

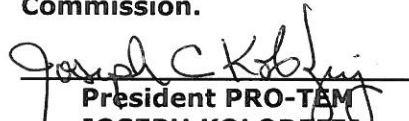
20.7, and in accordance with said Response, for services related to the Project; and

2. That an appropriate official of PVWC, on behalf of PVWC, is hereby authorized and directed to execute the Contract hereby awarded to the Awardee and the Secretary of PVWC to attest to the Contract and such other officers, employees and officials of PVWC are hereby authorized to perform such acts and execute such documents as are necessary to implement the terms and intentions of this Resolution, and
3. That this matter shall be advertised as required by New Jersey law, in accordance with an appropriate form of notice, and a copy of this Resolution and Agreement shall be placed on file and made available for public inspection at the office of the Administrative Secretary of Passaic Valley Water Commission.

RECORD OF COMMISSION VOTE ON FINAL PASSAGE

	AYE	NAY	ABSTAIN	ABSENT
FRIEND, G.	<u>X</u>	—	—	—
VANNOY, R.	<u>X</u>	—	—	—
LEVINE, J.	<u>X</u>	—	—	—
KOLODZIEJ, J.	<u>X</u>	—	—	—
VAN RENSALIER, R.	—	—	—	<u>X</u>
RODRIGUEZ, I.	<u>X</u>	—	—	—
SANCHEZ, R.	—	—	—	<u>X</u>

Adopted at a meeting of Passaic Valley Water Commission.

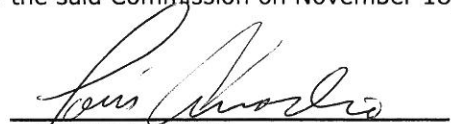

 President PRO-TEM
JOSEPH KOLODZIEJ


 Secretary
ROBERT VANNOY

This Resolution, when adopted, must remain in the custody of the Administrative Secretary.

CERTIFICATION

I, LOUIS AMODIO, Administrative Secretary of the Passaic Valley Water Commission in the County of Passaic, and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy thereof of the foregoing Resolution duly passed and adopted by a majority of a legal quorum of the full membership of the Passaic Valley Water Commission at its duly noticed and convened meeting of the said Commission on November 18, 2019.



LOUIS AMODIO
Administrative Secretary

PASSAIC VALLEY WATER COMMISSION

**PROJECT NO. 20-P-12
INSURANCE AGENT SERVICES FOR PROPERTY,
CASUALTY, AUTOMOBILE, AND EXCESS LIABILITY**

FORM OF AGREEMENT

EXHIBIT A

FORM OF AGREEMENT

PASSAIC VALLEY WATER COMMISSION
FORM OF AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (hereinafter "AGREEMENT") made as of NOVEMBER 18, 2019 between PASSAIC VALLEY WATER COMMISSION ("PVWC"), a Public Utility Company organized pursuant to its enabling statute (N.J.S.A. 40:62-108 *et seq.*), having its principal place of business at 1525 Main Avenue, Clifton, New Jersey 07011, and ALAMO INSURANCE GROUP, INC. a professional firm (hereinafter "PROFESSIONAL" and/or "contractor") having a place of business at 55 FLANAGAN WAY SECAUCUS, NJ 07094.

WHEREAS, PVWC desires professional services as applicable, to assist PVWC in its ongoing efforts related to Project No. 20-P-12 entitled "Insurance Agent Services for Property, Casualty, Automobile, and Excess Liability" (hereinafter the "PROJECT"); and

WHEREAS, PVWC requires Professional Services to assist it in implementing the PROJECT; and:

WHEREAS, PROFESSIONAL represents that it has the experience and the required professional knowledge to provide the professional services, and/or extraordinary unspecifiable services, as applicable (hereinafter "PROFESSIONAL SERVICES"), and as required by PVWC in this regard as set forth in the "Public Notice", "Table of Contents", and the "Request for Proposals" of the "Request for Proposals for Professional Services (or Extraordinary Unspecifiable Services)", and Appendices A, B, C, & F of the Solicitation (and including, where applicable, Appendix D with additional technical and other requirements attached thereto); all of which, along with a copy of the PROFESSIONAL'S proposal dated October 31, 2019, are collectively referred to herein as the "PROPOSAL", and, along with ranking methodology (Appendix E), are attached hereto and made a part hereof as Exhibit A; and

WHEREAS, the AGREEMENT shall be for the period of time as set forth in Appendix D where applicable, or where not otherwise set forth in Appendix D, the Agreement shall be for up to a one year period of time commencing on the Effective Date of this AGREEMENT as defined in Paragraph 19 herein, and for any extended periods authorized by PVWC.

