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**TO:** Board of Acquisition and Contract

**FROM:** Hugh J. Greechan, Jr., P.E.  
Commissioner of Public Works and Transportation

**DATE:** March 17, 2020

**SUBJECT:** Change Order No. 1  
Contract No. 09-514  
Biological Nutrient Removal Facilities  
New Rochelle Wastewater Treatment Plant  
New Rochelle, New York

**Contractor:** Yonkers Contracting Company, Inc.  
**Amount of Change Order No. 1: \$2,100,000.00**

On June 9, 2011, your Honorable Board awarded Contract No. 09-514 for Biological Nutrient Removal Facilities, New Rochelle Wastewater Treatment Plant, New Rochelle, New York to Yonkers Contracting Company, Inc., 969 Midland Avenue, Yonkers, New York 10704 in the amount of \$94,211,500.00, for the period from June 16, 2011 through May 15, 2016 ("Contract"). This Contract includes all necessary labor, material and equipment required to upgrade the plant for nitrogen removal as required by the Order-On-Consent with the New York State Department of Environmental Conservation. The Contract was subsequently executed. On March 31, 2016, your Honorable Board approved a Resolution to amend the June 9, 2011 Resolution budget box end date from May 15, 2016 to December 31, 2017 due to construction issues.

On August 25, 2015 the contractor commenced an action against the County of Westchester, Engineers Consortium LLP, Savin Engineers, P.C., Stearns & Wheler, LLC, Malcolm Pirnie, Inc., Arcadis U.S., Inc., CDM Smith Inc., Black & Veatch New York, LLP, and KJM Construction Management, Inc. to recover damages arising out of two separate public bid contracts entered into with the County: (i) Contract 08-540, Composite Performance Implementation and Expansion at the New Rochelle Wastewater Treatment Plant, and (ii) the Contract ("Litigation").

In order to avoid the necessity and cost of continued litigation, the County of Westchester ("County") and the contractor have agreed that the contractor will be compensated for certain additional work which will be in full and final satisfaction of the contractor's claims against the County.

The parties have agreed that additional work was required during construction which included additional concrete work, additional steel reinforcement and additional equipment, including support cranes due to field modifications, and additional bypass pumping due to unforeseen conditions. Only Change Order work authorized in writing by the County or the County's construction administrator may be paid for by the County. Payment to the contractor will be determined in strict accordance with the provisions of Article 30, "Extra Work: Increased Compensation/Decreased Work: Credit to the Owner" of the General Clauses in the Contract.

The objective of this Change Order is to pay for the work that was needed to reduce the amount of nitrogen in effluent wastewater discharge into Long Island Sound.

This Change Order is in the public's best interest because it ensures that the County's wastewater treatment plant operations are safe and environmentally compliant, thereby enhancing the health and general welfare of County residents.

The Department has tracked the scheduling and accomplishments by the contractor and performed on-site inspections required to ensure the project has been successfully completed.

This additional work was incidental to the original work and has not materially altered the main purpose of the contract so as to constitute a new undertaking. The work was of the same nature as the initial work, was performed in the same general vicinity, was necessary to efficiently complete the project and was unanticipated until work under the Contract began. The term of the Contract is June 16, 2011 to December 31, 2017. An extension of the term through December 31, 2020 is required to cover the work addressed by this Change Order.

Your Honorable Board is advised that the proposed Change Order is necessary in order to properly fund the additional work that has been done.

March 17, 2020

In such a case, the parties shall be returned to their respective statuses as of the date and time immediately prior to execution of the stipulation, and the parties shall proceed in all respects as if the stipulation had not been executed.

It is requested that your Honorable Board take action on the following:

Approval of Change Order No. 1

**Total Amount of Change Order No. 1.....\$2,100,000.00**

This Change Order has not been approved by the Law Department.

Approval is recommended.

HJG/LR

APPROVED BOARD OF ACQUISITION & CONTRACT - 03/19/2020 - USA MIAMI SECRETARY

# RESOLUTION

RE: **CONTRACT NO. 09-514**  
**CONTRACT AMOUNT:** \$ 94,211,500.00  
**CHANGE ORDER NO. 1:** \$ 2,100,000.00  
**NET INCREASE:** \$ 2,100,000.00  
**REVISED CONTRACT AMOUNT:** \$ 96,311,500.00

## CHANGE ORDER NO. 1

Upon communication from the Commissioner of Public Works and Transportation,

**WHEREAS**, Hugh J. Greechan, Jr., P.E., Commissioner, Public Works and Transportation, requests approval of Change Order No. 1 on Contract No. 09-514, between the County of Westchester and Yonkers Contracting Company, Inc., 969 Midland Avenue, Yonkers, New York 10704 for Biological Nutrient Removal Facilities, New Rochelle Wastewater Treatment Plant, New Rochelle, New York; and

**WHEREAS**, it is requested that Contract No. 09-514 be amended to properly fund the additional work that was completed and which was necessary to complete the upgrade the plant for nitrogen removal; and

**WHEREAS**, this matter has been discussed by the Board; now, therefore, be it

**RESOLVED**, that said Change Order No. 1 on Contract No. 09-514 be and the same is hereby approved in the amount of \$2,100,000.00; and be it further

**RESOLVED**, that the completion date of this contract is hereby extended to December 31, 2020; and be it further

**RESOLVED**, that all other terms and conditions of Contract No. 09-514 shall remain in full force and effect; and be it further

**RESOLVED**, that the County Executive or his duly authorized designee is hereby authorized and empowered to execute any and all documents necessary or appropriate to effectuate the purposes hereof.

**Total Amount of Change Order No. 1 ..... \$2,100,000.00**

# RESOLUTION

Contract No. 09-514, Change Order No. 1

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Bond Act No.	Dollars
	322	60	SLI0100C	6210-99	BA #195-2014	\$2,100,000.00

Budget Funding Year(s): 2020 Start Date: June 16, 2011 End Date: December 31, 2020  
 (must match resolution)

Funding Source: Tax Dollars 100% County Contractor Federal I.D. No./  
 Social Security No.: \_\_\_\_\_  
 State Aid \_\_\_\_\_  
\$2,100,000.00 Federal Aid \_\_\_\_\_ Vendor No.: \_\_\_\_\_  
 (must match resolution) Other \_\_\_\_\_ Encumbrance No.: \_\_\_\_\_

APPROVED BOARD OF ACQUISITION & CONTRACTS 03/19/2012 - LISA MRIJAJ, SECRETARY