tax over 3% have historically been used solely for County purposes, except for the \$12.5 million set aside by State law for cities and towns within the county noted above.

The additional 1 ¾% Local Sales Tax rate is the composite of separate authorizations to impose a 1% additional rate and a further ¾% rate. The County Legislature has adopted local laws to implement the State’s authorization to impose the additional 1% through November 30, 2010, and the additional ¾% through November 30, 2009, the current limits of the State’s authorizations for such incremental increases. No assurance can be given that either the County Legislature or the State will enact legislation extending the effective date of the additional 1% component of the Local Sales Tax beyond November 30, 2010 or the additional ¾% component of the Local Sales Tax beyond November 30, 2009. If such provision is not renewed, the County is required by the Act to maintain the existing 3% base rate. The following table sets forth the dates that incremental sales tax components in addition to the 3% base rate have been in effect in the County since authorized by the State in 1984.

<b>Effective Dates</b>	<b>Incremental Rate</b>	<b>Total Local Sales Tax Rate</b>
March 1, 1985 through June 30, 2005	1.00%	4.00%
July 1, 2005 through January 14, 2006	1.25%	4.25%
January 15, 2006 through November 30, 2011	1.75%	4.75%

The amount of future Local Sales Tax Revenues to be collected depends upon various factors including the economic conditions in the County. Economic conditions in the County have reflected numerous cycles of growth and recession. There can be no assurance that historical data relating to Local Sales Tax Revenues are predictive of future trends. For more information regarding the economic conditions in the County, see “APPENDIX B-INFORMATION REGARDING THE COUNTY.” In addition, the State has in the past enacted amendments to the Tax Law to exempt specified goods and services from the imposition of the sales and compensating use tax, or to reduce the rate of the sales tax on such goods and services. There can be no assurance that future proposals will not result in additional exemptions or reductions.

The following table sets forth the history of the County’s revenue from Local Sales Tax collections since fiscal year ending 1990. The amounts do not include the portion of the County’s 3% sales tax that is shared with the cities, towns, villages, and school districts within the County pursuant to its Local Sales Tax Agreement or the \$12.5 million of the 1% sales tax shared with the cities, towns and villages pursuant to State law. The average annual compound growth rate, for total collections from 1990 to 2008, inclusive of the rate increases of 0.25% and 0.75%, was approximately 5.00%.

**Table 1**  
**County Sales Tax Revenue from Local Sales Tax Collections**

<b>Fiscal Year</b>	<b>Accrual County Sales Tax Revenues (000)</b>	<b>Fiscal Year</b>	<b>Accrual County Sales Tax Revenues (000)</b>
1990	\$167,860	2000	\$230,795
1991	167,826	2001	233,499
1992	176,229	2002	234,008
1993	177,645	2003	248,155
1994	187,080	2004	248,073
1995	194,328	2005	271,960
1996	201,013	2006	355,002
1997	205,314	2007	381,196
1998	201,702	2008	386,851
1999	219,967		

SOURCE: County

Retail trade in the County, according to the 2002 Economic Census<sup>1</sup> prepared by the U.S. Census Bureau, involved 8,416 establishments with \$10.05 billion in sales. Major contributors to retail sales activity, not all of which may be subject to the sales and compensating use tax, include: motor vehicle and parts dealers, with 665 establishments accounting for \$2.8 billion in sales; food and beverage stores, with 756 establishments accounting for \$2.0 billion in sales; general merchandise stores such as department stores, with 146 establishments accounting for \$1.2 billion in sales; clothing and accessories stores, with

<sup>1</sup> The U.S. Census Bureau produces an Economic Census of the U.S. once every five years, from the national to the local level.

771 establishments accounting for \$514.2 million in sales; health and personal care stores, with 545 establishments accounting for \$762.6 million in sales; gasoline stations, with 325 establishments accounting for \$631.7 million in sales; and building material, garden equipment and supplies dealers, with 338 establishments accounting for \$672.6 million in sales.

As set forth in the following table of New York State's top retailing counties, the most recent economic census in 2002 showed the County to be ranked seventh in the State for retail sales.

**Table 2**  
**New York State Top Retailing Counties**

	<b>2002 Rank</b>	<b>2002 Retail Trade (000s omitted)</b>	<b>1997 Rank</b>	<b>1997 Retail Trade (000s omitted)</b>
New York (Manhattan)	1	\$26,431,688	1	\$19,964,095
Nassau	2	20,048,923	2	16,876,869
Suffolk	3	18,884,440	3	13,879,345
Westchester	4	12,055,687	4	9,438,521
Queens	5	11,733,654	5	9,237,429
Kings	6	11,397,935	6	8,407,009
<b>Erie</b>	<b>7</b>	<b>10,053,437</b>	<b>7</b>	<b>8,224,419</b>
Monroe	8	7,612,733	8	6,681,881
Onondaga	9	5,451,227	9	4,485,858
Albany	10	4,581,206	10	3,634,657

SOURCE: U.S. Census Bureau, Retail Trade

### **Local Sales Tax Collection and Distribution**

Local Sales Tax is collected by vendors and service providers in the County and remitted to the State Department of Taxation and Finance monthly, quarterly or annually based on the volume of sales. The State Department of Taxation and Finance reports the amounts of such net collections to the State Comptroller, and to the extent net collections from Local Sales Tax imposed by the County are payable to the Authority as County Sales Tax Revenues, such amounts are deposited daily with such banks, banking houses or trust companies as may be designated by the State Comptroller, to the credit of the State Comptroller in trust for the Authority. After retaining such amount as the State Commissioner of Taxation and Finance may determine to be necessary for refunds and for the reasonable costs of the State Tax Commissioner in administering, collecting and distributing such taxes, on or before the twelfth day of each month, the State Comptroller is required to pay to the Authority all County Sales Tax Revenues collected during the next preceding calendar month; provided, however, that the State Comptroller is required to make a partial payment on or before the last day of June and December consisting of collections made during and including the first 25 days of such months.

The amount of County Sales Tax Revenues received by the Authority each month in a year may vary from the amount for such month received by the Authority in prior years because of the impact of amounts deducted from or added to such payments to reflect the recalculation by the New York State Department of Taxation and Finance of actual amounts of Local Sales Tax collected.

The Authority has instructed the State Comptroller to pay County Sales Tax Revenues directly to the Trustee for application in accordance with the Act and the Indenture. For more information regarding

the application of County Sales Tax Revenues upon receipt by the Trustee, see “–Application of Revenues”.

The following table sets forth, on an accrual basis, monthly distributions of the County’s share of Local Sales Tax collections since January 2000.

**Table 3**  
**Monthly\* Distributions of County Sales Tax Revenue**

<b><u>MONTH</u></b>	<b><u>2000</u></b>	<b><u>2001</u></b>	<b><u>2002</u></b>	<b><u>2003</u></b>	<b><u>2006</u></b>	<b><u>2007</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>
<b>JANUARY</b>	\$13,769,450	\$13,865,081	\$15,407,512	\$15,814,258	\$21,161,369	\$26,363,738	\$27,751,183	\$26,351,097
<b>FEBRUARY</b>	24,659,099	27,252,600	22,822,605	27,397,506	38,353,244	36,573,895	37,181,991	37,949,129
<b>MARCH</b>	16,760,636	16,775,693	17,974,153	17,175,803	26,661,964	26,754,107	28,981,217	25,402,244
<b>APRIL</b>	15,267,803	17,230,777	16,608,860	18,083,803	25,878,652	27,061,719	28,357,080	25,809,918
<b>MAY</b>	25,108,274	23,271,123	23,571,822	25,033,187	34,050,871	41,526,608	40,105,353	42,532,365
<b>JUNE</b>	18,836,303	18,058,783	18,081,561	19,535,305	27,787,917	29,017,955	30,706,933	25,813,325
<b>JULY</b>	16,819,008	17,151,505	17,445,362	18,744,329	26,717,494	27,549,833	29,688,077	27,297,862
<b>AUGUST</b>	21,836,708	21,277,696	23,713,919	23,811,965	34,080,749	38,022,587	40,259,176	
<b>SEPTEMBER</b>	17,789,736	15,935,138	17,559,760	18,249,501	27,271,002	27,070,196	28,177,253	
<b>OCTOBER</b>	17,176,857	17,445,429	17,613,516	18,401,933	26,042,586	27,672,520	27,057,118	
<b>NOVEMBER</b>	23,724,686	24,918,371	23,843,713	23,471,035	37,167,826	40,965,584	37,928,205	
<b>DECEMBER</b>	<u>19,047,068</u>	<u>20,316,779</u>	<u>19,365,399</u>	<u>22,436,083</u>	<u>29,828,432</u>	<u>32,616,914</u>	<u>30,657,803</u>	
<b>TOTAL</b>	<b>\$230,795,629</b>	<b>\$233,498,976</b>	<b>\$234,008,184</b>	<b>\$248,154,708</b>	<b>\$355,002,107</b>	<b>\$381,195,655</b>	<b>\$386,851,389</b>	<b>\$211,155,940</b>

SOURCE: County.

\*Payments are scheduled to be received on or before the twelfth day of the month.

### State Aid Revenues

State Aid Revenues are defined as aid and incentives for municipalities and any successor type of aid and any new aid appropriated by the State as local government assistance for the benefit of the County, which are paid or payable to the Authority pursuant to the Act. The Act provides that the County will have no right, title or interest in or to State Aid Revenues required to be paid to the Authority, except after payment of debt service and operating expenses of the Authority pursuant to the Authority's contracts with bondholders and then as provided in the Authority's agreement with the County.

Any provision of the Act with respect to State Aid or State Aid Revenues shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the State beyond the moneys available for that purpose. Any payment by the State Comptroller to the Authority of State Aid Revenues is subject to annual appropriation of State Aid by the State Legislature.

The County has not received any non-reimbursement-based State Aid in recent fiscal years.

### Authority Notes and Bonds

Pursuant to the Act, the Authority has the power to issue its bonds, notes and other obligations to finance (a) the refunding, repayment or restructuring of a portion of the County’s outstanding

indebtedness or that of any Covered Organization; (b) cash flow needs of the County or any Covered Organization; (c) any object or purpose of the County or any Covered Organization for which a period of probable usefulness is prescribed in Section 11.00 of the State Local Finance Law; (d) amounts necessary to finance a portion of the operating costs of the County or any Covered Organization, as provided under the Act and approved by the Authority; (e) debt service reserve funds in connection with such bonds, notes and other obligations; and (f) incidental costs in connection with such issuance. Bonds, notes or other obligations may only be issued by the Authority upon a request therefor by the County made by the County Executive and approved by the County Legislature. Any such issuance of bonds, notes or other obligations shall be at the discretion of the Authority. No obligations of the Authority may mature later than December 31, 2039, or more than 30 years from its date of issue. Bonds, notes and other obligations of the Authority may be issued, amortized, redeemed and refunded without regard to the provisions of the State's Local Finance Law.

### **Additional Notes and Bonds**

Under the Act, the aggregate principal amount of the Authority's bonds, notes or other obligations that may be Outstanding at any one time may not exceed \$700,000,000. The Authority may also issue its bonds, notes or other obligations to refund obligations previously issued by the Authority. Bonds, notes or other obligations of the Authority issued (i) to pay reasonable costs of issuance, (ii) to establish debt service reserve funds, (iii) to refund or advance refund any outstanding bonds or notes of the County or the Authority, or (iv) as Cash Flow Borrowings will not count against the \$700,000,000 limitation described above. In any event, however, the Act limits to \$250,000,000 the aggregate principal amount of Cash Flow Borrowings that may be outstanding at any one time. Under the Act, no obligations of the Authority may mature later than December 31, 2039, or more than 30 years from its date of issue.

The Indenture provides that (i) other Series of Bonds or Notes may be issued only (A) as Senior Bonds or Senior Notes on a parity with other Series of Senior Bonds or Senior Notes, or (B) as Subordinate Bonds or Subordinate Notes; but (ii) no Series of Senior Bonds or Senior Notes on a parity with other Series of Senior Bonds or Senior Notes shall be authenticated and delivered unless the amount of County Sales Tax Revenues and received by the Authority for the twelve consecutive calendar months ended not more than three months prior to the calculation date is at least three (3) times the amount of annual Debt Service (excluding any accrued or capitalized interest), including Debt Service on such Series of Senior Bonds and Senior Notes proposed to be issued, for each Fiscal Year such Notes will be Outstanding. See "APPENDIX C-SUMMARY OF INDENTURE AND FINANCING AGREEMENT."

### **Application of Revenues**

Upon receipt of County Sales Tax Revenues and State Aid Revenues required to be paid to the Authority in accordance with the Authority's instructions to the State Comptroller, the Trustee must deposit such amounts into the Collection Account held by the Trustee. Under the Indenture, the priority for the use by the Authority of its Revenues is as follows: *first*, to the Bond Account or Redemption Account to pay or set aside for Debt Service in accordance with the procedures described below under "SOURCES OF PAYMENT AND SECURITY FOR THE NOTES-Retention Procedures" and to reserve the amount, if any, necessary to replenish the Debt Service Reserve Account to the extent of any withdrawal therefrom; *second*, to pay debt service on any Subordinate Bonds or Subordinate Notes and to reserve the amount, if any, necessary to replenish any reserve accounts established in connection therewith, and to pay any other amounts pursuant to Supplemental Indentures for the benefit of Subordinate Noteholders, Subordinate Bondholders and parties to Subordinate Agreements; *third*, to the Authority's operating expenses, including deposits to the Redemption Account for optional redemption of the Senior Bonds, if any, and any reserves held by the Authority for payment of operating expenses; and *fourth*, to the County, as soon as practicable, free and clear of the lien of the Indenture.

## **SUMMARY OF COLLECTION AND APPLICATION OF REVENUES**

### **Retention Procedures**

At any time it is determined necessary by the Authority at its sole discretion and upon written notice to the Trustee, the Trustee will first transfer Revenues from the Collection Account to the Bond Account in an amount equal to Accrued Debt Service. In order to provide for the timely payment of Debt Service on the payment date, Accrued Debt Service has been defined under the Indenture to account for a number of variables, such as: any accrued or capitalized interest deposited in the Bond Account and available for the payment of Debt Service on a given payment date; any other amounts held by the Trustee and irrevocably pledged to the payment of Debt Service; actual rates of interest on notes or bonds; any interim purchase or redemption of notes or bonds that reduces the amount of Debt Service payable on the next payment date; and other similar factors. At closing, prior to maturity of the Series B Notes, the Accrued Debt Service for the Series B Notes shall be zero unless and until the Trustee is advised in writing by the Authority that the County has failed to make a Set Aside Payment into the Blocked Account within three (3) business days of the date when such Set Aside Payment is required. In such event, the Accrued Debt Service shall be the amount specified in such notice as the shortfall between the required Set Aside Payment and the Set Aside Payment actually made by the County, if any. At maturity, the "Accrued Debt Service" for the Notes shall be the principal and interest due thereon.

. See "SUMMARY OF COLLECTION AND APPLICATION OF REVENUES – Certain Other Payments."

In addition, while the Indenture provides that sufficient moneys will in any event be retained in the Bond Account to ensure that the amount of moneys required to pay Debt Service on an Authority obligation on the next succeeding payment date will be available for such purpose two months prior to such payment date (provided, however, that any failure so to retain sufficient moneys will not constitute an Event of Default under the Indenture), the Second Supplemental Indenture will not include the application of this provision to the Series B Notes.

## **AGREEMENTS OF THE STATE AND THE COUNTY**

### **State**

In the Act, the State pledges and agrees with the holders of the Notes that the State will not limit, alter or impair the rights vested in the Authority by the Act to fulfill the terms of the Indenture, or in any way impair the rights and remedies of such holders of the Notes or the security for the Notes until such Notes, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders of the Notes, are fully paid and discharged. The State is not obligated to make any additional payments or impose any taxes to satisfy the Debt Service obligations of the Authority. The State Constitution allows the State to amend, repeal, modify or otherwise alter statutes imposing or relating to the Local Sales Tax. County Sales Tax Revenues collected by the State Comptroller for transfer to the Authority are not subject to appropriation by the State or the County. The Act does not restrict any right of the State to amend, repeal, modify or otherwise alter Section 54 of the State Finance Law or any other provision of State law relating to State Aid to municipalities. Any payment by the State Comptroller to the Authority of State Aid Revenues is subject to annual appropriation of State Aid by the State Legislature.

### **County**

The Act also contains the covenant of the County that it will not limit, alter or impair the rights vested in the Authority by the Act to fulfill the terms of the Indenture, or in any way impair the rights and



remedies of such holders of the Notes or the security for the Notes until such Notes, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders of the Notes, are fully paid and discharged. Nothing contained in the Act restricts any right the County may have to amend, modify, repeal or otherwise alter local laws, ordinances or resolutions affecting or relating to the Local Sales Tax, so long as, after giving effect to such amendment, modification or other alteration, the aggregate amount projected by the Authority of County Sales Tax Revenues to be available to the Authority during each of its fiscal years following the effective date of such amendment, modification or other alteration is not less than 200% of maximum annual Debt Service on all Authority bonds, notes, or other obligations then outstanding. The Act requires the County to impose the Local Sales Tax at a rate of no less than 3% for the period ending December 31, 2039. For a further description of the covenants of the County set forth in the Financing Agreement. See “APPENDIX C–SUMMARY OF INDENTURE AND FINANCING AGREEMENT.”

THE NOTES ARE NOT A DEBT OF EITHER THE STATE OR THE COUNTY, AND NEITHER THE STATE NOR THE COUNTY IS LIABLE THEREON.

The covenants of the County and the State described above shall be of no force and effect with respect to any Note if there is on deposit in trust with a bank or trust company sufficient cash or Defeasance Collateral to pay when due all principal of and applicable redemption premium, if any, and interest on such Note.

### **Certain Other Payments**

In consideration of the Authority’s issuance of the Series B Notes, the County expects to deliver to the Authority on the delivery date of the Series B Notes general obligation revenue anticipation notes of the County (the “County RANs”).

The County RANs will mature on June 30, 2010. The Authority has covenanted that to the extent it receives amounts from the County as payments of the principal of or interest accruing on the County RANs, it will apply such payments to the payment of principal of and interest due on the Series B Notes unless payment of the principal and interest on the Series B Notes has been provided for in some other manner. **The County RANs and any payments thereon are not pledged to the holders of the Series B Notes, and the holders of the Series B Notes will have no recourse to the County or the County’s real property tax revenues.**

## **THE NOTES**

### **General**

The Notes will be dated, will bear interest at the rate and will mature on the date as set forth on the cover and inside cover page of this Official Statement without the option of prior maturity. All of the Notes will be issued in book-entry only form.

The Notes will be issued in denominations of \$5,000 or any whole multiple thereof, and will bear interest calculated on the basis of a 360-day year of 30-day months.

The Notes are not subject to optional redemption prior to maturity. See “–Optional Redemption”.

### **Optional Redemption**

The Notes are not subject to optional redemption prior to maturity.

**Plan of Finance and Use of Proceeds**

The proceeds from the sale of the Notes will be either a) paid directly to the Authority or b) deposited in the Bond Proceeds Fund established under the Financing Agreement and held by the Trustee and will be used, along with other funds of the Authority, if any, to purchase the County RANs in order to provide for the payment of certain Financeable Costs, consisting of cash flow needs of the County, and to pay certain costs of issuance, as set forth in the table below. Note proceeds are not pledged or available to pay any indebtedness of the Authority (except to the extent of any remaining original issue premium after payment of all costs of issuance).

**Sources and Uses of Funds**

Set forth below are the sources and uses of the proceeds of the Notes:

**SOURCES OF FUNDS**

Par amount of the Notes .....	\$64,805,000.00
Plus Original Issue Premium.....	<u>332,449.65</u>
<b>Total Sources of Funds.....</b>	<b>\$65,137,449.65</b>

**USES OF FUNDS**

Payment to County of Purchase Price for County RANs.....	\$65,000,000.00
Underwriter's Discount .....	62,212.80
Other costs of issuance and rounding amount.....	<u>75,236.85</u>
<b>Total Uses of Funds .....</b>	<b>\$65,137,449.65</b>

**Book-Entry Only System**

Beneficial ownership interests in the Notes will be available in book-entry-only form, in the principal amount of \$5,000 or integral multiples thereof. Purchasers of beneficial ownership interests in the Notes will not receive certificates representing their interests in the Notes purchased.

DTC will act as securities depository for the Notes. The Notes will be issued as fully-registered securities 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 Note certificate will be issued in the principal amount of said Notes bearing interest at a specified interest rate and will be deposited with DTC.

DTC, the world’s largest 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 2 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”). DTC has Standard & Poor’s highest rating: AAA. 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](http://www.dtcc.com).

Purchases of the Notes under the DTC system must be made by or through Direct Participants, which will receive a credit for the Notes on DTC’s records. The ownership interest of each actual purchaser of the Notes (“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 Notes 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 the Notes, except in the event that use of the book-entry system for the Notes is discontinued.

To facilitate subsequent transfers, all the Notes 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 the Notes 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 Notes; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Notes 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.

