

RESOLUTION NO. 23-071

RESOLUTION OF PASSAIC VALLEY WATER COMMISSION

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH NJDOT FOR RT 287, RT 202 TO RAMAPO RIVER, MONTVILLE TOWNSHIP, KINNELON BOROUGH, PEQUANNOCK TOWNSHIP, RIVERDALE BOROUGH IN MORRIS COUNTY; BLOOMINGDALE BOROUGH, POMPTON LAKES BOROUGH, WANAQUE BOROUGH IN PASSAIC COUNTY; AND OAKLAND BOROUGH IN BERGEN COUNTY

**UECA-16-RT 287, RT 202 TO RAMAPO RIVER-143590
UPC CODE: 143590**

DATE OF ADOPTION: MAY 24, 2023

Introduced by Commissioner: **JOSEPH KOLODZIEJ**

Seconded by Commissioner: **JEFF LEVINE**

WHEREAS, the Commissioner of Transportation, acting for and in the name of the State of New Jersey (the "State") is planning to undertake the design and construction of "Rt. 287, Rt. 202 to Ramapo River" in Montville Township, Kinnelon Borough, Pequannock Township, Riverdale Borough, Morris County; Bloomingdale Borough, Pompton Lakes Borough, Wanaque Borough, Passaic County; and Oakland Borough in Bergen County New Jersey (the "Project"), and

WHEREAS, the Passaic Valley Water Commission (the "PVWC" and/or "Utility") owns and operates an existing water system in the area of the Project; and

WHEREAS, the Project may require the construction of new facilities, and/or protection of existing facilities, and/or relocation and/or adjustment of facilities that are owned and operated by PVWC; and

WHEREAS, the State will, at its sole cost and expense, contract for and cause to be constructed, all items in the NJDOT's contract plans and specifications and shall be described in a future NJDOT Utility Owner Design Authorization Checklist and approved by the Passaic Valley Water Commission (PVWC) for the Project related to facilities that are owned and operated by PVWC if required, and which shall supersede Recitals 15 and 16 of the Utility Engineering and Construction Agreement as stated in the Buy America Commitment Letter; and

WHEREAS, the State will authorize and reimburse PVWC for its actual costs incurred for verification, design, review, approval and inspection of the existing facilities owned and operated by PVWC; and

WHEREAS, PVWC is desirous of entering into an Agreement allowing for the protection, relocation or adjustment of its water system in the Project area and the reimbursement by the State for the expenses incurred by PVWC in connection with such protection, relocation or adjustment; and

WHEREAS, a copy of the Director of Engineering's memorandum dated May 17, 2023 is attached hereto and made a part hereof as **Exhibit A**; and

WHEREAS, the State's correspondence dated June 15, 2022, the Vendor Identification form, the Buy America Commitment Letter, the Utility Engineering and Construction Agreement (Agreement), the Utility Engineering and Construction Agreement Amendment (Amendment) issued by the State is attached hereto and made a part hereof as **Exhibit B**; and

WHEREAS, within the Utility Agreement, the State has expressly acknowledged that PVWC, defined as the Utility thereon, will be afforded the benefit of protections of applicable laws and regulations;

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

1. PVWC and the State have agreed to the terms in the attached Utility Agreement and Amendment and the Utility Agreement and Amendment is hereby authorized and approved.
2. That the appropriate officers and employees of PVWC are hereby authorized and directed to execute the Utility Agreement and implement the terms and conditions of said Utility Agreement in accordance with this Resolution and the submissions provided in connection therewith, all as set forth hereinabove.

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 RENSALIER, R.	___	___	___	<u>X</u>
FRIEND, G.	<u>X</u>	___	___	___

Adopted at a meeting of Passaic Valley Water Commission.



President
GERALD FRIEND

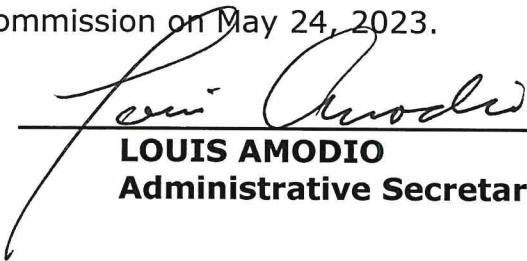


Secretary
RUBY N. COTTON

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 May 24, 2023.



