

RESOLUTION # 23-126

RESOLUTION OF PASSAIC VALLEY WATER COMMISSION

**RESOLUTION TO EXTEND CONTRACT NO. 19-B-24 (REBID)
"LIQUID RESIDUAL HAULING SERVICES"**

DATE OF ADOPTION: SEPTEMBER 27, 2023

Introduced by Commissioner: **RIGO SANCHEZ**

Seconded by Commissioner: **CARMEN DE PADUA**

WHEREAS, under Contract 19-B-34 "Liquid Residuals Hauling – RE-BID" (the "Contract"), Russell Reid Waste Hauling and Disposal Service Co., Inc. of Keasbey, New Jersey (the "Contractor") provided, and continues to provide, services under a 3-year contract commencing November 18, 2019, with the Passaic Valley Water Commission ("PVWC") and provides the services consistently, reliably, effectively, and efficiently on an as-needed basis with the Contract, as authorized by Resolution No. 19-110; and

WHEREAS, pursuant to 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, the Board exercised the provision that allows PVWC to extend the contract time up to an additional two (2) years or two one-year extensions, 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 PVWC and Contractor elected to extend the contract for one-year on September 28, 2022, as authorized by Resolution 22-090; and

WHEREAS PVWC and Contractor now seek to extend the contract time by and one (1) additional year, for a total contract duration of not more than five (5) years; 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 1-year period, beginning November 18, 2023, and ending on November 17, 2024; and

WHEREAS, the unit quantities stipulated under the original 3-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 to the unit prices with the total contract amount of \$1,933,200.00; and

WHEREAS, a copy of the Vendor's correspondence (dated August 30, 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 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**.

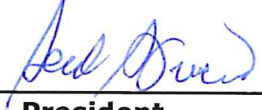
NOW, THEREFORE, BE IT RESOLVED, by Passaic Valley Water Commission, in the County of Passaic, New Jersey:

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 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 September 27, 2023.



LOUIS AMODIO
Administrative Secretary

EXHIBIT A

CONTRACT EXTENSION
WITH
PASSAIC VALLEY WATER COMMISSION
FOR

CONTRACT #19-B-34
LIQUID RESIDUALS HAULING SERVICES

THIS AGREEMENT, made and entered into this _____ day of _____ in the year Two Thousand and _____ by and between Passaic Valley Water Commission, a public body, hereinafter designated as "Commission" and Russell Reid Waste Hauling with its' principal office at Smith Street, in Keasbey, County of Middlesex 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, 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

In the event that the Commission awards the entire Contract to one Bidder, the period of the Contract shall be three hundred and sixty-five (365) consecutive calendar days from the Date of Execution of Contract by 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

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 (36,000,000 gallons at Unit Price of \$0.0537), the Contract Amount for the complete performance of this Contract is:

One Million Nine Hundred Thirty-Three Thousand Two Hundred Dollars and Zero Cents

(\$1,933,200.00) (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.

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

The CONTRACTOR agrees that the OWNER shall be and is hereby authorized to retain from moneys due and payable under this Contract, a sum equal to two percent (2%) of the amount of the Contract items and any Extra Work as guarantee of making any necessary repairs to the work during the Contract period. This is the retainage referred to in General Conditions Article 14.2.

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: _____

Russell Reid Waste Hauling & Disposal Ser. Co

(Contractor)

Attest:

(Witness)

Date: _____

PERFORMANCE BOND
CONTRACT #19-B-34
LIQUID RESIDUALS HAULING SERVICES

Date of Issuance of Bond: _____

Bond No.: _____

Penal Sum of Bond: \$ _____ ("Contract Price")

OBLIGEE: Passaic Valley Water Commission

Agreement: (Contract Name and Title is set forth above)

CONTRACTOR/PRINCIPAL: _____

SURETY: _____

Address of SURETY: _____

In providing the following Performance Bond (hereinafter "Bond"), such Bond shall not contain any conditions to its issuance or any conditions to the obligations of the Surety issuing same, except as expressly provided in this form of Bond.

This Bond is being issued by the PRINCIPAL and the SURETY to the OBLIGEE in accordance with the Contract. For purposes of this Bond, the Contract includes all of the Bidding Documents which preceded the award of same, the PRINCIPAL's Bid Proposal and other submissions in connection therewith, as well as any changes made, or to be made, to any of the referenced documents on, before or after the full execution of this Bond, and the Contract executed between the PRINCIPAL and OBLIGEE (hereinafter collectively referred to as the "Contract"). The Contract is incorporated into this Bond as though set forth in full herein.

KNOW ALL BY THESE PRESENTS, that we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named OBLIGEE, in the just and full sum of the Total Contract Price ("Penal Sum"), and for the payment of the Penal Sum to the OBLIGEE, the said PRINCIPAL and SURETY bind themselves, their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

NOW THEREFORE, the condition of this obligation is such that, if the PRINCIPAL shall faithfully perform all the undertakings, covenants, terms, conditions, and obligations under the Contract, then this Bond shall be null and void, otherwise this Bond shall remain in full force and effect and the PRINCIPAL and SURETY shall remain bound to the OBLIGEE in accordance with the terms of this Bond and the Contract.