Redemption notices shall be sent to DTC. If less than all of the Notes 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 the Notes unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority 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 the Notes are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Notes 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 detailed information from the Authority or the Trustee, on a 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, the Trustee, or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC is the responsibility of the Authority or 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 Notes at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, the Note 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, Note certificates will be printed and delivered to DTC.

The information in this section under the heading “THE NOTES-Book-Entry Only System” 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.

#### **Other Information**

For additional information regarding the Notes, the Indenture and the Second Supplemental Indenture, including the events of default under the Indenture and Second Supplemental Indenture and the remedies of the Noteholders thereunder, which include acceleration of the Notes under certain circumstances, see “APPENDIX C–SUMMARY OF INDENTURE, SECOND SUPPLEMENTAL INDENTURE AND FINANCING AGREEMENT.”

#### **MARKET FACTORS AFFECTING FINANCINGS OF THE STATE AND MUNICIPALITIES OF THE STATE**

The financial condition of the Authority as well as the market for the Notes could be affected by a variety of factors, some of which are beyond the Authority’s control. There can be no assurance that adverse events in the State, including, for example, the seeking by a municipality of remedies pursuant to the Federal Bankruptcy Act or otherwise, will not occur which might affect the market price of and the market for the Notes. If a significant default or other financial crisis should occur in the affairs of the State or at any of its agencies or political subdivisions, thereby further impairing the acceptability of obligations issued by borrowers within the State, both the ability of the Authority to arrange for additional borrowings, including any refinancing of the Notes, and the market for and market value of outstanding debt obligations, including the Notes, could be adversely affected.

#### **TAX MATTERS**

In the opinion of Phillips Lytle LLP, Bond Counsel to the Authority, under existing law and assuming continuous compliance with certain tax covenants described herein, (i) interest on the Notes is not includible in gross income for federal income tax purposes pursuant to section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), and (ii) interest on the Notes is not treated as a specific preference item under Section 57 of the Code for purposes of the federal alternative minimum tax imposed on individuals and corporations under the Code. In rendering its opinion, Bond Counsel has: (i) relied on certain representations, certifications of fact, and statements of reasonable expectations made by

the Authority and the County in connection with, respectively, the Notes and the County RANs; (ii) Bond Counsel has assumed continuous compliance by the Authority and the County with certain ongoing covenants to comply with applicable requirements of the Code to assure the exclusion of interest on, respectively, the Notes and the County RANs from gross income under Section 103 of the Code; and (iii) relied on the opinion of Bond Counsel to the County addressed to, among others, the Authority and Bond Counsel with respect to the excludability of interest on the County RANs from gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Code and that the interest thereon will not constitute a specific item of tax preference under Section 57 of the Code for purposes of calculating the alternative minimum tax.

In addition, in the opinion of Bond Counsel, by virtue of the Act, interest on the Notes is exempt from personal income taxes imposed by the State or any political subdivision thereof (including The City of New York).

Bond Counsel expresses no opinion regarding any other federal or state tax consequences with respect to the Notes. Bond Counsel renders its opinion under existing law as of the issue date, and assumes no obligation to monitor compliance or to update its opinion or to advise any party after the issue date to reflect any future action, fact or circumstance, or change in law or interpretation, or otherwise. Bond Counsel expresses no opinion on the effect of any action hereafter taken or not taken in reliance upon an opinion of other counsel on the exclusion from gross income for federal income tax purposes of interest on the Notes, or under state and local tax law.

### **Certain Ongoing Federal Tax Requirements and Covenants**

The Code establishes certain ongoing requirements that must be met subsequent to the issuance, and delivery of the Notes in order that interest on the Notes be and remain not includible in gross income under section 103 of the Code. These requirements include, but are not limited to, requirements relating to use and expenditure of gross proceeds of the Notes, accounting for the cash flows of the County during the preceding fiscal year and the current fiscal year, yield and other restrictions on investments of gross proceeds, and the arbitrage rebate requirement that certain excess earnings on gross proceeds be rebated to the federal government. Noncompliance with such requirements may cause interest on the Notes to become included in gross income for federal income tax purposes retroactive to their issue date, irrespective of the date on which such noncompliance occurs or is discovered. The Authority and the County have covenanted to comply with certain applicable requirements of the Code to assure the exclusion of interest, respectively, on the Notes and the County RANs from gross income under section 103 of the Code.

### **Certain Collateral Federal Tax Consequences**

The following is a brief discussion of certain collateral federal income tax matters and does not purport to address all aspects of federal taxation that may be relevant to a particular owner of a Series B Note.

Section 884 of the Code imposes on certain foreign corporations a branch profits tax equal to thirty percent (30%) of the “dividend equivalent amount” for the taxable year. Interest on the Notes received or accrued by a foreign corporation subject to the branch profits tax may be included in computing the “dividend equivalent amount” of such corporation.

In addition, passive investment income, including interest on the Notes, may be subject to federal income taxation under Section 1375 of the Code for any S corporation that has Subchapter C earnings and

profits at the close of the taxable year, if more than twenty-five percent (25%) of the gross receipts of such S corporation is passive investment income.

Ownership of the Notes may result in collateral federal income tax consequences to certain taxpayers including, without limitation, financial institutions, life insurance companies, holders of an interest in a financial asset securitization investment trust, controlled foreign corporations, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits and individuals who otherwise qualify for the earned income credit. The Code denies the earned income credit to an individual who is otherwise eligible if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds certain limits set forth in Sections 32(i) and (j) of the Code. Interest on the Notes will constitute disqualified income for this purpose. The Code also provides that for years beginning after December 31, 2010, the earned income credit is phased out if the modified adjusted gross income of the taxpayer exceeds certain amounts. Interest on the Notes will be included in determining the modified adjusted gross income of the taxpayer.

In addition, attention is called to the fact that Section 265(b)(1) of the Code eliminates the interest deduction otherwise allowable with respect to indebtedness deemed incurred by banks, thrift institutions and other financial institutions to purchase or to carry tax-exempt obligations acquired after August 7, 1986 other than "qualified tax-exempt obligations" as defined in Section 265(b)(3) of the Code and tax-exempt obligations issued during 2009 and 2010 that are held as a part of the de minimis safe harbor amount for financial institutions pursuant to Code section 265(b)(7). The de minimis safe harbor is applicable to the adjusted bases of tax-exempt obligations issued during 2009 and 2010 that do not exceed 2 percent of the average adjusted bases for all assets of the financial institution. The Authority has NOT designated the Notes as "qualified tax-exempt obligations." For the purposes of Section 265(b)(1) of the Code eighty percent (80%) of the interest expense deemed incurred by banks, thrift institutions and other financial institutions to purchase or to carry the portion of the Notes that is part of the de minimis amount held by a financial institution is deductible.

Owners of the Notes should consult their own tax advisors as to the applicability and effect on their federal income taxes of the alternative minimum tax, the branch profits tax and the tax on passive investment income of S corporations, as well as the applicability and effect of any other collateral federal income tax consequences.

### **Bond and Note Premium**

The excess, if any, of the tax basis of the Notes purchased as part of the initial public offering to a purchaser (other than a purchaser who holds such Notes as inventory, stock in trade or for sale to customers in the ordinary course of business) over the amount payable at maturity is "bond premium". Bond premium is amortized over the term of such Notes for federal income tax purposes (or, in the case of a bond with bond premium callable prior to its stated maturity, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on such bond). Owners of such Notes are required to decrease their adjusted basis in such Notes by the amount of amortizable bond premium attributable to each taxable year such Notes are held. The amortizable bond premium on such Notes attributable to a taxable year is not deductible for federal income tax purposes; however, bond premium is treated as an offset to qualified stated interest received on such Notes. Owners of such Notes should consult their tax advisors with respect to the determination for federal income tax purposes of the treatment of bond premiums upon sale or other disposition of such Notes and with respect to the state and local tax consequences of owning and disposing of such Notes.

## **Possible Government Action**

Legislation affecting municipal bonds is regularly under consideration by the United States Congress. In addition, the Internal Revenue Service has established an expanded audit program for tax-exempt bonds. There can be no assurance that legislation enacted or proposed or an audit initiated by the Internal Revenue Service involving either the Notes or other tax-exempt bonds will not have an adverse effect on the tax-exempt status or market price of the Notes. There can be no assurance that legislation enacted or proposed after the date of issuance of the Notes will not have an adverse effect on the tax-exempt status or market price of the Notes.

**PROSPECTIVE PURCHASERS OF THE NOTES SHOULD CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE FEDERAL, STATE AND LOCAL INCOME TAX CONSEQUENCES OF OWNERSHIP OF THE NOTES AND ANY CHANGES IN THE STATUS OF PENDING OR PROPOSED FEDERAL TAX LEGISLATION.**

## **ABSENCE OF LITIGATION**

There is not now pending any litigation (i) restraining or enjoining the issuance or delivery of the Notes or questioning or affecting the validity of the Notes or the proceedings and authority under which they are issued or will be issued, respectively; (ii) contesting the creation, organization or existence of the Authority, or the title of the directors or officers of the Authority to their respective offices; (iii) questioning the right of the Authority to collect the Revenues, to perform its obligations under the Indenture or the Financing Agreement and to pledge the Revenues and funds and other moneys and securities purported to be pledged by the Indenture in the manner and to the extent provided in the Indenture; or (iv) questioning or affecting the collection of the Local Sales Tax in any material respect, or the application of the Local Sales Tax for the purposes contemplated by the Act, or the procedure thereunder.

## **LEGAL MATTERS**

Legal matters incident to the authorization, issuance and sale of the Notes will be subject to the final approving opinion of Phillips Lytle LLP, Bond Counsel to the Authority in the form of APPENDIX D attached hereto. Certain legal matters will be passed upon for the County by its Bond Counsel, Hawkins Delafield & Wood LLP. Certain legal matters will be passed upon for the Underwriter by Orrick Herrington & Sutcliffe LLP.

## **FINANCIAL STATEMENTS**

The financial statements of the Authority as of and for the year ended December 31, 2008, included in this Official Statement, as APPENDIX E, have been audited by Toski, Schaefer & Co., P.C., independent auditors, as stated in their report appearing herein.

## **CONTINUING DISCLOSURE UNDERTAKING FOR THE NOTES -- MATERIAL EVENTS NOTICES**

In order to assist the Underwriter in complying with Rule 15c2-12 promulgated by the Securities and Exchange Commission, the Authority, the County and the Trustee will enter into one or more written undertakings (the "Continuing Disclosure Agreement") for the benefit of the holders of the Notes to provide, among other things, certain continuing disclosure of material events as described herein. The

Authority will undertake for the benefit of the holders of the Notes to provide same to the Municipal Securities Rulemaking Board (“MSRB”).

The notices described above include notices of any of the following events with respect to the Notes, if material: (1) principal and interest payment delinquencies on the Notes and any other notes or bonds of the Authority or of the County; (2) non-payment related defaults on the Notes and any other notes or bonds of the Authority or of the County; (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 or events affecting the tax status of the Notes; (7) modifications to the rights of Noteholders; (8) Note calls; (9) defeasances; (10) release, substitution or sale of property securing repayment of the Notes; and (11) rating changes of the Notes, the Authority or the County.

The sole and exclusive remedy for breach or default under the Continuing Disclosure Agreement to provide continuing disclosure described above is an action to compel specific performance of the undertakings of the Authority, and no person, including the holder of the Notes, may recover monetary damages thereunder under any circumstances. Any Noteholder, including any beneficial owner, may enforce the Continuing Disclosure Agreement. A breach or default under the Continuing Disclosure Agreement shall not constitute an Event of Default under the Indenture. In addition, if all or any part of Rule 15c2-12 ceases to be in effect for any reason, then the information required to be provided under the Continuing Disclosure Agreement, insofar as the provision of Rule 15c2-12 no longer in effect required the provision of such information, shall no longer be required to be provided.

The foregoing undertakings are intended to set forth a general description of the type of financial information and operating data that will be provided; the descriptions are not intended to state more than general categories of financial information and operating data; and where an undertaking calls for information that no longer can be generated or is no longer relevant because the operations to which it related have been materially changed or discontinued, a statement to that effect will be provided. As a result, the parties to the Continuing Disclosure Agreement do not anticipate that it often will be necessary to amend the informational undertakings. The Continuing Disclosure Agreement, however, may be amended or modified under certain circumstances set forth therein.

## **LEGAL INVESTMENT**

Pursuant to the Act, the Notes of the Authority are securities in which all public officers and bodies of the State and all public corporations, municipalities and municipal subdivisions, 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, all administrators, conservators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the State, may properly and legally invest funds, including capital, in their control or belonging to them. Pursuant to the Act, the Notes may be deposited with and may be received by all public officers and bodies of the State and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized.

## **RATINGS**

The Notes are rated “MIG1” by Moody’s Investors Service, Inc. (“Moody’s”) and “F1+” by Fitch Ratings (“Fitch”). The Authority has been assigned an issuer rating of “Aa2” by Moody’s and “AA” by Fitch. There is no assurance that a particular rating will continue for any given period of time or that any



such rating will not be revised downward or withdrawn entirely if, in the judgment of the Rating Agency originally establishing the rating, circumstances so warrant. A downward revision or withdrawal of such ratings may have an effect on the market price of the Notes.

### **UNDERWRITING**

The Notes are being purchased for reoffering by the Underwriter, Roosevelt & Cross Incorporated. The Underwriter has agreed, subject to certain conditions, to purchase the Notes from the Authority at a purchase price of \$65,075,236.85 (representing the aggregate principal amount of the Notes of \$64,805,000.00 plus a premium of \$332,449.65 less an Underwriter's discount of \$62,212.80) and to make an initial public offering of the Notes at prices that are not in excess of the initial public offering prices, or at yields below the yields, set forth on the inside cover page of this Official Statement. The Underwriter will be obligated to purchase all such Notes if any such Notes are purchased.

The Notes may be offered and sold to certain dealers (including the Underwriter) at prices lower than such public offering prices, and such public offering prices may be changed from time to time by the Underwriter.

### **APPROVAL OF LEGALITY**

All legal matters incident to the authorization, issuance and delivery of the Notes are subject to the approval of Phillips Lytle LLP, Bond Counsel to the Authority. A copy of the opinion of Bond Counsel will be available at the time of delivery of the Notes, the form of which is set forth in "APPENDIX D-FORM OF BOND COUNSEL OPINION" hereto. Certain legal matters are subject to the approval of Orrick, Herrington & Sutcliffe LLP, counsel to the Underwriter.

### **TRUSTEE**

Manufacturers and Traders Trust Company, Buffalo, New York, is acting as Trustee in connection with the Notes.

### **FINANCIAL ADVISOR**

Capital Markets Advisors, LLC has acted as Financial Advisor to the Authority in connection with the sale of the Notes.

### **MISCELLANEOUS**

The references herein to the Act, the Indenture, and the Financing Agreement are brief summaries of certain provisions thereof. Such summaries do not purport to be complete and reference is made to the Act, the Indenture, and the Financing Agreement for full and complete statements of such provisions. Copies of the Act, the Indenture, and the Financing Agreement are available at the offices of the Trustee.

The agreements of the Authority with holders of the Notes are fully set forth in the Indenture. Neither any advertisement of the Notes nor this Official Statement is to be construed as a contract with purchasers of the Notes.

Any statements in this Official Statement involving matters of opinion, projections or estimates, whether or not expressly stated, are intended merely as expressions of opinion, projections or estimates and not as representation of fact.

The delivery of this Official Statement has been duly authorized by the Authority.

ERIE COUNTY FISCAL STABILITY AUTHORITY

BY: \_\_\_\_\_  
Kenneth Vetter, Executive Director

## APPENDIX A

### INFORMATION REGARDING THE AUTHORITY

#### **Purpose and Operations**

The Authority is a corporate governmental agency and instrumentality of the State constituting a public benefit corporation created by the Act in July 2005 with a broad range of financial control and oversight powers, including the power to issue its bonds and notes for various County purposes, including the restructuring of a portion of the County's outstanding debt. The Authority shall continue in existence until its oversight, control or other responsibilities and its liabilities, which include the payment of Authority bonds and notes, including the Notes, have been met or discharged, which in no event may be later than December 31, 2039. In addition, the Authority has certain powers under the Act to control, oversee and monitor the County's finances, including Covered Organizations. During a "control period," the Authority possesses significantly expanded oversight authority, all as more fully described below under "Authority Financial Control and Oversight Functions."

The Authority is not authorized by State law to file a petition in bankruptcy. In addition, under the Act, the County and the Covered Organizations are prohibited from filing any petition with any United States district court or court of bankruptcy for the composition or adjustment of municipal indebtedness without the approval of the Authority and the State Comptroller, and no such petition may be filed while Authority bonds or notes remain Outstanding.

#### **Directors and Management**

The Authority is governed by a board of seven directors, who are to be appointed by the Governor of the State (one seat of which is currently vacant). Of the seven directors appointed by the Governor, one is to be appointed directly by the Governor, one is to be appointed following the recommendation of the State Comptroller, and one is to be appointed on the joint recommendation of the Temporary President of the Senate and the Speaker of the Assembly; these members are required to be residents of the County. The Governor designates the Chairperson and Vice Chair from among the directors. Four directors constitute a quorum.

##### ***Directors***

*Robert M. Glaser*, Director, Chairperson. Mr. Glaser is the Managing Director of Freed Maxick & Battaglia, CPAs, PC and RSM McGladrey in Buffalo, New York. Mr. Glaser has 39 years of experience in public accounting including 13 years with a Big 4 international accounting firm.

*Daniel C. Oliverio, Esq.* Director, Vice-Chairperson. A member of Hodgson Russ's Dispute Resolution and Intellectual Property Practice Groups, Mr. Oliverio is among the firm's practice leaders in both civil business litigation and white-collar criminal and regulatory matters, including corporate investigations and compliance. Mr. Oliverio has also appeared in numerous Federal False Claims Act cases on behalf of both relators and defendants.

*Stanley J. Keysa*, Director and Secretary. Mr. Keysa has held a number of elected and appointed offices in local and county government, including Director of Planning and Development for the County.

*John Johnson*, Director. Mr. Johnson is the former Commissioner of the New York State Office of Children and Family Services.

*Kenneth Kruly*, Director. Mr. Kruly is the Director of Government Relations at Canisius College. He is a former Director of Budget and Management for the County.

*Louis Thomas*, Director.

Vacant, Director

### ***Officers***

The following is a brief description of the principal officers of the Authority:

*Kenneth Vetter*, Executive Director. Mr. Vetter is a former Director of Budget and Management for the County, serving subsequent to the County's most recent fiscal crisis. Mr. Vetter's previous positions have included senior budget analyst for the County and six years with the Buffalo Regional Chamber of Commerce (Buffalo Niagara Partnership and the Greater Buffalo Development Foundation).

### **Financing Agreement**

In accordance with the provisions of the Act described above, the Authority and the County have entered into the Financing Agreement, dated as of May 1, 2009, providing for, among other things, the issuance of bonds and notes by the Authority to finance various County purposes authorized under the Act. See "APPENDIX C-SUMMARY OF INDENTURE AND FINANCING AGREEMENT."

### **Authority Monitoring and Control Functions**

The Act provides that the Authority shall have different financial control and oversight powers depending upon whether the County's financial condition causes it to be in a "control period" or an "advisory period". Under the Act, the Authority began its existence during a County advisory period, which means that the Authority commenced operation with the power to review the operation, management, efficiency and productivity of County operations and of any Covered Organization's operations, and to make reports and recommendations thereon; to consult with the County in the preparation of the budget of the County and to comment on the budget; to audit compliance with the County's financial plans; to review and comment on the terms of any proposed borrowing, including the prudence of each proposed issuance of bonds or notes by the County; to assess the impact of any collective bargaining agreement to be entered into by the County; and to impose a control period upon making one of the statutory findings.

On November 3, 2006, following the review and rejection of the County Executive's proposed budget for fiscal year 2007 and four-year financial plan covering fiscal years 2007 to 2010, the Authority imposed a control period upon the County. Said control period was established based on the determination by the Authority that the County Executive's proposed fiscal 2007 budget and four-year financial plan did not contain "actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year." As such, the Authority found the County to be in violation of a provision of the Act, justifying the imposition of a control period. Justification for the continuation of this control period beyond November 3, 2007 must be elaborated upon by the Authority

within sixty days of this date. See “Authority Oversight Actions to Date” herein for further Authority actions.

In the event that the County’s finances improve sufficiently in the future to cause the Authority to determine that an advisory period should be in effect, the Authority would operate with a reduced set of financial oversight powers and responsibilities. After an advisory period has been established, a control period could be reimposed on the County upon a determination by the Authority that a fiscal crisis is imminent or that any of the following events has occurred or that there is a substantial likelihood and imminence of its occurrence: (a) the County shall have failed to adopt a balanced budget, financial plan or budget modification as required by Sections 3956 and 3857 of the Act; (b) the County shall have failed to pay the principal of or interest on any of its bonds or notes when due; (c) the County shall have incurred an operating deficit of one percent or more in the aggregate results of operations of any major fund of the County or a Covered Organization during its fiscal year assuming all revenues and expenditures are reported in accordance with generally accepted accounting principles, subject to the provisions of the Act; (d) the comptroller’s certification at any time, at the request of the Authority or on the comptroller’s initiative, which certification shall be made from time to time as promptly as circumstances warrant and reported to the Authority, that on the basis of facts existing at such time such officer could not make the certification described in subdivision one of Section 3951 of the Act; or (e) the County shall have violated any provision of the Act.