LOUIS AMODIO
Administrative Secretary

EXHIBIT A

PASSAIC VALLEY WATER COMMISSION

INTER-OFFICE MEMORANDUM

Date: May17, 2023

To: J. Mueller

From: P. Porcaro

cc: Y. Brisman

Re: Execution of an Agreement with NJDOT for Rt 287, Rt 202 to Ramapo River, Montville Township, Kinnelon Borough, Pequannock Township, Riverdale Borough in Morris County; Bloomingdale Borough, Pompton Lakes Borough, Wanaque Borough in Passaic County; and Oakland Borough in Bergen County
UECA-16-Rt 287, Rt 202 to Ramapo River 13590
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The New Jersey Department of Transportation ("NJDOT") is planning to undertake the design and construction of (the "Project").

This NJDOT Project consists of a concrete pavement repair project on the Rt. 287 mainline from Milepost 47.10 in Montville Township, Morris County to Milepost 58.40 in the Borough of Oakland, Bergen County. The project work will also consist of overlaying Rt. 287 with an asphalt riding surface, upgrading the guiderail on the Rt. 287 mainline and ramps, and replacing the traffic signals at the ends of the Rt. 287 entrance/exit ramps. There are several PVWC water mains in the area that may be affected by the Project.

The Project will require evaluating the construction of new, and/or protection, and/or relocation and/or adjustment of facilities that are owned and operated by PVWC. The NJDOT will, at its sole cost and expense, contract for any design work that may be necessary for the Project.

The NJDOT will incorporate PVWC's water main requirements into the NJDOT contract documents if necessary. Any costs that PVWC incurs for verification, design, review, approval and inspection of the existing facilities owned and operated by PVWC will be reimbursed by the NJDOT.

Attached is a copy of the referenced Utility Agreement which has been reviewed by the Engineering Department from a technical engineering perspective and found to be acceptable.

It is recommended that, subject to review and approval by the Law Department, that the Utility Agreement be submitted for approval at an upcoming Commission meeting.

EXHIBIT B

Rt. 287, Rt. 202 to Ramapo River
Montville Township, Kinnelon Borough, Pequannock Township,
Riverdale Borough, Bloomingdale Borough, Pompton Lakes
Borough, Wanaque Borough, and Oakland Borough
Morris, Passaic, and Bergen Counties
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UPC Code: 143590
Contract ID No.: 22-16031

THIS AGREEMENT made this _____ day of _____, _____,
between the COMMISSIONER OF TRANSPORTATION, acting for and in the name of the STATE
OF NEW JERSEY, hereinafter called the "State", and the Passaic Valley Water Commission,
hereinafter called the "Utility".

WHEREAS, State is about to undertake the design and construction of Rt. 287, Rt. 202 to Ramapo River located in Montville Township, Kinnelon Borough, Pequannock Township, Riverdale Borough in Morris County; Bloomingdale Borough, Pompton Lakes Borough, Wanaque Borough in Passaic County; and Oakland Borough in Bergen County, hereinafter called the "Project"; and

WHEREAS, the Project may require the protection, relocation and/or adjustment of facilities of the existing water system which is owned and operated by the Utility; and

WHEREAS, Utility's legal right to occupy public right-of-way, subject to the conditions imposed by the State, is in no way mitigated by this Agreement; and

WHEREAS, the State is obligated, as per N.J.S.A. 27:7-44.9, to bear the cost of relocating public utility and cable television facilities, to accommodate highway construction and improvement projects; and

WHEREAS, the provisions of the State's Accommodation of Utilities within Highway Right-of-Way N.J.A.C. 16:25 and Code of Federal Regulations, 23 C.F.R. 645, Subpart B are applicable.

NOW THEREFORE, State and Utility, for the mutual benefits to be obtained, agree as follows:

