

Resolution 22-047

- (1) AUTHORIZING EXECUTION OF SETTLEMENT AGREEMENT BY AND BETWEEN TOMAR CONSTRUCTION SERVICES, INC. AND THE ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY REGARDING CONTRACT NO. 40 FINAL CLARIFIERS REPAIR PROJECT;**
- (2) AUTHORIZING EXECUTION OF CHANGE ORDER NO. 4 AND EXTENDING THE CONTRACT COMPLETION TIME; AND**
- (3) AUTHORIZING DISBURSEMENT OF PAYMENT IN THE SETTLEMENT AMOUNT OF \$646,985.89 SUBJECT TO THE PHASED PAYMENT TERMS OF THE SETTLEMENT AGREEMENT AND NJDEP APPROVAL**

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, the Parties 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 after a mediation that occurred on March 14, 2022 before Victor Ashrafi, a retired Appellate Division Judge of the Superior Court of New Jersey.

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

1. Upon execution of the Settlement Agreement by Tomar in the form attached hereto, the Executive Director is authorized to execute said Settlement Agreement.
2. Upon execution of Change Order No. 4 by Tomar and Kleinfelder in the form attached hereto, the Executive Director is authorized to execute Change Order No.4, which shall become effective upon approval by NJDEP.
3. Payment in the amount of \$646,985.89 which is the full Settlement Amount required by the Settlement Agreement attached hereto shall be disbursed in accordance with the phased payment terms of the Settlement Agreement and upon any necessary approval by NJDEP.
4. 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.
5. Funds are available in the 2022 budget line 01-EIT-040.
6. 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 April 22, 2022.

on motion of: Commissioner Guadagno

second by: Commissioner Howarth

ROLL CALL VOTE:

YEAS: (8) Cegelka, Corbett, Farrell, Guadagno, Howarth, Isselin, Schorno, and Zuppa.

NAYS: (0)

ABSTAIN: (0)

ABSENT: (2) Andes and Lavery

A handwritten signature in blue ink that reads "Michael Guadagno". The signature is written in a cursive style and is positioned above a horizontal line.

Michael Guadagno
Board Secretary