

RESOLUTION # 23-039

RESOLUTION OF PASSAIC VALLEY WATER COMMISSION

**RESOLUTION TO EXTEND CONTRACT NO. 21-B-8
"BITUMINOUS COLD PATCH MATERIAL"**

DATE OF ADOPTION: MARCH 22, 2023

Introduced by Commissioner: **JOSEPH KOLODZIEJ**

Seconded by Commissioner: **CARMEN DE PADUA**

WHEREAS, under Contract 21-B-8 "Bituminous Cold Patch Materials" (the "Contract"), Newark Asphalt Corp. of Newark, New Jersey (the "Contractor") provided, and continues to provide, goods and services under this 2-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 March 10, 2021; 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, extensions to existing contracts provide for up to two (2) additional years for contracts which are two (2) years or less, (for a total contract duration not to exceed four (4) years), with recommended actions concerning any and all such extensions subject to PVWC approval through Resolutions; and

WHEREAS, the currently active Contract, otherwise scheduled to end on or about March 9, 2023, includes a provision whereby PVWC may elect to allow said Contract to expire at the end of the time stipulated, or to extend the contract time by annual or semi-annual periods, for a total contract duration not to exceed the maximum allowable set forth hereinabove; and

WHEREAS, under the provisions of the Contract, the Contractor is required to maintain and extend all insurance and performance bonds, and any other applicable bonds, and to continue to provide goods and services under the extended contract under the terms and conditions of the existing contract; and

WHEREAS, it is, therefore, in the best interests of PVWC, its users and constituent municipalities to extend the Contract for a 1-year period of time beginning March 22, 2023, and ending on March 21, 2024; and

WHEREAS, the unit quantities stipulated under the original 2-year Contract are hereby adjusted and reestablished for this 1-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 in the total contract amount of \$62,500.00; and

WHEREAS, a copy of the Vendor's correspondence (dated February 27, 2023) agreeing to a 1-year extension of the Contract (under the terms and conditions of the Contract Documents), is attached hereto and made a part hereof as **Exhibit A**; 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 B**;

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.

* Out of Room

RECORD OF COMMISSION VOTE ON FINAL PASSAGE

	AYE	NAY	ABSTAIN	ABSENT
SANCHEZ, R.*	—	—	—	—
COTTON, R.	X	—	—	—
DEPADUA, C.	X	—	—	—
KOLODZIEJ, J.	X	—	—	—
LEVINE, J.	X	—	—	—
VAN RENSALIER, R.*	—	—	—	—
FRIEND, G.	X	—	—	—

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 March 22, 2023.

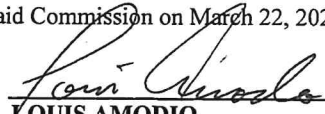

LOUIS AMODIO
Administrative Secretary

EXHIBIT A

Bresemann, Lisa

From: JBiggica@newarkasphalt.com
Sent: Monday, February 27, 2023 1:50 PM
To: Bresemann, Lisa
Subject: RE: Contract 21-B-8 - Bituminous Cold Patch Materials

Good afternoon Lisa,

It was a pleasure speaking with you. As per our conversation Newark Asphalt will gladly extend the contract 21-B-8 Bituminous Cold Patch Materials for one more year. Due to the volatility of the oil we can revisit the extension for the second year in 2024. Please do not hesitate to call my cell, 973-417-1392 with any further questions. Have a wonderful day.

Joe

From: Bresemann, Lisa <lbresemann@PVWC.com>
Sent: Monday, February 27, 2023 11:07 AM
To: JBiggica@newarkasphalt.com
Subject: Contract 21-B-8 - Bituminous Cold Patch Materials

Dear Mr. Biggica,

I am writing to inquire whether you would be willing to extend the above-referenced contract. We entered into this contract on March 10, 2021 as Newark Asphalt Corp. was the lowest responsive and responsible bidder. This Contract is due to expire on March 9, 2023. Pursuant to Local Public Contracts Law we can extend this contract for a period of two years but we are also willing to extend the contract for a period of one year, if you so choose.