- (1) The State and Utility shall cooperate in developing plans and cost estimates for their respective work necessitated by the Project.
- (2) The Utility shall designate a responsible representative to coordinate its effort with those of the State.
- (3) The State will, at its sole cost and expense, contract for and cause to be constructed, all items indicated in the State's contract plans and specifications for the Project.
- (4) The State will authorize and reimburse the Utility for its actual costs for design, protection, relocation or adjustment of its existing facilities necessary to accomplish the Project.
- (5) The Utility's preliminary engineering design costs for correspondence, meetings and exchanges of engineering information are eligible for reimbursement and the State will accept billing of these costs after this Agreement is fully executed and issued.
- (6) The Utility shall disclose and verify its existing facilities at no cost to State within the Project limits identifying the facility type, size and operating potentials.
- (7) The State will indicate the existing and proposed utility facilities in State's contract documents for the Project.
- (8) When the State proceeds to develop the Project plans, the State and Utility shall jointly identify potential conflicts between the Utility's facilities and the Project, and shall jointly develop a scheme for the protection, relocation, rearrangement and/or betterment of facilities in accordance with N.J.A.C. 16:25 Utility Accommodation to accomplish the Project.
- (9) Subsequent to the development of the above scheme with the approval of the State and concurrence of the Utility, the State will issue a "Utility Owner Design Authorization (Check List)" describing the utility work and authorizing the Utility to proceed with the Utility's final design effort including plans, estimates, and schedules necessary to protect, relocate, and/or

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rearrange facilities in concert with the Project, and submit them to the State's Project Designer for incorporation into the State's Project contract documents.

- (10) After receipt of the Utility's plans, estimates and schedules, the State will develop a "Utility Agreement Modification", which may include a Utility Agreement Plan, schedules, and funding ceilings to accomplish the utility work in the Project by the Utility and/or its contractor to be reimbursed by the State.
- (11) The State in the person of the Executive Regional Manager Team *D* (NJDOT), will issue a Utility Agreement Modification for anticipated work authorizing Utility Owner construction when the Project is approved for construction.
- (12) The purpose of this Agreement is to cover all the required utility facility protection, relocation, and rearrangement work necessitated by the Project; however, it is agreed that the State in the person of the Executive Regional Manager Team *D* (NJDOT), will issue modifications to this Agreement to cover unanticipated work, resulting from Project activities and/or field conditions.
- (13) State will supply the Utility with a copy of the contract plans and specifications when the Project is advertised.
- (14) The State will request, by certified mail, the Utility to submit final invoices for costs incurred by the Utility upon; (a) completion of design; (b) completion of the utility work; or (c) cancellation of the Project. All such invoices shall be submitted to the State within sixty (60) days of this request. The State may not accept invoices for payment submitted after the sixty (60) day period.
- (15) All matters pertaining to subcontracted work, billing, estimates, survey control, extra work items and inspection responsibility shall be in accordance with the Memorandum Of Record dated January 10, 2013, entitled: "Procedures Governing Estimation of Costs, Requirements During Construction and Billing the New Jersey Department of Transportation for Public Utility Work", and in accordance with the Federal Regulations 23 C.F.R. 645, Subpart A and with it being understood that where the State's Regulations are in conflict with the Federal Regulations, the Federal Regulations shall govern. Billing shall be based on accounting methods used by the Utility in conformity with the system of accounts adopted and prescribed by the Board of Public Utilities of the State of New Jersey. The matter of "Credit for Expired Service Life" has been considered for all items and where allowances apply, same are hereinafter specified in description of items and the cost summary.
- (16) The Utility will comply with the Buy America Federal Regulation requirements U.S.C. 313 and 23 CFR 635.410, for all steel and iron materials furnished by the Utility and its Subcontractors for permanent incorporation in this Project. Under this requirement, all manufacturing processes for steel and iron products shall occur in the United States including all melting, rolling, extruding, machining, bending, grinding, drilling and coating. The Utility Company shall submit a Buy America Commitment letter at the time of execution of this Agreement affirmatively stating that the Utility is committed to complying with all the requirements of the Buy America Federal Regulations, and that the Utility will comply with its approved Buy America Assurance Plan. The Utility's Buy America Assurance Plan shall indicate how the Utility will ensure that only materials that comply with the Federal Buy America requirements will be used for permanent incorporation into this Project. This will include how the Utility will maintain the records of certification from suppliers, fabricators and manufacturers verifying compliance with Buy America Federal Regulations. The State reserves the right to audit such records at the completion of the Project. The lack of these documents will be justification for rejection of the steel and/or iron product thus resulting in nonpayment for all work performed by the Utility.
With the Final Construction Invoice submission, the Utility shall submit a "Buy America

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Certification of Compliance” certifying that:

All steel and iron products provided for permanent incorporation in the Project, were made from steel and iron that was melted and manufactured in the United States including the application of coatings which protect or enhance the value of the material.