Under a control period, the Authority has the maximum authorized complement of financial control and oversight powers, and is empowered, among other things, (i) to approve or disapprove contracts, including collective bargaining agreements to be entered into by the County or any Covered Organization, binding or purporting to bind the County or any Covered Organization; (ii) to approve or disapprove the terms of borrowings by the County and Covered Organizations; (iii) to approve, disapprove or modify the County’s financial plans and take any action necessary in order to implement the financial plan should the County or any Covered Organization fail to comply with any material action necessary to fulfill the plan, including issuing binding orders to the appropriate local officials; (iv) to set a maximum level of spending for any proposed budget of any Covered Organization; (v) to impose a wage or hiring freeze, or both, with respect to employees of the County or any Covered Organization; (vi) to review the operation, management, efficiency and productivity of the County and any Covered Organization; (vii) to review and approve or disapprove the terms of any proposed settlement of claims against the County or any Covered Organization in excess of fifty thousand dollars; and (viii) to terminate the control period upon finding that no condition exists which would permit imposition of a control period.

### **Authority Oversight Actions to Date**

The Authority came into existence on July 12, 2005, following a report by the State Comptroller that projected an estimated \$118.4 million County General Fund gap in the 2005 fiscal year, and gaps of \$131.2 million in FY 2006, and \$178.2 million in 2007, in addition to several consecutive bond rating downgrades by Moody’s and Fitch of the County’s long-term credit rating. Since its creation, a chronology of some of the more significant oversight actions taken by the Authority are as follows:

On October 6, 2005, the Authority disapproved the version of the County’s four-year Financial Plan for the 2006-2009 period initially submitted to the Authority for its review on November 20, 2005, but approved a revised version of the County’s four-year Financial Plan on January 17, 2006. On July 26, 2006, following a review of the County’s four-year financial plan and expressing concern that many initiatives included in the plan were not being implemented, the Authority required the County to update and modify its four-year financial plan and resubmit the plan for approval by the Authority by August 22, 2006. On September 6, 2006, following a review of the revised four-year financial plan and expressing

concern that the four-year plan was becoming unbalanced in future years, the Authority rejected the County's submission and required a resubmission of this plan by October 16, 2006. On November 3, 2006, following a review of the County's proposed fiscal 2007 budget (as submitted on October 18, 2006) and four-year financial plan for the 2007-2010 period, the Authority rejected the County's submission, stating that the 2007 budget was structurally imbalanced and the 2007-2010 plan did not contain actions sufficient to ensure that with respect to the major operating funds, that annual aggregate operating expenses did not exceed annual aggregate operating revenues in each fiscal year, and imposed a control period upon the County. Also on November 3, 2006, the Authority adopted a resolution mandating a hiring freeze applicable to all employees of the County, effective immediately, and adopted a second resolution requiring that any contract, settlement or other obligation that binds or purports to bind the County or any Covered Organization with a value of \$50,000 and above shall be reviewed and approved by the Authority before it takes effect. Additionally, the resolution required the County to submit for Authority review, all collective bargaining agreements, memoranda of understanding, and negotiated settlements to grievances prior to the next regularly scheduled Authority meeting.

On October 15, 2007, the County submitted a revised four-year plan in conjunction with its 2008 executive recommended budget. At its November 3, 2007 meeting, the Authority voted to continue in a control period, citing that the County's 2008-2011 plan does not "contain actions sufficient to ensure with respect to major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year."

On December 21, 2007, the County submitted budget amendments and a revised four-year plan in conjunction with the 2008 legislative adopted budget. At its January 4, 2008 meeting, the Authority reasserted its control status based on the same methodology and reasoning indicated in the previous submission.

On October 1, 2008, the County submitted a revised four-year plan to, and the Authority rejected said revised four-year plan on October 15, 2008.

On October 15, 2008, the County Executive submitted to the ECFSA his proposed budget for the 2009 fiscal year, and a four-year financial plan for fiscal years 2009-2012 (the "2009-2012 Plan"). On November 3, 2008, having reviewed the 2009-2012 Plan, the ECFSA adopted a resolution rejecting the 2009-2012 Plan as it does not "contain actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year".

On June 2, 2009, the members of the ECFSA Board of Directors reviewed the revised 2009-2012 Plan submitted on May 27, 2009, and determined that it contained actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan – including budget year 2009 and out-years 2010 through 2012 – that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for each fiscal year; and determined that the Plan was complete and otherwise complies with the requirements of Section 3957 and the Act; and Public Authorities Law Section 3959(1) which requires the Authority to terminate the control period upon County when "it determines that none of the conditions which would permit the Authority to impose a control period exist."

The Authority found that the revised 2009-2012 Plan was complete and otherwise complies with the requirements of Section 3957 and the Act; and that by virtue of its submission of the revised 2009-2012 Plan to the Authority, the County is no longer in violation of Section 3957; and the Authority terminated the control period first imposed upon the County on November 3, 2006.

The Authority immediately reverted to an advisory period, as described by Public Authorities Law Section 3958; and the Authority shall re-impose the control period upon the County whenever the ECFSA determines that any one of the five circumstances listed in Public Authorities Law Section 3959(1)(a) through 3959(1)(e) shall have arisen.

**APPENDIX B\***

**INFORMATION REGARDING THE COUNTY**

**General Information**

The County is a municipal corporation of the State. With a 2000 population of 950,265, according to the U.S. Census Bureau, it is one of the State’s most populous counties. It has a land area of 1,058 square miles and is situated in Western New York, bounded on the west by Lake Erie and Canada, to the north by Niagara County, to the east by Genesee County and Wyoming County, and to the south by Cattaraugus and Chautauqua Counties. The County includes the State’s second largest city by population, Buffalo, as well as the cities of Lackawanna and Tonawanda and 25 towns. The County has numerous established residential areas, and its largest taxpayers include National Fuel Gas Corporation, National Grid and Benderson Development Co., Inc. The County includes major urbanized and industrial areas, as well as farmlands.

The County provides a variety of general governmental services, which supplement local city, town and village services. These include parks, cultural and recreational facilities, police, libraries, youth and senior citizen services, and correctional facilities. The County is responsible for providing mandated social service programs. The County also owns and operates a community college. It provides sanitary sewage collection, treatment and disposal facilities through a variety of special assessment districts.

Located within the County are three cities and 25 towns, including the City of Buffalo, the second largest city in the State, which serves as the County seat. The 2000 population estimates of the cities and five largest towns are as follows:

<b>Municipality</b>	<b>Population</b>
Buffalo, City .....	292,648
Lackawanna, City .....	19,064
Tonawanda, City .....	16,136
Amherst, Town.....	116,510
Cheektowaga, Town.....	94,019
Tonawanda, Town.....	78,155
Hamburg, Town .....	56,259
West Seneca, Town .....	45,920

SOURCE: U.S. Department of Commerce, Bureau of the Census.

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\* This Appendix B provided by the County and not subject to Authority verification.



## Population Characteristics

**TABLE 1**  
**Population (in 000s)**

<b>Year</b>	<b>Erie County</b>	<b>City of Buffalo</b>	<b>New York State</b>	<b>United States</b>
1970	1,114	463	18,237	203,212
1980	1,015	357	17,558	227,700
1990	969	328	18,000	248,200
2000	950	293	18,976	281,422

SOURCE: U.S. Department of Commerce, Bureau of the Census.

## Economy

The County is a major New York industrial and commercial center. The following tables illustrate the major components of the County's employment.

**TABLE 2**  
**Percent of Non-Farm Employment  
by Industry (NAICS) as of March 2009**

<u>Industry</u>	<u>Buffalo- Niagara Falls MSA<sup>(a)</sup></u>	<u>New York State</u>
Goods Producing		
Natural Resources, Mining & Construction .....	3.1%	3.7%
Manufacturing .....	10.5%	5.8%
Service Providing		
Trade, Transportation & Utilities .....	18.5%	17.0%
Information .....	1.5%	3.0%
Finance Activities .....	6.1%	8.1%
Professional & Business Services .....	12.8%	12.9%
Educational & Health Services .....	16.2%	19.6%
Leisure & Hospitality .....	8.8%	7.9%
Other Services .....	4.4%	4.3%
Government .....	18.1%	17.7%

<sup>(a)</sup> Metropolitan Statistical Area Summary

SOURCE: New York State Department of Labor, Labor Market Information.

**TABLE 3**  
**Total Labor Force and Employment 1993 – 2008 (in 000s)**

	<u>Erie County</u>		<u>New York State</u>	
	<b>Total Labor Force</b>	<b>Employed</b>	<b>Total Labor Force</b>	<b>Employed</b>
1993 .....	472.9	442.2	8698.9	8013.5
1994 .....	471.0	443.2	8682.0	8080.2
1995 .....	466.2	441.9	8676.8	8125.8
1996 .....	467.7	445.1	8780.5	8228.9
1997 .....	476.7	452.9	8997.5	8416.5
1998 .....	472.7	449.0	9058.8	8546.5
1999 .....	467.3	443.1	9134.1	8657.4
2000 .....	469.0	449.4	9180.4	8763.6
2001 .....	463.5	441.7	9177.6	8729.8
2002 .....	471.2	445.4	9311.4	8732.1
2003 .....	471.1	443.7	9300.3	8705.3
2004 .....	474.8	447.6	9355.1	8811.8
2005 .....	477.7	452.4	9415.4	8942.7
2006 .....			9492.2	9057.1
2007 .....	465.6	444.0	9519.3	9087.3
2008.....	468.7	425.9	9720.4	8906.5

NOTE: Annual averages not seasonally adjusted. Reflects employment of all employed persons in all occupations.

SOURCE: New York State Department of Labor, Labor Market Information.

**TABLE 4**  
**Annual Average Unemployment Rates 1993 - 2008<sup>(a)</sup>**

	<b>Erie County</b>	<b>New York State</b>	<b>United States</b>
1993	6.5%	7.9%	6.9%
1994	5.9	6.9	6.1
1995	5.2	6.4	5.6
1996	4.8	6.3	5.4
1997	5.0	6.5	4.9
1998	5.0	5.7	4.5
1999	5.2	5.2	4.2
2000	4.2	4.5	4.0
2001	4.7	4.9	4.7
2002	5.5	6.2	5.8
2003	5.8	6.4	6.0
2004	5.7	5.8	5.5
2005	4.9	5.0	5.1
2006	5.0	4.6	4.6
2007	4.8	4.5	4.6
2008	9.1	8.4	8.9

<sup>(a)</sup> Percent of total force unemployed, by place of residence, not seasonally adjusted.

SOURCES: U.S. Rate - U.S. Department of Labor, Bureau of Labor Statistics.  
Other Rates - New York State Department of Labor, Labor Market Information.

**TABLE 5**  
**Trends in Non-Farm Employment by Industry (NAICS) 1998 – 2008 (in 000s)**  
**Buffalo-Niagara Falls MSA**

Industry	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Goods Producing:											
Natural Resources, Mining & Construction	19.3	20.4	20.8	20.8	20.5	19.9	20.5	20.0	20.1	19.9	16.5
Manufacturing	84.7	84.0	83.7	78.2	72.3	68.8	66.5	64.1	62.6	60.8	55.7
Service Providing:											
Trade, Transportation & Utilities	106.7	107.1	108.2	107.5	104.7	102.9	102.1	103.4	102.8	103.6	98.1
Information	10.3	10.4	9.9	10.9	10.6	9.8	9.8	9.6	9.1	8.5	8.1
Finance Activities	29.3	29.7	29.9	31.2	33.2	33.6	35.0	34.4	34.8	33.3	32.4
Professional & Business Services	56.3	60.6	61.5	60.9	61.8	62.9	64.1	65.9	67.6	69.1	67.8
Educational & Health Services	83.1	83.8	83.5	80.3	81.6	83.0	84.1	85.1	85.3	85.3	85.0
Leisure & Hospitality	46.2	46.6	46.7	45.1	47.2	47.0	47.3	47.7	47.6	48.9	46.4
Other Services	22.1	22.9	23.1	23.5	23.1	23.1	23.0	22.9	22.9	23.2	23.3
Government:											
Federal Government	10.4	10.4	10.8	10.4	10.6	10.5	10.6	10.4	10.0	9.9	10.1
State Government	20.3	20.4	20.9	21.7	22.6	22.7	22.7	22.0	21.7	22.1	22.5
Local Government	56.8	57.9	59.2	59.5	59.8	61.7	62.1	61.5	61.6	62.3	63.5
<b>Total Non-Farm Employment (a) (b)</b>	<b>545.5</b>	<b>554.2</b>	<b>558.2</b>	<b>550.0</b>	<b>548.0</b>	<b>545.5</b>	<b>548.1</b>	<b>546.8</b>	<b>546.1</b>	<b>547.0</b>	<b>529.4</b>

(a) Totals may not add due to rounding.

(b) Total non-farm employment data is compiled by the New York State Department of Labor upon consultation with employers.

SOURCE: New York State Department of Labor, Labor Market Information.

The following is a list of the ten largest property taxpayers:

**TABLE 6  
Ten Largest Taxpayers (As of December 31, 2007)**

	<b>Equalized Taxable Valuation</b>
National Fuel Gas Corporation .....	\$684,800,536.31
National Grid.....	565,948,192.42
Verizon New York, Inc.....	319,609,987.68
Benderson Development Company, Inc.....	200,664,964.76
BG -Various Properties .....	187,799,568.79
Pyramid Company of Buffalo .....	142,904,477.73
New York State Electric & Gas .....	125,823,146.59
DDR MDT LLC.....	119,863,499.87
Seneca One Realty LLC.....	84,000,000.00
Wegmans Food Markets .....	<u>83,302,919.78</u>
TOTAL.....	<u>\$2,514,717,293.93</u>

SOURCE: Erie County Division of Real Property Tax Services.

**TABLE 7  
Ten Largest Employers (As of December 31, 2008)**

<b>Employer</b>	<b>Type of Activity</b>	<b>Number of Full Time Employees</b>
State of New York	Government	16,755
University at Buffalo	University	10,066
Kaleida Health	Health Care	10,000
U.S. Government	Government	10,000
HSBC Bank USA	Commercial Bank	5,848
Buffalo City School District	School District	5,389
Catholic Health System	Health Care	5,191
Employer Services Corp.	Employment Related Services	5,033
Erie County	Government and Community College	4,775
Tops Markets, LLC	Supermarkets and Convenience Stores	4,600

SOURCE: Business First –2009 Book of Lists (Employees in Western New York).

### ***County Employee Pension Benefits***

#### ***Employees' Retirement System (ERS)***

All employees of the County eligible for pension or retirement benefits under the Retirement and Social Security Law of the State of New York are members of the New York State and Local Employees' Retirement System ("ERS"). ERS is a cost-sharing multiple public employer retirement system. The obligation of employers and employees to contribute and the benefits to employees are governed by the New York State Retirement and Social

Security Law (the "Retirement System Law"). ERS offers a wide range of plans and benefits which are related to years of service and final average salary, vesting of retirement benefits, death and disability benefits and optional methods of benefit payments. All benefits generally vest after five years of credited service. The Retirement System Law generally provides that all participating employers in each retirement system are jointly and severally liable for any unfunded amounts. Such amounts are collected through annual billings to all participating employers. Generally, all employees, except certain part-time employees, participate in ERS. ERS is non-contributory with respect to members hired prior to July 27, 1976. All members hired on or after July 27, 1976 must contribute 3% of their gross annual salary toward the costs of retirement programs. The 3% contribution is waived when the employee completes ten (10) years of service.

The required ERS contributions for the last three fiscal years are as follows:

<u>Year</u>	<u>County ERS</u>	<u>Library Component ERS</u>	<u>ECMCC Component ERS</u>
2008	\$25,385,491	\$1,346,621	\$10,300,000
2007	28,669,390	1,470,906	10,800,000
2006	13,525,883	659,381	11,100,000

Source: County

**Other Post-Employment Benefits**

In adopting the requirements of GASB Statement No.45 during the year ended December 31, 2007, the County recognizes the cost of post-employment healthcare in the year when the employee services are received, reports the accumulated liability from prior years, and provides information useful in assessing potential demands on the County's future cash flows. Recognition of the liability accumulated from prior years will be phased in over 30 years, commencing with the 2007 liability.

For the County's fiscal year ended December 31, 2007, the County's annual OPEB cost (expense) of \$76,799,332 is equal to the Annual Required Contribution (ARC). Considering the annual expenses well as the payments for current health premiums, which totaled \$17,484,977 for retirees and their beneficiaries, the result was an increase in the net OPEB obligation of \$59,314,355 for the year ended December 31, 2007.

As of January 1, 2006, the most recent actuarial valuation date, the OPEB plan was unfunded, resulting in an unfunded accrued liability of \$736,191,567.

**Annual OPEB Cost and Net OPEB Obligation (in 000's)**

	<u>Governmental Activities</u>	<u>Business-type Activities</u>	<u>Primary Government Total</u>
Actuarial Accrued Liability (AAL)	\$600,577	\$135,615	\$736,192
Unfunded actuarial accrued liability (UAAL)	600,577	135,615	736,192
Normal cost at beginning of year	28,240	5,682	33,922
Amortization factor based on 30 years	17.40	19.71	
Annual covered payroll	196,875	46,457	243,332
UAAL as a percentage of covered payroll	305.05%	291.92%	302.55%

**Level Dollar Amortization  
Calculation of ARC under Projected Unit Credit Method  
(in 000's)**

	<u>Governmental Activities</u>	<u>Business-type Activities</u>	<u>Primary Government Total</u>
ARC normal cost with interest to end of year (UAAL) over 30 years with interest at end of year	\$28,240	\$5,682	\$33,922
Annual Required Contribution (ARC)	<u>36,145</u>	<u>6,732</u>	<u>42,877</u>
Interest on net OPEB obligation	64,385	12,414	76,799
Adjustment to ARC	0	0	0
	<u>0</u>	<u>0</u>	<u>0</u>

Annual OPEB cost (expense)	\$64,385	\$12,414	\$76,799
Contribution for fiscal year ended December 31, 2007	<u>(14,772)</u>	<u>(2,713)</u>	<u>(17,485)</u>
Increase in net OPEB obligation	49,613	9,701	59,314
Net OPEB obligation December 31, 2006	<u>0</u>	<u>0</u>	<u>0</u>
Net OPEB obligation December 31, 2007	<u>49,613</u>	<u>9,701</u>	<u>59,314</u>
Percent of annual OPEB cost contributed	22.94%	21.85	22.77%

## **Transportation**

The County is served by seven major railroad companies, providing easy freight and passenger access to United States and Canadian markets, including Canadian National, Canadian Pacific, CSX, Amtrak, Norfolk Southern, Buffalo Southern and Buffalo & Pittsburgh Railroad. It is one of the largest rail centers in the United States and one of the few centers with international connections.

Rail transportation is one of the County's larger industries, employing more than 2,100 persons with payrolls totaling approximately \$10 million a month. In addition to rail and air service, the County has a large trucking service with 10 transcontinental carriers, 23 international carriers, two transcontinental heavy equipment haulers, and numerous common carriers. There are four highway and two rail entry points into Canada from the County and Niagara County, which allow accessibility to numerous international, transcontinental and regional trucking companies. All major moving and storage companies are represented in the County.

Buffalo is located at the eastern end of Lake Erie and the western terminus of the New York State Barge Canal, with access to the St. Lawrence Seaway.

## **Educational, Cultural, Media and Recreational Facilities**

There are eight colleges and universities, four community and junior colleges, various vocational and technical schools, and junior and senior high schools, both public and parochial, located in the County. The City Campus of the Erie Community College opened in January 1982 and is located in the renovated historically significant former main post office in downtown Buffalo.

The State University of New York at Buffalo is the largest and most comprehensive component of the State University system. In Fall 2008 more than 28,000 students were enrolled in its undergraduate programs, graduate programs and professional schools. The university provides a \$1.5 billion economic impact annually. The facilities and faculty of the University are among the region's major assets.

A wide assortment of vocational and other specialized educational programs offered in the County are administered through a Board of Cooperative Educational Services (BOCES), with financial aid provided by cooperating school districts.

An important contribution to the area's educational facilities is the Buffalo and Erie County Public Library System. The merger of the Buffalo Public Library, the Governor Reference Library, and the Erie County Public Libraries in 1954 provided the scope for the Library System. The Library System houses approximately 5,000,000 volumes at its Central Library, city branches, and contract libraries.

The County has 12 hospitals with over 3,100 total beds, including the 550-bed, acute care Erie County Medical Center Corporation ("ECMCC"), a U.S. Department of Veterans Affairs medical center and a medical school at the University at Buffalo. The Roswell Park Cancer Institute is a major medical research facility located in Buffalo with 119 total beds. In 2008, following a recommendation from the New York State Commission on Healthcare Facilities in the 21st Century, ECMCC combined with Kaleida Health and the University at Buffalo to form a new joint entity called Great Lakes Health.

