

RESOLUTION # 23-034

RESOLUTION OF PASSAIC VALLEY WATER COMMISSION

**RESOLUTION TO EXTEND CONTRACT NO. 20-B-3
"WATER METER READING AND RELATED SERVICES"**

DATE OF ADOPTION: FEBRUARY 22, 2023

Introduced by Commissioner: **JOSEPH KOLODZIEJ**

Seconded by Commissioner: **RIGO SANCHEZ**

WHEREAS, under Contract 20-B-3 "Water Meter Reading and Related Services" (the "Contract"), Inframark, LLC of Glen Cove, New York (the "Contractor") provided, and continues to provide, goods and services under this 3-year contract with the Passaic Valley Water Commission ("PVWC") consistently and reliably and effectively and efficiently on an as-needed basis with the Contract commencing February 19, 2020 under Resolution No. 20-19; and

WHEREAS, under the Local Public Contracts Law N.J.S.A. 40A:11-1 et seq. as amended April 17, 2000 (the "Act"), certain discretionary provisions enabled under said Act, including extensions to existing contracts pursuant to N.J.S.A. 40A:11-15 (16) (the "LCPL"), were subsequently adopted by PVWC; and

WHEREAS, pursuant to the LCPL, this 3-year contract, which is otherwise scheduled to end on February 18, 2023, includes a provision whereby PVWC may elect to extend the contract time up to an additional two years, for a total contract duration of not more than five (5) years, including extensions, with recommended actions concerning any and all such extensions subject to PVWC approval through Resolutions; and

WHEREAS, under the provisions of the Contract, the Contractor is required to maintain and extend all insurance and any other applicable bonds, and to continue to provide goods and services under the extended contract under the terms and conditions of the contract eliminating the performance bond and retainage requirements included herewith and made a part hereof as **Exhibit A**; and

WHEREAS, it is, therefore, in the best interests of PVWC, its users and constituent municipalities to extend the Contract for a 2-year period of time beginning February 19, 2023 and ending on February 18, 2025; and

WHEREAS, the unit quantities stipulated under the original 3-year Contract are hereby adjusted and reestablished for this 2-year extended portion of the Contract, and, based on the appropriate adjustment of the unit prices currently in effect under the Contract (in accordance with the provisions of N.J.S.A. 40A:11-15 and as set forth in the contract documents) and with no change to the unit prices with the total contract amount of \$1,138,866.67; and

WHEREAS, a copy of the Vendor's correspondence (dated February 11, 2023) agreeing to a 2-year extension of the Contract (under the terms and conditions of the Contract Documents), is attached hereto and made a part hereof as **Exhibit B**; and

WHEREAS, PVWC's Chief Financial Officer has certified, with respect hereto, that funds are currently available for said purpose, and said certificate is included herewith and made a part hereof as **Exhibit C**.

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

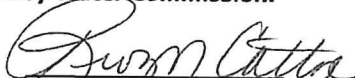
1. That PVWC hereby authorizes and awards a contract extension to the terms as set forth hereinabove; and
2. That appropriate officers of the Commission are hereby authorized and directed to execute this Contract extension as set forth hereinabove and implement the terms of this extended Contract in accordance with this Resolution and the submissions provided in connection herewith, and the Secretary of PVWC to attest to this Contract extension 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 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
SANCHEZ, R.	<u>X</u>	—	—	—
COTTON, R.	<u>X</u>	—	—	—
DEPADUA, C.	<u>X</u>	—	—	—
KOLODZIEJ, J.	<u>X</u>	—	—	—
LEVINE, J.	<u>X</u>	—	—	—
VAN RENSAIJER, R.	<u>X</u>	—	—	—
FRIEND, G.	<u>X</u>	—	—	—

Adopted at a meeting of Passaic Valley Water Commission.


President
GERALD FRIEND

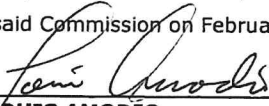

Secretary
RUBY N. COTTON

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 February 22, 2023.