Or if any material does not comply with these requirements, the Utility will indicate what material does not comply. The State may require the Utility to remove and replace material that does not comply with the Buy America requirements, at no expense to the Department and may deny the Utility reimbursement for all the relocation costs incurred by the Utility.

- (17) The Utility shall perform the work, specified herein, with its own forces wherever possible and only have that portion of the work performed by a consultant or contractor that the Utility is not adequately staffed or equipped to perform with its own forces. When the Utility is unable to perform the work with its own forces and intends to engage a contractor, the Utility must obtain the State’s approval of the contractor prior to its commencing any of the required work.
- (18) The Utility shall comply with the provisions of State and Federal “Equal Employment Opportunity For Procurement and Service Contracts”; “Equal Employment Opportunity For Construction Contracts” and “Title II of the Americans with Disabilities Act of 1990” and when soliciting work from a consultant or contractor performed under this Agreement shall include these provisions, as well as notifying all contractors or subcontractors that the prevailing wage scale must be paid to all workmen.
- (19) The intention of this Agreement is that facilities which are removed, relocated, or disrupted will be replaced in such a manner that shall result in services being restored to the status and degree of use as existed prior to said changes.
- (20) The design of utility facilities intended to be constructed by the State for the Utility shall be approved by the Utility before the State includes such facilities in the State’s contract documents before the Project is advertised.
- (21) In no case will the State pay for betterment of facilities unless specifically set forth in this Agreement, or subsequent Utility Agreement Modifications thereto nor will the State pay any costs for work performed for the sole benefit or convenience of the Utility, the State’s contractor, or the Utility’s contractor.
- (22) Utility facilities constructed under the terms of this Agreement shall become the sole property of the Utility and the Utility shall be solely responsible for their operation, repair, and maintenance.
- (23) In performing the work required by this Agreement, the Utility shall not be liable to the State’s contractor or its subcontractors for any delay costs arising from changes to the Utility Agreement Plan caused by the State’s contractor, and liquidated damages incurred by the State’s contractor caused by the failure of the Utility to complete the utility work in accordance with the Utility Agreement Plan and Schedule if such failure is proximately caused by fire, flood, earthquake, extreme weather or other acts of God, emergency safety-related circumstances that require the diversion of workers, regulatory requirements implemented after the direction to proceed with the relocation work has been issued by the State, acts of war, terrorism, riots, civil disorder, strikes or other labor disputes beyond the control of the utility, court order, or by reason of the negligent failure of any State contractor, its subcontractors, or any other utility to perform its contract.
- (24) The Utility shall obtain such "permits" from parties other than the Department of Transportation, as may be necessary for the work authorized herein, and this Agreement in no

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way relieves the Utility from this responsibility. However, for any work within the highway right-of-way where environmental permits are required, the Department of Transportation will include within its applications for such environmental permits, permission to progress the required utility relocation work. It is further understood that should the Utility desire to install additional facilities, at a future date within the highway right-of-way, the Utility shall obtain the appropriate Utility Permit from the authority having jurisdiction over the highway. This Agreement is the Utility Permit for the work authorized herein.

- (25) The Utility shall defend, indemnify, protect and save harmless the State and its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of, any act, error, or omission of the Utility, its agents, servants, and employees in the performance of the work covered by this Agreement.
- (26) The State has estimated the Utility's engineering costs for the Project and will adjust these costs to reflect the actual costs incurred by the Utility by issuing the appropriate Utility Agreement Modification.
- (27) The Utility's engineering costs incurred for the Project are eligible for reimbursement as of June 9, 2022 and are estimated to be \$7,000.00.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the date and year first written above.

CERTIFICATION

I hereby certify that I am an authorized representative of the Corporation and have all necessary authority to execute this Agreement and to bind the Corporation to all obligations arising from this Agreement. I fully understand that the Department of Transportation will rely upon this certification in accepting my execution of this Agreement for the Corporation.

ATTEST:

PASSAIC VALLEY WATER
COMMISSION

By: _____

Name:
Title:

Name:
Title:

ATTEST:

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION

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Anika James, Secretary
Department of Transportation

By: _____
Paul F. Schneider, Director
Capital Program Support

Date: _____

This aforementioned Agreement has been
reviewed and approved as to form.

