

BUFFALO WATER BOARD MINUTES
October 19, 2023

MEMBERS PRESENT:

Oluwole A. McFoy
Gerald E. Kelly
Denine N. Jackson
William L. Sunderlin

OTHERS PRESENT:

Peter Merlo
Jack McMahon
Doug Fultz
Charlie Martorana
Damond Rand
Stephen Waldvogel
Lisa Foti
Bill Ferguson
Kelly Leeb
Ryan Stotz
John Davis
Fouad Arab
David Hill
Beth Scheeler
Porsha Parson
Matthew Adam
April Baskin

The regular monthly meeting of the Buffalo Water Board (BWB) was called to order at 2:30 p.m. It also includes the Buffalo Water Board's Public Hearing to consider meetings using Videoconferencing.

1. Motion by Mr. Sunderlin, seconded by Ms. Jackson to approve the agenda. Approved.
2. Motion by Mr. Sunderlin, seconded by Ms. Jackson to approve the minutes of the August 16, 2023, and September 8, 2023, meetings. Approved.
3. Public Comment: After the Chair offered an opportunity for public comments, no comments were received.
4. Staff Update: Mr. Hill and Mr. Fultz, with Veolia Water provided a staffing update to the Buffalo Water Board.
5. The Chair of the Buffalo Water Board opened the Public Hearing regarding meetings using Videoconferencing. An opportunity for public comments was offered, no comments were received. The Public Hearing was closed.
6. Motion made by Mr. Kelly, seconded by Mr. Sunderlin to approve a Resolution and Procedures of the Buffalo Water Board to permit meetings using videoconferencing services and facilities in accordance with New York State Public Officers Law. Approved. A copy of the Resolution is attached.
7. The Buffalo Water Board legal counsel reported that discussions continue with Veolia Water to address developing additional personnel support for existing City employees serving the Buffalo Water System.

8. Upon the recommendation of the Principal Engineer of the Division of Water and GHD, motion made by Ms. Jackson, seconded by Mr. Sunderlin to authorize, and fund a contract with O'Connell Electric for the base bid plus the alternate for the Massachusetts Avenue Pump Station Electrical Upgrades Project PH1. The project and contract will be administered by the City of Buffalo, Division of Water in an amount not-to-exceed \$3,426,476.00. Approved. The following Bids were received:

<u>Bidder</u>	<u>Bid</u>	<u>Alternate</u>	<u>Total</u>
O'Connell Electric	\$2,826,338.00	\$600,138.00	\$3,426,476.00
Frey Electric	\$2,834,000.00	\$642,000.00	\$3,476,000.00
Ferguson Electric	\$4,251,158.00	\$646,501.00	\$4,897,659.00

9. Upon the recommendation of the Principal Engineer of the Division of Water, motion made by Mr. Sunderlin, seconded by Ms. Jackson to authorize a cost increase for Nussbaumer & Clarke, Inc. for the Massachusetts Avenue Pump Station Electrical Upgrades Project (contract #93002522). The project and contract will continue to be administered by the City of Buffalo, Division of Water, and the contract, as amended, is approved in an amount not-to-exceed \$514,060.00. Approved.
10. Upon the recommendation of the Principal Engineer of the Division of Water, motion made by Mr. Sunderlin, seconded by Ms. Jackson to authorize a contract for the Water Betterment portion of the Abbott Road Streetscape Project. The preliminary and final design phases of the project will be administered by the City of Buffalo, Division of Engineering, and the contract, as amended is approved in an amount not-to-exceed \$49,580.00, including this increase authorized by the Buffalo Water Board. Approved.
11. Upon the recommendation of the Principal Engineer of the Division of Water and the project engineering consultant Arcadis, motion made by Ms. Jackson, seconded by Mr. Sunderlin to authorize a no cost change order contract time extension with the State Group for the Residuals Systems Improvements Project (contract #93002898). The revised project completion date will be February 29, 2024. The project and contract will be administered by the City of Buffalo, Division of Water. Approved.
12. Motion made by Mr. Sunderlin, seconded by Ms. Jackson, to authorize and fund an increase for services as part of the Management Agreement dated as of July 1, 2020, with Veolia Water, specifically the High Priority Repairs & Lead Services Limit Account in an amount not-to-exceed \$4,435,533.09 to extend through June 30, 2024. These projects and services will continue to be administered by the City of Buffalo, Division of Water, as part of the Management Agreement with Veolia Water. Approved.
13. Motion made by Mr. Sunderlin, seconded by Ms. Jackson, to authorize and fund an increase for services as part of the Management Agreement dated as of July 1, 2020, with Veolia Water, specifically the Specialty Preventive Maintenance Limit Account in an amount not-to-exceed \$1,068,499.30 to extend through June 30, 2024. These projects and services will continue to be administered by the City of Buffalo, Division of Water, as part of the Management Agreement with Veolia Water. Approved.
14. Upon the recommendation of the Principal Engineer of the Division of Water and the project engineering consultant Wendel, motion made by Mr. Sunderlin, seconded by Ms. Jackson to authorize a no cost change order contract time extension with Destro & Brothers Concrete, Co., Inc. for the 2022 Citywide Water Cut Restoration Program (contract #93003023). The revised project completion date will be November 30, 2023. The project and contract will be administered by the City of Buffalo, Division of Water. Approved.

