

BUFFALO FISCAL STABILITY AUTHORITY
RESOLUTION NO. 04 - 81

RESOLUTION CONCERNING THE AUTHORIZATION, SALE AND ISSUANCE OF
SALES TAX AND STATE AID SECURED BONDS, SERIES ONE
AND BOND ANTICIPATION NOTES, SERIES 2004A-1

WHEREAS, the Buffalo Fiscal Stability Authority Act, incorporated in chapter 122 of the laws of 2003, as amended from time to time (the “Act”) authorizes the Buffalo Fiscal Stability Authority (the “Authority”) to issue bonds and notes for the purpose of financing Financeable Costs, as defined in the Act and to make the proceeds thereof available to the City of Buffalo (the “City”); and

WHEREAS, the Authority is authorized by the Act, upon submission by the City to the Authority of an approved declaration of need in accordance with the Act, to enter into agreements, in the Authority’s discretion, providing for the financing of Financeable Costs by the Authority and to issue its bonds, notes, or other obligations therefor; and

WHEREAS, the Act authorizes the Authority to enter into appropriate and necessary contracts with its bondholders and others to provide for the issuance thereof, and the Directors of the Authority hereby intend to provide for the authorization, issuance and sale of a series of its sales tax and state aid secured bonds (the “Bonds”) and a series of bond anticipation notes in anticipation of such Bonds (such series of bond anticipation notes, including any renewals thereof, the “Notes”) through the approval of appropriate documentation, including, without limitation, the approval of the Second Supplemental Indenture (as such term is defined below), the authorization of the issuance of such series of Bonds and the issuance, sale and delivery of such series of Bonds, and the preparation, negotiation and approval of appropriate documents in connection therewith; and

WHEREAS, the proceeds of such series of Notes will be used to finance Financeable Costs under the Act, which may include but are not limited to (i) refunding, repayment or restructuring of certain outstanding indebtedness of the City; (ii) cash flow needs of the City; (iii) capital projects; (iv) operating costs of the City; and (v) the costs of issuance of such series of Notes; and

WHEREAS, the Authority is required to obtain the written approval of the State Comptroller for the sale of the Notes and the terms thereof if such sale be a private sale to other than the State Comptroller; and

WHEREAS, the Authority will obtain the required approval of the State Comptroller prior to the delivery of the Notes; and

WHEREAS, the Authority has previously caused to be executed and delivered an indenture entitled “Indenture between Buffalo Fiscal Stability Authority and The Bank of New York, as Trustee, dated as of June 1, 2004” (the “General Indenture”), authorizing the issuance of one or more series of Bonds or notes, including bond anticipation notes, for the purposes set

forth therein and containing certain other terms, restrictions and covenants with respect to such Bonds or notes and the security pledged to the payment thereof; and

WHEREAS, the Authority has caused to be prepared a form of supplemental indenture entitled “Second Supplemental Indenture between Buffalo Fiscal Stability Authority and The Bank of New York, as Trustee Authorizing Up To \$145,000,000 Buffalo Fiscal Stability Authority Sales Tax and State Aid Secured Bonds, Series One and Up To \$125,000,000 Buffalo Fiscal Stability Authority Bond Anticipation Notes, 2004A-1, dated as of August 1, 2004” (the “Second Supplemental Indenture”), pursuant to which the Authority will authorize the issuance of the Sales Tax and State Aid Secured Bonds, Series One (the “Series One Bonds”) and the Notes, initially bearing the designation “Bond Anticipation Notes, Series 2004A-1,” subject to renewal thereof (the General Indenture, as amended and supplemented, including by the Second Supplemental Indenture, being hereinafter collectively referred to as the “Indenture”); and

WHEREAS, the Authority has previously caused to be executed and delivered a financing agreement dated as of June 1, 2004 (the “Financing Agreement”), by and between the Authority and the City, pursuant to which the City has made certain agreements and covenants relating to the issuance of Bonds or notes by the Authority, and has agreed to the pledge of said covenants to the Trustee on behalf of the Bondholders; and

WHEREAS, pursuant to the Act and the Financing Agreement, the City has requested and has submitted an approved Declaration of Need in accordance with the Financing Agreement in form satisfactory to the Authority that the Authority undertake this financing through the issuance of the Notes for the purpose of financing the cash flow needs of the City at lower cost than the City could finance such cash flow needs on its own; and further that as a condition thereto, the City will issue and deliver to the Authority as noteholder, its issue of Revenue Anticipation Notes (the “RANs”), the payments thereunder to the Authority, together with other available moneys of the Authority, including, without limitation, State Aid Revenues, expected to be sufficient for the Authority to pay in full amounts on the Notes at their respective maturity date or dates; and

WHEREAS, the Authority has caused to be prepared a form of a Preliminary Offering Circular (the “Preliminary Offering Circular”), relating to the Notes; and

