

Resolution 21-071

- (1) AUTHORIZING EXECUTION OF SETTLEMENT AGREEMENT BY AND BETWEEN KULPEKSA LAND IMPROVEMENT CORP. AND THE ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY REGARDING CONTRACT NO. 35 REBID II – RVRSA ROCKAWAY RIVER REGIONAL INTERCEPTOR BOONTON SECTION REPLACEMENT PROJECT;**
- (2) RESCINDING RESOLUTION NO. 21-036, VACATING TERMINATION OF KULPEKSA FOR CAUSE, SUBJECT TO SATISFACTION OF KULPEKSA'S OBLIGATIONS PURSUANT TO SAID SETTLEMENT AGREEMENT;**
- (3) AUTHORIZING EXECUTION OF CHANGE ORDER NOS. 2A AND 2B;**
- (4) AUTHORIZING EXECUTION OF PAYMENT APPLICATION NO.5 IN THE REVISED AMOUNT OF \$246,990.09; AND**
- (5) AUTHORIZING DISBURSEMENT OF PAYMENT APPLICATION NOS. 3, 4 AND 5 THE SUM OF WHICH EQUAL THE SETTLEMENT AMOUNT OF \$365,000.00 SUBJECT TO THE TERMS OF THE SETTLEMENT AGREEMENT AND NJDEP APPROVAL**

WHEREAS, by Resolution 20-007, the Rockaway Valley Regional Sewerage Authority (“RVRSA”) awarded to Kulpeksa Land Improvement Corp. (“Kulpeksa”) Contract No. 35 Rebid 2 known as the Rockaway River Regional Interceptor Boonton Section Replacement Project (the “Contract”) as the lowest responsible bidder in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.; and,

WHEREAS, on or about August 14, 2020, Kulpeksa and RVRSA executed change order number 1 to the Contract (all work performed and/or to be performed pursuant to the Contract and Change Order No. 1 is collectively referred to herein as the “Project”); and,

WHEREAS, by Resolution 21-015, RVRSA terminated the majority of the Contract for convenience (“Termination for Convenience”); and,

WHEREAS, by letter dated February 4, 2021, Kulpeksa submitted a claim to RVRSA for \$567,168.83; and,

WHEREAS, by Resolution 21-036, RVRSA declared Kulpeksa in default of the Contract and terminated the remaining portions of the Contract for cause (“Termination for Cause”); and,

WHEREAS, by letter dated February 18, 2021, Kulpeksa disputed the Termination for Cause; and,

WHEREAS, by letter dated March 4, 2021, Kulpeksa demanded non-binding mediation with RVRSA in accordance with the Contract; and,

WHEREAS, on March 11, 2021, RVRSA adopted Resolution 21-046, which authorized the release of funds to Kulpeksa for: (1) Payment Application No. 3 in the amount of \$16,282.23; (2) Payment Application No. 4 in the amount of \$101,727.68; and (3) Payment Application No. 5 in the amount of \$2,450.00 in the event that certain conditions were satisfied by Kulpeksa; and

WHEREAS, on April 6, 2021, Pumping Services, Inc. ("PSI") filed with RVRSA an Amendment to and Partial Discharge of Municipal Mechanic's Lien Claim, leaving the value of the lien in the outstanding amount of \$148,013.17 ("PSI Lien"); and,

WHEREAS, on May 5, 2021, Kulpeksa and RVRSA participated in non-binding mediation before Hon. Victor Ashrafi (Ret.); and,

WHEREAS, as a result of the mediation, the RVRSA and Kulpeksa have reached an agreement to fully and finally settle and discharge all matters in controversy between and among them in connection with the Contract and Project.

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

1. Upon execution of the Settlement Agreement by and between Kulpeksa and RVRSA in the form attached hereto, the Chairman is authorized to execute said Settlement Agreement.
2. Subject to satisfaction of Kulpeksa's Obligations set forth in Paragraph 3A, 3B, 3C and 3D of this Agreement and upon said satisfaction of Kulpeksa's Obligations, a

letter from RVRSA's Executive Director to Kulpeksa, which shall not be unreasonably withheld, stating that Kulpeksa's Obligations set forth in Paragraphs 3A, 3B, 3C and 3D have been satisfied, Resolution No. 21-036 entitled "Declaring Events of Default for Contract No. 35 Rebid II – RVRSA Rockaway River Regional Interceptor Boonton Section Replacement Project and Terminating Contract No 35 Rebid II for Cause" is rescinded, thereby vacating the Termination for Cause.

3. Upon execution of Change Order Nos. 2A and 2B by Kulpeksa and Mott MacDonald in the form attached hereto, the Executive Director is authorized to execute Change Order Nos. 2A and 2B, which shall become effective upon approval by NJDEP.
4. Upon execution of revised Payment Application No. 5 in the amount of \$246,990.09 by Kulpeksa and Mott MacDonald in the form attached hereto, the Executive Director is authorized to execute Payment Application No. 5.
5. The sum of: (1) Payment Application No. 3 in the amount of \$16,282.23; (2) Payment Application No. 4 in the amount of \$101,727.68; and (3) Payment Application No. 5 in the amount of \$246,990.09, equal \$365,000.00 which is the full Settlement Amount required by the Settlement Agreement attached hereto and shall be disbursed in accordance with the terms of the Settlement Agreement within three (3) days of RVRSA's receipt of all the items set forth in Paragraphs 3A, 3B, 3C and 3D of the attached Settlement Agreement and provided further that Change Orders 2a and 2b and Payment Application No. 5 have been fully executed and approved by NJDEP. This Resolution supersedes all the conditions set forth in

Resolution No. 21-046.

6. The Executive Director, staff and consultants of RVRSA are hereby authorized to take all other actions necessary or desirable to prepare and participate in the mediation and effectuate the terms and conditions of this Resolution.
7. Funds are available in the 2021 budget line 01-EIT-035 and 01-853-009.
8. This Resolution shall take effect immediately

CERTIFICATION

I do hereby certify that this Resolution was adopted at a special meeting of the Rockaway Valley Regional Sewerage Authority held on June 10, 2021.

on motion of: Commissioner Andes

second by: Commissioner Howarth


ROLL CALL VOTE:

YEAS: (7) Andes, Corbett, Farrell, Guadagno, Howarth, Schorno, Zuppa

NAYS: (0)

ABSTAIN: (0)

ABSENT: (3) Cegelka, Isselin, Recchia


Michael Guadagno
Board Secretary