

BUFFALO WATER BOARD MINUTES
July 21, 2021

MEMBERS PRESENT:

Oluwole A. McFoy
Gerald Kelly
Jessica Brown
William Sunderlin

OTHERS PRESENT:

Peter Merlo
Jack McMahon
Stephen Waldvogel
Damon Sykes
Dustin Steiner
Michael Wolasz
David Hill
Lisa Foti
Doug Fultz
Samantha Podlas
Charlie Martorana
William Ferguson
Bill Appenheimer
Michael Ramos
Kelly Leeb
Elizabeth Scheeler

The regular monthly meeting of the Buffalo Water Board was called to order at 8:00 a.m.

1. Motion by Mr. Sunderlin, seconded by Ms. Brown to approve the agenda. Approved
2. Motion by Mr. Kelly, seconded by Mr. Sunderlin to approve the minutes from the June 16, 2021 meeting as amended. Approved.
3. Mr. Ramos reported receipt that the Department of Inspections continues to support the work of the Buffalo Water Board and that he attends various community events and Block Club meetings and would be happy to pass along any information from the Buffalo Water Board as needed.
4. Staff Update: Mr. Hill with Veolia Water provided a staffing update to the Buffalo Water Board.
5. Election of Officers: Mr. McFoy continues pursuant to Mayoral appointment, as authorized by law, as Chair of the Buffalo Water Board. Motion by Mr. Kelly, seconded by Ms. Brown to approve Mr. Sunderlin as Vice Chair of the Buffalo Water Board. Approved.
6. Election of Officers: Motion by Mr. Sunderlin, seconded by Ms. Brown to nominate and elect Mr. Merlo as Secretary of the Buffalo Water Board. Approved.
7. Governance Committee: Motion by Mr. Sunderlin, seconded by Mr. Kelly to nominate Ms. Brown as Chair of the Governance Committee of the Buffalo Water Board. Approved.
8. Audit Committee: Motion by Mr. Sunderlin, seconded by Ms. Brown to nominate Mr. Kelly as Chair of the Audit Committee of the Buffalo Water Board. Approved.
9. PAAA Compliance: The Buffalo Water Board reviewed, the Buffalo Water Board's Mission Statement and Performance Goals established pursuant to the New York State Public Authorities Accountability Act, as amended (PAAA), as attached hereto. Motion by Mr.

Sunderlin, seconded by Mr. Kelly to confirm and restate the Buffalo Water Board's adoption of such Mission Statement and Performance Goals. Approved.

10. PAAA: Directors Confidential Evaluations are to be completed by each Buffalo Water Board member and delivered to the Buffalo Water Board legal counsel.

11. Motion by Mr. Sunderlin, seconded by Mr. Kelly to adopt Buffalo Water Board Resolution Regarding American Rescue Plan Financial Assistance and Customer Assistance with Continuation of Water Services during COVID-19 Pandemic, and Waiver of Certain Water-Related Charges, Interest and Fees as amended and attached hereto. Approved.

12. Upon the recommendation of the Principal Engineer of the Division of Water and Wendel, motion made by Mr. Sunderlin, seconded by Ms. Brown to authorize and fund a contract with Destro & Brothers Concrete Co., Inc. for the 2021 Citywide Water Cut Restoration Program. The project and contract will be administered by the City of Buffalo, Division of Water in an amount not-to-exceed \$1,658,095.00. Approved. The following Bids were received:

| <u>Bidder</u> | <u>Bid</u> |
|--------------------------------------|----------------|
| Destro & Brothers Concrete Co., Inc. | \$1,658,095.00 |
| Amherst Paving, Inc. | \$1,789,675.00 |
| Nova Site Company, LLC | \$1,955,650.00 |
| Mark Cerrone, Inc. | \$2,168,000.00 |

13. Upon the recommendation of the Principal Engineer of the Division of Water and Arcadis, motion made by Mr. Kelly, seconded by Ms. Brown to authorize and fund a contract with The State Group Industrial USA Limited for the Water Filtration Plant Residuals Handling System Improvements Project. The project and contract will be administered by the City of Buffalo, Division of Water in an amount not-to-exceed \$4,448,250.00. Approved. The following Bids were received:

| <u>Bidder</u> | <u>Bid</u> |
|--|----------------|
| The State Group Industrial USA Limited | \$4,448,250.00 |
| STC Construction, Inc. | \$4,999,000.00 |

14. Upon the recommendation of the Principal Engineer of the Division of Water and Clough Harbour and Associates, motion made by Mr. Kelly, seconded by Ms. Brown to authorize a contract increase with Kandey Co., Inc. for the Michigan Avenue Waterline Project (contract # 93002578). The project and contract will be administered by the City of Buffalo, Division of Water in an amount not-to-exceed \$570,910.00. Approved.