WHEREAS, officers and employees of the Authority will participate in revisions to the Preliminary Offering Circular and the preparation of a final Offering Circular to be used in connection with the issuance and sale of the Notes (the “Offering Circular”) and have negotiated the Contract of Purchase therefor (the “Purchase Contract”); and

WHEREAS, the Authority has negotiated a form of contract of purchase between the Authority and the City relating to the purchase by the Authority of the RANs from the City (the “RAN Purchase Contract”); and

WHEREAS, the Authority has caused to be prepared a Buffalo Fiscal Stability Authority Bond Anticipation Notes, Series 2004A-1 Continuing Disclosure Agreement (the “Continuing Disclosure Agreement”) between the Authority and the Trustee in order to assist the Underwriter (as defined below) in complying with the requirements of Rule 15c2-12 promulgated by the

Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934, as amended:

NOW, THEREFORE, the Authority, hereby adopts the following resolutions:

I. Second Supplemental Indenture

RESOLVED, that the form of Second Supplemental Indenture presented to this meeting, a copy of which shall be annexed to this resolution as Exhibit A, is hereby approved, and any Authorized Officer is hereby authorized to execute and deliver the Second Supplemental Indenture in substantially such form with such changes thereto prior to the issuance and delivery of the Notes or the Series One Bonds (which may be issued in one or more series or subseries) as may be approved by the Authorized Officer subject to the terms referred to in items VIII and X below; and further

II. Declaration of Need

RESOLVED, that pursuant to the Act and the Financing Agreement, the City has requested the Authority to undertake this financing and has submitted a Declaration of Need in substantially the form set forth in the Financing Agreement and any Authorized Officer is hereby authorized to execute and deliver an acceptance of said Declaration of Need consistent with this resolution; it being expressly understood that the Authority’s undertaking of this financing through the issuance of the Notes is conditioned upon the issuance and delivery by the City to the Authority as noteholder of the RANs in a form satisfactory to an Authorized Officer of the Authority and to bond counsel of the Authority; and further

III. Preliminary Offering Circular

RESOLVED, that the Preliminary Offering Circular of the Authority in substantially the form presented to this meeting, a copy of which shall be annexed to this resolution as Exhibit B, is hereby approved for use in marketing the Notes with such changes as an Authorized Officer may approve; and further

IV. Offering Circular

RESOLVED, that any Authorized Officer is authorized to execute and deliver, on behalf of the Authority, the Offering Circular, with such changes to the Preliminary Offering Circular as may be approved by an Authorized Officer, said execution being conclusive evidence of such approval, and any amendments or supplements thereto which may be necessary or desirable; and any Authorized Officer is further hereby authorized and directed to execute the same on behalf of the Authority, as well as any certificates necessary in connection therewith to allow the Underwriter to comply with SEC rules; and further

V. Purchase Contract

RESOLVED, that the Purchase Contract by and among the Authority and the Underwriter, in substantially the form presented to this meeting, a copy of which shall be annexed to this resolution as Exhibit C, is hereby approved with such changes as an Authorized

Officer may approve, and any Authorized Officer is hereby authorized and directed to execute the same on behalf of the Authority; and further

VI. RAN Purchase Contract

RESOLVED, that the RAN Purchase Contract by and among the Authority and the City, in substantially the form presented to this meeting, a copy of which shall be annexed to this resolution as Exhibit D, is hereby approved with such changes as an Authorized Officer may approve, and any Authorized Officer is hereby authorized and directed to execute the same on behalf of the Authority; and further

VII. Continuing Disclosure Agreement

RESOLVED, that the Continuing Disclosure Agreement presented to this meeting, a copy of which shall be annexed to this resolution as Exhibit E, is hereby approved, and any Authorized Officer is hereby authorized to execute and deliver the Continuing Disclosure Agreement in substantially such form as is so approved with such changes therein as the Authorized Officer executing the same may approve, such approval to be evidenced by such Authorized Officer's execution thereof, and further

VIII. Terms of Notes

RESOLVED, that there is hereby delegated to any Authorized Officer of the Authority, subject to the limitations, if any, contained in the Indenture, the power with respect to the Notes to determine and carry out the following:

(a) The principal amount of the Notes to be issued in an aggregate total principal amount up to \$125,000,000;

(b) The date or dates, maturity date or dates and principal amount of each maturity of the Notes; provided, however, that the Notes shall mature no later than eighteen months after their date of issuance;

(c) Provisions for the renewal of the Notes consistent with the Indenture; provided that any renewal notes shall mature no later than five years from the date of initial issuance of the Notes;

(d) The interest rate or rates of the Notes (including a zero interest rate), the date from which interest on the Notes shall accrue and the interest payment dates, if any, therefor; provided, however, that the true interest cost of the Notes (as determined by an Authorized Officer of the Authority, which determination shall be conclusive) shall not exceed 4% per annum, and the true net interest cost of any renewal of such Notes as so determined shall not exceed eight percent (8%) per annum;

(e) Additional provisions for the sale or exchange of the Notes and for the delivery thereof not otherwise set forth herein;