LOUIS AMODIO
Administrative Secretary

EXHIBIT A

**CONTRACT
WITH
PASSAIC VALLEY WATER COMMISSION
FOR
CONTRACT #20-B-3
WATER METER READING AND RELATED SERVICES**

THIS AGREEMENT, made and entered into this ____ day of _____ in the year Two Thousand and Twenty Three by and between Passaic Valley Water Commission, a public body, hereinafter designated as "Commission" and Inframark, LLC with its' principal office at 220 Gibraltar Road, Suite 200 in Horsham County of Montgomery and State of Pennsylvania hereinafter designated as "Contractor".

WITNESSETH: That the parties to these presents each in consideration of the undertakings, promises, and agreements on the part of the other herein contained, do hereby covenant, undertake, promise and agree, as set forth in the following pages:

ARTICLE I - Scope of the Work

The Contractor hereby agrees to furnish all of the tools, plant, equipment and labor necessary to perform all of the work described in the Technical Specifications, or which can be reasonably inferred therefrom, except such as may be hereinafter specifically excluded for the contract listed above; all in accordance with the requirements and provisions of the Contract Documents which include the following: (a) all of the "Bidding Documents" including but not limited to the Invitation to Bidders, Information and Instructions for Bidders, Form of Proposal, the form of Contract, the Supplementary Conditions (if any), General Conditions, Performance Bond (if any), One Year Maintenance Bond (if any), Technical Specifications, Drawings (if any), and Addenda, (b) this signed Contract, and (c) the Contractor's Bid Submission, including but not limited to its completed Form of Proposal and other forms.

ARTICLE II - Time of Completion and Contract Extension

The period of the Contract shall be for seven hundred and thirty (730) consecutive calendar days from the Date of Execution of Contract by the Commission.

This is the final contract extension. No additional contract extensions shall be allowed.

ARTICLE III – Performance Bond

Not Used

ARTICLE IV - The Contract Sum

Based on the unit prices and lump sums set forth in the Contractor's Form of Proposal, the Contract Amount for the complete performance of this Contract is:

One Million One Hundred and Thirty Eight Thousand Eight Hundred Sixty Six Dollars and Sixty Seven Cents

(\$1,138,866.67) (hereinafter "Contract Price").

ARTICLE V – No Waiver

Under no circumstances shall the failure by the Commission, or by any Engineer to whom it assigns the task of administering this Contract, to strictly enforce any undertaking or promise owed to the Commission by the Contractor be construed as a waiver of any kind of the Commission's rights (including but not limited to the right to enforce said undertaking or promise at a later date), unless that waiver is made expressly by the Commission and in writing, which writing shall be narrowly construed in any case. Waiver by the Commission of any breach of any covenant or duty of the Contractor under this Contract is not a waiver of a breach of any other covenant or duty of the Contractor, or of any subsequent breach of the same covenant or duty.

Payment by the Commission to the Contractor, even when the Commission is aware that the Contractor has failed to perform certain obligations owed to the Commission under the Contract or has performed work that is "deficient", shall not be deemed as a waiver of such failure to perform or of such deficiency.

Customs or practices that develop between the Parties in the course of administering this Contract are not to be construed to waive or lessen the right of the Commission to insist on the strict performance of the provisions of this Contract.

The various rights, remedies, options, and elections of the Commission shall be cumulative, and in addition to and not in substitution of the rights and remedies which would otherwise be vested in the Commission, all of which rights are remedies are fully reserved unless specifically waived. The failure of the Commission to exercise any of the remedies herein provided shall not preclude the resort to any other appropriate remedy. The use of specific remedies herein provided shall not prevent subsequent or concurrent resort to any other remedy which by law or equity would be vested in the Commission for recovery of damages or otherwise, in the event of default by the Contractor.

ARTICLE VI - Additional Provisions

Severability. If any of the provisions, or any portion of a provision, of this Contract are determined to be unenforceable or invalid (hereinafter referred to as "determination" in this provision), such determination shall be applied as narrowly as possible so as not to affect or impair the validity of the remainder of the provision and the other provisions of the Contract, which shall be considered severable, and shall remain in full force and effect. If as the result of the determination, the remaining provisions of the Contract cannot thereafter be applied and effective without material prejudice to the Commission, then the Parties shall negotiate in good faith for an equitable resolution. If, as a result of the determination, the Commission has lost a material benefit that it would have otherwise received, the parties will negotiate in good faith for a lawful remedy to restore as reasonably possible the benefit lost by the determination.