Kindly advise as to whether you are willing to extend this contract and if so, whether you would like to extend this contract for a period of one or two years.

I thank you for your attention in this matter.

Regards,

Lisa Bresemann

Purchasing Agent
Passaic Valley Water Commission
lbresemann@pvwc.com
p: 973.340.4315
f. 973.340.4314



"Great things in business are never done by one person. They're done by a team of people." – Steve Jobs

CONTRACT EXTENSION
WITH
PASSAIC VALLEY WATER COMMISSION
FOR

CONTRACT 21-B-8
BITUMINOUS COLD PATCH MATERIALS

THIS AGREEMENT, made and entered into this 22nd day of March in the year Two Thousand and Twenty-Three by and between PASSAIC VALLEY WATER COMMISSION, a public body, hereinafter designated as "OWNER" and Newark Asphalt Corp with its' principal office at Foot of Passaic St. in Newark County of Essex and State of New Jersey 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, materials, equipment and labor to provide all goods and services to perform all of the Work indicated, specified, or required by the Contract Documents, or which can be reasonably inferred therefrom, all in accordance with the requirements and provisions of the Contract Documents which include the following: (a) all of the "Bidding Documents" that preceded this Contract including but not limited to the Invitation to Bidders, Information and Instructions for Bidders, Form of Proposal, the form of this Contract, the Procurement General Conditions, Technical Specifications, Drawings (if any), Appendices, and Addenda, (b) this signed Contract, and (c) the Contractor's Bid Submission, including but not limited to its completed Form of Proposal, representations, and other forms.

ARTICLE II - Time of Completion and Contract Extension

The period of the Contract shall be three hundred and sixty-five (365) consecutive calendar days commencing with the Effective Date of the Contract or as specified in the Notice to Proceed, whichever is earlier. All Work performed under this Contract shall be completed within the time periods provided for in the applicable provisions of the Contract Documents.

In accordance with the provisions of N.J.S.A. 40:A11-1 et. seq., P.L. 1999, c.440, the Commission reserves the right to allow the Contract to expire at the end of the Contract Time stipulated in the Contract: or to extend the Contract Time by two 1-year periods (or one 2-year period) or any combination thereof, for a total Contract duration of not more than 4 years, including extensions; all as may be mutually agreed to between the Contractor and the Commission.

The Contractor shall be required to maintain and extend all Insurance and any bonds required by the Contract Documents, and shall continue to provide Goods and Services under the extended Contract under the same terms and conditions indicated by the Contract Documents or which can be reasonably inferred therefrom.

In the event that the Commission has commenced re-bidding prior to the Contract expiration or when award of a contract is pending at the time that this Contract expires, by mutual consent between the Commission and the Contractor, this Contract can be extended for the duration of the interim period until the subsequent contract has been awarded and able to satisfy the Commission's requirements.

In the event the Commission elects to extend the Contract Time, the Commission will provide written notification to the Contractor not less than 60 days prior to the date the Contract would otherwise end. Said notification will advise the Contractor of the duration of the extended time frame.

ARTICLE III - Performance Bond

For Contracts requiring a Performance Bond, following award of the Contract, the Contractor shall attach hereto the required Performance Bond conforming to the requirements set forth in the Section of the Contract Documents entitled "Information and Instructions for Bidders".

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:

\$Sixty-Two Thousand Five Hundred Dollars and Zero Cents

(\$ 62,500.00) (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.

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.

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: _____

Newark Asphalt Corp.

(Contractor)

Attest:

(Witness)

Date: _____

EXHIBIT B

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: **Contract Extension**
 21-B-8 Bituminous Cold Patch Materials,
 Newark Asphalt Corp.

Amount of Project or Contract: \$62,500.00

1. Acct: # 001-3002-424-4302 R & M / Resurface

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

Other comments: One (1) Year Contract Commencing: March 2022
 Bituminous Cold Patch Materials

Date of Certification: 03/22/2023 Certified: \$62,500.00

Yitzchak Weiss
Comptroller and Chief Financial Officer

YW:lb
