

RESOLUTION # 23-043

RESOLUTION OF PASSAIC VALLEY WATER COMMISSION

AUTHORIZATION TO APPLY FOR A THIRD EXTENSION OF THE SUBRECIPIENT AGREEMENT BETWEEN THE NJDEP AND THE PVWC IMPLEMENTING THE CDBG-DR PROGRAM FOR THE STANDBY GENERATOR PROJECT, CONTRACT NO. 15-B-25

DATE OF ADOPTION: MARCH 22, 2023

Introduced by Commissioner: **JOSEPH KOLODZIEJ**

Seconded by Commissioner: **CARMEN DE PADUA**

WHEREAS, the Subrecipient Agreement between the NJ Department of Environmental Protection ("NJDEP") and the PVWC supplies the financing the PVWC needs to pay for the construction of the Standby Emergency Generators Project (Contract No. 15-B-25) ("Project"),

WHEREAS, the Subrecipient Agreement contains a term deadline which is set to expire on June 23, 2023; and

WHEREAS, the Project is not expected to reach final completion until after the deadline; and

WHEREAS, if the deadline is not extended, the PVWC risks losing approximately \$3 million in financing under the Subrecipient Agreement (*see* Memorandum of Special Counsel attached hereto as **Exhibit A**); and

WHEREAS, the officials of the PVWC request permission from the Commissioners to request an extension of the Subrecipient Agreement by one year, which would extend the term to June 23, 2024; and

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

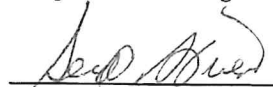
1. That PVWC hereby authorizes the appropriate officials of the PVWC, and such other officers, employees and officials of PVWC, on behalf of PVWC, to apply to the NJDEP for a third extension of the Subrecipient Agreement through to June 23, 2024, and to perform such other acts and execute such documents as are necessary to implement the terms and intentions of this Resolutions; and
2. 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 change order shall be placed on file and made available for inspection at the office of the Administrative Secretary of Passaic Valley Water Commission.

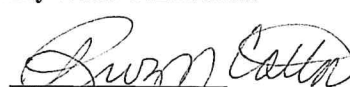
* Out of Room

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.

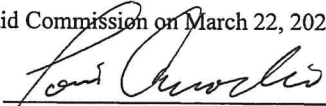

LOUIS AMODIO
Administrative Secretary

EXHIBIT A

MEMORANDUM

To: Yaacov Brisman, Esq., General Counsel, Passaic Valley Water Commission

From: Guido S. Weber, Esq.

Date: March 10, 2023

Re: Contract No.: 15-B-25—Water Storage Improvements, Phase I, Standby
Emergency Generators ("Project")
Stone Hill Contracting Co., Inc. ("Contractor" or "SHC")
CH2M Inc. n/k/a Jacobs ("Engineer" or "Jacobs")

Application for Extension of the Subrecipient Agreement Term by One Year

Summary

The Subrecipient Agreement between the NJDEP and the PVWC allows the PVWC to finance the costs of the Project. The Agreement expires on June 23, 2023, but the Project will probably not be completed by then.

After speaking with James Keil of the NJDEP and Nancy Diehl of the NJDCA about extending the deadline, we do not anticipate a problem getting a one-year extension, which is likely to be the most that the PVWC can get at this point. Ms. Diehl said that she preferred to not go beyond one year. She noted that there is an administrative cost to the NJDCA and NJDEP of servicing this Project. Therefore, her hope is that the PVWC will do whatever it can to make this request its last.

We need the Commissioners to provide their consent to the request and authorize the PVWC's officers to sign the formal amendment that we hope to get from the NJDEP soon.

Background

We need at least a one-year extension (from June 23, 2023 to June 23, 2024) to ensure that the Project is fully financed as intended. Although the Project is expected to reach final completion in the summer of 2023, additional time is needed to settle post-completion disputes including but not limited to determining the amount of retainage to release to the contractor, Stone Hill Contracting ("SHC"), in light of the PVWC's liquidated damages claim. SHC is expected to submit a claim for delay damages as well.

Furthermore, in order to give the PVWC the best chance to have 100% of construction costs on this Project financed through the Subrecipient Agreement, the following 7 events must occur at least a month and a half before the end of the term:

- a. Stone Hill Contracting ("SHC") must achieve final completion.
- b. Jacobs must certify to final completion and recommend final acceptance to the Commissioners.
- c. The Commissioners must resolve to finally accept the Project.
- d. SHC must submit a final payment requisition including retainage.

- e. SHC's bill must be reviewed by Jacobs, and when approved, it must be submitted to the Commissioners for payment.
- f. SHC must be paid by the PVWC.
- g. Jacobs must submit the request for reimbursement of the final payment to NJDEP for approval and reimbursement to the PVWC under the Subrecipient Agreement before the Subrecipient Agreement expires.

Events "d" through "f" are expected to take time to achieve as they require settlement negotiations. The PVWC is holding on to SHC's retainage as security for liquidated damages due to delay in achieving substantial completion as per the Contract as amended by Change Order No. 3. Therefore, before SHC can submit a bill for its retainage (d & e) and be paid for same (f), the PVWC will need to settle its delay claim against SHC.

The PVWC is holding on to \$2.7 million in retainage. Liquidated damages have been accruing at \$1,000 per calendar day since December 30, 2019. As of March 10, 2023, liquidated damages totaled \$1,162,000.00 (1162 days multiplied by 1000).

The PVWC has no realistic chance of achieving the 7 events before the current deadline. Unless the extension request is granted by the NJDCA and NJDEP, the PVWC would be without financing to pay for the contract balance and settlement of claims with SHC. The contract balance including whatever retainage must be paid to SHC is likely to be somewhere between \$1 and \$2 million. The amount of SHC's anticipated delay damages claim is unknown at this time.