WHEREAS, PVWC and PROFESSIONAL are desirous of entering into a consulting agreement to cover the PROFESSIONAL SERVICES authorized by PVWC and required for the PROJECT; and

NOW, THEREFORE, in consideration of the mutual promises herein, PVWC and PROFESSIONAL agree that the terms and conditions of this AGREEMENT are the following:

1. PROFESSIONAL shall provide the PROFESSIONAL SERVICES authorized by PVWC and required for the PROJECT. PROFESSIONAL'S obligations under this AGREEMENT are solely for the benefit of PVWC and no other party is intended to benefit or have rights hereunder.

2. PROFESSIONAL shall perform the PROFESSIONAL SERVICES as defined under this AGREEMENT at a level customary for competent and prudent professional service providers, all as applicable, performing such services at the time and place where the services are provided ("STANDARD OF CARE"). These services will be provided by professional service providers in the appropriate disciplines, and by other professionals and individuals skilled in other technical disciplines, as appropriate. PROFESSIONAL shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all aspects of its services including reports and other deliverables and services provided under this AGREEMENT. The services to be performed by PROFESSIONAL shall conform to the generally accepted codes and regulations applicable to the subject PROJECT. PROFESSIONAL agrees to indemnify and hold PVWC harmless from all losses and damages resulting from PROFESSIONAL'S failure to meet the STANDARD OF CARE. Further, PROFESSIONAL shall correct and re-perform any services not conforming to the required STANDARD OF CARE without additional compensation and cost to PVWC, (including, but not limited to pending written or oral testimony, reports, etc., which might occur from activities resulting from the performance of this AGREEMENT

which were caused by PROFESSIONAL'S performance). In addition, PROFESSIONAL shall indemnify and hold harmless PVWC and its officers, agents and employees of PVWC from and against any losses, claims, damages, or liabilities to which PVWC may become subject insofar as and to the extent they arise out of the deviation from the STANDARD OF CARE in the performance of the services by the PROFESSIONAL, hereunder.

3. There shall be no fees or other forms of compensation to the PROFESSIONAL other than those set forth in the Proposal and agreed to by PVWC.

4. PROFESSIONAL shall be responsible to PVWC for any subcontractors and outside associates or professional it engages to assist it in the performance of the services required under this AGREEMENT.

5. PVWC will provide to PROFESSIONAL all available information, including previous reports and any other data in its possession relevant to the subject PROJECT. Further, PVWC will be responsible for providing PROFESSIONAL access to all public and private property in connection with services to be performed for the PROJECT.

6. Both PVWC and PROFESSIONAL understand that the goal of this AGREEMENT is to complete all phases of the subject PROJECT in a reasonably expeditious fashion. To this end each pledges to the other full cooperation.

7. The services to be performed under this AGREEMENT for the PROJECT shall be deemed to be completed when the scope of work authorized by PVWC for the PROJECT has satisfactorily been fulfilled.

8. By notice in writing at any time, PVWC may change the general scope of services required by PROFESSIONAL as set forth herein. In such event an equitable adjustment, if appropriate, in compensation shall be agreed to in writing prior to PROFESSIONAL'S performing the changed services.

9. PROFESSIONAL shall hold secret and confidential all information designated by PVWC as confidential. PROFESSIONAL shall not reveal any designated confidential information to a third party unless the disclosing party was lawfully possessed with the information before receipt of same from the party claiming confidentiality and whose information has been designated as described herein as being confidential, or applicable law, regulation, court order or any agency of competent jurisdiction requires its disclosure; or the failure to disclose the information would pose an imminent and substantial threat to human health or the environment.

10. PROFESSIONAL shall maintain insurance against the following risk during the term of this AGREEMENT:

a) Worker's Compensation in statutory amounts and Employer's Liability for PROFESSIONAL'S employees' for the PROJECT for related injuries or disease; and

b) General Liability and Automobile Liability (each including excess coverage as required) and each in the amount of not less than \$1,000,000 for personal injury or property damage to third parties which arises from PROFESSIONAL'S performance under this AGREEMENT; and

c) Professional Liability in the amount of not less than \$1,000,000 for legal obligations arising out of PROFESSIONAL'S failure to meet the STANDARD OF CARE or other items covered under such Professional Liability policy.

PROFESSIONAL shall provide to the PVWC certificates of insurance as to each of the above which evidence that the policies are in effect.

11. This AGREEMENT shall be interpreted in accordance with the laws of the State of New Jersey and any litigation/arbitration relating to the AGREEMENT shall be venued in New Jersey. In the event of litigation, the parties agree and consent to the action being initiated in the Superior Court of New Jersey, Passaic County.

12. PROFESSIONAL represents that it is an independent professional and not an employee of PVWC.

13. If a dispute or complaint arises concerning this AGREEMENT, PVWC and PROFESSIONAL will negotiate a resolution of the dispute. Should negotiations

be unsuccessful, the resolution of the dispute shall be submitted to arbitration in accordance with the current Construction Industry Arbitration Rules of the American Arbitration Association and the arbitration proceeding shall be venued in New Jersey. Any decision rendered by the arbitrators shall be final. Judgment may be entered upon the decision in any court having jurisdiction. The decision shall not be subject to modification or appeal except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act (9 U.S.C. 10, 11). Notwithstanding the aforementioned, disputes which have a total value (exclusive of interest) in excess of the dollar amount for cost of services (said dollar amount as stipulated in paragraph 3 herein) shall not be arbitrated but shall be litigated.