The Buffalo Niagara Medical Campus is an agency that has been created to develop and implement a master plan for Buffalo's Medical Corridor. The agency is a collaborative effort of the State University of New York at Buffalo, Kaleida Health, Hauptman Woodward Medical Research Institute, Roswell Park Cancer Institute, and other private sector non-profit groups. The campus includes institutions such as Roswell Park Cancer Institute, Buffalo General Hospital, and the Center for Excellence in Bioinformatics. This project is linking the medical institutions with the State University of New York at Buffalo and creating a magnet for talent and funding in the biomedical research field. The Campus Master Plan has been completed and two new research facilities costing over \$25 million are the first facilities in the plan. In January 2008, the State announced an appropriation of \$4.5 million for the acquisition of the former Trico Products property and renovation of the building for re-use.

The County area is served by a morning newspaper published by The Buffalo News, Inc. In addition, approximately 40 weekly newspapers, and local, general and special interest magazines and periodicals are circulated throughout the County. The area is served by 24 radio stations with a diverse range of programming, seven television stations, four of which are national network affiliates, and several cable TV companies offering multi-channel fare to a growing list of subscribers.

The County is the home of the Buffalo Bills (National Football League), the Buffalo Sabres (National Hockey League), and the Buffalo Bisons AAA Baseball (International League) professional sports teams.

The Buffalo area has attained a national reputation for a broad diversity of ethnic heritage and culture. Cultural centers include Kleinhans Music Hall (home of the Buffalo Philharmonic Orchestra), Burchfield Penney Art Center, the HSBC Arena, the Naval and Servicemen's Park, the Buffalo Zoo, the Albright-Knox Art Gallery, the Museum of Natural Science, and the Buffalo and Erie County Historical Society Museum. The Botanical Gardens were originally designed by Frederick Law Olmsted.

State and local officials have commenced a project that entails the expenditure of approximately \$45 million for redeveloping the Buffalo harbor through a State agency, the Erie Canal Harbor Development Corporation. The Buffalo Inner Harbor Project area is located adjacent to the 20,000 seat HSBC Arena at the foot of Main Street and the terminus of the Metro light rail line in downtown Buffalo. The project, originally conceived as a contemporary recreation-oriented plan, has a history-oriented focus and emphasizes the role of Buffalo's waterfront as the western terminus of the Erie Canal. The project includes the ongoing demolition of the Memorial Auditorium and rehabilitation of the vacant Donovan State Office Building and potential creation of a mixed retail-hotel facility.

Cultural tourism is being promoted and several projects are being pursued to help in this area. The historic restoration of Frank Lloyd Wright's Martin House is complete, as is a County supported Frank Lloyd Wright Boathouse on the Niagara River. Wright's Graycliff in the Town of Evans is now in the hands of a public benefit corporation that is progressing that facility's restoration. The Roycroft Campus Corporation has been organized to oversee the restoration of the entire campus in East Aurora.

**APPENDIX C**

**SUMMARY OF INDENTURE, SECOND SUPPLEMENTAL INDENTURE  
AND FINANCING AGREEMENT**



This summary of the Indenture and the Second Supplemental Indenture (the “Indenture”) and the Financing Agreement (the “Agreement”) is qualified in its entirety by reference to such documents, copies of which are available from the Authority and/or the Trustee.

## **The Indenture**

Definitions. The following terms, among others, are defined in the Indenture or Agreement:

“Accrued Debt Service” means, as of the beginning of each calendar month, (i) for Bonds, an amount equal to the sum of the amounts of accrued Debt Service, calculating the accrued Debt Service with respect to each obligation to include: (a) commencing [eight] months prior to any due date of interest, [one-sixth] of the amount of interest payable on such due date of interest and (b) commencing [fourteen] months prior to any due date of Principal Installments, [one-twelfth] of the amount of Principal Installments payable on such due date of Principal Installments (if there is no Principal Installment due date for more than [fourteen] months, then, the deposits required with respect to (b) shall commence [fourteen] months prior to the due date of such Principal Installment); provided, however, that as of the beginning of the calendar month [two] months prior to each due date with respect to Principal Installments and/or interest, Accrued Debt Service shall be recalculated, to the extent necessary, as the amount required to bring the balance in the Bond Account up to the full amount of interest and/or Principal Installments coming due on such due date, plus, if there are no Principal Installments due on such due date, such additional amount required pursuant to (b) above; and (ii) for Notes, an amount as determined by the Authority and to be included in the applicable Supplemental Indenture issued in connection therewith. In connection with the issuance of any obligations, the Authority shall provide a schedule to the Trustee setting forth the Accrued Debt Service due in each month for such obligations and other obligations then Outstanding hereunder. Notwithstanding the foregoing, in connection with the issuance of any obligations bearing a variable rate of interest, “Accrued Debt Service” shall be calculated using the highest possible rate pursuant to the definition of such term included in any Supplemental Indenture authorizing the issuance of such obligations.

“Ancillary Contracts” means contracts entered into pursuant to law by the Authority or for its benefit or the benefit of any of the Beneficiaries to facilitate the issuance, sale, resale, purchase, repurchase or payment of Bonds or Notes, including bond insurance, letters of credit and liquidity facilities.

“Arbitrage and Use of Proceeds Certificate” means the Arbitrage and Use of Proceeds Certificate of the Authority in connection with the issuance of the Series 2009B Notes, also signed by or with accompanying certifications of the County, all in a form satisfactory to Counsel to the Authority.

“Authorized Officer” means: (a) in the case of the Authority, the Chairperson, the Vice Chairperson, the Executive Director, the Treasurer, the Chief Financial Officer, the Chief Counsel, the Corporate Secretary, their successors in office, and any other person authorized to act hereunder by appropriate Written Notice to the Trustee.

“Beneficiaries” means Bondholders and, to the extent specified in the Indenture, Noteholders.

“Bondholders,” “Noteholders” and similar terms mean the registered owners of the Bonds and Notes from time to time as shown on the registration books of the Authority or its designee as registrar, and to the extent specified by Supplemental Indenture, the owners of bearer Bonds and Notes.

“Bond Proceeds Fund” means the Bond Proceeds Fund established pursuant to the Agreement.

“Bonds” means all obligations issued as Bonds under the Indenture.

“Cash Flow Borrowings” shall mean “cash flow borrowings” as used in the Act.

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

“Continuing Disclosure Undertaking” means the Erie County Fiscal Stability Authority Continuing Disclosure Agreement dated as of October \_\_\_\_, 2009, by and between the Authority and the Trustee.

“Counsel” means nationally recognized bond counsel or such other counsel as may be selected by the Authority for a specific purpose under the Indenture.

“County Covenant” means the specific pledge and agreement authorized by Section 3967 of the Act and recited in the paragraph entitled “County Covenant” below.

“County Tax Revenues” shall have the meaning ascribed to the term “county tax revenues” in the Act.

“Debt Service” means interest, redemption premium, purchase price to the extent provided by Officer’s Certificate of the Authority, principal and sinking fund payments due on outstanding Senior Bonds and (to the extent provided by Supplemental Indenture) Senior Notes, and amounts payable from the Bond Account on Senior Agreements.

“Debt Service Reserve Account” shall mean the Account so designated and held by the Trustee pursuant to the Indenture.

“Debt Service Reserve Account Requirement” shall mean Zero Dollars (\$0.00), provided, however, that if at any time the Sales Tax Coverage Ratio is less than 5.0x, then “Debt Service Reserve Account Requirement” shall mean the least of: (a) 10% of the par amount of the Senior Bonds; (b) 100% of the Maximum Annual Debt Service on the Senior Bonds; or (c) 125% of the annual average adjusted Debt Service on the Senior Bonds, in each case determined by the Authority at the time of the required funding of the Debt Service Reserve Account. If at any time thereafter the Sales Tax Coverage Ratio exceeds 5.0x, then the Debt Service Reserve Requirement shall revert to Zero Dollars (\$0.00). The Authority shall provide the Trustee with written notice of any change to the Debt Service Reserve Account Requirement.

“Declaration of Need” means a determination and declaration by the County that it requests the Authority to undertake a financing of Financeable Costs pursuant to and in accordance with §3961 of the Act.

“Defeasance Collateral” means money any (a) non-callable direct obligations of the United States of America, non-callable and non-prepayable direct federal agency obligations the timely payment of principal of and interest on which are fully and unconditionally guaranteed by the United States of America, non-callable direct obligations of the United States of America which have been stripped by the United States Treasury itself or by any Federal Reserve Bank (not including “CATS”, “TIGRS” and “TRS” unless the Authority obtains Rating Confirmation with respect thereto) and the interest components of REFCORP bonds for which the underlying bond is non-callable (or non-callable before the due date of such interest component) for which separation of principal and interest is made by request to the Federal Reserve Bank of New York in book-entry form, and shall exclude investments in mutual funds and unit investment trusts;

(b) obligations timely maturing and bearing interest but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof;

(c) certificates evidencing ownership of the right to the payment of the principal of or interest on obligations described in clause (b) of this definition, provided that such obligations are held in the custody of a bank or trust company satisfactory to the Trustee in a segregated trust account in the trust department separate from the general assets of such custodian; and

(d) bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (i) which are not callable at the option of the obligor or otherwise prior to maturity or as to which irrevocable notice has been given by the obligor to call such bonds or obligations on the date specified in the notice, and (ii) timely payment of which is fully secured by a fund consisting only of cash or obligations of the character described in clause (a), (b) or (c) of this definition which fund may be applied only to the payment when due of such bonds or other obligations.

“Defeased Bonds” means Bonds or Notes that remain in the hands of their Holders but are no longer deemed Outstanding.

“Eligible Investments” means and includes any of the following obligations to the extent they are at the time legal for investment of such funds pursuant to any applicable provision of law:

(a) Defeasance Collateral;

(b) certificates of deposit, whether negotiable or non-negotiable, and banker’s acceptances of any of the fifty largest banks in the United States which bank, at the time of investment, has an outstanding unsecured, uninsured and unguaranteed debt issue ranked by two nationally recognized independent rating agencies at a rating category that is no lower than the then current rating of the authority’s bonds, notes or other obligations;

(c) commercial paper of any bank or corporation created under the laws of either the United States or any state of the United States which commercial paper, at the time of the investment, has received the highest rating of two nationally recognized independent rating agencies;

(d) bonds, debentures, or other evidences of indebtedness, issued or guaranteed at the time of the investment by the federal national mortgage association, federal home loan mortgage corporation, student loan marketing association, federal farm credit system, or any other United States government sponsored agency, provided that at the time of the investment such agency receives, or its obligations receive, any of the three highest rating categories of two nationally recognized independent rating agencies;

(e) any bonds or other obligations of any state or the United States of America or of any political subdivision thereof or any agency, instrumentality or local governmental unit of any such state or political subdivision which bonds or other obligations, at the time of the investment have received any of the three highest ratings of two nationally recognized independent rating agencies;

(f) any repurchase agreement with any bank or trust company organized under the laws of the state of the United States of America or any national banking association or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in paragraph (a), (b) or (e)

above, which securities shall at all times have a market value of not less than the full amount of the repurchase agreement and be delivered to another bank or trust company organized under the laws of the state or any national banking association domiciled in the state, as custodian;

(g) reverse repurchase agreements with any bank or trust company organized under the laws of any state of the United States of America or any national banking association or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in paragraph (a), (b) or (e) above which securities shall at all times have a market value of not less than the full amount of the repurchase agreement and be delivered to another bank or trust company organized under the laws of the state or any national banking association domiciled in the state, as custodian; or

(h) such other investments as the Authority may approve in any Supplemental Indenture;

provided that no investment held in the Bond Proceeds Fund may (i) evidence the right to receive only interest with respect to the obligations underlying such instrument or (ii) be purchased at a price greater than par if such instrument may be prepaid or called at a price less than its purchase price prior to its stated maturity.

“Estimated Average Interest Rate” means, as to any obligations bearing a variable interest rate (including Bonds and swap contracts) and as of any date of calculation, the interest rate or rates anticipated to be borne by such Bonds and the period or periods for which such rate or rates are anticipated to be in effect, all as determined by the Authority as the greater of the Index plus 2%, or the actual average for the last twenty-four months of variable interest rates on Outstanding variable interest rate Bonds, which rate or rates may, to the extent determined by the Authority, be the rate or rates payable in connection with such obligations and a related swap contract meeting the requirements of the Indenture. The Authority shall provide the Trustee with written notice of any change to the Estimated Average Interest Rate.

“Fiduciary” or “Fiduciaries” means the Trustee, any representative of the Holders of Subordinate Notes or Subordinate Bonds appointed by Supplemental Indenture.

“Financeable Costs” has the meaning given to the term “financeable costs” in the Act.

“Fitch” means Fitch Inc.; references to Fitch are effective so long as Fitch is a Rating Agency.

“Index” when calculating the Estimated Average Interest Rate hereunder, shall mean the average for the last twenty-four calendar months of (a) the Securities Industry and Financial Markets Association Municipal Swap Index (formerly the Bond Market Association/PSA Municipal Swap Index) (as such term is defined in the *1992 ISDA U.S. Municipal Counterparty Definitions*) (the “SIFMA Municipal Swap Index”) or (b) if the SIFMA Municipal Swap Index is no longer published, the Kenny Index (as such term is defined in the *1992 ISDA US. Municipal Counterparty Definitions*) or (c) if neither of the SIFMA Municipal Swap Index nor the Kenny Index are published, the index determined by the Authority to equal the prevailing rate for tax-exempt state and local government bonds meeting criteria determined in good faith by the Authority to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association to determine the SIFMA Municipal Swap Index just prior to when the Securities Industry and Financial Markets Association stopped publishing the SIFMA Municipal Swap Index.

“LFL” means the Local Finance Law of the State, as amended from time to time.

“Majority in Interest” means the Holders of a majority of the Outstanding Bonds or Notes eligible to act on a matter, measured by principal amount at maturity unless otherwise specified in a Supplemental Indenture.

“Maximum Annual Debt Service” on all Authority bonds, notes and other evidences of indebtedness means, as determined by the Authority at any given time, the greatest amount of interest, principal and sinking fund payments on all outstanding Authority Bonds, Notes, and ancillary and swap contracts (including payments on Subordinate Bonds and Senior Bonds and Notes, but excluding payments on Bond Anticipation Notes anticipated by the Authority to be repaid from Authority Bonds, whether or not any such payments constitute Debt Service) payable in the current or any future fiscal year. The Authority shall give the Trustee notice of any change to the Maximum Annual Debt Service.

“Mirror Obligations” means notes or bonds issued by the County and approved by, and payable to, the Authority in accordance with the Local Finance Law to finance capital project expenditures in conjunction with the issuance of notes or bonds issued by the Authority.

“Moody’s” means Moody’s Investors Service and its successors; references to Moody’s are effective so long as Moody’s is a Rating Agency.

“Notes” means all obligations issued as Notes under the Indenture.

“Operating Expenses” means all expenses incurred by the Authority in the administration of the Authority including but not limited to salaries, administrative expenses, insurance premiums, auditing and legal expenses, fees and expenses incurred for professional consultants and fiduciaries, payments on Notes and swap and ancillary contracts not paid as Financeable Costs or from the Bond Account, transfers to pay or service Subordinate Bonds, and all operating expenses so identified by Supplemental Indenture.

“Official Statement” means the final official statement, dated October \_\_\_\_, 2009, relating to the Series 2009B Notes.

“Outstanding”, when used to modify Bonds or Notes, refers to Bonds or Notes issued under the Indenture, excluding: (a) Bonds or Notes which have been exchanged or replaced, or delivered to the Trustee for credit against a principal payment; (b) Bonds or Notes which have been paid; (c) Bonds or Notes which have become due and for the payment of which money has been duly provided; (d) Bonds or Notes, including any portion of any Series thereof, for which there has been irrevocably set aside sufficient Defeasance Collateral timely maturing and bearing interest, to pay or redeem them; and if any such Bonds or Notes are to be redeemed prior to maturity, the Authority shall have taken all action necessary to redeem such Bonds or Notes and notice of such redemption shall have been duly mailed in accordance with the Indenture or irrevocable instructions so to mail shall have been given to the Trustee; (e) Bonds and Notes, including any portion of any Series thereof, the payment of which shall have been provided for; and (f) for purposes of any consent or other action to be taken by the Holders of a Majority in Interest or specified percentage of Bonds or Notes under the Indenture, Bonds or Notes held by or for the account of the Authority, the County or any person controlling, controlled by or under common control with either of them.

“Preliminary Official Statement” means the preliminary official statement dated October \_\_\_\_, 2009, relating to the Series 2009B Notes.

“Principal Installment” means, with respect to any obligations the payment of which constitute Debt Service, principal and sinking fund payments and any other such payment obligations not constituting interest or an interest component of such payment obligation.

“Purchase Contract” means the contract of purchase dated October \_\_\_\_, 2009, between the Authority and the Underwriter, relating to the Series 2009B Notes.

“Rating Agency” means each nationally recognized statistical rating organization that has, at the request of the Authority, a rating in effect for the Senior Bonds.

“Rating Confirmation” means evidence that no Senior Bond rating in effect from a Rating Agency will be withdrawn or reduced solely as a result of an action to be taken under the Indenture.

“Requisition” means a certificate in writing signed by an Authorized Officer of the County in the form required from time to time by the Authority under the Agreement.

“Revenues” means the County Tax Revenues, State Aid Revenues, investment earnings on money and investments on deposit in the Accounts and all other income and receipts (other than Note or Bond proceeds) paid or payable to the Authority or the Trustee for the account of the Authority to the extent such other income and receipts are to be treated as Revenues under the terms of the Indenture.

“S&P” means Standard & Poor’s Ratings Services; references to S&P are effective so long as S&P is a Rating Agency.

“Sales Tax Coverage Ratio” means the sum of: (a) the receipts of County Tax Revenues for the most recent 12 consecutive calendar months ended three months prior to the date of determination; and (b) the receipts of State Aid Revenues for the most recent 12 consecutive calendar months ended three months prior to the date of determination; divided by the aggregate amount of Debt Service (excluding any accrued or capitalized interest) on the Senior Bonds for the most recent twelve (12) consecutive calendar months ended three months prior to the date of determination, calculated by the Authority as of January 1, April 1, July 1 and December 1 of each calendar year.

“Senior Agreements” means ancillary and swap contracts to the extent that amounts are payable thereon from the Bond Account pursuant to a Supplemental Indenture.

“Senior Bonds” means all Bonds issued as Senior Bonds in compliance with the Indenture.

“Senior Notes” means all Notes issued as Senior Notes in compliance with the Indenture.

“Series” means all Notes or Bonds so identified in a Supplemental Indenture, regardless of variations in maturity, interest rate or other provisions, and any Notes or Bonds thereafter delivered in exchange or replacement therefor.

“Series 2009B Notes” means a series of Senior Bond Anticipation Notes authorized under the Second Supplemental Indenture in the aggregate principal amount of \$64,805,000.00.

“State” means the State of New York.

“State Aid Revenues” shall have the meaning ascribed to the term “state aid revenues” in the Act.

“State Covenant” means the State’s pledge and agreement set forth in Section 3966 of the Act and recited in the paragraph entitled “State Covenant” below.

“Subordinate Agreements” means ancillary and swap contracts to the extent that such contracts are not Senior Agreements.

“Subordinate Bonds” means all Bonds other than Senior Bonds.

“Subordinate Notes” means all Notes other than Senior Notes.

“Swap Contract” means an interest rate exchange or similar agreement entered into by the Authority pursuant to the Act, with Rating Confirmation from each Rating Agency.

“Tax-Exempt Bonds” or “Tax-Exempt Notes” means all Bonds or Notes so identified in any Supplemental Indenture.

“Tax Law” means the Tax Law of the State, as amended from time to time.

“Trigger Event” shall mean the occurrence of either of the following events:

(a) the Authority shall enter an “advisory period” as contemplated by Section 3958 of the Act at any time during the Short Term Period, or

(b) the County becomes authorized by the Act, as amended, to issue bonds or notes without the consent or approval of the Authority.

“Trust Indenture Act” means the United States Trust Indenture Act of 1939 as in force at the date of which the Indenture was executed; *provided*, however, that in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“Underwriter” means the underwriter named in the Purchase Contract.

Directors, State and County Not Liable on Notes or Bonds. Neither the Directors of the Authority nor any person executing Notes, Bonds or other obligations of the Authority shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

The Notes, Bonds and other obligations of the Authority shall not be a debt of either the State or the County, and neither the State nor the County shall be liable thereon, nor shall they be payable out of any funds other than those of the Authority; and the Notes and Bonds shall contain on the face thereof a statement to such effect.

