



**ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM**

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair

Cc: Terrence D. McCracken, Secretary of the Authority
Russell J. Stoll, Chief Operating Officer
Margaret A. Murphy, General Counsel
Leonard F. Kowalski, Executive Engineer
Joyce A. Tomaka, Comptroller
Lavonya C. Lester, Director of Administration

From: Karen A. Prendergast, Chief Financial Officer

Date: March 30, 2020

Subject: Amendment Relating to the Procurement Provisions Contained in the Declaration of Emergency

On March 24, 2020, the Board of Commissioners (the “Board”) of the Erie County Water Authority (the “Authority”) issued a Declaration of Emergency (the “Declaration”) and directed the implementation of a Comprehensive Emergency Management Plan to address the COVID-19 emergency.

The Comprehensive Emergency Plan was intended to ensure the Authority continue its essential operations while working with only minimum essential staff. The Executive Staff recommended the adoption of temporary emergency procurement measures with this intention. Consequently, the Board suspended the “[s]tandard procurement practices and procedures” to the extent necessary to complete an emergency procurement while the Authority operates with minimum staff.

However, in reading the provisions of §7 of the Declaration, the meaning of “emergency procurement” appears too limiting to achieve the intention and purpose of these emergency measures:

[A] emergency procurement means the purchase of supplies, materials, commodities, technology and services or products, including logistics and technical support to ensure the continuing operation of the Authority **and** necessary for the health, safety and welfare of its employees or its customers. (Emphasis added).

I would recommend the Board amend the provision to define an emergency procurement as the purchase of goods and services, which either ensure the continuing operation of the Authority, ***or*** are necessary for the health, safety and welfare of its employees or its customers.

After consulting with the Authority's General Counsel, I recommend the following amendment:

7.2 For purposes of this Declaration of Emergency, an emergency procurement means the purchase of supplies, materials, commodities, technology and services, which are needed to ensure the continuing operation of the Authority, or are for the health, safety and welfare of its employees or its customers.



ERIE COUNTY WATER AUTHORITY

DECLARATION OF EMERGENCY

WHEREAS, on March 7, 2020, Andrew M. Cuomo, the Governor of the State of New York (the “Governor”) declared by Executive Order No. 202 “a State disaster emergency for the entire State of New York;” and

WHEREAS, since March 7, 2020, the Governor has issued a series of Executive Orders (Nos. 202.1 through 202.7) “to facilitate the most timely and effective response to the COVID-19 emergency disaster,” enabling all governmental entities within the State of New York “to act quickly to gather, coordinate, and deploy goods, services, professionals, and volunteers of all kinds” to address the COVID-19 emergency; and

WHEREAS, pursuant to his constitutional and statutory powers, the Governor has issued these Executive Orders “to temporarily suspend or modify any statute, local law, ordinance, rule or regulation, or parts thereof, of **any agency**” (emphasis added) which “would prevent, hinder, or delay action to cope with the disaster emergency or if necessary to act or aid in coping with such disaster;” and

WHEREAS, pursuant to Executive Order No. 202.3, no entity performing an essential governmental function may issue an emergency order or declaration of emergency inconsistent with, conflicting with or suspending any directives or other executive order, issued pursuant to Executive Law § 24, by the Governor;

NOW, THEREFORE, consistent with the directives and orders issued by the Governor, the Erie County Water Authority (the “Authority”), a local public authority “performing an essential governmental function” pursuant to the Public Authorities Law § 1053(4) and providing 25 billion gallons of safe, clean, potable water annually to residential, commercial, and industrial customers in 36 municipalities located within Erie County and parts of Chautauqua, Cattaraugus, western Wyoming, and western Genesee counties, as well as the territories of the Seneca Nation of Indians, hereby declares a state of emergency and directs the following actions be taken pursuant to Public Authorities Law § 1053(1):

Section 1: Comprehensive Emergency Management Plan

1.1 The Board of Commissioners (the “Board”), by a resolution adopting this Declaration of Emergency, directs the Secretary of the Authority, the Chief Operating Officer, the Chief Financial Officer, and its General Counsel (the Authority’s “Division Heads”), along with the Authority’s Executive Engineer (collectively with the Division Heads, known as the “Executive Staff”) to implement the Comprehensive Emergency Management Plan (the “Plan”) set forth in this Declaration of Emergency.

1.2 Unless otherwise indicated in the Plan, the effective date of this Declaration of Emergency and its Plan shall be March 17, 2020.

1.3 Policy No. 22 (Hours of Work) and Policy No. 25 (Overtime) of the Human Resources Policies and Procedures will be suspended during the period under which the Authority is operating under this Declaration of Emergency.