14. All notices required or intended under this AGREEMENT may be delivered in person, by facsimile or express mail. All notices shall be effective upon the date of receipt by the parties. Notices shall be delivered or sent to the other party at the address appearing in this AGREEMENT. An address may only be changed by written notice to the other party.

15. During the performance of this contract, the contractor agrees as follows:

a) The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation and gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth the provisions of this nondiscrimination clause.

b) The contractor or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

c) The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d) The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq. as amended and supplemented from time to time and the Americans with Disabilities Act.

e) The contractor or subcontractor agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2, or Good faith efforts to meet targeted county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

f) The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

g) The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the

principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

h) In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

i) The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval
- Certificate of Employee Information Report
- Employee Information Report Form AA302

j) The contractor and its subcontractor shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

16. This AGREEMENT is subject to termination at the conclusion of all of the Contract work, time being of the essence as described herein, unless extended by the mutual agreement of the Parties. PVWC retains the right to terminate the PROFESSIONAL upon 15 days' notice to the PROFESSIONAL, which notice shall be effective when given to the PROFESSIONAL in writing at the PROFESSIONAL'S place of business by way of certified mail return receipt requested and regular mail. No other Notice shall be necessary. Should termination under this Article take place, the PROFESSIONAL shall be entitled to compensation for all authorized Contract work completed satisfactorily to the date of termination. PVWC shall be the sole judge of satisfactory work.

17. This AGREEMENT, including any schedules, attachments and referenced documents, is the entire agreement between PVWC and PROFESSIONAL. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly stated herein are of no force and effect. Any changes to this AGREEMENT shall be in writing and signed by the PVWC and PROFESSIONAL.

18. A waiver or breach of any term, condition or covenant by a party shall not constitute a waiver or breach of any other term, condition or covenant. If any court of competent jurisdiction declares a provision of the AGREEMENT invalid, illegal or otherwise unenforceable, the remaining provisions of the AGREEMENT shall remain in full force and effect.

19. The effective date of this AGREEMENT shall be as of the date set forth hereinabove, or where such date is not indicated, the effective date of the AGREEMENT shall be when the last of the two parties is in full possession of a fully executed AGREEMENT document.

20. PROFESSIONAL'S hourly rates for technical and related support services and non-labor expenses shall be as set forth in the PROPOSAL.

21. PROFESSIONAL understands and agrees that upon submission to PVWC and upon receipt of proper payment as provided for in this AGREEMENT, any reports, data, logs or other information provided to PVWC pursuant to the terms and conditions of this AGREEMENT (and which are not designated in accordance with Paragraph 9 of this AGREEMENT as being confidential) are deemed to be non-proprietary to the extent that PVWC, in its sole discretion, may utilize the information submitted for whatever purposes it deems necessary or desirable without seeking permission from PROFESSIONAL, and without providing any additional compensation to PROFESSIONAL; provided, however, that PVWC shall have sole responsibility for use of such work products in applications for which they may not originally have been intended. Reports, data, logs and other information provided to PVWC by PROFESSIONAL shall become the property of PVWC provided, however, that PROFESSIONAL shall have unrestricted right to their use.

22. PVWC designates the Executive Director, the Administrative Secretary, or the Director of Engineering, of the PVWC as its designated representative having authority to give instructions, receive information, define PVWC'S policies, and make decisions with respect to the scope of the work to be performed. PVWC reserves the right to change these designees from time to time and will notify PROFESSIONAL of any change(s) in writing.

23. Except as otherwise approved by PVWC, for the PROJECT, PVWC will be responsible for furnishing all approvals and permits from governmental authorities and other entities having jurisdiction over the scope of the work to be performed and approvals from others as may be necessary for the timely completion of the said work, including payment of all permit fees.

24. This AGREEMENT may be executed in several counterparts and all so executed documents shall constitute one agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT by their duly authorized officers, and have affixed their corporate seals, as of the day and year shown on the cover page.

ALAMO INSURANCE GROUP, INC.