15. Motion by Mr. Kelly, seconded by Ms. Brown to approve a Fund Transfer of \$6,677,255.00 from Buffalo Water Board Reserve Account to Structural Improvements Account (# 53023517-473020). Approved.

16. Upon the recommendation of the Principal Engineer of the Division of Water, motion made by Mr. Kelly, seconded by Mr. Sunderlin, to accept the watermain as part of Colvin Estates Phase 3, Part 1, installed in the Right-of-Way along Rachel Vincent Way, West of Starin Avenue in Buffalo, NY as an asset of the Buffalo Water Board. Approved.

17. Upon the recommendation of the Principal Engineer of the Division of Water and the City Accountant, motion made by Mr. Sunderlin, seconded by Ms. Brown to authorize payment for the following City of Buffalo invoices:

- a) Invoice 21823 dated 07/31/2004 in an amount of \$5,046.91. Approved.
- b) Invoice 23147 dated 12/31/2004 in an amount of \$5,628.48. Approved.
- c) Invoice 24690 dated 07/31/2005 in an amount of \$8,052.50. Approved.

- d) Invoice 29774 dated 01/31/2009 in an amount of \$1.31. Approved.
- e) Invoice 31425 dated 04/28/2010 in an amount of \$23.02. Approved.

18. Mr. Waldvogel and Mr. Steiner of GHD Consulting Services, Inc. delivered a report of GHD's on-going professional services to assist the Buffalo Water Board on a number of projects, including: GHD is developing a predictive cost based model for replacing lead based services; plans to meet with the Army Corps of Engineers regarding their Seawall Project west of the Colonel Ward Water Treatment Facility; and will be coordinating review of two responses to a Request for Proposals (RFP) for a third party vendor to manage the Buffalo Water Board Affordability Program. GHD is also continuing to provide engineering and oversight services at Colonel Ward Treatment Facility, for among other matters, the sodium hypochloride system design, replace Hach boards on Turbidimeters, develop the bid advertisement for the Electrical Upgrades project and continued work on the Pipe Loop Project.
19. Mr. Hill of Veolia Water presented Veolia Water's monthly management report with the Buffalo Water Board. Mr. Hill noted that the fiscal year ended on June 30, 2021 with revenue collection reaching \$44.2 million (approximately 8.6 percent less than the fiscal year goal of \$48.5 million), and he reviewed the Management Agreement Limit Accounts through the end of the fiscal year. The City distribution crews have completed the work in the Valve House, and treatment plant workers will begin to clean out the South Basin sludge next week. This year's Leak Detection program has begun and will focus on the West side of Buffalo. Mr. Sykes reported the top 30 water customers for the most recent fiscal year and noted that several of these customers used considerably less water during the past fiscal year than in previous years.

Motion by Mr. Sunderlin, seconded by Ms. Brown to adjourn at 9:27 A.M. Approved.

Next meeting, Wednesday, August 25, 2021 at 8:00 A.M. This meeting will be held in the Colonel Ward Water Treatment Facility Administration Building Conference Room located at 2 Porter Avenue, Buffalo, NY 14201.

**BUFFALO WATER BOARD RESOLUTION REGARDING
AMERICAN RESCUE PLAN FINANCIAL ASSISTANCE
AND CUSTOMER ASSISTANCE WITH CONTINUATION
OF WATER SERVICES DURING COVID-19 PANDEMIC,
WAIVER OF CERTAIN WATER-RELATED CHARGES,
INTEREST AND FEES**

WHEREAS, on March 15, 2020, Byron W. Brown, Mayor of the City of Buffalo, declared a State of Emergency for the entire City of Buffalo in coordination with Andrew M. Cuomo, Governor of the State of New York's, declaration of a State of Emergency for the entire State of New York (the "State"), effective March 7, 2020, in response to the COVID-19 Pandemic; and