Recommended:

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL
OF NEW JERSEY

George Worth
Project Management Specialist 3, Team D

By: _____
Nonee Lee Wagner
Deputy Attorney General

Date: _____

Date: _____

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DUNS No. for Utility: 06-427-9839

THIS AMENDMENT AGREEMENT made this _____ day of _____, between **COMMISSIONER of TRANSPORTATION**, acting for and in the name of the **STATE OF NEW JERSEY**, hereinafter called the "State", and the Passaic Valley Water Commission hereinafter called the "Utility".

WHEREAS, the State and Utility have already agreed upon but not fully executed a Utility Agreement before July 1, 2017; and

WHEREAS, the State has determined that federal financial assistance or grants have been or will be expended in the design and construction of this Project, and;

WHEREAS, as of July 1, 2017, 2 C.F.R. 200 and 2 C.F.R. 200, Appendix II are mandated to be part of any procurement based on federal financial assistance; and

WHEREAS, 2 C.F.R. 200 requires other federal regulations to be followed and adhered to in construction projects using federal financial assistance; and

WHEREAS, before entering into additions phases of the Utility's work, an amendment to the original agreement must be executed;

NOW THEREFORE, State and Utility, for the mutual benefits to be obtained agree as follows:

GENERAL CONDITIONS

- (1) The agreed upon but unexecuted agreement before July 1, 2017 is being executed simultaneous with this Amendment.
- (2) The previous Agreement is superceded to the extent that it conflicts with the Amendment, all non-conflicting provisions shall remain in full force and effect.

AMENDMENTS

- (3) This paragraph amends UECA NORM paragraph 10.

After receipt of the Utility's plans, estimates, and schedules, the State will develop a "Utility Agreement Modification". The Utility Agreement Modification, may

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include a Utility Agreement Plan, but it will set forth in detail the proposed Scope of Work to be performed by the Utility, the anticipated schedules, estimates, project duration and benchmarks, and funding ceilings to accomplish the utility work in the Project by the Utility and/or its contractor to be reimbursed by the State. Separate Utility Agreement Modifications can be performed for the design work and the construction work if a Utility is contracting with firms outside of the Utility to consult with the State in the Preliminary Design process. If the construction is to be performed by the State's Contractor, the Utility Modification will indicate within the Scope of Work any duties of inspection or verification being retained by the Utility.

- (4) This paragraph amends UECA NORM paragraph 14.

State will request, by certified mail, the Utility to submit final invoices for costs incurred by the Utility upon: (a) completion of design; (b) completion of the utility work; or (c) cancellation of the Project. Final construction invoice shall be submitted along with the Certificate of Compliance (DC17U). (Exhibit 1). All such invoices shall be submitted to the State monthly and the State shall not accept invoices for payment submitted after a sixty (60) day period. In no event will the State reimburse the Utility for costs not included in invoices submitted to the State after the sixty (60) days period

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following notice. In compliance with 2 C.F.R. 200.309,
the Utility shall not charge to this Agreement costs
incurred after the period of performance of the project.

- (5) This paragraph amends UECA NORM paragraph 15. All matters
pertaining to subcontracted work, billing, estimates,
survey control, extra work items, and inspection
responsibility shall be in accordance with the Memorandum
of Record dated January 10, 2013, entitled "Procedures
Governing Estimation of Costs, Requirements During
Construction and Billing the New Jersey Department of
Transportation for Public Utility Work", and in accordance
with the federal regulations at 23 C.F.R. 645 Subpart A
and 2 C.F.R. 200 Subpart E and with it being understood
that where the State's Regulations are in conflict with
the Federal Regulations, the Federal Regulations shall
govern. Disallowed costs are those charges determined to
not be allowed in accordance with the applicable Federal
cost principles or other conditions contained in this
agreement. The matter of "Credit for Expired Service Life"
has been considered for all items and where allowances
apply, same are hereinafter specified in description of
items and the cost summary.

- (6) This paragraph also amends UECA NORM paragraph 15.