Witness or Attest

By: _____
Secretary
(Seal)

By: _____
Authorized Signatory

PASSAIC VALLEY WATER COMMISSION

By: _____
LOUIS AMODIO
Administrative Secretary

By: _____
RIGO SANCHEZ
President

PASSAIC VALLEY WATER COMMISSION

ATTACHMENT "A"

PROFESSIONAL'S PROPOSAL

PASSAIC VALLEY WATER COMMISSION

**PROJECT NO. 20-P-12
INSURANCE AGENT SERVICES FOR PROPERTY,
CASUALTY, AUTOMOBILE, AND EXCESS LIABILITY**

EXHIBIT B

(The Solicitation and the Awardee's
Response are on file in the Office of
PVWC's Administrative Secretary)

RESOLUTION: 19-113
RESOLUTION OF PASSAIC VALLEY WATER COMMISSION
CHANGES IN SCOPE OF PROFESSIONAL SERVICES FOR
PROJECT 12-P-43 ENTITLED "PROFESSIONAL ENGINEERING
SERVICES-EMERGENCY BACK-UP POWER AND WATER STORAGE
FACILITIES-DESIGN, PERMITTING AND CONSTRUCTION
ADMINISTRATION SERVICES"

PROFESSIONAL SERVICES FOR
ADDITIONAL PROJECT MODIFICATIONS
(AMENDMENT 7)

DATE OF ADOPTION: NOVEMBER 18, 2019

Approved as to form and legality by Law Department on basis of facts set forth by Executive Director, Purchasing, Engineering and Finance Departments.

Introduced by Commissioner: **VANNOY**

Seconded by Commissioner: **RODRIGUEZ**

WHEREAS, Project 12-P-43 entitled "Professional Engineering Services-Emergency Back-up Power and Water Storage Facilities-Design, Permitting and Construction Administration Services" (the "Project") was awarded to CH2M Hill Engineers, Inc. ("CH2M") of Parsippany, New Jersey at PVWC's Commission Meeting dated June 19, 2013 (PVWC Resolution 13-76) in accordance with the authorized scope of work, and with reimbursement to be on a time-and-materials basis, not to exceed \$3,188,397.00; and

WHEREAS, the Project has been amended previously, with the Commission's approval, which amendments were numbered 1 through 6; and

WHEREAS, Amendment 7, which is the subject of this Resolution, addresses additional services not previously addressed by Amendments 1 through 6; and

WHEREAS, previously approved Change Order 3 for construction Contract 15-B-25 entitled "Water Storage Improvements, Phase I, Standby Emergency Generators" (the "Contract"), among other things, increased the Substantial Completion Date for the Contract by an additional 315 days to December 30, 2019 and the Final Completion Date for the Contract by an additional 318 days to February 11, 2020;

which Completion Dates were based on Stone Hill Contracting's CPM Schedule Update No. 10 dated May 22, 2019; and

WHEREAS, on June 20, 2019, NJDEP Division of Water Quality, Municipal Finance and Construction Element issued a Notice to PVWC approving Change Order 3 (thereby adjusting the Substantial and Final Completion Dates as set forth hereinabove), equal to and ratifying the change order sought from the Commission; and

WHEREAS, Amendment 7 includes additional professional services and related costs to provide construction administration/office coordination and full-time resident engineering for the Emergency Power sub-project, including escalation in labor fees for remaining efforts including start-up services, and post-startup services (operation and maintenance, training, and record drawing preparation); all through the above-referenced extended and NJDEP-approved Final Completion Date for the Contract; and

WHEREAS, at PVWC's request, Jacobs has submitted a proposal dated October 22, 2019 (the "Proposal") to include additional professional services and related costs as set forth above; and

WHEREAS, Amendment 7 does not include any cost impacts that resulting from delays in the timing and sequencing of the bidding and construction phase services for the Levine Storage sub-project, which cost impacts cannot be appropriately quantified at this time; and

WHEREAS, as previously indicated, when the actual timing and sequencing of the bidding and construction phase services impacts for the Levine Storage sub-project become sufficiently known to enable these cost impacts to be appropriately quantified, a request for a negotiated increase in the professional services to reflect said impacts will be submitted to the Commission for consideration at some future date when appropriate; and

WHEREAS, said additional professional services included in Amendment 7 were not included in Jacobs' (formally CH2M's) original proposal (nor in previously approved Amendments 1-6); and

WHEREAS, a copy of the form of Amendment 7 to the Agreement for Professional Services (Project 12-P-43) ("Amendment 7") followed by a copy of the Proposal, including a breakdown of the scope and additional costs related thereto, is attached hereto and hereby made a part hereof as Exhibit B referenced below; and

WHEREAS, the Director of Engineering has reviewed Jacobs' Proposal for the additional Work as set forth hereinabove and finds it to be reasonable, considering the nature and scope of additional Work involved, and has recommended that the said modifications to the Project, and additional costs related thereto, be approved; and

WHEREAS, a copy of the Director of Engineering's memorandum dated October 23, 2019 recommending approval of the said changes to the Project is attached hereto and made a part hereof as Exhibit A; and

WHEREAS, the Executive Director; and the General Counsel, (as to form and legality); have reviewed the above-referenced memorandum and concur with the Director of Engineering's recommendations; and

WHEREAS, previously approved Amendments 1-6 increased the above not-to-exceed total amount to \$4,761,551.50 (an overall 49.3% increase); and