1.4 The Authority and the Brotherhood of Western New York Water Workers (the Brotherhood”) have agreed to workforce measures, ensuring the safety of Authority personnel, the treatment and distribution of water, the repair and maintenance of the water system, and the recording and payment of compensation and benefits.

1.4.1 As part of these good-faith discussions, the Authority and Brotherhood have agreed to suspend any policy or contractual obligation, conflicting with the emergency measures relating to such work schedules, hours of work and compensation plan while this Declaration of Emergency remains in effect.

Section 2: Non-Essential Personnel

2.1 Pursuant to Executive Order No. 202.4, the Governor has directed any non-essential personnel, as determined by the governmental entity, should be reduced to no less than fifty percent (50%).

2.2 Non-essential personnel, as determined by the Authority’s Executive Staff, shall be reduced to zero.

2.3 Effective March 17, 2020, all non-essential personnel have been sent home and placed on a furlough status while the Authority is operating under this Declaration of Emergency.

2.4 While on furlough, non-essential personnel will continue to be compensated at their normal rate of pay and will not be required to use any accrued leave time. The employee will also continue to accrue benefits.

2.5 Division and department heads shall determine which employees are deemed to be non-essential, with the Division Head having the final authority on the determination of which personnel are non-essential.

2.6 As of March 17, 2020, 31 of the 234 Authority employees have been deemed as non-essential personnel.

Section 3. Essential Personnel

3.1 Pursuant to Executive Order No. 202.4, the Governor allows entities performing an essential governmental function to determine and identify essential personnel. As of March 17, 2020, 203 of the 234 Authority personnel have been deemed as essential.

3.2 Division and department heads shall determine which employees are deemed to be essential personnel, with the Executive Staff having the final authority on the determination of which personnel are essential.

3.2.1 Essential personnel will be classified as follows:

3.2.1.1 Essential personnel who may work from home;

3.2.1.1.1 As of March 17, 2020, 13 of the 203 essential personnel are working from home.

3.2.1.2 Full-time essential personnel, who are required to work a normal work schedule, including essential personnel whose work require them to be in the field or at one of the Authority's facilities;

3.2.1.2.1 As of March 17, 2020, 63 of the 203 essential personnel have been classified as full-time.

3.2.1.3 Rotating essential personnel, who will be required, as needed or on a rotating basis, to work in the field or at one of the Authority's facilities;

3.2.1.3.1 As of March 17, 2020, 116 of the 203 essential personnel have been classified as rotating.

3.2.1.3.2 Of these 116 rotating employees, it is estimated 58-60 will be working during any given work week, while other rotating employees remain on-call at home.

3.2.1.4 Essential on-call personnel, who are members of the Executive or Senior staff and who will be required to work from their home or be in the field or at one of the Authority's facilities to carry out any essential function during the period this Declaration of Emergency remains in effect.

3.2.1.4.1 As of March 17, 2020, 11 of the 203 essential personnel have been classified as full-time on call.

3.3 Division and department heads will determine which essential personnel may work from their home, with the Division Head having the final authority on such determinations.

3.4 Division and department heads will determine which essential personnel will be classified as full-time or rotating, with the Division Head having the final authority on such determinations.

3.5 Division and department heads may grant requests for leave for any essential personnel. If such a request is made and granted, the employee will be required to use his/her accrued time unless the employee is requesting time pursuant to § 4.6 of this Plan.

3.5.1 When such a request is granted, the division or department head must immediately notify payroll by email (payroll@ecwa.org), copying the employee on the email.

3.5.2 If the employee has not been assigned an email account, a copy of the email should be mailed by the employee at his/her home. When emergency situations make it impractical to mail such a copy, then the payroll department may waive this requirement.

3.6 During the COVID-19 crisis, the Division Head has the discretion to deem an employee originally classified as essential as nonessential, placing such employee on furlough, subject to approval of the Secretary of the Authority.

3.7 While the Authority's Declaration of Emergency remains in effect, the Authority agrees to suspend enforcement of the provisions contained in Appendix E of the collective bargaining agreement with the Brotherhood, as it relates to personnel whose licenses are not regulated by the Federal Highway Administration.

Section 4. Emergency Credit

4.1 Essential personnel while working in the field or at one of the Authority's facilities will receive emergency credit if:

4.1.1 The employee is a member of a collective bargaining unit, or

4.1.2 A non-represented employee having a salary grade of 24 or less.

4.2 No essential personnel will be entitled to any emergency credit while at home.

4.3 No essential on-call personnel will be entitled to any emergency credit.

4.4 If an essential employee is entitled to overtime pay, such employee will not be eligible for emergency credits while working on overtime.