The State, FHWA, or their agents, shall be entitled to
perform an audit at the following times: during the
performance of the work or during a period of up to three

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years after project close out. All accounts and records shall be kept in accordance with accounting system that meets the requirements of 2 C.F.R. 200.301-200.303 and 2 C.F.R. 200 Subpart F and will facilitate and effective audit in accordance with the Single Audit Act of 1984, as amended (31 U.S.C. §§ 7501-7507). All State audit procedures shall be in conformance with State Treasury Circular Letter 04-04-OMB Single Audit Policy for Receipts of Federal Grants, State Grants and State Aid; State Grant Compliance Supplement; and Treasury Circular 07-07-OMB; and New Jersey Treasury Circular OMB-15-08-OMB "Single Audit Policy for Subrecipients of Federal Grants, State Grants, and State Aid."

- (7) This paragraph also amends UECA NORM paragraph 15.

The Utility acknowledges that changes in payment due to the Utility resulting from audits performed by the State shall be made as follows:

A. In the event of overpayment by the State, the Utility shall refund the amount of such overpayment within thirty days of the request by the State. In the event the Utility fails to comply with said request, the State is hereby authorized to deduct such overpayment from other monies due the Utility under the terms of this Agreement or any other agreement between the State and the Utility. Furthermore, the Utility expressly understands and agrees that the provisions of this

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section shall in no way be construed to relieve the Utility from any liability, or preclude the State from taking any other actions as are available to it under any other provisions of this Agreement or otherwise at law. The terms of this section shall survive the expiration or termination of the Agreement.

B. In the event of underpayment by the State, the State shall pay sufficient funds to the Utility to correct the underpayment as soon as is practicable.

C. The Utility shall include in the Final Invoice the following release clause:

"In consideration of the requested payment of this Final Invoice, the (Utility) hereby releases the State of New Jersey and the New Jersey Department of Transportation, their agents, officers and employees, from all claims and liabilities arising from work done or services performed under this Agreement."

- (8) This paragraph amends UECA NORM paragraph 15. Payment to the Utility for a Final Invoice does not waive either the right of the State to establish adjustments and to collect overpayments that are disclosed by audits performed subsequent to payment of the Final Invoice, or the right

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of the Utility to underpayments based upon adjustments disclosed by said audits.

- (9) This paragraph amends UECA NORM paragraph 15. Closeout Reports. The Utility shall submit a Project Closeout report no later than 90 days after the period of performance end date. The report will be in a form satisfactory to the State and shall, at a minimum, comply with the requirements of 2 C.F.R. 200.343 and allow the State to comply as well.
- (10) NEW PARAGRAPH. The State may, in its sole discretion terminate this agreement for cause or for convenience pursuant to the Standard Specification or if the State, USDOT or FHWA determined that termination of this Agreement is in the public interest.

PROCUREMENT REQUIREMENTS FOR UTILITY AND ITS SUBCONTRACTS

- (11) In order to be a recipient of federal financial assistance, the State must comply with all of the federal requirements, as applicable, to the type of work performed by the State, and in turn the Utility performing work on behalf of the State. This list is attached at Exhibit 2.
- (12) If the Utility is assisting in the preparation of plans and specifications during the engineering phases of the Project, the Utility is subject to these provisions in obtaining a subconsultant to perform the work.
- (13) If the Utility will only provide inspections, and will not subcontract for that work, the Utility is responsible for

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the compliance with all applicable federal, state and local laws.

- (14) If the Utility is obtaining engineering or design services as a consultant, Utility will abide by the Brooks Act (40 U.S.C. §§ 1101-1104) as implemented in 23 U.S.C. 112(b)(2) or equivalent qualifications based requirements as approved by State or FHWA.
- (15) If the Utility is not performing the construction work under this Agreement, the State is obligated to comply with all applicable federal procurement procedures in obtaining its contract to perform the work contained in this Agreement.
- (16) If the Utility is performing engineering or construction work with the aid of subcontractors or subconsultants under this Agreement with estimates and reimbursements under the appropriate Utility Agreement Modification, Utility shall include in any solicitation for bids, Requests for Proposals of work, or materials as negotiated:
- "The Recipient (State), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated

Rt. 287, Rt. 202 to Ramapo River
Montville Township, Kinnelon Borough, Pequannock Township,
Riverdale Borough, Morris County; Bloomingdale Borough, Pompton
Lakes Borough, Wanaque Borough, Passaic County;
and Oakland Borough, Bergen County
Passaic Valley Water Commission
UECA-16-Rt 287, Rt 202 to Ramapo River-143590
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against on the grounds of race, color, or national origin
in consideration for an award."