WHEREAS, the previously approved not-to-exceed total price of \$4,761,551.50 (which includes Amendments 1-6) is hereby increased by the additional amount of \$246,440.00 (an additional 7.7% increase) for Amendment 7 as set forth herein, for a revised not-to-exceed total price of \$5,007,991.50 for the Project (which equates to an overall net increase of approximately 57.0% to the Project); and

WHEREAS, the said modifications will be incorporated into Amendment 7, the form of which (along with the Proposal) is attached hereto and made a part hereof as Exhibit B; and

WHEREAS, the additional services to be rendered pursuant hereto constitute professional services (or extraordinary unspecifiable services) within the meaning and intent of the Local Public Contracts Law; and

WHEREAS, PVWC's Comptroller has certified, with respect hereto, that funds are currently available for said purpose and said certificate is attached hereto as Exhibit C;

NOW, THEREFORE, BE IT RESOLVED, by Passaic Valley Water Commission, in the County of Passaic, New Jersey;

1. That PVWC hereby approves Amendment 7 to the Agreement for Professional Services for Project 12-P-43; all as set forth hereinabove; and

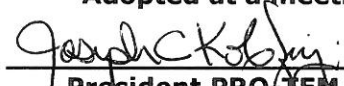
2. That the appropriate officials of PVWC, and such other officers, employees and officials of PVWC, on behalf of PVWC, are hereby authorized to execute and enter into Amendment 7, and to perform such other acts and execute such documents as are necessary to implement the terms and intentions of this Resolution; and

3. That this matter shall be advertised as required by New Jersey law, in accordance with an appropriate form of notice, and a copy of this Resolution and Agreement shall be placed on file and made available for inspection at the office of the Administrative Secretary of Passaic Valley Water Commission.

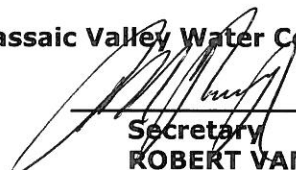
RECORD OF COMMISSION VOTE ON FINAL PASSAGE

	AYE	NAY	ABSTAIN	ABSENT
FRIEND, G.	<u>X</u>	---	---	---
VANNOY, R.	<u>X</u>	---	---	---
LEVINE, J.	<u>X</u>	---	---	---
KOLODZIEJ, J.	<u>X</u>	---	---	---
VAN RENSALIER, R.	---	---	---	<u>X</u>
RODRIGUEZ, I.	<u>X</u>	---	---	---
SANCHEZ, R.	---	---	---	<u>X</u>

Adopted at a meeting of Passaic Valley Water Commission.



President PRO-TEM
JOSEPH KOLODZIEJ

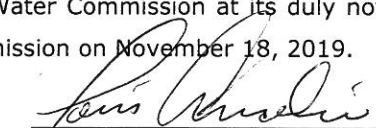


Secretary
ROBERT VANNOY

This Resolution, when adopted, must remain in the custody of the Administrative Secretary.

CERTIFICATION

I, LOUIS AMODIO, Administrative Secretary of the Passaic Valley Water Commission in the County of Passaic, and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy thereof of the foregoing Resolution duly passed and adopted by a majority of a legal quorum of the full membership of the Passaic Valley Water Commission at its duly noticed and convened meeting of the said Commission on November 18, 2019.



LOUIS AMODIO
Administrative Secretary

PASSAIC VALLEY WATER COMMISSION

**CHANGES IN SCOPE OF PROFESSIONAL SERVICES FOR
PROJECT 12-P-43 ENTITLED "PROFESSIONAL ENGINEERING
SERVICES-EMERGENCY BACK-UP POWER AND WATER STORAGE
FACILITIES-DESIGN, PERMITTING AND CONSTRUCTION
ADMINISTRATION SERVICES"**

**PROFESSIONAL SERVICES FOR
ADDITIONAL PROJECT MODIFICATIONS
(AMENDMENT 7)**

**PVWC DIRECTOR OF ENGINEERING'S
MEMORANDUM DATED OCTOBER 23, 2019**

EXHIBIT A

**PASSAIC VALLEY WATER COMMISSION
INTEROFFICE MEMORANDUM**

Date: October 23, 2019

To: Hon. Commissioners

From: J. Duprey

cc: J. Bella
G. Hanley
L. Amodio
G. Lucianin

Re: Modifications to Professional Services for Project 12-P-43 "Professional Engineering Services-Emergency Back-up Power and Water Storage Facilities-Design, Permitting and Construction Administration Services-Professional Services for Additional Project Modifications-Emergency Power sub-project (Amendment 7)

Summary

It is recommended that, under Project 12-P-43, Jacobs (formerly CH2M) of Parsippany, New Jersey be awarded a negotiated increase of \$246,440.00 (increasing the total previously approved not-to-exceed amount for Project 12-P-43 from \$4,761,551.50 (which includes previously approved Amendments 1-6) to \$5,007,991.50 to provide PVWC with additional professional services related to the Emergency Power sub-project as set forth in the attached copy of Jacobs' proposal dated October 22, 2019.