15. Mr. Waldvogel, Mr. Stotz, and Mr. Davis of GHD Consulting Services, Inc. delivered a report of GHD's on-going professional services to assist the Buffalo Water Board on several projects, including: (a) introduction of Ms. April Baskin, Chairwoman of the Erie County Legislature who is working as a sub-consultant to GHD on several current projects; (b) GHD has worked on reviewing plans submitted from AT&T regarding equipment upgrades to existing equipment located on the E. Ferry Water Tower; (c) GHD has worked with the Buffalo Water Board Legal Counsel regarding staffing matters; (d) the latest release of the Get Water Wise website includes materials pertaining to Lead Line replacement and affordability programs; (e) GHD reported that social media has been very active and that there was a recent meeting with community groups regarding release of the service map and scheduling a press conference soon; (f) Mr. Davis reported on the very positive response to the continuing Public Outreach Campaign and community engagement. The Get Water Wise tent was at a Health & Wellness event recently; (g) GHD is continuing to provide engineering and oversight services at Colonel Ward Treatment Facility, for among other matters, commencement of electrical upgrades at the plant, the Flood Mitigation Berm Project submittals are coming in for review, procedures for installation of stop logs downstream of the clearwell are being reviewed, repairs to replace Outfall #6 are ongoing and contractor meetings for work at the Ralph C. Wilson Centennial Park have commenced.

16. Mr. Fultz of Veolia Water presented Veolia Water's monthly management report. Mr. Fultz reported that in September 2023, the Colonel Ward Water Treatment Facility hosted approximately 100 operators from across New York State for the NYS AWWA Tift Symposium Operators Forum. Mr. Fultz reported that R.E. Kelly is currently repairing the Raw Water Intake that was damaged during the December 2022 storm and masonry work is currently underway on the stone pile building to repair the exterior of the structure that houses the Buffalo Water Board stone pile. The South Basin has been cleaned and returned to service.

Motion by Mr. Sunderlin to enter Executive Session to discuss a litigation matter. Seconded by Ms. Jackson. Approved.

Motion by Mr. Kelly to exit Executive Session. Seconded by Mr. Sunderlin. Approved.

Motion by Mr. Kelly, seconded by Mr. Sunderlin to adjourn at 3:32 P.M. Approved.

Next meeting is scheduled for Wednesday, November 8, 2023, at 9:00 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, for Board Members and by virtual conference call, as authorized by law.

**BUFFALO WATER BOARD RESOLUTION TO PERMIT VIDEOCONFERENCE MEETINGS IN
ACCORDANCE WITH NEW YORK STATE PUBLIC OFFICERS LAW**

WHEREAS, Section 103-a of the Public Officers Law, as added by Part WW of Chapter 56 of the Laws of 2022, permits members of a public body, under extraordinary circumstances, to attend and participate in a meeting of the public body by videoconferencing from a remote location that is not available to the public, provided that: (1) the public body has adopted a resolution authorizing the use of videoconferencing, (2) the number of members of the public body who attend the meeting at location(s) where the public can attend is at least equal to the number required to satisfy the public body's quorum requirement, (3) the public body has established written procedures governing member and public attendance consistent with Section 103-a of the Public Officers Law, (4) such written procedures are conspicuously posted on the public website of the public body, and (5) the other criteria specified in Section 103-a are satisfied; and

WHEREAS, the Buffalo Water Board (the "Board") after having conducted a public hearing allowing the public an opportunity to be heard on the matters in this resolution, deems it appropriate that the Board and any and all committees of the Board now existing or hereafter established be authorized to use videoconferencing to conduct meetings in the manner contemplated by Section 103-a of the Public Officers Law, that is, meetings where a member who is unable to be physically present at any such meeting location due to extraordinary circumstances is permitted to attend and participate in the meeting by videoconferencing from a remote location that is not available to the public; and

WHEREAS, the Board also deems it appropriate that the Board and any and all committees of the Board continue to be authorized to use videoconferencing to conduct meetings where each member wishing to attend and participate in such meeting is physically present at such meeting at a location where the public can attend.