No Assignment. Contractor may not assign this Contract in whole or in part without the expressed, written consent of Commission.

Applicable Law & Venue. This Contract, including but not limited to questions relating to its legal effect, interpretation, construction, or breach by either Party, shall be governed by and interpreted in accordance with the laws of the State of New Jersey. Any legal action brought by either Party against the other arising under this Contract shall be venued exclusively in the Superior Court of New Jersey, Passaic County, unless a Party wishes to bring, and can satisfy the jurisdictional requirements for maintaining, an action in the United States District Court for the District of New Jersey ("DNJ"), in which case the federal action shall be venued exclusively in the Newark Vicinage of the DNJ. No action shall be brought in any other venue other than those permitted in this provision, notwithstanding any allegation as to where the cause of action arose or any other rules relating to venue to the contrary. Any alternative dispute resolution proceeding allowed or required by the Contract or by the law must be venued in Passaic County, New Jersey or in another location acceptable to Commission.

Special Limitation on Certain Remedies. Regarding any claim arising from a breach of Contract, any tort (including negligence), or otherwise, the Commission will not be liable to the Contractor for: (i) any special, consequential, incidental, indirect, or penal damages, including, but not limited to, loss of anticipated profit, loss of revenue, damage to goodwill, damage to other business assets, rental fees, storage fees, injury to economic advantage, loss of other business opportunities, loss of rental value for contractor-owned equipment, damages to associated equipment, cost of capital, or interest, or (ii) litigation expenses arising out of or in connection with the breach, including attorneys' fees, expert fees, and court costs, except as provided by the Prompt Payment Act, N.J.S.A. § 2A:30A-1 to -2 or pursuant to mandatory fee-shifting provisions in the law governing the operations of the Commission.

ARTICLE VII - Retainage

Not Used.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year as first written above.

Passaic Valley Water Commission

President

Attest:

PVWC - Secretary

(Witness)

Date: _____

(Contractor)

Attest:

(Witness)

Date: _____

EXHIBIT B

Porcaro, Patrick

From: Bresemann, Lisa
Sent: Thursday, February 16, 2023 5:49 PM
To: Porcaro, Patrick
Subject: FW: Inframark - Water Meter Reading Renewal Follow-up Meeting

From: Shupe Jr., Jerry <jerry.shupe@inframark.com>
Sent: Saturday, February 11, 2023 1:18 PM
To: Bresemann, Lisa <lbresemann@PVWC.com>
Subject: RE: Inframark - Water Meter Reading Renewal Follow-up Meeting

Lisa

This works for me.

Thank you

Jerry B. Shupe Jr. | Vice President, East Region



229 Northside Drive | Danville, VA 24540

(M) 434-822-3635 | www.inframark.com

From: Bresemann, Lisa <lbresemann@PVWC.com>
Sent: Friday, February 10, 2023 5:12 PM
To: Shupe Jr., Jerry <jerry.shupe@inframark.com>
Subject: RE: Inframark - Water Meter Reading Renewal Follow-up Meeting

Yes, I spoke with Pat Porcaro in the Engineering Department and with our General Counsel Yaacov Brisman and we do not see the need for a Performance Bond. We can get the 2 year contract extension on the Agenda for this month if you are agreeable.

Regards,

Lisa Bresemann
Purchasing Agent

EXHIBIT C

OFFICE OF THE COMPTROLLER

CERTIFICATION OF AVAILABILITY OF FUNDS

It is hereby certified that subject to Commission approval of future Budgets, with respect to multi-budget year contracts, there are or will be sufficient available funds for expenditures to be incurred as result of any contract or commitment to be entered into by Passaic Valley Water Commission as follows:

Description of Project or Contract: **2 YEAR CONTRACT EXTENSION
20-B-3 - Inframark, LLC**

Amount of Project or Contract: \$ 1,138,866.67

1. Acct: # 001-0601-416-72-10 Purchases-Services / Outside Meter Reading

Specific Appropriation to which expenditures will be charged: Budget 2023/2024/2025

Other comments: Two (2) Year Contract Extension Commencing: February 2023
Water Meter Reading and Related Services

Date of Certification: February 22, 2023 - Certified: \$ 1,138,866.67

Yitzchak Weiss
Comptroller and Chief Financial Officer

YW:lb