Whenever the PRINCIPAL shall be, or is declared to be, in default under the Contract by the OBLIGEE, the SURETY shall promptly take action to either: (1) remedy the default, (2) take over, perform, and complete the PRINCIPAL's obligations under the Contract, or (3) make payment in the full amount of the Penal Sum to the OBLIGEE. For purposes of this provision, the time period that would constitute "promptly take action" shall be whatever is reasonable under the circumstances, but in no event shall the Surety exceed three (3) business days to begin good faith efforts to investigate the OBLIGEE's claim under the Bond, and thereafter, any remedial or completion work to be performed by the SURETY, either by itself, or by assisting the PRINCIPAL, or through completion contractors or consultants, shall be done promptly and as expeditiously as needed to support the then-existing demands placed upon the OBLIGEE.

If the OBLIGEE has terminated the services of the PRINCIPAL, the SURETY cannot use the PRINCIPAL in any capacity (e.g., subcontractor, completing contractor, or consultant) or otherwise assist the PRINCIPAL with performing work pursuant to this Bond without the OBLIGEE's expressed written consent, which consent can be withheld for any reason whatsoever. The SURETY must ensure that any contractors or consultants that it wishes to use in connection herewith satisfy all qualifications, both contractual and legal, to perform any part of the Contract.

The SURETY may arrange for the completion of the PRINCIPAL's obligations under the Contract by a contractor acceptable to the OBLIGEE.

No right or action shall accrue on this bond to or for the use of any person or corporation other than the OBLIGEE named herein or their heirs, executors, administrators, or successors of the OBLIGEE. Any proceeding, legal or equitable, under this Bond must be instituted before the expiration of two (2) years from the date that either: (a) the PRINCIPAL ceased performing all of the undertakings, covenants, terms, conditions, and obligations covered by this Bond; (b) the termination of the PRINCIPAL's services by the OBLIGEE; or (c) the date on which final payment to the PRINCIPAL came due, whichever of these events occurs last.

Neither the PRINCIPAL nor SURETY may revoke or otherwise limit the OBLIGEE's rights under this Bond without the OBLIGEE'S expressed written consent. The SURETY promises to the OBLIGEE that the OBLIGEE may rely upon the stipulations and agreements contained in this Bond even in the event that the SURETY has waived, or otherwise not received compensation for, agreeing to issue this Bond.

The PRINCIPAL and the SURETY shall not be liable to the OBLIGEE in the aggregate in excess of the Penal Sum. Any payment made by the SURETY in good faith under this bond shall reduce the Penal Sum by a like amount.

The SURETY hereby stipulates and agrees that its obligations under this Bond shall in no way be affected, relieved, limited, waived, or diminished by reason of any change to the terms and conditions of the Contract occurring on, before or after this Bond is executed, including but not limited to: (i) changes which supplement, add to, or diminish in any way the PRINCIPAL's role, scope of work, or obligations to the OBLIGEE, (ii) changes which extend or reduce the time for performance including the term of the Contract, and/or (iii) changes which increase or decrease the PRINCIPAL's compensation. The SURETY waives the common law rights of presentment, notice of dishonor, and the right to exhaustion of remedies against the PRINCIPAL.

The date on this Bond may pre-date the Contract without voiding this Bond. The PRINCIPAL may not assign any of its rights or duties under this Bond except to the SURETY. The SURETY shall not assign any of its rights or duties under this Bond, but may delegate the administration of the SURETY's duties subject to the OBLIGEE's consent.

The SURETY represents that it is licensed to engage in the business of issuing contract surety bonds in the State of New Jersey and that it meets the qualifications necessary to issue bonds pursuant to N.J.S.A. § 2A:44-143. All bonds executed by an agent of the SURETY shall be accompanied by a certified copy of the SURETY's grant of authority to act for the SURETY at the time of executing this Bond and the appropriate "Disclosure Statement and Certification" required by N.J.S.A. § 2A:44-143. The OBLIGEE shall have the right to reject any Bond that is not executed in strict conformance hereto.

As a precondition to expiration of this bond and notwithstanding any other terms or conditions hereof, the surety shall supply the Commission with sixty (60) days written notice that the bond will expire. Upon receipt of this written notice and from said date, the bond will remain in full force and effect until the end of the sixty (60) day period even if beyond the date set forth in this bond.

IN WITNESS WHEREOF, the PRINCIPAL and SURETY bounded together have executed this Performance Bond on this _____ day of _____, _____ and affixed their respective corporate seals hereto, and each of the undersigned signatories represents that he/she is duly authorized by the governing body or his/her Parties to sign for them.

