

**AUTHORIZING EXECUTION OF VOLUNTARY MEDIATION AGREEMENT BY  
AND BETWEEN THE AUTHORITY AND RIKER DANZIG SCHERER HYLAND &  
PERRETTI, LLP FOR THE RETENTION OF VICTOR ASHRAFI AS MEDIATOR IN  
THE CONSTRUCTION DISPUTE BETWEEN THE AUTHORITY AND  
TOMAR CONSTRUCTION SERVICES, INC.  
CONTRACT NO. 40 - FINAL CLARIFIERS REPAIR PROJECT**

**WHEREAS**, on July 13, 2017, the Rockaway Valley Regional Sewerage Authority (“RVRSA”) awarded Contract No. 40 – “Final Clarifiers Repair Project” to Tomar Construction Services, Inc., having a business address of 18 Connerty Court, Suite B, East Brunswick, New Jersey 08816 (“Tomar” 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 \$5,594,000.00, subject to authorization to award by NJDEP, pursuant to Resolution 17-089 (the “Contract”); and

**WHEREAS**, NJDEP subsequently authorized the award of the Contract to Tomar; and

**WHEREAS**, the Contract included replacement of the sludge collection mechanisms in four final clarifier tanks, modification of the clarifier walls to accommodate the new sludge collection mechanisms, installation of baffles in each final clarifier tank, and replacement of the motor control center to be completed by June 6, 2019 (630 days after the issuance of the Notice to Proceed); and

**WHEREAS**, on March 14, 2019, RVRSA authorized the execution of Change Order No. 1 in the amount of \$56,882.67 for certain additions to the work including clarifier draft tube modifications and local control panel modifications, together with a 7-day non-compensable time extension for the completion of all the work by June 13, 2019; and

**WHEREAS**, on April 9, 2020, RVRSA authorized the execution of Change Order No. 2

in the amount of \$68,678.29 for certain additions to the work including launder slab additional reinforcing and waterstop, clarifier bridge access steps, drainage pump emergency repairs to Final Clarifier No. 1, upper drain valve replacement to Final Clarifier No. 1, yard hydrant curb boxes and heat tracing end seal connections; and

**WHEREAS**, on April 9, 2020, RVRSA also authorized the execution of Change Order No. 3 in the amount of \$11,228.61 for certain additions to the work including perimeter site lighting at the final clarifiers and the chlorine contact tank; and

**WHEREAS**, the work required to be performed pursuant to the Contract and Change Order Nos. 1, 2 and 3 are collectively referred to herein as the Project; and

**WHEREAS**, on February 11, 2021, RVRSA adopted Resolution 21-035 entitled “Declaring Events of Default for Contract No. 40 ‘Final Clarifiers Repair Project’ And Unless Cured As Set Forth In This Resolution, Terminating Contract No. 40 For Cause” for all the reasons set forth in said Resolution; and

**WHEREAS**, thereafter, the parties attempted to voluntarily settle the matter, but settlement discussions have stalled since June, 2021; and

**WHEREAS**, on August 12, 2021, RVRSA adopted Resolution 21-093 entitled “Authorizing A Demand For Mediation Upon Tomar Construction Services, Inc. For Contract No. 40 Final Clarifiers Repair Project”; and

**WHEREAS**, mediation has been scheduled for March 14, 2022 before the Honorable Victor Ashrafi, a retired Judge of the Superior Court of New Jersey, Appellate Division, who is presently “Of Counsel” with the firm of Riker Danzig Scherer Hyland Perretti LLP, subject to execution of the Voluntary Mediation Agreement, dated February 2, 2022 retaining Judge Ashrafi as the mediator under the terms and conditions set forth therein.

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

1. The Executive Director and Counsel are authorized to execute the Voluntary Mediation Agreement, dated February 2, 2022, in substantially the form attached hereto.
2. The mediator will charge an hourly rate of \$600 for mediation services, including the time expended for preparation and the fees and expenses of the mediator will be shared one-half by RVRSA and one-half by Tomar Construction Services, Inc.
3. 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.
4. 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 February 10, 2022.

on motion of: Commissioner Schorno

second by: Commissioner Corbett

**ROLL CALL VOTE:**

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

NAYS: (0)

ABSTAIN: (1) Lavery

ABSENT: (2) Andes and Cegelka



Michael Guadagno  
Board Secretary