WHEREAS, the Buffalo Water Board ("Buffalo Water"), by prior resolutions adopted on July 8, 2020, November 12, 2020, and January 20, 2021 established and extended moratoria on terminations and disconnections of residential water customers during the COVID-19 Pandemic, determined to restore water services and grant waivers of interest, late fees, penalties and certain service charges for residential customers adversely affected by changes in financial circumstances due to the COVID-19 Pandemic through June 30, 2021; and

WHEREAS, on July 2, 2021, Byron W. Brown, Mayor of the City of Buffalo declared, effective as of July 1, 2021, a continuation and expansion of the Water and Sewer Amnesty Program, including, among other things, financial relief and assistance for eligible low income residential customers with unpaid water charges, interest charges, late fees, penalties and financial assistance through the American Rescue Plan; and

WHEREAS, the State Public Service Law sections 32 and 89-1, applicable to Buffalo Water, requires, among other things, that no residential customers, non-residential customers whose account services residential premises and certain eligible small business customers will have water service terminated or disconnected for non-payment of an overdue charge, occurring from May 21, 2021 and for a period of one hundred eighty (180) days after, either the State COVID-19 State of Emergency is lifted or expires, or December 31, 2021, whichever date is earlier; and

WHEREAS, Andrew M. Cuomo, Governor of the State, by Executive Order Number 210 declared that the State COVID-19 State of Emergency ended effective June 25, 2021; and

WHEREAS, Buffalo Water, in collaboration with the City of Buffalo, finds that adverse health and financial consequences related to the COVID-19 Pandemic continue to exacerbate economic challenges faced by many persons served by Buffalo Water; and

WHEREAS, Buffalo Water, in collaboration with the City of Buffalo, is committed to developing and implementing equitable solutions to address the needs of the people of the City of Buffalo and the equitable provision of its essential services and to its role in protecting public health; and

WHEREAS, Buffalo Water, as part of such implementation, in addition to complying with the requirements of the State Public Service Law sections 32 and 89-1, will apply financial resources made available by the City of Buffalo through the American Rescue Plan and will provide protection against disconnection, will restore water service and grant financial assistance to low income customers eligible under the American Rescue Plan's Emergency Rental Assistance Program and the Homeowner Assistance Fund, respectively, who are in arrears for unpaid water charges, and interest, late fees, penalties and service charges as provided in this Resolution.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Effective as of July 1, 2021, Buffalo Water, in collaboration with the City of Buffalo, shall use financial assistance funding provided from the American Rescue Plan and City of Buffalo to pay water charges and any interest, late fees, penalties, meter replacement fees and/or burst meter charges, turn-on and turn-off fees otherwise imposed on accounts, that are either two quarters or \$300.00 in arrears for low income residential service customers, who qualify for eligibility under the American Rescue Plan's Emergency Rental Assistance Program and the Homeowner Assistance Fund, respectively. Buffalo Water may require customers to submit an application, records or other information demonstrating eligibility as a low income customer and shall identify, communicate and conduct affirmative outreach to contact eligible low income residential customers and assist, as necessary or appropriate, to obtain an application or other information demonstrating eligibility as a low income customer. The benefits provided in this Resolution section number one shall be in addition to the benefits described in this Resolution, and shall continue in effect for the duration of the funding available by the American Rescue Plan and City of Buffalo.
2. No residential customer, non-residential customer whose account services residential premises and certain eligible small business customers will have water services terminated or disconnected for non-payment of an overdue charge, pursuant to State Public Service Law sections 32 and 89-1, occurring between May 11, 2021, and one hundred eighty (180) days from the day when the COVID-19 State of Emergency is lifted or expires or December 31, 2021, whichever date is earlier, and which now is scheduled to expire on December 21, 2021 by virtue of the Governor's State Executive Order Number 210.
3. Any residential customers, non-residential customers whose account services residential premises and certain eligible small business customers who: (a) certify that they have experienced "a change in financial circumstances due to the COVID-19 state of emergency which began on March 7, 2020," and (b) enter into or restructure a Deferred Payment Agreement ("DPA") with Buffalo Water through December 21, 2021 will not be obligated to pay interest, late fees, penalties, meter replacement fees and/or burst meter charges, turn-on and turn-off fees as part of the DPA. This provision does not apply to and excludes any charges for water use or principal charges for provision or consumption of water, and also excludes any other fees or charges otherwise required by the Buffalo Water Board Schedule of Water Rates, Fees and Charges set forth in 21 N.Y.C.R.R. Part 10085 *et seq.*