These recommended modifications under this proposed Amendment 7 are set forth in more detail below.

Background

Project 12-P-43 entitled "Professional Engineering Services-Emergency Back-up Power and Water Storage Facilities-Design, Permitting and Construction Administration Services" (the "Project") was awarded to CH2M Hill Engineers, Inc. of Parsippany, New Jersey at PVWC's Commission Meeting dated June 19, 2013 (PVWC Resolution 13-76) in accordance with the authorized scope of work, and with reimbursement to be on a time-and-materials basis, not to exceed \$3,188,397.00.

As can be seen from the Table below, previously approved Amendments 1-6 increased the above not-to-exceed total amount to \$4,761,551.50. Proposed Amendment 7 in the amount of \$246,440.00 increases the above not-to-exceed total amount to \$5,007,991.50.

Description	Adjustment	Total Not-to-Exceed
Original Agreement with CH2M		\$3,188,397.00
Previously Approved (Amendments 1-6)	\$1,573,154.50	\$4,761,551.50
Proposed Amendment 7	\$246,440.00	\$5,007,991.50

Previously Approved Amendments 1-6

Amendments 1 and 2 for professional services to assess alternate site locations (for the Levine Storage sub-project), and for incorporating additional requirements and project features (for the Emergency Power Project), respectively, were previously approved.

In addition, Amendments 3 and 4 for technical support to assist PVWC during the public outreach and participation process and helping obtain a HUD Community Development Block Grant-Disaster Recovery (CDBG-DR), and for additional design and submittal HUD requirements, respectively, were also previously approved.

Amendment 5 included additional professional services over an extended five-month bid period to assist PVWC through the bid protest hearing process which ultimately led to award of the Emergency Power Contract, subsequent delayed start of construction of the Emergency Power Project (and additional delays resulting from utilization of the CDBG-DR program) and the duration of the contract extended at PVWC's request from eighteen (18) months to twenty four (24) months (necessitated by the increased technical complexity of the project), the related construction phase services impacts (CH2M office construction administration and resident observation) associated with the said Emergency Power Project. As previously indicated, utilizing the CDBG-DR could save PVWC approximately \$500,000 in an upfront reduction of NJDEP/HUD fees, and principal forgiveness of up to twenty five percent (25%) of the construction cost (a projected estimated savings of approximately \$7,000,000) on the Emergency Power sub-project.

Construction of the Levine Storage sub-project and of the Emergency Power sub-project was originally contemplated to occur in parallel, which turned out to be not the case, thereby requiring a reallocation of professional services for resident observation between these two sub-projects. A portion of the budget for full time resident observation was reallocated from the Levine Storage sub-project to the Emergency Power sub-project (within overall Project 12-P-43) in the amount of \$383,434.00 due to these sub-projects not being performed simultaneously, and which transferred amount served to reduce the net increase for previously approved Amendment 5.

Amendment 6 included additional professional services and related costs resulting from major scope changes for the Levine Reservoir sub-project due to extensive public opposition during the historic Preservation review process, required design updates to gain approvals from the State Historic Preservation Office (SHPO) and EPA Section 106, participation in design coordination meetings with HPO, City of Paterson Historic Preservation Commission (HPC) and National Park Service (NPS) as required by NJDEP, review and incorporation of required electrical, civil, structural, mechanical, and architectural changes resulting from an update in New Jersey Administrative Code N.J.A.C. 5:23-1 (issued August 20, 2018), and preparation of newly signed and sealed design documents to reflect the updated design for permitting and bidding (along with preparation of an updated construction cost estimate for same).

As previously indicated, the above-referenced Amendments 1-6 did not include any cost impacts resulting from delays in the timing and sequencing of the bidding and construction phase services for the Levine Storage sub-project, as well as on the timing and sequencing of the various construction contracts as they unfold, because the said impacts were not able to be sufficiently quantified at that time.

Amendment 7

The following additional professional services were not included in CH2M's original proposal, nor in previously approved Amendments 1-6:

Amendment 7 includes additional professional services and related costs to provide construction administration/office coordination and full-time resident engineering, including escalation in labor fees for remaining efforts including start-up services, and post-startup services (operation and maintenance, training, and record drawing preparation), all through the extended, and NJDEP-approved, Final Completion Date of February 11, 2020 for construction Contract 15-B-25.

Amendment 7 does not include any cost impacts that resulting from delays in the timing and sequencing of the bidding and construction phase services for the Levine Storage sub-project.

As previously indicated, when the actual timing and sequencing of the bidding and construction phase services impact for the Levine Storage sub-project become sufficiently known to enable these cost impacts to be appropriately quantified, a request for an increase in the professional services to reflect said impacts will be submitted to the Commission for consideration at some future date when appropriate.

