

Resolution 24-031

**(1) AUTHORIZING EXECUTION OF CHANGE ORDERS CM-009, CM-010 AND CM-011; (2) AUTHORIZING ISSUANCE OF MOTT MACDONALD LETTER SETTING FORTH RVRSA'S CLAIM FOR DAMAGES, REMAINING WORK TO BE PERFORMED AND DEMANDING A MEETING WITH THE CONTRACTOR; AND (3) SUBJECT TO CONDITIONS SET FORTH HEREIN, AUTHORIZING THE ISSUANCE OF A DEMAND FOR MEDIATION UPON COPPOLA SERVICES, INC., SELECTION OF JUDGE ASHRAFI AS MEDIATOR, EXECUTION OF VOLUNTARY MEDIATION AGREEMENT AND PAYMENT OF MEDIATOR'S RETAINER IN CONNECTION WITH CONTRACT NO. 41 PHOSPHORUS REMOVAL AND FILTRATION FACILITIES PROJECT**

**WHEREAS**, on February 10, 2021, the Rockaway Valley Regional Sewerage Authority ("RVRSA") awarded Contract No. 41 – "RVRSA Phosphorus Removal and Filtration Facilities Project" to Coppola Services, Inc., having a business address of 28 Executive Parkway, Ringwood, New Jersey 07456 ("Coppola" 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 \$10,844,890.00, subject to authorization to award by NJDEP, pursuant to Resolution 21-010 (the "Contract"); and

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

**WHEREAS**, the Contract included installation of phosphorus removal equipment, temporary phosphorus chemical feed system, supply and installation of Disc Filter system and supply and installation of pre-engineered building to be completed by June 25, 2022 (460 days after the issuance of the Notice to Proceed); and

**WHEREAS**, on August 12, 2021, RVRSA authorized the execution of Change Order No. 1 in the amount of \$39,746.99 for certain additions to the work including Removal and replacement of existing Sodium Hypochlorite chemical feed piping and Temporary Chemical Feed Facilities for Phosphorus Removal (Reduction in Scope of Work); and

**WHEREAS**, on October 14, 2021, RVRSA authorized the execution of Change Order No. 2 in the amount of \$28,486.08 for certain additions to the work including Installation of temporary 2-inch Sodium Hypochlorite chemical feed piping and Chemical feed piping – Material Cost increase; and

**WHEREAS**, on October 20, 2021, RVRSA authorized the execution of Change Order No. 3 in the amount of \$20,638.90 for certain additions to the work including Relocation, and Connection of existing bisulfite chemical feed piping and Additional 240-ft of schedule 80 PVC pipe; and

**WHEREAS**, on December 9, 2021, RVRSA authorized the execution of Change Order No. 4 in the amount of \$3,992.40 for certain additions to the work including Elevation Adjustments to Stainless Steel Platform in Disc Filter Room; and

**WHEREAS**, on August 11, 2022, RVRSA authorized the execution of Change Order No. 5 in the amount of \$25,221.77 for certain additions to the work including Installation of Monitored Post Indicator on Fire Service Water Supply Line; and

**WHEREAS**, on September 8, 2022, RVRSA authorized the execution of Change Order No. 6 in the amount of \$227,812.74 for certain additions to the work including Repair of Water Supply Line and Supply and Installation of 60-inch Magnetic Flow Meter and Supply and Installation of motor & control for six (6) overhead garage doors of new pre-engineered metal building; and

**WHEREAS**, on November 10, 2022, RVRSA rescinded Resolution 22-083 and authorized the execution of Amended Change Order No. 6 in the amount of \$24,938.58 for certain additions to the work including Repair of Water Supply Line and Supply and Installation of motor & control for six (6) overhead garage doors of new pre-engineered metal building; and

**WHEREAS**, on November 10, 2022, RVRSA authorized the execution of Change Order No. 7 in the amount of \$75,000.00 for certain additions to the work including Allowance for Demolition and Removal of Existing Concrete Duct Bank, for Pull-Back and Coiling of Live Conductors in MH-19, and for Disconnecting and Removal of Direct Bury Conductors and Allowance for Providing Temporary Power to Existing Equipment, as Necessary; and

**WHEREAS**, on January 31, 2023, RVRSA authorized the execution of Change Order No. 8 in the amount of \$27,656.44 for certain additions to the work including Modifications to Existing Effluent Flow Meter Chamber; and