- (17) Utility will comply with the parameters of 49 C.F.R. Part 26, Disadvantaged Business Enterprises Program, in its procurement of subcontractors and subconsultants to make all applicable good faith efforts. Requirements are set forth at Exhibit 3.
- (18) If after the scope of work is determined and a Disadvantaged Business Enterprises goal ("DBE goal") is established by the State's DBE unit, the individual DBE goal shall be listed in the Utility Agreement Modification relating to the engineering or construction work for which the goal is being established. If it is determined that the DBE goal is 0%, the DBE goal shall still be listed in the Utility Agreement Modification.
- (19) State, as a requirement of receiving federal financial assistance, is obligated to require Utility to abide by and include in any contracts by the Utility with its subcontractors and subconsultants the attached Exhibit 4 and Exhibit 5.
- (20) Bonding and insurance requirements shall be set forth in the Utility Modification Agreement based on the type of Project, estimated costs, whether work is to be constructed by the Utility, and whether or not the Utility is self-insured.

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(21) After July 1, 2017, State became responsible to include every engineering and construction contract and its grants the requirements of 2 C.F.R. 200 and 2 C.F.R. 200, Appendix II. Utility shall be responsible for the compliance with these federal regulatory provisions and comply by following:

- A. Federal Mandatory Equal Opportunity Language on Federal Aid Project, Authority Subject to 41 C.F.R. Part 200 and 2 C.F.R. Part 200 Appendix II. (Exhibit 6).
- B. Federal Form 1273, Prevailing Wage (Exhibit 7) and Supplementary State Provisions at Exhibit 8.
- C. If any federal funds subject to 37 C.F.R. §401.2 are used to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement" the Utility must comply with the requirements of 37 C.F.R. part 401 "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by the federal agency or State.
- D. In addition to the Debarment and Suspension requirements of the System for Award Management and the New Jersey List of Debarred Contractors as explained in Form 1273, Utility shall follow Exhibit 8.
- E. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and requirements of submission of documents to State at Exhibit 9.
- F. If materials used in performance of this contract are listed on the Procurement of Recovered Materials at 2 C.F.R. 200.322, Utility shall comply with all requirements therein.

(22) Utility shall also comply with the requirements of the State's receipt of federal financial assistances concerning:

- A. Drug Free Workplace (Exhibit 10)
- B. State of New Jersey Treasury Circular 07-05-OMB, Grant Agreements and Agency Contracts incorporated by reference herein. Any federal statutes or regulations that conflict with this circular shall control.

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C. Department of Transportation Code of Vendor Ethics

- (23) The Utility shall recognize and agree that both the initial provision of funding and the continuation of such funding under the Agreement is expressly dependent upon the availability to the Department of funds appropriated by the State Legislature from State and/or Federal revenue or such other funding sources as may be applicable. A failure of the Department to make any payment under this Agreement or to observe and perform any condition on its part to be performed under the Agreement as a result of the failure of the Legislature to appropriate funds shall not in any manner constitute a breach of the Agreement by the Department or in event of default under the Agreement and the Department shall not be held liable for any breach of the Agreement because of the absence of available funding appropriations. In addition, future funding shall not be anticipated from the Department beyond the duration of the award period set forth in the Agreement/ Utility Modification Agreement in no event be construed as a commitment by the Department to expend funds beyond the termination date/Project completion date set in the Agreement/Utility Modification Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
duly executed the day and year first written above.

CERTIFICATION

I hereby certify that I am an authorized representative of the Utility and have all
necessary authority to execute this Agreement and to bind the Utility to all
obligations arising from this Agreement. I fully understand that the Department of
Transportation will rely upon this certification in accepting my execution of this
Agreement for the Utility.

ATTEST: PASSAIC VALLEY WATER COMMISSION

BY: _____
Name: _____
Title: _____

BY: _____
Name: _____
Title: _____

ATTEST: STATE OF NEW JERSEY
DEPARTMENT OF
TRANSPORTATION

By: _____
Anika James
Department of Transportation
DATE: _____

BY: _____
Paul F. Schneider, Director
Capital Program Support

This aforementioned Agreement has
been reviewed and APPROVED AS TO FORM:

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL
OF NEW JERSEY

Recommended:

George Worth
Project Management Specialist 3, Team D
DATE: _____

By: _____
Nonee Lee Wagner
Deputy Attorney General
DATE: _____