At PVWC's request, Jacobs has submitted a proposal dated October 22, 2019 (the "Proposal") for Amendment 7 to modify the Emergency Power sub-project to include additional professional services related to the above, and a copy of the Proposal, including a breakdown of the scope and additional costs related thereto, is attached to and made a part of Exhibit B referenced below.

Jacobs' Proposal for the additional Work as set forth hereinabove has been reviewed and is reasonable, considering the nature and scope of additional Work involved.

It is recommended that, under Project 12-P-43, Jacobs be awarded an increase of \$246,440.00 (7.7%) for Amendment 7 thereby increasing the total previously approved not-to-exceed amount for Project 12-P-43 from \$4,761,551.50 (which includes previously approved Amendments 1-6) to \$5,007,991.50 (which equates to an overall net increase of approximately 57.0% to the Project) to provide PVWC with additional professional services related to the Project under Amendment 7 as set forth in the attached copy of the Proposal.

It is also recommended that anticipated additional costs related to timing and sequencing of bidding and construction phase services impacts for the Levine Storage sub-project be deferred for reasons set forth hereinabove.

Subject to concurrence and approval by the Law Department as to form and legality, the said changes will be incorporated into "Amendment 7 to the Agreement for Professional services (Project 12-P-43)" the form of which is included in Exhibit B.

PASSAIC VALLEY WATER COMMISSION

**CHANGES IN SCOPE OF PROFESSIONAL SERVICES FOR
PROJECT 12-P-43 ENTITLED "PROFESSIONAL ENGINEERING
SERVICES-EMERGENCY BACK-UP POWER AND WATER STORAGE
FACILITIES-DESIGN, PERMITTING AND CONSTRUCTION
ADMINISTRATION SERVICES"**

**PROFESSIONAL SERVICES FOR
ADDITIONAL PROJECT MODIFICATIONS
(AMENDMENT 7)**

**FORM OF AMENDMENT TO AGREEMENT
AND JACOBS' PROPOSAL
DATED OCTOBER 22, 2019**

EXHIBIT B

**Passaic Valley Water Commission
Amendment 7 to the
Agreement for Professional Services
(Project 12-P-43)**

This Amendment 7 to the Professional Engineering Services-Emergency Back-Up Power and Water Storage Facilities-Design, Permitting and Construction Administration Services (Project 12-P-43) (hereinafter "Amendment"), Emergency Power sub-project, is made by and between:

Passaic Valley Water Commission ("PVWC")

-and-

Jacobs (formerly CH2M-Hill Engineers, Inc. "CH2M") ("Jacobs")

(hereinafter referred to collectively as the "Parties" or either one of them as "Party").

IT IS hereby agreed as follows:

**Article 1
Recitals**

1.01. On or about June 19, 2013, the PVWC and CH2M entered into an Agreement for "Professional Engineering Services-Emergency Back-Up Power and Water Storage Facilities-Design, Permitting and Construction Administration Services" (hereinafter "Agreement") referred to as project 12-P-43, not to exceed the amount of \$3,188,397.00.

1.02 Jacobs (CH2M) submitted a claim to PVWC for an increase in the not-to-exceed amount of the Agreement to compensate Jacobs for various unforeseen events and changes since the original Agreement was executed.

1.02.01 Additional professional services included in Amendment 7 were not included in CH2M's original proposal, nor in previously approved Amendments 1-6.

1.02.02 Amendment 7 includes additional professional services and related costs to provide construction administration/office coordination and full-time resident engineering, including escalation in labor fees for remaining efforts including start-up services, and post-startup services (operation and maintenance, training, and record drawing preparation), all through the extended (and NJDEP approved) Final Completion Date of February 11, 2020 for construction Contract 15-B-25.

1.03 PVWC reviewed Jacobs' claim, and the Parties hereby agree to the claim.

1.04 The amount of Jacobs' claim (with the exception of bidding and construction phase services impacts for the Levine Reservoir sub-project, which will depend on the actual timing and sequencing of that construction contract as it unfolds, and which impacts cannot be sufficiently quantified at this time) was \$246,440.00 which was memorialized in a 2-Page letter dated October 22, 2019, issued by Russell Ford, PhD, PE, Vice President and by Linda Wancho, PE, Project Manager jointly on behalf of Jacobs to James G. Duprey, PE, Director of Engineering, for PVWC (hereinafter "Compromise").

1.05 By enacting this Amendment, the not-to-exceed amount of this agreement changes as follows:

Agreement or Amendment	Adjustment	Total Not-to-Exceed
Agreement (original)		\$ 3,188,397.00
Amendments 1-6	\$ 1,573,154.50	\$ 4,761,551.50
Amendment 7	\$ 246,440.00	\$5,007,991.50

Article 2
Acceptance of Compromise

2.01. Acceptance of Compromise. The Parties accept the Compromise and adopt same as an amendment to the Agreement, thereby increasing the not-to-exceed amount of the Agreement by \$246,440.00 for a new total of \$5,007,991.50.

