

## ITEM NO. 33-2

**AUTHORIZATION TO ENTER INTO ACCESS AGREEMENT WITH AGC, INC.**

- WHEREAS: On November 22, 2021, the Board of the Buffalo Sewer Authority approved a bid in the amount of \$4,512,455.00 for the Mill Race Real Time Control Project; and
- WHEREAS: On October 19, 2022, a contract amendment in the amount of \$482,585.83 was approved by the Board of the Buffalo Sewer Authority to account for easement delays, inflationary forces, Carroll Street sewer interconnections, and flowmeter redesign; and
- WHEREAS: The Buffalo Sewer Authority and AGC, Inc. have negotiated an access agreement (Attachment B) to grant the Authority the right, privilege and authority to enter upon, use and occupy lands required to complete the construction of this project; and
- WHEREAS: By a separate agreement, AGC, Inc. intends to convey to the City of Buffalo, for the benefit of the Authority for the Mill Race Real Time Control Project, a portion of AGC, Inc.'s Real Property; and
- WHEREAS: AGC, Inc. has agreed under the terms of the access agreement to grant the Authority the right, privilege and authority to enter upon, use and occupy the site, in advance of the conveyance to the City of Buffalo; and
- WHEREAS: The term of the access agreement shall be for an initial period of twelve (12) months at an agreed to fee of Twelve Thousand Dollars (\$12,000.00) with the right to extend this agreement and the access rights for up to an additional twelve (12) months at a fee of Fifteen Hundred Dollars (\$1,500.00) per month (up to a possible Eighteen Thousand Dollars, \$18,000.00, for a full second year); and
- WHEREAS: In addition to payment of the access fee (\$12,000.00) and additional access fee (\$18,000.00), under the terms of the access agreement, the Authority shall agree to reimburse AGC, Inc. for attorney fees and costs that AGC, Inc. has incurred in connection with the conveyance of AGC's Real Property to the City of Buffalo and the access agreement in an amount not to exceed Forty Thousand Dollars (\$40,000.00). The Authority shall pay such attorney fees and costs to AGC, Inc. at the time of the closing of the conveyance of the Real Property.

NOW THEREFORE  
BE IT RESOLVED:

The Board of the Buffalo Sewer Authority does hereby authorize the BSA General Manager, in consultation with Barclay Damon, Outside Counsel and City of Buffalo Corporation Counsel, to execute an agreement with AGC, Inc. at a cost not-to-exceed \$30,000.00 for access and an additional cost not-to-exceed \$40,000.00 for attorney’s fees and costs to AGC, Inc.in furtherance of the Mill Race Real Time Control Project. The cost of this agreement, not-to-exceed Seventy Thousand Dollars (\$70,000.00) will be funded from account no. 00110106-444101.

MOTION TO \_\_\_\_\_  
MADE BY \_\_\_\_\_  
2<sup>ND</sup> BY \_\_\_\_\_  
AYES \_\_\_\_\_ NOES \_\_\_\_\_

Board Meeting of April 5, 2023