Security and Pledge. Pursuant to the Act, the Authority assigns and pledges to the Trustee in trust upon the terms of the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture, (a) the Revenues, (b) all rights to receive the Revenues and the proceeds of such rights, (c) all Accounts and assets thereof, including money, contract rights, general intangibles or other personal property, held by the Trustee under the Indenture, (d) the State Covenant, the County Covenant and the other covenants, agreements and acknowledgments of the County made the Agreement, and (e) any and all other property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, conveyed, pledged, assigned or transferred as and for additional security under the Indenture. Except as specifically provided in the Indenture, this assignment and pledge does not include: (i) the rights of the Authority pursuant to provisions for consent or other action by the Authority, notice to the Authority, indemnity or the filing of

documents with the Authority, or otherwise for its benefit and not for that of the Beneficiaries, or (ii) any right, duty or power reserved to the Authority pursuant to the Act or other law. The Authority will implement, protect and defend this assignment and pledge by all appropriate legal action, the cost thereof to be an Operating Expense. The preceding, and all pledges and security interests made and granted by the Authority pursuant hereto, are immediately valid, binding and perfected to the full extent provided by the Act. The foregoing collateral is pledged and a security interest is therein granted, to secure the payment of Bonds, Notes, and payments in respect of Senior Agreements and Subordinate Agreements; provided, however, that the pledge and security interest in the Indenture granted to secure the Authority's obligation to pay Subordinate Bonds and Subordinate Agreements shall be subject and subordinate to the pledge and security interest in the Indenture granted to secure Debt Service. The lien of such pledge and the obligation to perform the contractual provisions made in the Indenture, including, but not limited to, paying the Trustee's fees, expenses and indemnification costs, shall have priority over any or all other obligations and liabilities of the Authority secured by the Revenues. The Authority shall not incur any obligations, except as authorized by the Indenture, secured by a lien on the Revenues or Accounts equal or prior to the lien of the Indenture.

Defeasance. (a) If the Authority shall pay or cause to be paid to the Beneficiaries of all obligations then Outstanding the principal and interest and redemption price, if any, to become due thereon, at the times and in the manner stipulated therein and in the Indenture, then, at the option of the Authority, expressed in an instrument in writing signed by an Authorized Officer and delivered to the Trustee, the respective covenants, of the Authority, the State and the County to the Beneficiaries shall be discharged and satisfied. In such event, the Trustee shall, upon the request of the Authority, execute and deliver to the Authority all such instruments as may be desirable to evidence such discharge and satisfaction and the Fiduciaries shall pay over or deliver to the Authority all money, securities and funds held by them pursuant to the Indenture which are not required for the payment or redemption of obligations not theretofore surrendered for such payment or redemption.

(b) Outstanding Bonds or Notes or any portions thereof for the payment or redemption of which money shall have been set aside and shall be held in trust by the Paying Agents shall, at the respective maturity or redemption dates thereof, be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this paragraph. Outstanding Bonds or Notes or any portions thereof shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this paragraph either (i) as provided in the Supplemental Indenture authorizing their issuance or (ii) (A) if in case any of said Bonds or Notes 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 mail as provided in the Indenture notice of redemption on said date of such obligations, (B) there shall have been irrevocably deposited with the Trustee either money in an amount which shall be sufficient, or Defeasance Collateral 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, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon, to pay when due, the principal or redemption price, if applicable, and interest due and to become due on such Bonds or Notes or such portions thereof on and prior to the redemption date or maturity date thereof, as the case may be, and (C) in the event such Bonds or Notes are not by their terms maturing or are not subject to redemption within the next succeeding 60 days, the Authority shall have given the Trustee in form satisfactory to it irrevocable instructions to mail, as soon as practicable, a notice to the Beneficiaries of such Bonds or Notes that the deposit required by (B) above has been made with the Trustee and that said Bonds or Notes are deemed to have been paid in accordance with the Indenture and stating such maturity or redemption date upon which money is to be available for the payment of the principal or redemption price, if applicable, on such Bonds or Notes. Neither Defeasance Collateral nor money deposited with the Trustee pursuant to the Indenture nor principal or interest payments on any such Defeasance Collateral shall be withdrawn or



used for any purpose other than, and shall be held in trust for, the payment of the principal or redemption price, if applicable, and interest on said Bonds or Notes provided that any money on deposit with the Trustee, (x) to the extent such money will not be required at any time for such purpose, shall be paid over to the Authority as received by the Trustee, free and clear of any trust, lien or pledge securing said Bonds or Notes or otherwise existing under the Indenture, and (y) to the extent such money will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Defeasance Collateral maturing at times and in amounts sufficient, together with any money available to the Trustee for such purpose, to pay when due the principal or redemption price, if applicable, and interest to become due on said Bonds or Notes on and prior to such redemption date or maturity date thereof, as the case may be.

(c) Upon such defeasance, the funds and investments required to pay or redeem the Bonds, Notes and other obligations to Beneficiaries shall be irrevocably set aside for that purpose, subject only, however, to provisions of the Indenture relating to unclaimed money, and money held for defeasance shall be invested only as provided above in this section and applied by the Trustee and other Paying Agents, if any, to the retirement of the Bonds and Notes and other obligations. Any funds or property held by the Trustee and not required for payment or redemption of the Bonds, Notes and other obligations to Beneficiaries in full shall, after satisfaction of all the rights of the Authority and the Trustee, be distributed to the Authority upon such indemnification, if any, as the Trustee may reasonably require.

Notes and Bonds of the Authority. (a) Subject to the provisions of the Act, by Supplemental Indenture complying procedurally and in substance with the Act and the Indenture, the Authority may authorize, issue, sell and deliver Bonds or Notes, including Notes in anticipation of Bonds, from time to time in such principal amounts as the Authority shall determine to be necessary, to provide sufficient funds to finance Financeable Costs by payment or reimbursement, and fund reserves to secure Notes or Bonds; and may issue Notes or Bonds to renew or refund Notes or Bonds, by exchange, purchase, redemption or payment, and establish such escrows therefor as it may determine. The Trustee shall have the right to decline to authenticate and deliver any additional Notes or Bonds under this Section if the Trustee, determines that such action may not lawfully be taken by the Authority or if the Trustee in good faith by its board of directors or board of trustee, executive committee, or a trust committee of directors or trustees or Responsible Officers shall determine that such action would expose the Trustee to personal liability to existing Bondholders or Noteholders, as applicable.

(b) Bonds and Notes may be issued only:

(i) as Senior Bonds or Senior Notes, or as Subordinate Bonds or Subordinate Notes;

(A) to pay or reimburse Financeable Costs, but not to exceed the limitations for specified Financeable Costs set forth in §3962(1) of the Act in issuance amount, measured by proceeds to the Authority, and

(B) to refund or renew such Bonds or Notes; but

(ii) with the exception of the initial Series of Senior Bonds issued under the Indenture, no Senior Bonds or Notes shall be authenticated and delivered except upon receipt by the Trustee of:

(A) an Officer's Certificate of the Authority setting forth, based upon information provided to the Authorized Officer filing such Officer's Certificate by the State Comptroller or other State official on whom such Authorized Officer may reasonably rely, the receipts of County Tax Revenues by the Trustee (or by the Authority or the County, as applicable, with respect to the period prior

to redirection of such amounts to the Trustee) for the most recent 12 consecutive calendar months ended not more than three months prior to the date of such certificate for which information is available; and

(B) an Officer's Certificate of the Authority setting forth

(I) the aggregate amount of Debt Service (excluding any accrued or capitalized interest), including such Series of Bonds or Notes, for each Fiscal Year Bonds or Notes will be Outstanding, and

(II) that the amount set forth pursuant to clause (A) will be at least two times such aggregate amount set forth in clause (B)(I) for each fiscal year.

(iii) no Senior Bonds shall be authenticated and delivered except upon receipt by the Trustee of (A) an Officer's Certificate of the Authority making the computation, if any, required in the definition of Debt Service Reserve Account Requirement, if any, set forth in the Supplemental Resolution under which such Senior Bonds are being issued, and determining the amount, if any, required to be deposited to the Debt Service Reserve Account to fulfill such Debt Service Reserve Account Requirement, and (B) provision for such deposit.

For purposes of this Section, each interest rate on Outstanding and proposed variable interest rate Bonds or Notes shall be assumed at the Estimated Average Interest Rate. The elements of this Section shall be certified to the Trustee by an Authorized Officer of the Authority or as specified above.

(c) The Notes and Bonds shall bear such dates and shall mature at such times as the Authority may provide pursuant to the Act. The Notes and Bonds shall bear interest at such fixed or variable rates, and shall be in such denomination, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place and be subject to such terms of redemption as the Authority may provide pursuant to the Act. The Notes and Bonds may be sold by the Authority at public or private sale pursuant to the Act.

(d) The Notes and Bonds shall be executed in the name of the Authority by the signature or facsimile signature of an Authorized Officer and attested by the signature or facsimile signature of an Authorized Officer. The authenticating certificate of the Trustee or designated fiscal agent shall be manually signed. Coupons, if any, attached to a Bond shall be authenticated by the facsimile or manual signature of an Authorized Officer unless the Authority shall, by resolution, provide that such coupons shall be authenticated by the facsimile or manual signature of the Trustee or designated fiscal agent. Obligations executed as set forth above shall be valid and binding obligations when duly delivered, notwithstanding the fact that before the delivery thereof the persons executing the same shall have ceased to be in office or others may have been designated to perform such functions.

(e) Every Bond and Note shall contain a statement of at least the following:

- (i) The type of obligation.
- (ii) The amount of the obligation and the total amount of the Series of which the obligation is a part.
- (iii) The date and maturity of the obligation.
- (iv) The place or places of payment of principal and interest.

(v) The medium of payment.

(vi) If the obligation is payable to bearer, whether it may be converted into a registered obligation; if the obligation is in registered form, whether it may be converted into a bearer obligation.

(vii) If the obligation may be called for redemption prior to its date of maturity, the terms and conditions under which such obligation may be redeemed.

(viii) The rate of interest or, in the case of obligations bearing a variable rate of interest, the procedure for calculating such variable rate of interest and the maximum rate of interest which such variable rate obligations may bear, together with the date or dates of payment thereof.

(f) The Trustee shall keep a complete record of each Series of Bonds and Notes, which shall include:

(i) The type and purpose thereof.

(ii) The amount thereof.

(iii) The number of obligations in the Series.

(iv) The rate or rates of interest thereon.

(v) The date of issue thereof.

(vi) The date of maturity of each obligation.

(vii) The date of the applicable Supplemental Indenture

Documents to be Delivered to Trustee. The Authority may from time to time request the authentication and delivery of a Series of Bonds or Notes by providing to the Trustee (at or prior to such authentication and delivery), among other documents, the following:

(a) copies of the Agreement and each applicable Supplemental Indenture, certified by an Authorized Officer of the Authority, and a copy of any related Declaration of Need;

(b) an Officer's Certificate of the Authority as to the purposes to be financed, showing compliance with the Indenture and to the effect that, to the best of such Authorized Officer's knowledge, there is no default under the Indenture that will remain uncured immediately following such delivery, nor an uncured failure of the State or the County to comply with their respective agreements provided for in the Act, as in effect at the date of the Indenture;

(c) an opinion of Counsel as to the due authorization, execution and delivery by the Authority of the Indenture and each relevant Supplemental Indenture; to the effect that the Indenture is in full force and effect and that the Bonds or Notes are valid and binding obligations of the Authority secured by the pledge of the Indenture; and after delivery of the initial Series of Bonds or Notes under the Indenture, to the effect that the issuance of the Bonds or Notes will not adversely affect the exclusion from gross income for federal income tax purposes of interest on Tax-Exempt Bonds or Tax-Exempt Notes theretofore issued (as set forth in the opinions delivered with such prior Bonds or Notes);

(d) such other documents as may be required by the applicable Supplemental Indenture; and

(e) an Officer's Certificate of the Authority to the effect that the applicable conditions to the issuance of Bonds or Notes set forth in the Indenture and in each applicable Supplemental Indenture have been met; and authorizing and directing the authentication by the Trustee of the Bonds or Notes

Ancillary and Swap Contracts. Pursuant to the Act, the Authority may enter into, amend or terminate, as it determines to be necessary or appropriate, any ancillary or swap contracts, including Senior Agreements. The Authority may by Supplemental Indenture provide for the payment through the Bond Account of any amounts due pursuant to ancillary and swap contracts (excluding termination payments), any such ancillary and swap contracts thereby constituting Senior Agreements. Any amounts paid or payable to the Authority pursuant to any ancillary or swap contract shall constitute a Revenue and, except as otherwise provided in a Supplemental Indenture, shall be deposited in the Bond Account.

Bond Anticipation Notes. Whenever the Authority shall authorize the issuance of a Series of Bonds, the Authority may, by Supplemental Indenture, authorize the issuance of Notes and renewals thereof in anticipation of such Series. The interest on such Notes and renewals thereof may be made payable from the proceeds of such Notes, from the Bond Account or from the proceeds of the Series of Bonds in anticipation of which such Notes are issued. The proceeds of such Bonds may be pledged for the payment of the principal of or interest on such Notes, and any such pledge shall have a priority over any other pledge of such proceeds created by the Indenture. Subject to Article V of the Indenture, the Authority may also pledge the Revenues and the Accounts to the payment of the principal of such Notes.

Financeable Costs. Proceeds of the sale of the Bonds and Notes issued for Financeable Costs shall be promptly deposited in the Bond Proceeds Fund to the extent set forth by Supplemental Indenture, and applied to finance, by payment or reimbursement, Financeable Costs. The Authority shall transfer its earnings on the Bond Proceeds Fund to the Collection Account as Revenues, or otherwise apply such earnings in accordance with the Code pursuant to an Officer's Certificate.

Limited Purpose of Indenture. The Indenture provides for the issuance and payment of the Authority's obligations and the financing and refinancing of Financeable Costs. The Indenture is not intended to convey to the Trustee or the Beneficiaries any right to exercise or approve the Authority's financial control and oversight powers and duties, including those set forth in the Act, and the right and obligation to exercise such powers and duties is reserved solely to the Authority, nor is the Indenture intended to convey to the Trustee or the Beneficiaries the benefit of any provisions of the Agreement not expressly pledged pursuant to the Indenture. Except as set forth in the Indenture and the Agreement, the Authority, the County and the Trustee shall have no liability to each other or to the Beneficiaries for the construction, reconstruction, acquisition, installation, physical condition, ownership or operation of any capital project of the County financed as a Financeable Cost under the Indenture or otherwise for the financing of Financeable Costs.

Application of Revenues. (a) Provision is made in the Act for the payment to the Authority of the County Tax Revenues and State Aid Revenues, and the Authority has requested the State Comptroller to make such payments to the Collection Account to be held by the Trustee for application under the Indenture. Any Revenues received by the Authority shall be promptly deposited in the Collection Account. All Revenues in the Collection Account shall be applied upon receipt by the Trustee, in the following order of priority in accordance with an Officer's Certificate: first to the Bond Account to pay Debt Service pursuant to paragraph (b) summarized below, and any amount, if any, necessary to replenish the Debt Service Reserve Account to the extent of any withdrawal therefrom, and, so long as the balance in the Debt Service Reserve Account is less than the Debt Service Reserve Account Requirement, on a monthly basis, equal deposits of one-twelfth (1/12) of the Debt Service Reserve Account Requirement

until the balance in the Debt Service Reserve Account is equal to or greater than the Debt Service Reserve Account Requirement; second, to pay debt service on any Subordinate Bonds or Subordinate Notes, amounts, if any, necessary to replenish any reserve accounts established in connection thereto, and any other amounts pursuant to Supplemental Indentures for the benefit of Subordinate Noteholders, Subordinate Bondholders and parties to Subordinate Agreements; third to the Authority's operating expenses, which may include deposits to the Redemption Account for optional redemption and reserves to be held by the Authority for payment of operating expenses, in such amounts as may be determined by Supplemental Indenture or Officer's Certificate; and fourth, subject to any agreements between the Authority and the County, as soon as practicable, to the order of the County, free and clear of the lien of the Indenture.

(b) At the beginning of each calendar month, the Trustee shall begin to transfer all Revenues from the Collection Account to the Bond Account, and shall continue such transfers until the amount transferred to the Bond Account in such month is equal to Accrued Debt Service. To the extent that Debt Service includes principal, interest or premium on Bonds or Notes to be purchased or redeemed prior to maturity, such Debt Service may be paid through the Redemption Account, and the Authority may by Officer's Certificate direct the Trustee in writing to transfer Revenues thereto, rather than to the Bond Account.

(c) Prior to any payment date for Debt Service, the Authority may by Officer's Certificate estimate interest payable at a variable rate; or treat anticipated receipts on an ancillary or swap contract as offsets thereto as specified in the Indenture.

(d) The transfers and payments to be made under this Article shall be appropriately adjusted by Officer's Certificate of the Authority to reflect the date of issue of Notes or Bonds, any accrued or capitalized interest deposited in the Bond Account or any other amounts irrevocably pledged to the payment of such Debt Service for such period, dates of receipt of Revenues, actual rates of interest, any amount needed or held in the Accounts for Debt Service, and any purchase or redemption of Notes or Bonds, so that there will be available on each payment date the amount necessary to pay Debt Service and so that accrued or capitalized interest will be applied to the installments of interest to which it is applicable.

(e) Revenues shall in all events be transferred from the Collection Account to the Bond Account or the Redemption Account to provide for the timely payment of Debt Service, and all Revenues shall be applied to pay Debt Service and other amounts then overdue pursuant to the Indenture.

(f) A Debt Service Reserve Account is established with the Trustee and money shall be deposited therein as provided in the Indenture. Moneys on deposit in the Debt Service Reserve Account shall be held in trust and, except as otherwise provided, shall be applied solely to remedy any shortfall in the Bond Account in amounts due on Debt Service on the Senior Bonds. In the event that, on the business day preceding any date upon which payment of Debt Service is due, upon the written direction of the Authority, the amounts on deposit in the Bond Account is less than the amount required to pay such Debt Service on the Senior Bonds, the Trustee shall withdraw from the Debt Service Reserve Account and deposit to the Bond Account such amount as will increase the amount therein to an amount sufficient to make such payment. If at any time, upon the written direction of the Authority, the amount, if any, on deposit in the Debt Service Reserve Account is in excess of the Debt Service Reserve Account Requirement, the Trustee shall transfer such excess from the Debt Service Reserve Account to the Collection Account.

Bond Account. (a) A Bond Account is established with the Trustee and money shall be deposited therein as provided in the Indenture. Accrued interest received upon the sale of Senior Notes (if so

specified by Supplemental Indenture) or Senior Bonds shall be deposited in the Bond Account. The money in the Bond Account shall be held in trust and, except as otherwise provided, shall be applied solely to the payment of Debt Service. If at any time, upon the written direction of the Authority, the amount held in the Bond Account exceeds Accrued Debt Service, the Trustee shall transfer such excess to the Collection Account as Revenues.

(b) The Trustee shall pay, or transfer money from the Bond Account to a Paying Agent in time for such Paying Agent to pay Debt Service when due in same-day funds.

Redemption Account. (a) A Redemption Account is established with the Trustee and money shall be deposited therein as provided in the Indenture. The money and investments in such Account shall be held in trust and, except as otherwise specified in the Indenture, shall be applied by the Trustee to the redemption of Bonds and Notes. Upon direction by Officer's Certificate of the Authority, the Trustee shall apply money in the Redemption Account to the purchase of Bonds and Notes for cancellation at prices not exceeding (unless so directed by Officer's Certificate of the Authority) the price at which they are then redeemable (or next redeemable if they are not then redeemable), but not with money required to pay Bonds or Notes for which notice of redemption has been given. Accrued interest on the purchase of Bonds and Notes may be paid from the Bond Account (if so payable under the Indenture) or as directed by Officer's Certificate of the Authority.

(b) When money in the Redemption Account is to be applied to the redemption of Notes or Bonds, the Trustee shall pay, or transfer such money to a Paying Agent in time for such Paying Agent to pay, such Notes or Bonds when due in same-day funds.

(c) If on any date the amount in the Bond Account is less than the amount then required to be applied to pay Debt Service then due, the Trustee shall apply the amount in the Redemption Account (other than any sum irrevocably set aside for particular Notes or Bonds no longer Outstanding) to the extent necessary to meet the deficiency.

Redemption of the Bonds and Notes. (a) The Authority may redeem Bonds and Notes at its option in accordance with their terms and shall redeem Bonds and Notes in accordance with their terms pursuant to any mandatory redemption (including any "sinking fund redemptions") requirements established by Supplemental Indenture. When Bonds or Notes are called for redemption, the accrued interest thereon shall become due on the redemption date. To the extent not otherwise provided, the Authority shall deposit with the Trustee prior to the redemption date a sufficient sum to pay principal, redemption premium, if any, and accrued interest.

(b) Unless otherwise specified by Supplemental Indenture, there shall, at the option of the Authority, be applied to or credited against any sinking fund requirement the principal amount of any such Bonds that have been defeased, purchased or redeemed and not previously so applied or credited.

