

ITEM NO. 33-3

AUTHORIZATION TO PROVIDE PERMANENT EASEMENT FOR CONSTRUCTION OF MILL RACE REAL TIME CONTROL PROJECT

- WHEREAS: The Buffalo Sewer Authority has committed to the construction of the Mill Race Real Time Control Project (the “Project”) in order to retain combined sewage within the existing system which would otherwise overflow during wet weather events to the Buffalo River; and
- WHEREAS: The location for construction of this facility is land in an area located within 236 Larkin Street (the “Property”); and
- WHEREAS: Based on examination of public records for this area, ownership of the Property is held by AGC, Inc.; and
- WHEREAS: Within 236 Larkin Street, the City of Buffalo acquired title to an approximately forty (40) foot strip of land in 1873 for the construction and maintenance of the Mill Race; and
- WHEREAS: In 1935, under Article 5 Title 8 Section 1179 of the New York State Public Authorities Law, authority over the city’s sewer system including the Mill Race was transferred to the Buffalo Sewer Authority; and
- WHEREAS: AGC, Inc. as a condition of sale of a portion of 236 Larkin Street to facilitate the construction of the Mill Race Real Time Control Project has proposed that an easement agreement be established for the forty (40) foot strip of City owned land over the Mill Race for the surface use by AGC, Inc.; and
- WHEREAS: The New York State Public Authorities Law Sections 1178(7) and 1182 authorizes the Buffalo Sewer Authority to acquire lands, or any right, title, interest, or easement therein in the name of the City of Buffalo, and upon such acquisition, any such fee, right, title, interest, or easement shall become dedicated to the uses and purposes of the Buffalo Sewer Authority; and
- WHEREAS: AGC, Inc. and the Buffalo Sewer Authority through Outside Counsel and in concurrence with the Corporation Counsel of the City of Buffalo, the Buffalo Sewer Authority and the City of Buffalo have negotiated an Easement Agreement (Attachment C); and
- WHEREAS: The Principal Sanitary Engineer and staff have reviewed the Easement Agreement and recommends its approval by the Buffalo Sewer Authority’s Board and the submittal of this Easement Agreement to the Common Council of the City of Buffalo for their approval; and

NOW THEREFORE

BE IT RESOLVED: That the Board of the Buffalo Sewer Authority hereby authorizes the General Manager and any other representative or agent of the Buffalo Sewer Authority including, but not limited to, the Corporation Counsel of the City of Buffalo and Outside Counsel, to execute and deliver the Easement Agreement with AGC, Inc. at no cost to the Authority.

MOTION TO _____

MADE BY _____

2ND BY _____

AYES _____ NOES _____

Board Meeting of April 5, 2023

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

I, the undersigned Secretary of the Buffalo Sewer Authority (the “Authority”), DO HEREBY CERTIFY that I have compared the annexed extract of the minutes of the meeting of the Authority, including the resolution contained therein, held the 5th day of April, 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 Authority 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, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

I FURTHER CERTIFY that all members of said Authority 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 Authority Board present throughout said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of April, 2023.

Eleanor C. Wilson DiVincenzo
Secretary of the Board

(SEAL)