(f) Directions for the (i) application of the proceeds of the Notes to the purchase of the RANs and other purposes and (ii) investment of the proceeds of the Notes not in conflict with the provisions hereof,

(g) Any other provisions deemed necessary or advisable by an Authorized Officer of the Authority, not in conflict with the provisions hereof or of the Indenture, including, without limitation, incorporating a credit facility or other form of credit enhancement or amending the pledge of collateral (other than the pledge of the Series One Bonds) securing the Notes or changes to address rating agency considerations, in each case to the extent that an Authorized Officer of the Authority determines that such changes would be in the best interest of the Authority; and further

IX. Issuance and Sale of the Notes

RESOLVED, that the Authority shall issue, award, sell and deliver the Notes to the Underwriter upon the terms and conditions set forth in the Purchase Contract at a purchase price of not less than ninety-five percent (95%) of the aggregate original principal amount (issuance value) of the Notes to be sold and shall apply the proceeds thereof in accordance with the provisions of the Indenture and certain other certificates to be delivered upon issuance of the Notes; and further

X. Terms of Series One Bonds

RESOLVED, that there is hereby delegated to any Authorized Officer of the Authority, subject to the limitations, if any, contained in the Indenture, the power with respect to the Series One Bonds to determine and carry out the following:

(a) The principal amount of the Series One Bonds to be issued in an aggregate total principal amount up to \$145,000,000;

(b) The date or dates, maturity date or dates and principal amount of each series and maturity of the Series One Bonds, the amount and date of each sinking fund installment, if any, and which Series One Bonds, if any, are serial bonds or term bonds; provided, however, that the Series One Bonds shall mature no later than ten years from their date of issuance;

(c) The interest rate or rates of each series of the Series One Bonds (including a zero interest rate), the dates from which interest on each series of the Series One Bonds shall accrue, the interest payment dates, if any, therefor and the interest rate mode or modes thereof; provided, however, that the true interest cost of the Series One Bonds (as determined by an Authorized Officer of the Authority, which determination shall be conclusive) shall not exceed 8% per annum;

(d) The redemption price or redemption prices, if any, and the redemption terms, if any, for each series of the Series One Bonds; provided; however, that the redemption price of any Series One Bond subject to redemption at the election of the Authority or in accordance with the General Indenture shall not be greater than one hundred three percent (103%) of the principal amount of the Series One Bonds or portion thereof to be redeemed, plus accrued interest thereon to the date of redemption;

(e) Additional provisions for the sale or exchange of the Series One Bonds and for the delivery thereof not otherwise set forth herein, including, but not limited to, provisions for the negotiated sale thereof and preparation and approval of the Series One Bond Instruments, s defined and provided for in Section 4.03 of the form of the Second Supplemental Indenture;

(f) Directions for the application of the proceeds of the Series One Bonds and investment thereof not in conflict with the provisions hereof,

(g) Any other provisions deemed necessary or advisable by an Authorized Officer of the Authority, not in conflict with the provisions hereof or of the Indenture, including, without limitation, changing the designation of the Series One Bonds, incorporating bond insurance or other form of credit enhancement or changes to address rating agency considerations, in each case to the extent that an Authorized Officer of the Authority determines that such changes would be in the best interest of the Authority; and further

XI. Authorized Officers

RESOLVED, that each of the Chairperson, the Vice Chairperson, the Executive Director, the Chief Financial Officer, the Chief Counsel, the Treasurer and the Corporate Secretary of the Authority, and any person duly authorized to act in such capacity, is designated an “Authorized Officer” for the purposes of the foregoing resolutions; and further

XII. Appointment of Underwriter

RESOLVED, that the firm of Lehman Brothers Inc. is hereby appointed as senior managing underwriter for the financings authorized by this resolution.

XIII. Negotiated Sale

RESOLVED, that the use of a negotiated underwriting in connection with the sale of the Notes, renewal notes and the Series One Bonds is found to be appropriate.

XIV. Appointment of Bond Counsel

RESOLVED, that the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. is hereby appointed bond counsel for the Notes, renewal notes and the Series One Bonds; and further

XV. Further Action

RESOLVED, that the Authorized Officers or their designee(s) are each hereby authorized and directed to approve and execute such documents or certifications (including certifications as to the federal tax status of interest on the Notes, any renewals thereof and the Series One Bonds), make such payments and take such other actions, in the name of the Authority and on its behalf, as he or she may reasonably deem necessary or appropriate to carry out the foregoing resolutions, including without limitation the execution, sale and delivery of the Notes, renewal notes and Series One Bonds, any amendment to the Financing Agreement deemed necessary or convenient in carrying out the intent of this resolution, and that all such actions heretofore taken

in connection with the Notes, renewal notes and Series One Bonds by any Authorized Officer, or his or her designee, are hereby ratified and approved.

Approved July 21, 2004

/S/ Richard Tobe
Secretary