4. Eligible small business customers as used herein consist of a small business with twenty-five or fewer employees that is not (a) a publicly held company, or a subsidiary thereof, (b) seasonal, short-term, or temporary customer, (c) high energy customer as defined by the State Public Service Commission, or (d) a customer that Buffalo Water can demonstrate has resources to pay outstanding water charges, interest and fees, provided that Buffalo Water notifies the small business customer of its reasons and of the customer's right to contest this determination through the Public Service Commission's complaint procedures.
5. If the eligible customer certifies that, due to a change in financial circumstances for the period commencing after March 7, 2020, and/or existing during the term of this Resolution, the customer is unable to pay outstanding water charges, Buffalo Water will extend protections to the eligible customer during the additional 180-day period in accordance with the rules, regulations, and guidance issued by the State Department of Public Service, which is currently scheduled to expire on December 21, 2021 in accordance with the Governor's State Executive Order Number 210.
6. Buffalo Water will make reasonable efforts to identify, communicate and conduct affirmative outreach to contact customers who are in arrears in payment of their water charges. When a residential customer, non-residential customer whose account services residential premises or small business owner has filed a self-certification of change in financial circumstances, Buffalo Water will record the certification in its records and will offer to negotiate a DPA or restructure an existing DPA with the residential customer, non-residential customer whose account services residential premises or eligible small business owner, after the completion of a financial disclosure statement and delivery of any requested supporting documentation.
7. Qualifying customers may enter into or renegotiate a DPA without the requirement of a down payment, with reasonable installment payments and will not be subject to payment of late fees, penalties, and interest for arrearages incurred during the time the customer is a party to a DPA.
8. When a qualifying customer has a DPA, Buffalo Water will not terminate or discontinue water services, nor enforce any lien for unpaid arrears, regardless of any payment default or restructure the DPA, until December 21, 2021, or the expiration of the applicable period of this Resolution. Except for eligible low income residential customers described in Resolution section number one, the moratorium on terminations and availability of DPA's is a grace period to assist eligible customers to pay their bills and obtain financial assistance, and any unpaid balance of water charges, late fees, penalties, and interest or other charges or arrears otherwise imposed by Buffalo Water Board Schedule of Rates, Fees and Charges, set forth in 21 N.Y.C.R.R Part 10085 et seq., will be due after December 21, 2021.
9. Any dispute about whether a small business customer is eligible for the statutory protections mandated by Public Service Law sections 32 and 89-1 may be resolved through

the Public Service Commission's consumer complaint process. Buffalo Water shall have the burden to demonstrate that the small business is not eligible for the moratorium protections and has the resources to pay its outstanding water charges.

10. Buffalo Water will not require any eligible residential customer, non-residential customer whose account services residential premises or small business customer to apply for or to receive assistance from the Home Energy Assistance Program (HEAP), COVID Emergency Rental Assistance Program (ERAP), Emergency Broadband Benefit Program (EBB) or any other federal or state assistance program as a condition precedent for eligibility for protection from termination or disconnection. Buffalo Water, however, will encourage eligible customers to apply for such assistance.
11. Buffalo Water will provide each water customer with overdue water charges with a notice or fact sheet of customer rights with each invoice and post it on its website.


STATE OF NEW YORK)
) SS.:
COUNTY OF ERIE)

I, the undersigned Secretary of the Buffalo Water Board (the "Board"), DO HEREBY CERTIFY that I have compared the annexed extract of the minutes of the meeting of the Board, including the resolution contained therein, held the 21st day of July, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Board and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of said Board had due notice of said meeting, (B) said meeting was duly held, (C) pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and public notice of the time and place of said meeting was duly given in accordance with such Article 7, (D) there was a quorum of the members of the Board present throughout said meeting, and (E) the said resolution was offered by Mr. Sunderlin, and seconded by Mr. Kelly, and was adopted by unanimous vote of the Buffalo Water Board.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 25 day of August, 2021.



Peter J. Merlo, P.E., Secretary
Buffalo Water Board