4.5 Applicable essential personnel will be entitled to receive an emergency credit of a quarter (.25) hour for each hour worked in the field or at one of the Authority's facilities.

4.6 Emergency credit may be taken in the form of additional pay, or time off subject to the following restrictions:

4.6.1 No more than eighty (80) hours of emergency credit may be banked for time-off to be taken later ("banked hours");

4.6.2 Any banked hours must be taken within two years, including during the period the Authority is operating under this Declaration of Emergency;

4.6.3 The maximum number of banked hours to be used in a calendar year is limited to forty (40) hours;

4.6.4 Time-off for banked hours is subject to the same approval restrictions as request for leave for vacation and personal days; and

4.6.5 If any banked hours have not been used within two years, such hours will expire.

4.7 The employee must tell his/her supervisor at the end of the pay period whether any hours will be banked. Immediately after the pay period, the supervisor will report to Payroll the number of hours submitted for additional pay and the number of hours to be banked.

4.8 If the employee fails to tell his/her supervisor prior to the end of the pay period whether any hours will be banked, both the supervisor and payroll will record the hours for additional pay.

4.7 The provisions of Policy No. 24.0 (Call-In Pay) of the Human Resources Policies and Procedures are suspended, except as to essential personnel classified as full-time pursuant to § 3.2.1.2 of the Plan,

Section 5. Timekeeping & Payroll

5.1 The provisions of Policy No. 29 of the Human Resources Policies and Procedures are suspended to the extent it conflicts with the Plan by requiring employees to use a time clock or to affix a signature to a timesheet to receive

compensation during the period the Authority is operating under this Declaration of Emergency.

5.2 The Comptroller is authorized, with the approval of the Chief Financial Officer, to implement changes for the recording of employee time for the purpose of compensating Authority personnel during the period the Authority is operating under this Declaration of Emergency.

Section 6. Essential Services

6.1 For purposes of this Declaration of Emergency and its Plan, the Authority declares essential services to be any services relating to the safety of employees, the treatment and distribution of water, the repair and maintenance of water mains and other appurtenances essential for the operation of the water system, the payment of compensation to employees, payments relating to accounts payable or for customer refunds, the handling of mail, and other services deemed by the Division Heads to be necessary to carry out the essential governmental functions of the Authority.

Section 7. Emergency Procurements

7.1 Consistent with the Executive Orders issued by the Governor, the Director of Administration and/or Comptroller may make emergency procurements, subject to the approval of the Chief Financial Officer, while the Authority is operating under this Declaration of Emergency.

7.2 For purposes of this Declaration of Emergency, an emergency procurement means the purchase of supplies, materials, commodities, technology and services, which are needed to ensure the continuing operation of the Authority, or are necessary for the health, safety and welfare of its employees or its customers.

7.3 Pursuant to Executive Order No. 202.6, the Governor has exempted vendors from the mandatory workforce reduction directives, if the vendor provides essential services or products, including logistics and technical support to ensure the continuing operation of essential governmental services relating to the health, safety, and welfare of the public.

7.4 Standard procurement practices and procedures are suspended to the extent necessary to complete an emergency procurement.

7.5 All emergency procurements must be reported to the Board at its next regularly scheduled meeting.

Section 8. Execution of Contracts

8.1 Pursuant to Article V, § 2, the Authority's Chair "shall sign and execute all contracts in the name of the Authority" when so authorized by resolution.

8.2 The adoption of this Declaration of Emergency, by resolution, authorizes the Chair or in his absence, the Vice Chair to sign all contracts approved by resolution or a contract relating to an emergency procurement.

8.3 Pursuant to Executive Order 202.8, any notarial action is authorized to be performed utilizing audio-video technology. The Assistant to the Secretary Trish Fabozzi is authorized to notarize any contract using the following procedure:

- 8.3.1 Any person seeking notary services from Ms. Fabozzi, if not personally known to Ms. Fabozzi, must present a valid photo ID during an audio-video conference;
- 8.3.2 The audio-video conference must allow for direct interaction between the person and Ms. Fabozzi;
- 8.3.3 The person must affirmatively represent that he/she is physically situated in the State of New York;
- 8.3.4 The person must transmit by electronic means a legible copy of the signed document to Ms. Fabozzi on the same day it was signed;
- 8.3.5 Ms. Fabozzi may notarize the transmitted copy of the document and transmit the same back to the person; and
- 8.3.6 Ms. Fabozzi may repeat the notarization of the original signed document as of the date of execution provided that Ms. Fabozzi receives such original signed documents together with the electronically notarized copy within thirty (30) days after the date of execution.