NOW THEREFORE BE IT

RESOLVED, the Board, and any and all committees of the Board now existing or hereafter established are hereby authorized to use videoconferencing to conduct meetings, provided that a minimum number of members are present to fulfill the Board's quorum requirement in the same physical location or locations where the public can attend, in the manner authorized by Section 103-a of the Public Officers Law; including meetings where a member who is unable to be physically present at any such meeting location due to extraordinary circumstances, including disability, illness, caregiver responsibilities, or any other significant or unexpected factor or event which precludes the member's physical attendance at such meeting, is permitted to attend and participate in the meeting by videoconferencing from a remote location that is not available to the public; and it is further

RESOLVED, that, in addition, the Board continues to authorize the Board and any and all committees of the Board now existing or hereafter established to use videoconferencing to conduct meetings where each member wishing to attend and participate in such meeting is physically present at such meeting at a location where the public can attend; and it is further

RESOLVED, that the Board hereby adopts the Procedures Governing Member and Public Attendance at Meetings Conducted by Use of Videoconferencing annexed hereto and made part hereof (the "Procedures") and directs that all meetings of the Board conducted by use of videoconferencing and all meetings of any committee of the Board conducted by use of videoconferencing shall be conducted in accordance with such Procedures as they may from time to time be revised or amended and in accordance with the applicable provisions of the Open Meetings Law, and it is further

RESOLVED, that the attached Procedures be conspicuously posted on the public website of the Buffalo Water Board, www.BuffaloWater.org.

At a meeting of the Buffalo Water Board, convened in public session at the Colonel Ward Treatment Plant, Foot of Porter Avenue, Buffalo, New York on October 19, 2023, the foregoing resolution was offered by GERALD E KELLY, and seconded by WILLIAM L. SUNDEBLIN, and with a quorum present throughout such resolution was duly adopted by the Buffalo Water Board.

CERTIFICATION

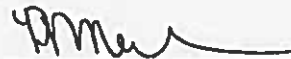
STATE OF NEW YORK)
) SS.:
COUNTY OF ERIE)

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 19th day of October, 2023, 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 all members of said Board had due notice of said meeting, said meeting was duly held, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and public notice of the time and place of said meeting was duly given in accordance with such Article 7, and there was a quorum of the members of the Board present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of October, 2023.



Peter J. Merlo, P.E.
Secretary of the Board

**PROCEDURES GOVERNING MEMBER AND PUBLIC ATTENDANCE
AT MEETINGS CONDUCTED BY USE OF VIDEOCONFERENCING**

**Adopted by the
BUFFALO WATER BOARD**

Pursuant to Public Officers Law § 103-a (2)(b), the Buffalo Water Board ("Board") adopts these Procedures Governing Member and Public Attendance at Meetings Conducted by use of Videoconferencing (the "Procedures"). These Procedures shall apply to all public meetings of the Board conducted by use of videoconferencing and to all public meetings of any committee of the Board now existing or hereafter established conducted by use of videoconferencing. When applying these Procedures to meetings of a committee of the Board, references to the Board shall be deemed to be references to such committee.

1. Except as provided in paragraph 2, each member of the Board who wishes to attend and participate in a public meeting of the Board shall be physically present at a meeting location that is available to the public to attend and identified in the public notice for such meeting. Notwithstanding the provisions in these Procedures that permit members to attend a meeting via videoconferencing from a location that is not available to the public, the Board shall not be permitted to conduct the Board meeting unless the number of members physically present at locations where the public can attend is at least equal to the minimum number of members necessary to fulfill the Board's quorum requirement. If such quorum requirement is satisfied, the members physically present at location(s) where the public can attend and the member(s) attending the meeting via videoconference from location(s) not available to the public may participate in the meeting and vote at the meeting.
2. If, due to extraordinary circumstances, a member of the Board who wishes to attend and participate in a meeting is unable to be physically present at a meeting location that is available to the public and identified in the public notice for such meeting, such member may submit a written request, including by electronic mail or electronic service such as text message, to the Chairperson, the Secretary or any other member to attend the meeting via videoconference from a location that is not available to the public. The written request must be submitted at a reasonable time, as available under the circumstances, in advance of the meeting (and to the extent feasible, no later than the time required to allow the public notice for the meeting to be revised to indicate that the meeting will be conducted by use of videoconferencing) and must identify the general nature of the extraordinary circumstance that causes such member to be unable to be physically present at a meeting location that is open to the public and identified in the public notice.
3. Extraordinary circumstances shall include:
 - Disability;
 - Illness;
 - Caregiving responsibilities; and
 - Any other significant or unexpected factor or event which precludes such member's physical attendance at such meeting at a meeting location that is open to the public.