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

WITNESSED IN THE PRESENCE OF: PRINCIPAL

Signature of Witness Signature of Person Signing for PRINCIPAL

Print Name of Witness Title of Person Signing for PRINCIPAL

Dated: _____ [CORPORATE SEAL]

WITNESSED IN THE PRESENCE OF: SURETY

Signature of Witness Signature of Person Signing for SURETY

Print Name of Witness Title of Person Signing for SURETY

Dated: _____ [CORPORATE SEAL]

**** Certification is on Following Page ****

Certification for Surety and/or Surety's Agent

I, _____, do hereby certify that I am the duly authorized attorney-in-fact for the SURETY identified in this Performance Bond to the Passaic Valley Water Commission; and that I have attached hereto a certified copy of the SURETY's grant of authority to permit me to execute and bind the SURETY to this Bond. I hereby grant the OBLIGEE the unconditional permission to contact the SURETY at any time hereafter should the OBLIGEE wish to verify the scope of my agency authority.

Attorney-in-Fact

State of _____ :
County of _____ : ss:
_____ :

I, the undersigned notary public in and for the above State and County, do hereby

CERTIFY that on _____, 20____,

_____ personally came before me and testified that he/she is the duly authorized attorney-in-fact for the Surety identified in this Performance Bond, and that he/she has acknowledged signing and delivering this instrument by his/her own free will and voluntary act as the duly authorized representative for the Surety named herein, for the uses and purposes described herein.

Notary Public

Commission Expiration Date:

Notice to the SURETY shall be by certified or registered and regular mail and sent to:

(Full Name of Surety)

(Address of Surety)

EXHIBIT B

Bresemann, Lisa

From: Jordan M. Serenkin <Jordan@unitedsiteservices.com>
Sent: Wednesday, August 30, 2023 11:51 AM
To: Bresemann, Lisa
Cc: Howard Steinman
Subject: RE: Liquids Sludge Hauling Bid for 2023 - 2024 (Passaic Valley Water Commission)

Hi Lisa –

Sounds good...

We would like to renew our contract the period of September 25th, 2023 through September 25th, 2024 at the \$0.0537 per gallon rate...

Please let me know how to proceed when you have a chance.

As always, thank you for your continued business.

Sincerely,



Jordan Serenkin
Director of Special Events
jordan@unitedsiteservices.com
732.673.0666

Porta potties don't have to be gross! Learn more at CleanToilets.com.

From: Bresemann, Lisa <lbresemann@PVWC.com>
Sent: Wednesday, August 30, 2023 11:17 AM
To: Jordan M. Serenkin <Jordan@unitedsiteservices.com>
Subject: RE: Liquids Sludge Hauling Bid for 2023 - 2024 (Passaic Valley Water Commission)

Jordan,

There is a clause in the contract that permits an increase that is in line with the increases that were previously permitted under the contract. In this case, that would be from 0.0517 (the price we are currently paying) to 0.0537.

Regards,

Lisa Bresemann
Purchasing Agent

From: Jordan M. Serenkin <Jordan@unitedsiteservices.com>
Sent: Wednesday, August 30, 2023 9:11 AM
To: Bresemann, Lisa <lbresemann@PVWC.com>
Subject: RE: Liquids Sludge Hauling Bid for 2023 - 2024 (Passaic Valley Water Commission)

Hi Lisa –

Just following up here...

Thanks in advance.

Sincerely,



Jordan Serenkin
Director of Special Events
jordan@unitedsiteservices.com
732.673.0666

Porta potties don't have to be gross! Learn more at CleanToilets.com.

From: Jordan M. Serenkin <Jordan@unitedsiteservices.com>
Sent: Tuesday, August 29, 2023 8:27 AM
To: Bresemann, Lisa <lbresemann@PVWC.com>
Subject: RE: Liquids Sludge Hauling Bid for 2023 - 2024 (Passaic Valley Water Commission)

Hi Lisa –

I hope all is well...

Dave is no longer with the organization.

Are we able to access a CPI increase here 😊?

Please let me know when you have a chance.

As always, thank you for your continued business.

Sincerely,



Jordan Serenkin
Director of Special Events
jordan@unitedsiteservices.com
732.673.0666

Porta potties don't have to be gross! Learn more at CleanToilets.com.

From: Bresemann, Lisa <lbresemann@PVWC.com>
Sent: Friday, August 25, 2023 5:43 PM
To: David G. Kupcho <David.Kupcho@unitedsiteservices.com>
Subject: Liquids Sludge Hauling Bid for 2023 - 2024

Good Afternoon,

My records indicate that our contract expires on September 25, 2023. Last year we renewed the Contract for a period of one year and we are permitted under LPCL to renew for an additional year. Are you interested in renewing your contract at the same rate as Year 3, which is \$0.0517?

I would appreciate it if you could get back to me within a week, if possible. Should you not wish to renew, I will have to go out to bid for a new contract.

I thank you for your kind attention to this matter.

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: **Contract Extension - 19-B-34 (Re-Bid)**
Russell Reid Waste Hauling & Disposal Svcs, Inc.

Amount of Project or Contract: \$1,933,200.00
1. Acct: # 001-1002-421-74-02 Purchases / Sludge Disposal Chemicals

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

Other comments: One Year Extension
Liquid Residuals Hauling Services

Date of Certification: September 27, 2023 Certified: \$ 1,933,200.00

Yitzchak Weiss
Comptroller and Chief Financial Officer

YW:lb