**WHEREAS**, Change Order No. 9 has been prepared for the cost of routing flue vent from HV-1 Unit through the building roof, extending exhaust fan wall sleeves to facilitate smoke detector installation, providing a credit to RVRSA for spare pump equipment and testing that was deleted from the contract and plant work that was deleted from the contract, resulting in a net credit to RVRSA in the amount of \$31,467.40; and

**WHEREAS**, Change Order No. 10 has been prepared for structural building changes, project delay costs, asphalt and fuel price adjustments, pressure reducing valve installation, ammonia analyzer conduit routing, repair for unmarked electrical lines, permanent power to flow meter chamber and providing a credit for light pole base scope removal and a credit for sidewalk and DGA road scope of work reduction, resulting in a net changer order cost increase of \$67,247.93 and an increase by 38 days to the contract completion time; and

**WHEREAS**, Change Order No. 11 has been prepared to provide a credit to RVRSA for unused amounts in various bid items and for unused amounts in Change Order CM-007 which result in a net credit to RVRSA in the amount \$106,118.44; and

**WHEREAS**, Mott MacDonald has prepared a letter to be sent to Coppola Services, Inc. to enclose Change Orders 9, 10 and 11, setting forth RVRSA's damage claims, remaining punch list work to be completed, demanding a meeting and in the event that said meeting does not occur by February 23, 2024, stating that a demand for mediation will be sent to Coppola in accordance with the Article XLVIII of the Contract and the Local Public Contracts Law, N.J.S.A. 40A:11-50 (the "Mott MacDonald Letter"); and

**WHEREAS**, Article XLVIII of the Contract with Coppola Services, Inc. states, in relevant part, that pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-50 "with regard to any dispute arising under this contract and prior to being submitted to a court for adjudication, the parties agree to try in good faith to settle the dispute by the alternative dispute resolution practice known as non-binding mediation. The Parties agree that the Owner shall select the mediator. The mediator may be a retired judge of the Superior Court of New Jersey. The expense of the mediation shall be shared equally by the parties. The mediation shall be conducted at the Owner's offices or at any other mutually agreeable location in Morris County, New Jersey. If necessary to fully resolve the issues in dispute, either party may demand the joinder of other interested parties to the dispute unless the mediator determines that such a joinder is inappropriate. Nothing in this section shall prevent the Owner from seeking an injunction or declaratory relief in court at any time. During any and all mediation, the Contractor shall continue to work on the Project and the Work and the time to complete the Project and the Work shall not be extended as a result of the processing of mediation hereunder."

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

1. The Executive Director is authorized to execute Change Orders CM-009, CM-010 and CM-011.
2. The Mott MacDonald Letter, together with its enclosures, are authorized to be sent to Coppola Services, Inc. and the surety company, Liberty Mutual Insurance, Co.
3. A demand for mediation is authorized to be sent to Coppola Services, Inc. for all claims in connection with Contract No. 41, Phosphorus Removal and Filtration Facilities Project at a time to be determined by the Executive Director.
4. In the event that the demand for mediation is sent to Coppola Services, Inc. as set forth above, RVRSA desires to select 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, L.L.P., to be the mediator, or in the event that Judge Ashrafi is not available due to a conflict of interest or otherwise, a different mediator upon recommendation of counsel with a mediation engagement letter from the mediator selected to be authorized by separate Resolution. In the event that Judge Ashrafi does not have a conflict of interest and a demand for mediation has been submitted to Coppola Services, Inc., the Executive Director is authorized to execute the Voluntary Mediation Agreement sent on January 19, 2024 from Judge Ashrafi to RVRSA's counsel in substantially the same form and submit a retainer deposit to the mediator not to exceed the mediator's rate which is to be negotiated, but in no event shall the retainer deposit for RVRSA's one half-portion of the mediator's retainer exceed \$4000.

5. 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.
6. 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 8, 2024.

On motion of Commissioner Andes

Second by Commissioner Howarth

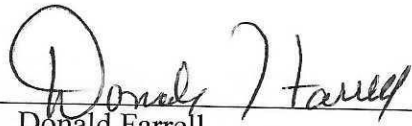
And a Roll Call Vote as Follows:

Yeas: (9) Andes, Cegelka, Corbett, Howarth, Isselin, Lavery, Potter, Schorno and Zuppa.

Nays: (0) None

Abstain: (0) None

Absent: (1) Farrell

  
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Donald Farrell  
Board Secretary