8.4 The parties to any Authority contract may agree in writing to accept electronic signature pages, signed in conformity with the provisions of this section as if those pages were signed in person before a notary.

8.5 Any means recommended by the Authority's IT Department may be used to conduct an audio-video conference and to carry out the provisions set forth in this section.

Section 9. Check Processing of Customer Refunds and Accounts payable

9.1 The Comptroller, subject to the approval of the Chief Financial Officer, is authorized to issue payment for customer refunds and for accounts payable without prior Board approval, while the Authority is operating under this Declaration of Emergency.

9.2 All such payments must be reported to the Board at its next regularly scheduled meeting.

Section 10. Suspension of Certain Tariff Provisions

10.1 The Board directs the restoration of water services upon the request of any water customer whose services have been terminated or otherwise shut off.

10.2 The Board waives any provisions contained in its Tariff relating to charges for the restoration of services conducted on or after March 17, 2020 while the Authority is operating under this Declaration of Emergency.

10.3 No water services will be shut off or terminated while the Authority is operating under this Declaration of Emergency.

10.4 While this Declaration of Emergency is in effect, the Authority will not be handling postcards with meter readings and will be using estimated readings for billing purposes.

10.5 Effective March 23, 2020, the Authority suspends for a ninety (90) day period those provisions of the Authority's Tariff relating to late fees.

10.6 The Authority will not impose a late charge on any water bill issued during this ninety (90) day period ("forbearance period").

10.7 In the discretion of the Chief Financial Officer, this forbearance period may be extended while the Authority is operating under this Declaration of Emergency.

Section 11. Suspension of Certain Open Meetings Rules

11.1 Pursuant to Executive Law No. 202.1, the Governor has suspended Article 7 of the Public Officers Law, "to the extent necessary to permit any public body to meet and take such actions authorized by law without permitting the public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or

listen to such proceeding and that such meetings are recorded and later transcribed.”

11.2 While this Declaration of Emergency remains in effect, the Board will endeavor to convene its regularly scheduled meetings or any special meeting, in a manner consistent with Executive Order No. 202.2 or any subsequent order or directive issued by the Governor pursuant to Executive Law § 24.

11.3 If a regularly scheduled meeting lacks a quorum while this Declaration of Emergency remains in effect, the Division Heads may act in the Board’s absence to conduct business on that day in a deliberative meeting for purposes of reviewing and approving Board agenda items.

11.3.1 A meeting of the Division Heads authorized under this section is a public meeting pursuant to Article 7 of the Public Officers Law and must be conducted in conformity with Executive Order 202.2 or any subsequent order or directive issued by the Governor pursuant to Executive Law § 24.

11.3.2 The Secretary of the Authority will chair such a meeting. In his absence, the Chief Operating Officer will act as the Chair.

11.3.3 Three Division Heads constitute a quorum.

11.3.4 No action may be taken unless a favorable vote of three Division Heads is recorded.

11.3.5 If a Board agenda item is not approved, the item may be introduced at a subsequent Board meeting.

11.3.6 While this Declaration of Emergency remains in effect, the Board suspends the following provisions of the Authority’s Open Meeting Law Policy & Procedures:

11.3.6.1 Section 4 relating to public access to such meeting;

11.3.6.2 Section 5(h) relating to live streaming of meetings;

11.3.6.3 Section 6 relating to public expression and communications and bills;

11.3.6.4 Section 9 relating to recording and broadcasting of meetings; and

11.3.6.5 Section 10 relating to public expression.

11.3.7 All remaining provisions within the Authority's Open Meeting Law Policy & Procedure will remain in effect.

Section 12: Enforcement Period

12.1 The effective date of this Declaration of Emergency is March 17, 2020.

12.2 This Declaration of Emergency will remain in effect for ninety (90) days unless terminated by Board resolution.

12.3 This Declaration of Emergency may be extended by the Board or by the Division Heads if the Board is unable to establish a quorum.

12.4 A copy of this Declaration of Emergency, while it remains in effect, shall be conspicuously posted and remain on the Authority's website.

IN THE PRESENCE OF THE SECRETARY OF THE AUTHORITY, the following Commissioners have duly approved in the City of Buffalo on the 24th day of March in the year 2020 the Declaration of Emergency, by signing and directing the Secretary to affix the Seal of the Erie County Water Authority on the Declaration of Emergency.

JEROME D. SCHAD, Chair

MARK S. CARNEY, Vice Chair