(c) When Bonds or Notes are to be redeemed prior to maturity, the Authority, or, upon receipt of written direction from the Authority, the Trustee, shall give notice in the name and at the expense of the Authority, which notice shall identify the Bonds or Notes to be redeemed, state the date fixed for redemption and state that such Bonds or Notes will be redeemed at the corporate trust office of the Trustee or a Paying Agent. The notice shall further state that on such date there shall become due and payable upon each Bond or Note to be redeemed the redemption price thereof, together with interest accrued to the redemption date, and that money therefor having been deposited with the Trustee or Paying Agent, from and after such date, interest thereon shall cease to accrue. The Trustee shall give at least 30 days' notice by mail, or otherwise transmit the redemption notice in accordance with the applicable Supplemental Indenture, to the registered owners of any Bonds or Notes which are to be redeemed, at

their addresses shown on the registration books of the Authority. Such notice may be waived by any Holder of Bonds or Notes to be redeemed. Failure by a particular Holder to receive notice, or any defect in the notice to such Holder, shall not affect the redemption of any other Bond or Note.

(d) Unless otherwise specified by Supplemental Indenture: (i) if less than all the Outstanding Bonds or Notes of like Series and maturity are to be redeemed, the particular Bonds or Notes to be redeemed shall be selected by the Trustee by such method as it shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to any authorized denominations) of the principal of Bonds or Notes of a denomination larger than the minimum authorized denomination, and (ii) the Trustee shall redeem any and all Bonds or Notes held by the provider of an ancillary contract prior to any other Bonds or Notes redeemed hereunder unless otherwise directed by Officer's Certificate of the Authority.

Investments. (a) Pending its use under the Indenture, money in the Accounts may be invested by the Trustee in Eligible Investments maturing or redeemable at the option of the holder at or before the time when such money is expected to be needed and shall be so invested pursuant to written direction of the Authority. Investments shall be held by the Trustee in the respective Accounts and upon the direction of the Authority shall be sold or redeemed to the extent necessary to make payments or transfers from each Account.

(b) Unless the Trustee received written notice to the contrary from the Authority, any income realized on investments in any Account and any profit realized upon the sale or other disposition thereof shall be credited to the Collection Account.

(c) The Trustee may hold undivided interests in Eligible Investments for more than one Account (for which they are eligible) and may make interfund transfers in kind.

(d) If any money is invested under the Indenture and a loss results therefrom so that there are insufficient funds to pay Debt Service or to redeem Bonds or Notes called for redemption, then the deficiency shall be timely filled from Revenues (as Debt Service if so payable under the Indenture). The Trustee shall not be liable for any losses on investments made at the direction of the Authority.

Unclaimed Money. Except as may otherwise be required by applicable law, in case any money deposited with the Trustee or a Paying Agent for the payment of the principal of, or interest or premium, if any, on any Bond or Note remain unclaimed for two years after such principal, interest or premium has become due and payable, the Fiduciary may and upon receipt of a written request of the Authority will pay over to the Authority the amount so deposited and thereupon the Fiduciary and the Authority shall be released from any further liability under the Indenture with respect to the payment of principal, interest or premium and the owner of such Bond or Note shall be entitled (subject to any applicable statute of limitations) to look only to the Authority as an unsecured creditor for the payment thereof.

Contract, Obligations to Beneficiaries. (a) In consideration of the purchase and acceptance of any or all of the Bonds and Notes and ancillary and swap contracts by those who shall hold the same from time to time, the provisions of the Indenture shall be a part of the contract of the Authority with the Beneficiaries, and shall be deemed to be and shall constitute contracts among the Authority, the Trustee, the County (to the extent specified in the Agreement), the Beneficiaries from time to time and, to the extent specified in the Act, the State. The pledge made in the Indenture and the covenants set forth to be performed by the Authority, the County, and the State shall be for the equal benefit, protection and security of the Beneficiaries of the same priority. All of the Bonds or Notes or ancillary or swap contracts of the same priority, regardless of the time or times of their issuance or maturity, shall be of equal rank

without preference, priority or distinction of any thereof over any other except as expressly provided pursuant to the Indenture and to the Act.

(b) The Authority shall pay when due all sums payable on the Bonds and Notes from the Revenues and money designated in the Indenture, subject only to (i) the Act and the Indenture, and (ii) to the extent permitted by the Act and the Indenture, (A) agreements with Holders of Bonds and Notes pledging particular collateral for the payment thereof and (B) the rights of Beneficiaries under ancillary and swap contracts. The obligation of the Authority to pay principal, interest and redemption premium, if any, to the Holders of Bonds and Notes shall be absolute and unconditional, shall be binding and enforceable in all circumstances whatsoever, and shall not be subject to setoff, recoupment or counterclaim. The Authority shall also pay its Operating Expenses.

(c) The Authority is duly authorized pursuant to law to create and issue the Bonds and Notes, to enter into the Indenture and to pledge the Revenues and other collateral purported to be pledged in the manner and to the extent provided in the Indenture. The Revenues and other collateral so pledged are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by the Indenture, and all corporate action on the part of the Authority to that end has been duly and validly taken. The Bonds and Notes and the provisions of the Indenture are and will be valid and binding general obligations of the Authority in accordance with their terms.

(d) At any and all times the Authority shall, so far as it may be authorized or permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning, confirming and affecting all and singular the rights, Revenues and other collateral pledged or assigned in the Indenture, or intended so to be, or which the Authority may hereafter become bound to pledge or assign.

Enforcement. The Authority shall enforce or cause the Trustee to enforce, by appropriate legal proceedings, each covenant, pledge or agreement made by the State or the County in the Indenture or in or pursuant to the Act for the benefit of any of the Beneficiaries.

Tax Covenant. The Authority shall at all times do and perform all acts and things permitted by law and necessary or desirable to assure that interest paid by the Authority on Tax-Exempt Bonds and Tax-Exempt Notes shall be excludable from gross income for Federal income tax purposes pursuant to §103(a) of the Tax Code; and no funds of the Authority shall at any time be used directly or indirectly to acquire securities or obligations the acquisition or holding of which would cause any Tax-Exempt Bond or Tax-Exempt Note to be an arbitrage bond as defined in the Code and any applicable Regulations issued thereunder. The Authority shall at all times comply with the covenants of the Authority set forth in the Arbitrage and Use of Proceeds Certificate.

If and to the extent required by the Code, the Authority shall periodically, at such times as may be required to comply with the Code, pay from the Bond Proceeds Fund or as an operating expense the amount, if any, required by the Code to be rebated thereto or paid as a related penalty.

Accounts and Report. The Authority shall (a) cause to be kept books of account in which complete and accurate entries shall be made of its transactions relating to all funds and accounts under the Indenture, which books shall at all reasonable times be subject to the inspection of the County, the Trustee and the Holders of an aggregate of not less than 25% in principal amount of Bonds and Notes then Outstanding or their representatives duly authorized in writing; and



(b) keep in effect at all times by Officer's Certificate an accurate and current schedule of all Debt Service to be payable during the life of then Outstanding Bonds, Notes and Senior Agreements secured by the Bond Account; certifying for the purpose such estimates as may be necessary.

Ratings. Unless otherwise specified by Supplemental Indenture, the Authority shall pay such reasonable fees and provide such available information as may be necessary to obtain and keep in effect ratings on all the Senior Bonds from at least two nationally recognized statistical rating organizations.

No Other Business. The Authority shall not engage in any line of business not contemplated by the Act.

County Covenant. The Authority includes in the Indenture: (a) the County's pledge and agreement with the holders of any bonds, notes or other obligations of the Authority that the County will not take actions which limit, alter or impair the rights and remedies of such holders or the security for such bonds, notes or other obligations until such bonds, notes or other obligations, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged, (b) the further terms of the County Covenant in the Act to the effect that: Nothing contained in this covenant or the Act shall be deemed to restrict the right of the County to amend, modify, repeal or otherwise alter any local law, ordinance or resolution imposing or relating to the County Tax Revenues or the State Aid Revenues, including sales and compensating use taxes pursuant to the authority of subdivision (a), (c) or (d) of §1262 of the Tax Law, so long as, after giving effect to such amendment, modification or other alteration, the aggregate amount as then projected by the Authority of (i) sales and compensating use taxes to be imposed pursuant to the authority of subpart (B) of part one of Article 29 of the tax law and paid to the County; and (ii) all such net collections to be set aside or to be allocated and applied, paid or used by the County pursuant to the authority of §1262 of the Tax Law during each of the Authority's fiscal years thereafter shall be not less than two hundred percent of maximum annual debt service on Authority bonds, notes or other obligations then outstanding. The County further agrees that it shall impose taxes pursuant to the authority of §1210 of the Tax Law at a rate of no less than three percent (3%).

State Covenant. The Authority includes in the Indenture: (a) the State's pledge and agreement with the holders of outstanding Bonds, Notes or other evidences of indebtedness of the Authority that the State will not limit, alter or impair the rights vested in the Authority by the Act to fulfill the terms of any agreements made with the holders (including the ability to enforce the County's obligations under the Agreement), or in any way impair the rights and remedies of such holders or the security for the Bonds, Notes or other evidences of Authority indebtedness until such Bonds, Notes or other evidences of indebtedness, together with the interest thereon, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged, and (b) the further terms of the State Covenant in the Act to the effect that: nothing contained in this covenant or the Act shall be deemed to restrict the right of the State to amend, modify, repeal or otherwise alter statutes imposing or relating to the County Tax Revenues or State Aid Revenues, and nothing in this covenant shall be deemed to obligate the State to make any additional payments or impose any taxes to satisfy the obligations of the Authority.

Authority Acknowledgment. (a) The Authority acknowledges that the State Covenant, the County Covenant and the covenants set forth in this paragraph constitute important security provisions of the Bonds and Notes, and to the fullest extent permitted by applicable State law, waives any right to assert any claim to the contrary and agrees that it will neither in any manner directly or in-directly assert, nor in any manner directly or indirectly support the assertion by the County, the State or any other person of, any such claim to the contrary.

(b) By acknowledging that the State Covenant, the County Covenant and the covenants set forth in this paragraph constitute important security provisions of the Bonds and Notes, the Authority also acknowledges, to the fullest extent permitted by applicable State law, that, in the event of any failure or refusal by the County or the State to comply with their respective agreements, the Holders of the Bonds or Notes may have suffered monetary damages, the extent of the remedy for which may be, to the fullest extent permitted by applicable State law, determined, in addition to any other remedy available at law or in equity, in the course of any action taken pursuant hereto; and to the fullest extent permitted by applicable State law, the Authority waives any right to assert any claim to the contrary and agrees that it will neither in any manner directly or indirectly assert, nor in any manner directly or indirectly support the assertion by the State, the County or any other person of, any claim to the effect that no such monetary damages have been suffered.

(c) The Authority confirms that the acknowledgments and agreements set forth in paragraphs (a) and (b) above have been included in the Indenture as a result of negotiations with the underwriters of the initial Series of Bonds delivered under the Indenture and may further acknowledge in any Supplemental Indenture if and the extent to which any provision of the Indenture has been amended, or any provision of such Supplemental Indenture has been included therein, as a result of the same or similar negotiations.

Rights and Duties of the Fiduciaries. (a) All money and investments received by the Fiduciaries under the Indenture shall be held in trust, in a segregated trust account in the trust department of such Fiduciary, not commingled with any other funds, and applied solely pursuant to the provisions of the Indenture.

(b) The Fiduciaries shall keep proper accounts of their transactions under the Indenture (separate from its other accounts), which shall be open to inspection on reasonable notice by the Authority and its representatives duly authorized in writing.

(c) The Fiduciaries shall not be required to monitor the financial condition of the Authority or the physical condition of any capital project of the County, and, unless otherwise expressly provided, shall not have any responsibility with respect to reports, notices, certificates or other documents filed with them under the Indenture, except to make them available for inspection by Beneficiaries.

(d) Upon a failure of the Authority to make a payment of Debt Service when due or a failure actually known to a Responsible Officer of the Trustee to make any other payment required within seven (7) days after the same becomes due and payable, the Trustee shall give written notice thereof to the Authority. The Trustee shall give default notices when instructed to do so by the written direction of another Fiduciary or the owners of at least 25% in principal amount of the Outstanding Senior Bonds; or with respect to the Indenture, if the Event of Default is actually known to a Responsible Officer. The Trustee shall proceed under the Indenture for the benefit of the Holders in accordance with the written directions of a Majority in Interest of the Outstanding Senior Bonds. The Trustee shall not be required to take any remedial action (other than the giving of notice) unless reasonable indemnity is furnished for any expense or liability to be incurred.

Upon receipt of written notice, direction or instruction and indemnity, as provided above, and after making such investigation, if any, as it deems appropriate to verify the occurrence of any event of which it is notified as aforesaid, the Trustee shall promptly pursue the remedy provided by the Indenture or any such remedies (not contrary to any such direction) as it deems appropriate for the protection of the Bondholders or Noteholders, and in its actions under this sentence, the Trustee shall act for the protection of the Bondholders or Noteholders with the same promptness and prudence as would be expected of a prudent person in the conduct of such person's own affairs.

(e) Each Fiduciary shall be entitled to the advice of counsel (who may be counsel for any party) and shall not be liable for any action taken in good faith in reliance on such advice. Each Fiduciary may rely conclusively on any notice, certificate or other document furnished to it under the Indenture and reasonably believed by it to be genuine. A Fiduciary shall not be liable for any action taken or omitted to be taken by it in good faith and reasonably believed by it to be within the discretion or power conferred upon it, or taken by it pursuant to any direction or instruction by which it is governed under the Indenture or omitted to be taken by it by reason of the lack of direction or instruction required for such action, or be responsible for the consequences of any error of judgment reasonably made by it. When any payment or consent or other action by a Fiduciary is called for by the Indenture, the Fiduciary may defer such action pending receipt of such evidence, if any, as it may reasonably require in support thereof. A permissive right or power to act shall not be construed as a requirement to act.

(f) The Fiduciaries shall in no event be liable for the application or misapplication of funds, or for other acts or defaults, by any person, firm or corporation except by their respective directors, officers, agents, and employees. No recourse shall be had for any claim based on the Indenture, the Bonds, the Notes or any ancillary contracts or swap agreement against any director, officer, agent or employee of any Fiduciary unless such claim is based upon the bad faith, fraud or deceit of such person.

(g) Nothing in the Indenture shall obligate any Fiduciary to pay any debt or meet any financial obligations to any person in relation to the Bonds, Notes, ancillary contracts or swap contracts except from money received for such purposes under the provisions of the Indenture or from the exercise of the Trustee's rights thereunder.

(h) The Fiduciaries may be or become the owner of or trade in the Bonds or Notes or enter into ancillary or swap contracts with the same rights as if they were not the Fiduciaries.

(i) Unless otherwise specified by Supplemental Indenture, the Fiduciaries shall not be required to furnish any bond or surety.

(j) The Authority shall, as an operating expense, indemnify and save each Fiduciary harmless against any expenses and liabilities (including reasonable legal fees and expenses) that it may incur in the exercise of its duties under the Indenture and that are not due to its negligence or bad faith. This paragraph (j) shall survive the satisfaction and discharge of the Indenture or the earlier resignation or removal of such Fiduciary.

(k) Any fees, expenses, reimbursements or other charges which any Fiduciary may be entitled to receive from the Authority under the Indenture, if not otherwise paid, shall be a first lien upon (but only upon) any funds held hereunder by the Trustee for payment of operating expenses of the Authority.

(l) The Trustee shall not be deemed to have notice or knowledge of any Default or Event of Default with respect to any Bonds or Notes unless a Responsible Officer has actual knowledge thereof or unless written notice thereof is received by a Responsible Officer of the Trustee at its Corporate Trust Office.

(m) The rights, privileges, protections, immunities and benefits provided to the Trustee under the Indenture (including its right to be indemnified) are extended to, and shall be enforceable by, the Trustee in each of its capacities thereunder and to each of its agents, custodians and other persons duly employed by the Trustee thereunder.

(n) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

(o) The Trustee may request that the Authority deliver an Officers' Certificate setting forth the name of the individuals and/or titles of officers authorized at such time to take specific actions pursuant to the Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such Officers' Certificate previously delivered and not superseded.

(p) The Trustee shall at no time have any responsibility or liability for or with respect to the legality, validity or enforceability of any collateral or any arrangement or agreement between the Authority, the County and any person with respect thereto, or the perfection or priority of any security interest created in any of the collateral or the maintenance of any such perfection and priority, or for or with respect to the sufficiency of the collateral following an Event of Default. Notwithstanding anything to the contrary contained in the Indenture, the Trustee shall have no responsibility for the preparing, recording, filing, re-recording, or re-filing of any financing statement, continuation statement or other instrument in any public office.

(q) The Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by the Indenture.

(r) In no event shall the Trustee be liable, directly or indirectly, for any special, indirect or consequential damages, even if the Trustee has been advised of the possibility of such damages.

(s) The Trustee and any Paying Agent shall not at any time be under any duty or responsibility to the Authority, the County, any Holder or any other third party to determine or calculate any amount under the Indenture, or whether any facts exist which may require any adjustment of any previously determined amount, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or in the Indenture or in any Supplemental Indenture provided to be employed, in making the same.

(t) The Authority covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation as agreed between the Authority and the Trustee from time to time (which compensation shall not be limited by any provision of applicable law in regard to the compensation of a trustee of an express trust). In addition, the Trustee shall be entitled to additional compensation from the Authority for (to the extent duly documented) the reasonable out-of-pocket costs of:

(i) collecting and administrating any assets not held directly with the Trustee and for distributing assets;

(ii) performing any additional or extraordinary services requested by the Authority, the Holders (in accordance with the terms of the Indenture) or any representative of any of the foregoing; and

(iii) preparing and filing any report, return or other document, not otherwise routinely prepared by the Trustee, that may be required with respect to the trust created under the Indenture.

1. The Authority covenants and agrees to pay or reimburse, or cause the payment or reimbursement of, the Trustee and each predecessor Trustee, upon its request, for all duly documented expenses, disbursements and advances reasonably incurred or made by or on

behalf of it in accordance with the Indenture (including the reasonable compensation of, documented expenses of, and disbursements by its counsel and of all agents and other persons not regularly in its employ), except any such expense, disbursement or advance as may arise from its own negligence or willful misconduct.

2. When the Trustee incurs expenses or renders services in connection with any Event of Default, the expenses (including the reasonable compensation of, duly documented expenses of, and disbursements by its counsel) and the compensation for its services are intended to constitute expenses of administration under any applicable United States federal or state or non-U.S. bankruptcy, insolvency or other similar law.
3. To secure the Authority's obligations under this Section, the Trustee shall have a lien prior to the Notes or Bonds on all money or property held or collected by the Trustee in its capacity as Trustee.
4. The provisions of this Section shall survive the termination or satisfaction of the Indenture and the resignation or removal of the Trustee.

Paying Agent. The Authority designates the Trustee a Paying Agent. The Authority may appoint additional Paying Agents, generally or for specific purposes, may discharge a Paying Agent from time to time and may appoint a successor. The Authority shall designate a successor if the Trustee ceases to serve as Paying Agent. Each Paying Agent shall be a bank or trust company eligible under the Act, and unless otherwise provided by Supplemental Indenture shall have a capital and surplus of not less than \$50,000,000 and be registered as a transfer agent with the Securities and Exchange Commission. The Authority shall give notice of the appointment of a successor to the Trustee as Paying Agent in writing to each Beneficiary shown on the books of the Trustee. A Paying Agent may but need not be the same person as the Trustee. Unless otherwise provided by the Authority, the Trustee as Paying Agent shall act as Bond and Note registrar and transfer agent, in accordance with the Indenture.

Resignation or Removal of the Trustee. The Trustee may resign on not less than 45 days' written notice to the Authority and the Holders. The Trustee will promptly certify to the Authority that it has given written notice to all Holders and such certificate will be conclusive evidence that such notice was given as required by the Indenture. The Trustee may be removed by written notice from the Authority (if not in default) or a Majority in Interest of the Outstanding Senior Bonds to the Trustee and the Authority. Such resignation or removal shall not take effect until a successor has been appointed and qualified and has assumed the Trustee's obligations under the Indenture. If a successor Trustee shall not have been appointed, qualified and shall have assumed the Trustee's obligations under the Indenture within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction (at the expense of the Authority) for the appointment of a successor Trustee.

Successor Fiduciaries. (a) Any corporation or association which succeeds to the municipal corporate trust business of a Fiduciary as a whole or substantially as a whole, whether by sale, merger, consolidation or otherwise, shall thereby become vested with all the property, rights, powers and duties thereof under the Indenture, without any further act or conveyance.

(b) In case a Fiduciary resigns or is removed or becomes incapable of acting, or becomes bankrupt or insolvent, or if a receiver, liquidator or conservator of a Fiduciary or of its property is appointed, or if a public officer takes charge or control of a Fiduciary, or of its property or affairs, then such Fiduciary shall with due care terminate its activities under the Indenture and a successor may, or in the case of the Trustee shall, be appointed by the Authority. The Authority shall notify the Holders of the appointment of a successor Trustee in writing within 20 days from the appointment. The Authority will

promptly certify to the successor Trustee that it has given such notice to all Holders and such certificate will be conclusive evidence that such notice was given as required by the Indenture. If no appointment of a successor Trustee is made within 45 days after the giving of written notice in accordance with the Indenture or after the occurrence of any other event requiring or authorizing, such appointment, the outgoing Trustee or any Holder may apply to any court of competent jurisdiction for the appointment of such a successor, and such court may thereupon, after such notice, if any, as such court may deem proper, appoint such successor. Any successor Trustee appointed under this section shall be a trust company or a bank having the powers of a trust company, located in the State or the United States of America, having a capital and surplus of not less than \$50,000,000. Any such successor Trustee shall notify the Authority of its acceptance of the appointment and, upon giving notice, shall become Trustee, vested with all property, rights, powers and duties of the Trustee under the Indenture, without any further act or conveyance. Such successor Trustee shall execute, deliver, record and file such instruments as are required to confirm or perfect its succession under the Indenture and any predecessor Trustee shall from time to time execute, deliver, record and file such instruments as the incumbent Trustee may reasonably require to confirm or perfect any succession under the Indenture.

