

Resolution 21-015

**RESOLUTION TERMINATING THE MAJORITY OF CONTRACT NO. 35 REBID 2 –  
ROCKAWAY RIVER REGIONAL INTERCEPTOR BOONTON SECTION  
REPLACEMENT PROJECT FOR CONVENIENCE**

**WHEREAS**, on January 9, 2020, the Rockaway Valley Regional Sewerage Authority (“RVRSA”) awarded Contract No. 35 Rebid 2 – “Rockaway River Regional Interceptor Boonton Section Replacement Project” to Kulpeksa Land Improvement Corporation, having a business address of 248 Franklin Avenue, Rockaway, New Jersey 07866 (“Kulpeksa” or the “Contractor”) as the lowest responsible bidder in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., having submitted a bid in the amount of \$1,222,350.00, subject to approval by NJDEP, pursuant to Resolution 20-007 (the “Contract”); and

**WHEREAS**, NJDEP subsequently approved the award of the Contract to Kulpeksa; and

**WHEREAS**, the Contract included bypass piping of flow, utilizing the extension of the existing siphon and utilizing existing bypass system located in the Monroe Street Pump Station, for the installation of a siphon outlet chamber, a manhole and 140-feet of piping across Washington Avenue; and

**WHEREAS**, on August 13, 2020, RVRSA authorized the execution of Change Order No. 1 in the amount of \$109,871.79 and a 45-day non-compensable time extension to Kulpeksa for a different method of bypassing flow and associated appurtenances, together with the installation of a manhole in Canal Park as further detailed in a memorandum from RVRSA’s consulting engineer, Mott MacDonald, dated August 10, 2020; and

**WHEREAS**, a test of the bypass pumping system pursuant to Change Order No. 1 was performed on November 10, 2020, but the test was unsuccessful because the pumps at Monroe

Street could not keep up with the flow being pumped from Canal Park and a second test of the bypass pumping system thereafter also failed; and

**WHEREAS**, on November 20, 2020, NJDEP stated that it is “requiring RVRSA to submit a written bypass plan for its main trunk line during the replacement of the Boonton siphon outlet chamber prior to any wastewater being bypassed.”; and

**WHEREAS**, Mott MacDonald directed Kulpeksa to provide a detailed bypass pumping plan that could be sent to NJDEP for approval; and

**WHEREAS**, on November 28, 2020, a letter was received from Kulpeksa stating that they were unable to provide a bypass pumping plan due to unforeseen conditions; and

**WHEREAS**, at a meeting between Mott MacDonald and Kulpeksa on November 30, 2020, Kulpeksa’s supplier, Pumping Services, Inc., recommended that the bypass pumping required for the project be achieved by pumping from Canal Park and discharging directly into the manhole at the intersection on Monroe Street and Washington Street due to concerns about the potential failure of the pumping system set forth in Change Order No. 1; and

**WHEREAS**, on December 4, 2020, Kulpeksa submitted a delay claim in the amount of \$137,741.98 which was denied for lack of supporting information; and

**WHEREAS**, on January 11, 2021, Kulpeksa submitted a cost proposal in the amount of \$2,360,573.42 for an above ground bypass system from Canal Park to Monroe Street, which is 193% more than the original publicly bid project; and

**WHEREAS**, the Contract provides in relevant part: “In addition to and not in lieu of the termination remedies . . . the Owner may terminate this Contract, in whole or in part, for the convenience of the Owner, if the Owner determines that such termination is in the Owner’s

interest. Such termination shall be by written notice to the Contractor specifying the extent of termination and the effective date. In case of such termination for convenience, the Contractor shall be paid for the work satisfactorily completed to the date of termination, together with the reasonable costs of settlement of the work terminated, but not for losses, disruption, delay, loss of productivity, escalation, home office overhead, field office overhead, extended or disrupted performance, demobilization, mobilization, remobilization, indirect or impact claims, acceleration, loss of profit, time loss use of money, claims by third parties, and all costs (including but not limited to all fees and charges of engineers, architects, attorneys' fees, and other professional and consultant fees and all court and alternative dispute resolution costs) loss or anticipated profits or such other damages on the work terminated.”; and

**WHEREAS**, RVRSA desires to terminate the Contract for convenience, with the exception of the work attached hereto as Schedule A which shall be completed by the Contractor no later than February 1, 2021.

**NOW, THEREFORE, BE IT RESOLVED** by the Rockaway Valley Regional Sewerage Authority as follows:

1. It is determined that it is in RVRSA's interest to terminate Contract No. 35 Rebid 2 – “Rockaway River Regional Interceptor Boonton Section Replacement Project” for convenience pursuant to Article XLIII of said Contract, with the exception of the work set forth in Schedule A, attached hereto, and for the delivery of the maintenance bond and environmental maintenance bond as required by the Contract.
2. All work required by Contract No. 35 Rebid 2 – “Rockaway River Regional Interceptor Boonton Section Replacement Project” is terminated for convenience effective January 15, 2021,

with the exception of the work set forth in Schedule A, attached hereto, and the delivery of the maintenance bond and environmental maintenance bond as required by the Contract.

3. The work set forth in Schedule A, attached hereto, shall be completed by the Contractor no later than February 1, 2021 and the Contractor shall provide RVRSA with the maintenance bond and environmental maintenance bond required by the Contract no later than February 1, 2021.

4. The Contractor shall be paid \$16,282.24 for work satisfactorily completed to the date of termination authorized by this Resolution.

5. Written notice shall be provided to the Contractor, the surety company, and NJDEP regarding the extent of this termination for convenience with January 15, 2021 as the effective date by providing a copy of this Resolution to the Contractor, the surety company and NJDEP.

6. The Executive Director, staff and consultants of RVRSA are hereby authorized to take all other actions necessary or desirable to effectuate the terms and conditions of this Resolution.

7. This Resolution shall take effect immediately

### **C E R T I F I C A T I O N**

I do hereby certify that this Resolution was adopted at a regular meeting of the Rockaway Valley Regional Sewerage Authority held on **January 14, 2021**.

on motion of: Commissioner Andes

second by: Commissioner Guadagno

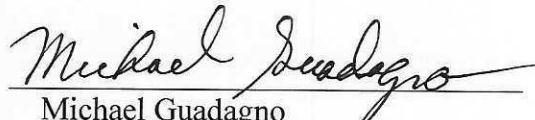
ROLL CALL VOTE:

YEAS: (8) Andes, Cegelka, Corbett, Farrell, Guadagno, Isselin, Schorno, Zuppa

NAYS: (0)

ABSTAIN: (0)

ABSENT: (2) Recchia , Borough of Rockaway Commissioner

  
Michael Guadagno  
Board Secretary