2.02 Compromise Incorporated. The Compromise is incorporated herein and made a part of the terms and conditions of this Amendment.

2.03 Effective Date. The Effective date of this Amendment shall be the date on which this Amendment is fully executed by, and delivered to, all Parties hereto and the PVWC's governing body has duly authorized the PVWC to execute, deliver and be bound by the terms of this Amendment. Unless and until the PVWC's governing body has duly authorized or ratified this Amendment, this Amendment shall have no force or effect and shall be null and void.

2.04 Full and Final Settlement of Jacobs' claim. Jacobs agrees that this Amendment shall constitute full and final compensation to Jacobs for any and all claims for additional compensation in connection with the agreement that were, or could have been, asserted against the PVWC by Jacobs or requested from PVWC by Jacobs as of the date of the Compromise. A claim could have been asserted if Jacobs had knowledge of one or more events that impacted Jacobs negatively in any way, whether or not Jacobs had enough information at the time to sufficiently quantify the impact and/or substantiate the claim under the terms of the Agreement. Jacobs may not re-assert any claim that it has asserted previously in connection with the negotiations leading up to the Compromise.

2.05 Reservation of Right. Jacobs reserves the right to assert a claim or request an increase in compensation in connection with the Agreement for any claims that were unknown as of the date of the Compromise and could not have been asserted by Jacobs before the date of the Compromise. In addition:

- 2.05.01 Jacobs reserves the right to assert a claim or request an increase in compensation in connection with the Agreement relating to impacts on the cost of providing bidding and construction phase services on the Levine sub-project, which the Parties stipulate will depend on the actual future start date and timetable for construction of the Levine sub-project, and events that may transpire during the course of construction on the Levine sub-project.
- 2.05.02 Nothing herein shall constitute a waiver by Jacobs of its rights to seek additional compensation in connection with Project 12-P-43, provided that Jacobs' claim is permissible under this Amendment.
- 2.05.03 Although the PVWC foresees the likelihood that Jacobs may request another increase in their compensation under the Agreement at some point in the future, the PVWC does not take any position on future claims that have been reserved by Jacobs and nothing herein shall bind the PVWC to increase Jacobs' compensation beyond the not-to-exceed amount set forth in this Amendment.

Article 3
Construction of the Amendment

3.01 Agreement. The Parties remain bound by all provisions in the Agreement that are not amended herein or are not inconsistent with this Amendment. Unless a specific waiver is made herein, both Parties reserve all of their rights and claims under the Agreement as amended.

3.02 Severability. If any of the provisions of this amendment are determined to be invalid under any applicable state or federal laws, such invalidity shall not affect or impair the validity of the other provisions, which shall be considered severable, and shall remain in full force and effect.

3.03 Counterparts. The Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same agreement. Digital and/or facsimile signatures shall be deemed original signatures for purposes of this Amendment.

3.04 Neutral Construction. The Amendment shall be given a neutral construction, such that it shall not be construed in favor or against any party to this Amendment by

reason of the extent to which any party or its Counsel participated in the drafting hereof.

3.05 *Recitals.* The recitals set forth in Article 1 of this Amendment shall be construed as terms to the Amendment and not mere recitals.

3.06 *Signatories' Representations.* By signing this Amendment, each of the undersigned represents that s/he is duly authorized to enter into this Amendment and to legally bind his/her respective Party to same.

**** Signatures on the Next Page****

Jacobs

By: _____ Dated: _____
(Signature)

Name & Title: _____
(Print)

Witness or Attest:

_____ (Signature, print name)

- oOo-

Passaic Valley Water Commission

By: _____
LOUIS AMODIO
Administrative Secretary

By: _____
RIGO SANCHEZ
President

PASSAIC VALLEY WATER COMMISSION

**CHANGES IN SCOPE OF PROFESSIONAL SERVICES FOR
PROJECT 12-P-43 ENTITLED "PROFESSIONAL ENGINEERING
SERVICES-EMERGENCY BACK-UP POWER AND WATER STORAGE
FACILITIES-DESIGN, PERMITTING AND CONSTRUCTION
ADMINISTRATION SERVICES"**

**PROFESSIONAL SERVICES FOR
ADDITIONAL PROJECT MODIFICATIONS
(AMENDMENT 7)**

**JACOBS' PROPOSAL
DATED OCTOBER 22, 2019**

(ATTACHMENT TO EXHIBIT B)

PASSAIC VALLEY WATER COMMISSION

**CHANGES IN SCOPE OF PROFESSIONAL SERVICES FOR
PROJECT 12-P-43 ENTITLED "PROFESSIONAL ENGINEERING
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**PROFESSIONAL SERVICES FOR
ADDITIONAL PROJECT MODIFICATIONS
(AMENDMENT 7)**

PVWC'S FINANCIAL CERTIFICATION SHEET

EXHIBIT C