Fiduciaries for Subordinate Notes and Subordinate Bonds. The Authority may by Supplemental Indenture provide for the appointment of a Fiduciary (which may be the Trustee) to represent the Holders of Subordinate Notes or Subordinate Bonds, having powers and duties not inconsistent with the Indenture or with the Act.

Action by Holder. Any request, authorization, direction, notice, consent, waiver or other action provided by the Indenture to be given or taken by Holders of Bonds or Notes may be contained in and evidenced by one or more writings of substantially the same tenor signed by the requisite number of Holders or their attorneys duly appointed in writing or by such electronic or other means as may be recognized pursuant to applicable law. Proof of the execution of any such instrument, or of an instrument appointing any such attorney, shall be sufficient for any purpose of the Indenture (except as otherwise in the Indenture expressly provided) if made in the following manner, but the Authority or the Trustee may nevertheless in its discretion require further or other proof in cases where it deems the same desirable. The fact and date of the execution by any Bondholder or his attorney of such instrument may be proved by the certificate or signature guarantee, which need not be acknowledged or verified, of an officer of a bank, trust company or securities dealer satisfactory to the Authority or to the Trustee; or of any notary public or other officer authorized to take acknowledgements of deeds to be recorded in the state in which he purports to act, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. The authority of the person or persons executing any such instrument on behalf of a corporate Holder may be established without further proof if such instrument is signed by a person purporting to be the president or a vice president of such corporation with a corporate seal affixed and attested by a person purporting to be its clerk or secretary or an assistant clerk or secretary. Any action of the Owner of any Bond or Note shall be irrevocable and bind all future record and beneficial owners thereof.

Registered Owners. The enumeration of certain provisions applicable to DTC as Holder of Notes and Bonds shall not be construed in limitation of the rights of the Authority and each Fiduciary to rely upon the registration books in all circumstances and to treat the registered owners of Notes and Bonds as the owners thereof for all purposes not otherwise specifically provided for by law or in the Indenture. Notwithstanding any other provisions of the Indenture, any payment to the registered Owner of a Note or Bond shall satisfy the Authority's obligations thereon to the extent of such payment.

Events of Default: Default. "Event of Default" in the Indenture means any one of the events set forth below and "default" means any Event of Default without regard to any lapse of time or notice: (a)

The Authority shall fail to pay when due any interest, principal or redemption premium on a Note or Bond; (b) The Authority shall fail to observe or perform any of its other agreements, covenants or obligations under the Indenture and such failure is not remedied within 30 days after written notice thereof is given by the Trustee to the Authority, unless such default is not reasonably susceptible of cure within thirty (30) days and the Authority promptly commences and diligently pursues such cure (provided, however, that, notwithstanding any provision of the Indenture, the Trustee shall not be obligated to take any action with respect to an Event of Default pursuant to this clause (b) unless it has been first notified to do so in writing by the Holders of at least twenty-five percent (25%) in aggregate principal amount of the Bonds or Notes (as applicable) then outstanding); (c) specified events of insolvency; (d) The State shall (i) amend, alter, repeal or fail to comply with the State Covenant in the Act as in effect on the date of the Indenture or (ii) enact a moratorium or other similar law affecting the Bonds or Notes; (e) The County shall (i) fail to observe or perform any of its agreements, covenants or obligations under the Agreement that have been pledged for the benefit of the Holders and such failure is not remedied within 30 days after written notice thereof is given by the Trustee to the County and the Authority or by the Authority to the Trustee and the County; or (ii) amend, alter, repeal or fail to comply with the County Covenant in the Act as in effect on the date of the Indenture.

Remedies of the Trustee. (a) If an Event of Default occurs and is continuing: (i) The Trustee may, and upon written request of the Holders of 25% in principal amount of the Senior Bonds and Senior Notes Outstanding shall, in its own name by action or proceeding in accordance with the Civil Practice Law and Rules of the State:

(A) enforce all rights of the Holders and require the Authority or, to the extent permitted by law, the State or the County to carry out its agreements with the Holders and to perform its duties under the Act;

(B) sue upon such Bonds and Notes;

(C) require the Authority to account as if it were the trustee of an express trust for the Holders of such Bonds and Notes; and

(D) enjoin any acts or things which may be unlawful or in violation of the rights of the Holders of such Bonds and Notes.

(ii) The Trustee shall, in addition to the other provisions above, 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 Holders in the enforcement and protection of their rights.

(iii) If such Event of Default is described in clause (a) and relates to a Bond or Note the payment of which constitutes Debt Service or is described in clause (c) under the paragraph entitled "Events of Default: Default" above, the Trustee shall (A) give Written Notice thereof to the Authority, the Holders, the County Executive, the County Legislature, the Governor, the State Comptroller, the chair and ranking minority member of the Senate Finance Committee, and the chair and ranking minority member of the Assembly Ways and Means Committee, and (B) if so directed by a Majority in Interest of the Senior Bonds, and having given 30 days' notice to the Authority, declare the principal amount of all Bonds and Notes to be, and the same shall become, due and payable.

Subordinate Note and Subordinate Bond Remedies. Subject to the prior application of the Accounts to pay Debt Service, to the Indenture and to each applicable Supplemental Indenture, the Holders of Subordinate Notes or Subordinate Bonds, or a Fiduciary appointed for them, may enforce the provisions of the Indenture for their benefit by appropriate legal proceedings.

Individual Remedies. No one or more Holders shall by his or their action affect, disturb or prejudice the pledge created by the Indenture, or enforce any right under the Indenture, except in the manner in the Indenture provided; and all proceedings at law or in equity to enforce any provision of the Indenture shall be instituted, had and maintained in the manner provided in the Indenture and for the equal benefit of all Holders of the same class; but nothing in the Indenture shall affect or impair the right of any Holder of any Bond or Note to enforce payment of the principal of, premium, if any, or interest therein at and after the maturity thereof, or the obligation of the Authority to pay such principal, premium, if any, and interest on each of the Bonds and Notes to the respective Holders thereof at the time, place, from the source and in the manner expressed in the Indenture and in the Bonds and Notes.

Venue. The venue of every action, suit or special proceeding against the Authority shall be laid in the County of Erie, New York.

Waiver. If the Trustee determines that a default has been cured before the entry of any final judgment or decree with respect to it, the Trustee may waive the default and its consequences, by written notice to the Authority, and shall do so upon written instruction of the Holders of at least 25% in principal amount of the Outstanding Senior Bonds and Notes.

Application of Money. If available money in the Accounts is not sufficient on any day to pay all Debt Service, Subordinate Bonds, Subordinate Notes and Subordinate Agreements then due or overdue, such money (subject to provisions theretofore made for the payment of Bonds or Notes no longer outstanding) shall be applied first to the Trustee's fees, including costs and expenses of Trustee's counsel, and other costs of collecting and applying the Revenues and administering the accounts, second to the payment of interest on Senior Bonds and Senior Notes, including interest on overdue principal and interest, in the order in which the same became due (pro rata with respect to interest which became due at the same time), and if the amount available shall not be sufficient to pay in full any installment or installments of interest or obligations with respect to Senior Agreements maturing on the same date, then to the payment thereof ratably, according to the amounts due in respect of each item of Debt Service without priority or preference of any item over any other; third to the payment of principal (including sinking fund installments) and redemption premiums, if any, constituting Debt Service, without regard to the order in which the same became due (in proportion to the amounts due), and if the amount available shall not be sufficient to pay in full all principal, premium or obligations with respect to Senior Agreements maturing on the same date, then to the payment thereof ratably, according to the amounts due in respect of each item of Debt Service without priority or preference of any item over any other; and fourth to the payment to any Subordinate Notes, Subordinate Bonds and Subordinate Agreements then due and, if the amounts available are insufficient to pay in full all such subordinated payment obligations, then to the payment thereof ratably, without preference or priority of any such item over any other. For this purpose Debt Service on Senior Agreements shall be characterized in accordance with their financial terms and interest on overdue principal shall be treated as coming due on the first day of each month. Whenever money is to be applied pursuant to this section, such money shall be applied at such times, and from time to time, as the Trustee shall be instructed in writing. Upon the receipt of such written instruction, the Trustee shall fix the date (which shall be the first of a month unless it deems another date more suitable) upon which such application is to be made, and upon such date interest on the principal then provided for shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing, of any such date. When interest or a portion of the principal is to be paid on an overdue Bond or Note, the Trustee may require presentation of the Bond or Note for endorsement of the payment.

Supplements and Amendments. (a) The Indenture may be (i) supplemented by delivery to the Trustee of an instrument certified by an Authorized Officer of the Authority to (A) provide for earlier or greater deposits into the Bond Account, (B) subject any property to the lien of the Indenture, (C) add to



the covenants and agreements of the Authority or surrender or limit any right or power of the Authority, (D) identify particular Notes or Bonds for purposes not inconsistent herewith, including credit or liquidity support, remarketing, serialization and defeasance, or (E) authorize Bonds or Notes of a Series and in connection therewith determine the matters referred to in the Indenture, and any other things relative to such Bonds or Notes that are not prejudicial to the Holders, or to modify or rescind any such authorization or determination at any time prior to the first authentication and delivery of such Series of Bonds or Notes.

(b) The Indenture may be amended by the Authority and the Trustee: (i) to cure any ambiguity or defect, (ii) to add provisions that are not prejudicial to the Holders, (iii) to change the aggregate principal amount of Bonds or Notes authorized to be Outstanding at any one time, provided that such amendment shall not be inconsistent with the provisions of the Act and will not take effect unless the Authority obtains Rating Confirmation from each Rating Agency; (iv) to adopt amendments that do not take effect unless and until (A) no Bonds or Notes Outstanding prior to the adoption of such amendment remain Outstanding or (B) such amendment is consented to by the Holders of such Bonds or Notes in accordance with the further provisions of the Indenture, or (v) pursuant to the following paragraph (c).

(c) Except as provided in the foregoing paragraphs (a) and (b), the Indenture may be amended (i) only with the written consent of a Majority in Interest of the Subordinate Bonds, Subordinate Notes, Senior Bonds and Senior Notes (acting as four separate classes) to be Outstanding at the effective date thereof and affected thereby; but (ii) only with the unanimous written consent of the affected Holders for any of the following purposes: (A) to extend the maturity of any Bond or Note, (B) to reduce the principal amount or interest rate of any Bond or Note, (C) to make any Bond or Note redeemable other than in accordance with its terms, (D) to create a preference or priority of any Bond or Note over any other Bond or Note of the same class or (E) to reduce the percentage of the Bonds and Notes required to be represented by the Holders giving their consent to any amendment.

(d) Any amendment of the Indenture shall be accompanied by a Counsel's Opinion to effect that the amendment is permitted by law and the terms of the Indenture and does not adversely affect the exclusion of interest on the Tax-Exempt Bonds and Tax-Exempt Notes from gross income for Federal income tax purposes.

(e) When the Authority determines that the requisite number of consents have been obtained for an amendment hereto or to the Agreement which requires consents, it shall file a certificate to that effect in its records and give notice to the Trustee, the Holders and each Rating Agency. The Trustee will promptly certify to the Authority that it has given such notice to all Holders and such certificate will be conclusive evidence that such notice was given in the manner required by the Indenture. In addition to the documents required by the Indenture, before the execution to any supplement, amendment or waiver thereof, the Trustee shall receive an Officer's Certificates of the Authority and an Opinion of Counsel each stating that any amendment, supplement or waiver is authorized or permitted by the Indenture and complies with the applicable provisions of the Indenture.

Beneficiaries. The Indenture is not intended for the benefit of and shall not be construed to create rights in parties other than the Authority, the Fiduciaries, the Holders of Senior Notes and Senior Bonds, and the other Beneficiaries to the extent specified in the Indenture.

## **The Second Supplemental Indenture**

Principal Amount, Designation and Series. Pursuant to the Indenture and the Act, a Series of Senior Bond Anticipation Notes is authorized by the Second Supplemental Indenture in the aggregate principal amount of \$64,805,000. Such Series 2009B Notes shall be issued as fixed rate notes, and shall

be designated as, and shall be distinguished from the Notes of all other Series by the title “Bond Anticipation Notes, \$64,805,000 Series 2009B.” Notwithstanding any other provision of the Second Supplemental Indenture, to the extent provided in one or more Officer’s Certificates of the Authority such Series 2009B Notes may be issued and delivered in one or more Series or sub-series with such further or different designations as set forth in such Officer’s Certificates of the Authority.

Details of the Series 2009B Notes. The Series 2009B Notes shall be issued in fully registered form and shall be numbered from BR-1 upwards unless specified otherwise in an Officer’s Certificate. The Series 2009B Notes shall be in the denomination (principal amount) of \$5,000 each or any integral multiple thereof unless specified otherwise in an Officer’s Certificate. The Series 2009B Notes shall be dated their date of authentication. Interest on the Series 2009B Notes shall be payable at maturity. The Series 2009B Notes shall be issued substantially in the form of Exhibit A attached to the Second Supplemental Indenture, and shall mature and initially bear interest as shown on Exhibit B to the Second Supplemental Indenture.

Application of Proceeds. The Series 2009B Notes shall be issued to provide for the payment of Financeable Costs under the Act. The proceeds of the Series 2009B Notes shall be delivered directly to the Authority by the Underwriter. Upon receipt of the proceeds of the Series 2009B Notes, the Authority shall apply such proceeds as follows: (a) the Costs of Issuance of the Series 2009B Notes shall be disbursed directly or through the Bond Proceeds Fund pursuant to an Officers’ Certificate; (b) the Debt Service Reserve Account shall be funded in an amount at least equal to the Debt Service Reserve Account Requirement, taking into account deposits, agreements and arrangements currently held in the Debt Service Reserve Account; (c) the sum of [\$\_\_\_\_\_] shall be paid to the order of the County in purchase of the County Notes, which were issued to pay or reimburse Financeable Costs or applied to Financeable Costs through the Bond Proceeds Fund in accordance with the terms of the Agreement and upon submission of Requisitions therefor submitted by the County to the Authority in form and substance satisfactory to the Authority; and (d) the balance of such proceeds, if any, shall be deposited in the Bonds Proceeds Fund.

County Issuance of County Notes. Simultaneously with the issuance of the Series 2009B Notes, the County shall issue its revenue anticipation notes in favor of the Authority (the “County Notes”). Such County Notes shall be (a) in the aggregate principal amount of \$64,805,000, (b) payable initially to the Authority, (c) have debt service provisions that are substantially similar to the Series 2009B Notes, and (d) otherwise be in form and substance satisfactory to the Authority. The County shall provide to the Authority such customary and reasonable opinions, certificates, documents as the Authority shall request in connection with the County Notes. The County Notes and any and all payments thereunder received by the Authority shall be pledged to the Trustee pursuant to Section 2.01(e) of the Indenture. However, to the extent that payment is made by the Authority on the Series 2009B Notes, the County shall receive a credit in like amount against the payment due under the County Notes.

Accrued Debt Service. Prior to maturity, “Accrued Debt Service” for the Series 2009B Notes shall be zero unless and until the Trustee is advised in writing by the Authority that the County has failed to make a Set Aside Payment (as defined below) into the Blocked Account (as defined below) within three (3) business days of the date when such Set Aside Payment is required by Schedule A attached to the Second Supplemental Indenture. In such event, the Accrued Debt Service for the Series 2009B Notes shall be as determined in Article III of the Second Supplemental Indenture. At maturity, the “Accrued Debt Service” for the Series 2009B Notes shall be the principal and interest due thereon.

Blocked Account. Pursuant to a separate agreement between Manufacturers and Traders Trust Company (in such capacity, “M&T”) and the County, the County has agreed to deposit certain “set aside” payments required to be made by the County pursuant to Section 25.00(g) of the Local Finance Law into

a special segregated and blocked account (the “Blocked Account”) maintained by the County with M&T in the amounts and on the dates set forth on Schedule A attached to the Second Supplemental Indenture (collectively, the “Set Aside Payments”). Moneys on deposit in the Blocked Account are not subject to the Indenture, are not subject to a security interest in favor of Trustee and are not held in trust by M&T for the benefit of any person other than the Authority, as holder of the County Notes. Moneys in the Blocked Account shall be held and disposed of in accordance with the terms of agreements between M&T and the County.

ECFSA Series 2009B Set Aside Subaccount. (a) An ECFSA Series 2009B Set Aside Subaccount is established with the Trustee as a subaccount of the Bond Account pursuant to the Second Supplemental Indenture. Moneys on deposit in the ECFSA Series 2009B Set Aside Subaccount shall be held in trust and, except as otherwise provided in the Second Supplemental Indenture, shall be applied solely to remedy any shortfall in the Bond Account in amounts due with respect to Debt Service on the Series 2009B Notes.

(b) If the County fails to make a required Set Aside Payment within three (3) business days of the due date thereof, the Authority shall then immediately give the Trustee notice of such failure and the Accrued Debt Service shall be the amount specified in such notice as the shortfall between the required Set Aside Payment and the Set Aside Payment actually made by the County, if any. The Trustee shall thereafter transfer into the ECFSA Series 2009B Set Aside Subaccount such Accrued Debt Service pursuant to the provisions of Section 501(b) of the Indenture. At maturity, amounts in the ECFSA Series 2009B Set Aside Subaccount shall be transferred to the Bond Account and applied as set forth in Section 502 of the Indenture.

(c) If, after the Trustee makes any transfer as set forth in subparagraph (b) above, the County makes an additional Set Aside Payment into the Blocked Account in order to fund all or a portion of such shortfall, then the Authority shall give the Trustee prompt written notice of such payment and the Trustee shall thereafter promptly transfer an amount equal to such payment from the ECFSA Series 2009B Set Aside Subaccount to or at the direction of the County.

Statutory Determinations and Recommendations. The County determined that a need to secure financing of Financeable Costs exists; and pursuant to the Act and the Indenture, the County requested that the Authority provide financing therefor by submission of a Declaration of Need in accordance therewith and the Agreement; and the Authority determined and agreed that such need exists. The Authority determined that issuance of the Series 2009B Notes is appropriate and under the Second Supplemental Indenture authorizes (a) the issuance and sale of the Series 2009B Notes, including the private sale to the Underwriter, at the compensation and in accordance with the terms specified in the Purchase Contract, and (b) the prices, interest rates, maturities and other terms and conditions provided in the Second Supplemental Indenture for the issuance of the Series 2009B Notes.

Provisions for Capitalized or Accrued Interest. Pursuant to Section 501(d) of the Indenture, provisions for deposit of capitalized interest on the Series 2009B Notes shall be made in the Bond Account and provision for accrued interest on the Series 2009B Notes shall be made in the Bond Account.

Further Authority. (a) Without limiting authority elsewhere conferred, the Chairperson, the Vice Chairperson, the Treasurer, the Executive Director, the Chief Financial Officer, the Corporate Secretary and the Chief Counsel of the Authority and each of them are designated under the Second Supplemental Indenture as Authorized Officers to execute and deliver such documents, agreements, instruments and certifications as may be necessary to give effect to the Indenture, including the Second Supplemental Indenture; and authorized to execute, or authorize or ratify the distribution of, the Continuing Disclosure Undertaking, the Purchase Contract, the Arbitrage and Use of Proceeds Certificate, Preliminary Official

Statement and Official Statement. All preparatory actions previously taken by such Authorized Officers are ratified under the Second Supplemental Indenture.

(b) To the extent an Authorized Officer of the Authority deems necessary to obtain a credit facility or a reserve credit facility or obtain or preserve a rating on the Series 2009B Notes or to obtain a no adverse impact letter relating to the rating on the Series 2009B Notes, or otherwise give effect to the terms of sale of the Series 2009B Notes, the Officer's Certificate of the Authority may include, to the extent reasonable or necessary to provide for the terms of the Series 2009B Notes as set forth in the Purchase Contract, additional determinations providing for the interest rates, designation, maturities, terms of redemption and other terms with respect to the Series 2009B Notes, including, but not limited to, minimum requirements on amounts held in the various Accounts or funds (which requirements are not inconsistent with the Indenture and the Second Supplemental Indenture) and restrictions on investments of amounts held under the various Funds (which restrictions are not inconsistent with the Indenture and the Second Supplemental Indenture).

Continuing Disclosure Undertaking. The Authority covenants with the Holders of the Series 2009B Notes to execute and deliver a form of Continuing Disclosure Undertaking to allow the Underwriter to comply with the requirements of the Securities and Exchange Commission Rule 15c2-12 as in effect on the date of the Second Supplemental Indenture.