4. Notwithstanding the in-person quorum requirements set forth in paragraph 1, and consistent with section 103-a of the Public Officer's Law, the Board hereby authorizes any member who has a disability as defined in section 292 of the Executive Law, where such disability renders such member unable to participate in-person at any such meeting location where the public can attend, to be considered present for purposes of fulfilling the quorum requirements for such public body at any meetings conducted through videoconferencing pursuant to this section, provided, however, that the remaining criteria set forth in these Procedures are otherwise met; and provided, further, that the public body maintains at least one physical location where the public can attend such meeting.
5. If videoconferencing is used to conduct a meeting, then except in the case of executive sessions, the Board shall ensure that each member participating in the meeting, whether at a location where the public can attend or from a remote location that is not open to the public, can be heard, seen, and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon. Members participating from a remote location shall ensure that their visual and audio connections are operational and shall, to the extent feasible: (a) identify their full name on the videoconferencing software so that it appears on the screen or (b) have a name plate with their full name that appears on the screen. Notwithstanding any other provision of these Procedures to the contrary, a member who is otherwise qualified to participate in a meeting from a remote location that is not available to the public shall not be permitted to participate in the meeting from such remote location if such member's visual and audio connections are not operational and/or do not permit such member to be heard, seen, and identified, while the meeting is being conducted.
6. If videoconferencing is used to conduct a meeting, the minutes of the meeting shall identify which, if any, member(s) participated remotely and shall be available to the public pursuant to Section 106 of the Public Officers Law.
7. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used; shall specify where the public can view the meeting (and, when public participation in the meeting is authorized, shall specify where the public can view and/or participate in the meeting); shall specify where required documents and records will be posted or available; shall identify the physical location(s) for the meeting where the public can attend; and shall otherwise comply with all applicable requirements of the Open Meetings Law.
8. If videoconferencing is used to conduct a meeting, the meeting shall be recorded, the recording of the meeting shall be posted or linked on the public website of the Board within five business days following the meeting, and such recording shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.
9. If videoconferencing is used to conduct a meeting, the public may attend the meeting at any location that is open to the public and, in addition, the Board shall (a) provide the opportunity for members of the public to view such meeting via video, and (b) when

public comment or participation is authorized, shall provide the opportunity for members of the public to participate in proceedings via videoconference in real time and shall ensure that videoconferencing authorizes the same public participation or testimony as in person participation or testimony.

10. If videoconferencing is used to conduct a meeting, the Board may require any member of the public who wishes to attend the meeting remotely by videoconference to register for the meeting, provided that such registration shall be open to all and that the manner in which registration can be made is specified in the public notice for the meeting.
11. If videoconferencing is used to conduct a meeting during which public comment is authorized or otherwise accepted, the Board may require any member of the public who provides comments during such meeting to identify themselves and to provide such additional information as may be deemed necessary. Nothing in this paragraph or elsewhere in these Procedures shall be construed as requiring the Board to accept public comments at any meeting or otherwise to permit participation by members of the public in any meeting. If the Board does accept public comments at any meeting or does otherwise permit participation by members of the public in any meeting, nothing in this paragraph or elsewhere in these Procedures shall be construed as limiting the right of the Board to impose such limits and restrictions on such public comments and/or public participation as may be permitted by applicable law or as may be required to maintain order and decorum. Persons attending via videoconferencing determined by the Chairperson to be out of order may be muted or ejected as appropriate to prevent further disruption.
12. The in-person participation requirements of paragraph 1 of these Procedures shall not apply during a State disaster emergency declared by the Governor pursuant to Section 28 of the Executive Law, or a local state of emergency proclaimed by the chief executive of the County or City pursuant to Section 24 of the Executive Law, if the Board, through communication with the Chairperson or Secretary, determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the Board to hold an in-person meeting. A determination under this paragraph may be made at a meeting in which any or all of the members participate by videoconferencing from remote locations not open to the public.

ADOPTED: October 19, 2023