Incorporation of Officer's Certificate of the Authority. Any Officer's Certificate of the Authority delivered pursuant to the Second Supplemental Indenture shall be incorporated therein, and the provisions thereof shall have the same force and effect as if fully set forth in the Second Supplemental Indenture.

Trustee Not Responsible for Recitals. The recitals contained in the Second Supplemental Indenture shall be taken as the statements of the Authority, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of the Second Supplemental Indenture.

## **The Financing Agreement**

County's Further Assurances. (a) Pursuant to the Act, the County acknowledges the State's grant to the Authority and the Authority's pledge and assignment to the Trustee of, and disclaims ownership of, all subject to the terms of the Act: the County's right, title and interest in and to the County Tax Revenues and State Aid Revenues, and all rights to receive the same and the proceeds thereof.

(b) The County will protect and defend the Trustee's title to the assets.

Directors, State and County Not Liable on Notes or Bonds. (a) Neither the Directors of the Authority nor any person executing Notes, Bonds or other obligations of the Authority shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

(b) The Notes, Bonds and other obligations of the Authority shall not be a debt of either the State or the County, and neither the State nor the County shall be liable thereon, nor shall they be payable out of any funds other than those of the Authority; and the Notes and Bonds shall contain on the face thereof a statement to such effect. It shall be the responsibility of the Authority and the Trustee to pay or cause to be paid amounts due with respect to the Bonds and Notes from the Revenues in accordance with the Indenture.

No Indebtedness on Funds of County. Neither the Agreement nor any obligations of the Authority shall constitute indebtedness of the County for purposes of §20.00 of the New York Local Finance Law or any constitutional or statutory limitation. The Authority's revenues are not funds of the County.

Separate Accounts and Records. The Authority and the County represent and covenant, each for itself, that: (a) Each of them will maintain its books, financial records and accounts (including, without limitation, inter-entity transaction accounts) in a manner so as to identify separately the assets and liabilities of each such entity; each has observed and will observe all applicable corporate procedures and formalities, including, where applicable, the holding of regular periodic and special meetings of governing bodies, the recording and maintenance of minutes of such meetings, and the recording and maintenance of resolutions, if any, adopted at such meetings; and all transactions and agreements between and among the Authority, the County and the Trustee have reflected and will reflect the separate legal existence of each entity and have been and will be formally documented in writing.

(b) The Authority and the County will each have separate annual financial statements prepared in accordance with generally accepted accounting principles that reflect the separate assets and liabilities of each such entity and all transactions and transfers of funds involving each such entity, and each will pay or bear the cost of the preparation of its own financial statement regardless of whether such statements (whether audited or unaudited) are prepared internally or by a certified public accounting firm that prepares or audits its financial statements.

(c) The Authority and the County have paid and will pay their respective liabilities and losses from their own respective separate assets. In furtherance of the foregoing, the Authority and County have compensated and will compensate all of their respective consultants, independent contractors and agents from their own funds for services provided to them by such consultants, independent contractors and agents. Provided, however, upon written request by the County and approval by the Authority's Bond Counsel, the Authority shall provide payment of the County's costs of issuance, or reimbursement thereof, as Financeable Costs.

(d) Neither the Authority nor the County has commingled or will commingle any of its assets, funds or liabilities with the assets, funds or liabilities of any other person or entity. Each of them has conducted and will conduct all business between itself and third parties in its own name and separate and distinct from the other.

(e) Assets will not be transferred by the County to or from the Authority inconsistently with the Act or with the intent to hinder, delay or defraud creditors.

Timely Submission of Declaration of Need: Responses. The County acknowledges that no financing shall be considered by the Authority until a Declaration of Need satisfactory to the Authority has been approved and submitted by the County in accordance with the Act. Subject to the Authority's right to waive such prior notice, any Declaration of Need shall be so approved and submitted (together with appropriate documentation) by the County not later than 60 days prior to the County's requested date for issuance of the Authority's Bonds, Notes or other obligations. The Authority will promptly notify the County of any requests for additional information or supporting materials and any determinations as to whether or not to provide all or any portion of a requested financing, as well as any conditions to a potential financing or the disbursement of proceeds thereof. In the event that the Authority determines to proceed with a financing, it agrees to consult with the County with respect to the Authority's plan of finance and financing structure.

Bond Proceeds Fund. (a) A Bond Proceeds Fund is established (under the Agreement to be held by the Trustee in trust for the benefit of the Authority and the County. The Beneficiaries shall have no interest in the Bond Proceeds Fund or any amounts from time to time on deposit in it. Money shall be

deposited therein as provided in the Indenture. The money and investments in the Bond Proceeds Fund shall be applied at the direction of the Authority as described below.

(b) The Trustee shall pay from the Bond Proceeds Fund the Costs of Issuance which are approved by the Authority, and, except as otherwise directed by the Authority in accordance with the Agreement, disburse funds to the County upon receipt of a Requisition submitted by the County to finance, by payment or reimbursement, Financeable Costs to the extent set forth in the related Declaration of Need or as otherwise approved by the Authority. When all Costs of Issuance and other Financeable Costs have been paid or reimbursed, as evidenced by Officers' Certificates of the Authority and the County, any excess in the Bond Proceeds Fund shall promptly be paid to the Trustee for deposit in the Redemption Account.

(c) The Authority shall develop, and may from time to time modify, procedures for the disbursement of money to the County from the Bond Proceeds Fund, upon terms, conditions and documentation providing for compliance with the Act, the provisions of the related Arbitrage and Use of Proceeds Certificate, the Agreement, the Indenture, and the advice of Counsel as to the application of proceeds of Tax-Exempt Notes and Tax-Exempt Bonds. The County shall apply Note and Bond proceeds made available to it only to pay such Financeable Costs as have been included in a Declaration of Need previously approved by the Authority and for which Requisition in proper form has been submitted. The County shall apply such proceeds to pay such Financeable Costs under contracts awarded by the County or to make a contribution of such proceeds as County funds to another entity for the payment or reimbursement of such Financeable Costs.

(d) To the extent provided in any applicable Supplemental Indenture, the Trustee shall, upon the direction of the Authority, pay from the Bond Proceeds Fund amounts necessary to accomplish any restructuring or refunding of the County's or the Authority's debt, as applicable, into a separate account or fund for investment in appropriate defeasance securities as provided in a Supplemental Indenture.

(e) Money in the Bond Proceeds Fund shall be invested and reinvested at the direction of the Authority in accordance with the Act and the Indenture, consistent with the related Arbitrage and Use of Proceeds Certificate. Earnings thereon shall be transferred to the Collection Account as Revenues.

Indemnity. To the extent permitted by law, the County shall indemnify the Authority and hold it harmless against any claim, demand, action, liability, damages, cost, loss or expense (including, legal fees and disbursements) that the Authority incurs arising out of or in relation to any capital project of the County or the financing of any Financeable Cost by the Authority.

Limited Purpose of Agreement. The Agreement provides for the Authority's financing of Financeable Costs. Except as specified in the Agreement, the Authority, the County, and the Trustee shall have no liability to each other or to the Beneficiaries of the Indenture for the construction, reconstruction, acquisition, installation, physical condition, ownership or operation of any capital project of the County or arising out of the status of any such capital project under the State Environmental Quality Review Act or otherwise. Whether to undertake any financing, as well as the specific Financeable Costs to be paid or reimbursed by the Authority, shall be determined by the Authority, in its sole discretion, upon the request of the County as evidenced by submission to the Authority by the County of a Declaration of Need.

Covenants of the County. The County covenants with the Authority, and consents to the pledge and assignment to the Trustee of any of its covenants, that:

(a) The County will at all times do and perform all acts and things permitted by law and necessary or desirable to assure that interest paid by the Authority on Tax-Exempt Bonds and Tax-

Exempt Notes shall be excludable from gross income for Federal income tax purposes pursuant to §103(a) of the Code; and shall execute and deliver to the Authority an Arbitrage and Use of Proceeds Certificate, as requested by the Authority or Counsel to the Authority and shall comply with the terms thereof; and no funds of the County shall at any time be used directly or indirectly to acquire securities or obligations the acquisition or holding of which would cause any Tax-Exempt Bond or Tax-Exempt Note to be an arbitrage bond as defined in the Code and any applicable Regulations issued thereunder.

(b) The County in its papers and in the statements of its officials has referred and will refer to the Authority as a separate and distinct legal entity; and the County will take no action that is inconsistent with the Agreement and that would give any creditor of the County cause to believe either that any such obligations incurred by the County would be not only the obligation of the County, but also of the Authority, or that the County were not or would not continue to remain an entity separate and distinct from the Authority.

(c) The County will not exercise any right it may have to amend, modify or otherwise alter local laws imposing or relating to the Sales Tax Revenues without first requesting in writing the Authority to make the projection of Sales Tax Revenues required by the Agreement and confirming with the Authority that such exercise will not violate the County covenant contained therein and in the Act. The foregoing is not intended to limit the right of the County to adopt one or more local laws or ordinances imposing or extending the imposition of sales and use taxes.

(d) The County will at all times do and perform all acts and things permitted by law and necessary or desirable to maintain compliance with its undertakings under the Agreement and in connection with any financing by the Authority, including, cooperating with the Authority, its employees, consultants and underwriters, and in providing certifications and opinions requested by the Authority, and, further, (i) providing all material disclosure for any Offering Circular of the Authority or in connection with any necessary undertaking under Securities and Exchange Commission (“SEC”) Rule 15c2-12 to allow the underwriters of Authority financings to meet their obligations thereunder and under SEC Rule 10b-5, and (ii) annually updating such material disclosure contained in any Offering Circular as required by any related continuing disclosure agreement.

(e) The County will comply, and will take all reasonable efforts in its power to cause any “non-exempted covered organization”, as such term is defined in the Act, to comply with the provisions of §3960(1) of the Act.

(f) Except to the extent expressly identified in any such Declaration of Need, the County will not make any Declaration of Need or submit any Requisition except with respect to Financeable Costs that could be financed by the County by the issuance of its bonds or notes as of the date of such Declaration of Need or Requisition, there being in effect with respect to each capital project constituting such Financeable Costs: (i) findings or other proceedings meeting the requirements of the State Environmental Quality Review Act, and (ii) all proceedings necessary under the County Charter and all other applicable State law necessary to authorize the appropriation and expenditure of County funds for such purposes, and each Declaration of Need and Requisition shall be deemed to be a representation by the County to such effect with respect to the Financeable Costs that are the subject thereof. The County shall provide to the Authority such documentation and information as requested, and in the form requested, by the Authority from time to time in connection with Financeable Costs proposed for financing.

(g) The County will observe and perform each covenant, condition and agreement on its part to be observed or performed under the Indenture, including, without limitation, Sections 2.02 and 2.03 of the Second Supplemental Indenture.

Statutory Covenant and Agreement. The County covenants and agrees with the holders of any issue of Bonds, Notes or other obligations issued by the Authority pursuant to the Act and the Agreement and secured by this covenant and agreement that the County will not take actions which limit, alter or impair the rights vested in the Authority to fulfill the terms of the Agreement or any other agreements made with such holders pursuant to, or in any way impair the rights and remedies of such holders or the security for such Bonds, Notes or other obligations, until such Bonds, Notes or other obligations, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged. The covenant and agreement contained in this Section shall not be deemed to restrict any right the County may have to amend, modify, repeal or otherwise alter any local law, ordinance or resolution imposing or relating to taxes or fees, or appropriations relating to such taxes or fees, or setting aside or allocating and applying, paying or using net collections pursuant to the authority of subdivision (a), (c) or (d) of Section 1262 of the State Tax Law, so long as, after giving effect to such amendment, modification or other alteration, the aggregate amount as then projected by the Authority of (i) sales and compensating use taxes to be imposed pursuant to the authority of Subpart B of Part One of Article Twenty-Nine of the State Tax Law and paid to the County; and (ii) all such net collections to be set aside or to be allocated and applied, paid or used by the County pursuant to the authority of Section 1262 of the State Tax Law during each of the Authority's fiscal years following the effective date of such amendment, modification or other alteration shall be not less than 200% of maximum annual debt service on Authority Bonds, Notes or other obligations then outstanding. The County further agrees that it shall impose taxes pursuant to the authority of subdivision (a) of Section 1210 of the State Tax Law at the rate of no less than three percent.

Statutory Requirement. To the extent required by the Act, the County agrees that it shall require every contract entered into by the County or entered into by any other entity receiving funds from the County for projects or costs to be financed in whole or in part by the Authority to be subject to the provisions of the County Charter, the Act and other applicable laws governing contracts of the County or such entity, as the case may be.

Transfers to County: Issuance of Bonds or Notes. Subject to the provisions of the Act and the Agreement, all money received by the Authority which, together with other money available for the purposes of the Indenture, exceeds the amount determined by the County to be necessary for such purposes shall be transferred to the County as frequently as practicable. The County acknowledges that any decision by the Authority to issue or incur its Bonds, Notes or other evidences of indebtedness from time to time is in the sole discretion of the Authority consistent with the Act and the Indenture.

County Acknowledgments. (a) The County acknowledges that the paragraphs entitled "Covenants of the County" and "Statutory Covenant and Agreement" above constitute important security provisions of the Bonds and Notes, and to the fullest extent permitted by applicable Federal and State law, waives any right to assert any claim to the contrary and agrees that it will neither in any manner directly or indirectly assert, nor in any manner directly or indirectly support any assertion of any claim to the contrary.

(b) By acknowledging that its covenants constitute important security provisions of the Bonds and Notes, the County also acknowledges, to the fullest extent permitted by applicable Federal and State law, that, in the event of any failure or refusal by the County to comply therewith, the Holders of the Bonds or Notes may have suffered monetary damages, the extent of the remedy for which may be, to the fullest extent permitted by applicable Federal and State law, determined, in addition to any other remedy available at law or in equity, in the course of any action taken pursuant hereto; and to the fullest extent permitted by applicable Federal and State law, the County waives any right to assert any claim to the contrary and agrees that it will neither in any manner directly or indirectly assert, nor in any manner



directly or indirectly support any assertion of any claim to the effect that no such monetary damages have been suffered.

(c) The County further acknowledges that the acknowledgments and agreements set forth in paragraphs (a) and (b) above have been included as a result of negotiations with the underwriter of the Bonds and Notes and may further acknowledge if and the extent to which any provision of the Agreement has been amended, or any provision of a Supplemental Indenture has been included therein, as a result of the same or similar negotiations.

Remedies. If the County shall fail to observe or perform any covenant, or condition or agreement on its part to be observed or performed, the Authority shall, if such default has not been cured, have the right (a) to institute any action at law or in equity deemed by the Authority to be necessary or desirable to collect any amounts then due or thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the County under the Agreement and (b) to withhold disbursement of any amounts from the Bond Proceeds Fund other than amounts set aside for the payment of County bonds or notes. At its election, the Authority may withhold any amounts adjudged or decreed payable to it from the Revenues as an Operating Expense.

Amendment. (a) The Agreement may be (i) supplemented by delivery to the Trustee of an instrument certified by an Authorized Officer of the Authority and by an Authorized Officer of the County to the extent required the Agreement and by the Act, to add to the covenants and agreements of the County or the Authority for the benefit of the holders of the Bonds, Notes or other obligations issued by the Authority or surrender or limit for the benefit of the Holders any right or power of the County or the Authority; or (ii) amended by the parties with notice to the Trustee but without Bondholder or Noteholder consent to (A) cure any ambiguity or defect, (B) change any provision of the Agreement that is not pledged to the Trustee pursuant to the Indenture, or (C) add provisions that are not materially prejudicial to the holders of the Bonds, Notes or other obligations issued by the Authority, including provisions that do not take effect unless and until (I) no Bonds, Notes or other obligations issued by the Authority which are outstanding prior to the adoption of such amendment remain outstanding or (II) such amendment is consented to by such holders in accordance with the further provisions of the Agreement.

(b) Any amendment of the Agreement shall be accompanied by a Counsel's Opinion to the effect that the amendment is permitted by law and does not adversely affect the exclusion of interest on the Tax-Exempt Bonds and Tax-Exempt Notes from gross income for Federal income tax purposes.

Beneficiaries. The Agreement is not intended for the benefit of and shall not be construed to create rights in parties other than the County, the Authority and, to the extent specified in the Agreement and in the Indenture, the holders of Bonds, Notes or other obligations issued by the Authority and the other Beneficiaries.



**APPENDIX D**

**FORM OF BOND COUNSEL OPINION**

October\_\_, 2009

Erie County Fiscal  
Stability Authority  
Buffalo, New York

Ladies and Gentlemen:

We have acted as bond counsel to the Erie County Fiscal Stability Authority (the “Authority”) relating to the issuance of \$64,805,000 Erie County Fiscal Stability Authority Bond Anticipation Notes, Series 2009B (the “Series 2009B Notes”), as more particularly described below. The Series 2009B Notes are dated, bear interest, mature, are subject to redemption and are secured as set forth in the Indenture dated as of May 1, 2009 (as supplemented, the “Indenture”), between the Authority and Manufacturers and Traders Trust Company, as Trustee (the “Trustee”), including, without limitation, the Second Supplemental Indenture dated as of October 1, 2009 (the “Second Supplement”). Terms defined in the Indenture and used herein shall have the meanings assigned in the Indenture, unless the context otherwise requires.

The Series 2009B Notes are issued as Senior Notes under the Indenture. The Authority is authorized to issue additional Senior Notes (the Series 2009B Notes, together with all Senior Notes heretofore and hereafter issued the “Notes”) only on the terms and conditions set forth in the Indenture and all such Notes shall with the Series 2009B Notes be entitled to the equal benefit, protection and security of the provisions, covenants and agreements in the Indenture.

The County of Erie, New York (the “County”), has requested the Authority to undertake the financing of Financeable Costs (as defined in the Act), the Authority and the County have entered into a Financing Agreement dated as of May 1, 2009 (the “Agreement”), provisions of which have been pledged by the Authority to secure the Notes. We assume the parties will perform their respective covenants in the Indenture and the Agreement in all material respects.

Based on the foregoing and our examination of existing law, such legal proceedings and such other documents as we deem necessary to render this opinion, we are of the opinion that:

1. The Authority is a duly organized and validly existing public benefic corporation under the Constitution and laws of the State of New York, and such proceedings show lawful authority for the issuance and sale of the Series 2009B Notes pursuant to the Erie County Fiscal Stability Authority Act, §3961(3) of the Public Authorities Law, added by Chapter 182 of the Laws of 2005 (the “Act”), and the Indenture.

2. The Series 2009B Notes have been duly authorized, executed and delivered by the Authority and are valid and binding obligations of the Authority payable from the Revenues pledged and the other collateral provided therefor in the Indenture. The Series

2009B Notes do not constitute a debt of the State or the County, and neither the State nor the County shall be liable thereon, nor shall the Series 2009B Notes be payable out of any funds other than those of the Authority.

3. The Second Supplement (a) has been duly authorized, executed and delivered by the Authority, (b) creates the valid pledge of Revenues and other collateral that it purports to create, and (c) assuming due and proper authorization, execution and delivery by the Trustee, is a valid and binding obligation of the Authority, enforceable in accordance with its terms.

4. Except as provided in the following sentence, interest on the Series 2009B Notes is not includable in the gross income of the owners of the Series 2009B Notes for the purposes of Federal income taxation under existing law. Interest on the Series 2009B Notes will be includable in the gross income of the owners thereof retroactive to the date of issue of the Series 2009B Notes in the event of a failure by the Authority or the County to comply with the applicable requirements of the Internal Revenue Code of 1986, as amended (the "Tax Code"), and their respective covenants regarding use, expenditure and investment of bonds proceeds and the timely payment of certain investment earnings to the United States Treasury; and we render no opinion as to the exclusion from gross income of interest on the Series 2009B Notes for Federal income tax purposes on or after the date on which any action is taken under the Indenture or related proceedings upon the approval of counsel other than ourselves. In rendering the foregoing opinions, we have relied upon the representations and covenants made by the Authority and the County and assumed continuing compliance by the Authority and the County with their respective covenants to comply with the provisions of the Tax Code so that interest on the Series 2009B Notes, in the case of the Authority, and interest on the County's notes delivered to the Authority in connection with the issuance of the Series 2009B Notes (the "County's Notes"), in the case of the County, will remain excludable from gross income for Federal income tax purposes. We have also relied on the opinion letter of Hawkins, Delafield & Wood LLP, Bond Counsel to the County, as to the Federal tax treatment of the County's Notes.

5. Interest on the Series 2009B Notes is not a specific preference item for purposes of the Federal individual or corporate alternative minimum tax. The Tax Code contains other provisions that could result in tax consequences, upon which we render no opinion, as a result of ownership of such Series 2009B Notes or the inclusion in certain computations of interest that is excluded from gross income.

6. Under the Act, interest on the Series 2009B Notes is exempt from personal income taxes imposed by the State and its political subdivisions, including the City of New York.

The rights of the Holders of the Series 2009B Notes and the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the extent constitutionally applicable and except as specifically stated above, and may also be subject to the exercise of the State's police powers and of judicial discretion in appropriate cases.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change of law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur and we have no obligation to update this opinion in light of such actions or events.

Very truly yours,

**APPENDIX E**

**FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS' REPORT**