

**AGREEMENT BETWEEN
PASSAIC VALLEY SEWERAGE COMMISSION
AND
CH2M HILL ENGINEERS, INC.**

PVSC Resolution No. 350-16(R)
PVSC Agreement No. 2661

THIS AGREEMENT is made by and between

PASSAIC VALLEY SEWERAGE COMMISSION

600 Wilson Avenue
Newark, New Jersey 07105
(hereinafter, "PVSC")

and

CH2M HILL ENGINEERS, INC.

1 International Boulevard
10th Floor, Suite 1000
Mahwah, New Jersey 07495-0027
(hereinafter, "Consultant" or "HDR")

(collectively, the "Parties") and shall be deemed binding and effective upon the date that it is signed by both Parties.

WHEREAS, under Resolution No. 80-16, the Passaic Valley Sewerage Commission authorized the issuance of a Request for Qualifications and Request for Proposals ("RFQ/RFP") for the professional Design, Design Services during Construction and Resident Project Representative Services required for the construction of the Stormwater Pump Stations Projects; and

WHEREAS, the construction of the Stormwater Pump Stations is part of PVSC's FEMA Hazard Mitigation Grant Program to reduce the risk of loss of essential functions of the PVSC treatment plant; and

WHEREAS, the Consultant's proposal adequately addresses the critical scope items, outlines a thoughtful approach to the project, identifies appropriate staff with relevant experience in the design and construction of stormwater pumping station, assigns practice levels of efforts, and includes reasonable costs to perform the scope of work outlined in the RFQ/RFP; and

WHEREAS, PVSC approved Consultant's Proposal for this work as is set forth in PVSC Resolution No. 350-16(R), dated December 15, 2016 ("Resolution 350-16(R)") (Exhibit A).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed between the parties as follows:

I. CONSULTANT'S SERVICES

A. Description of Consultant's Services. Consultant shall perform all services, as described below in the Request for Qualifications and Proposals prepared by PVSC dated July 2016, which is annexed hereto and incorporated herein as Exhibit B, and Consultant's complete proposal dated September 1, 2016, which is annexed hereto and incorporated herein as Exhibit C. In the event Consultant's proposal and this Agreement and the Request for Qualification and Proposals are in conflict, the provisions, terms and conditions of this Agreement and Request for Qualifications and Proposal shall govern and bind the parties.

B. Changes in Consultant's Personnel. Consultant shall not make changes in personnel or subconsultants without the prior written permission of PVSC.

C. Consultant's Work Product. At the conclusion of the work performed hereunder, Consultant shall return to PVSC, without further charge or payment, all data, drawings and other documents, including, but not limited to, all underlying calculations, computations, and studies, which documents shall become the property of PVSC. Consultant may retain copies of all work and documents for its records. Consultant does not assume liability for reuse of data, drawings and other documents by PVSC or others for any purpose other than the purpose intended in this Agreement.

ATTACHMENT L- Form of Contract cont.

II. METHOD OF PAYMENT

A. Fees. (AS PER INDIVIDUAL RFP REQUIREMENTS)

B. Method of Payment. (AS PER INDIVIDUAL RFP REQUIREMENTS) PVSC shall make payments within forty (40) days after receipt of each such invoice. Invoices must be received at least twenty-four (24) days prior to the published dates of any PVSC meetings in order for payment to be made within forty (40) days.

C. Disputes. In the event of a disputed or contested billing, PVSC shall withhold only that portion so contested and PVSC shall pay the undisputed portion. No interest shall accrue on any unpaid balance.

III. INSURANCE

Consultant shall procure and maintain, at Consultant's own cost, throughout the duration of the project, from inception through completion, insurance as follows:

- | | | |
|----|--|--|
| a. | Workers' Compensation Insurance in compliance with the laws of the State of New Jersey | \$500,000/\$500,000/\$500,000 |
| | Employers Liability Coverage in the amount of | \$1,000,000 |
| b. | Comprehensive General Liability and Bodily Injury, including death | \$1,000,000 each occurrence |
| | Combined Single Limit | \$1,000,000 each occurrence |
| c. | Comprehensive Automobile Liability, Bodily Injury, Property Damage | \$1,000,000 each occurrence |
| | Combined Single Limit | \$5,000,000 each occurrence |
| d. | Professional Liability | \$5,000,000 per claim and annual aggregate |

PVSC and its Commission, officers, directors, employees, and agents shall be named as additional insureds on the Comprehensive General Liability and Comprehensive Automobile Liability policies. Consultant shall provide evidence of same in the form of certified endorsements specifically naming PVSC and its Commission, officers, directors, employees, and agents as additional insureds. The submission of a Certificate of Insurance will not serve as adequate proof that PVSC and its Commission, officers, directors, employees, and agents have been named as additional insureds.

The Consultant will provide a minimum thirty (30) days' written notice to PVSC prior to any cancelation, material change, or refusal of renewal of Consultant's insurance. In the event of cancellation due to non-payment of premiums, said notice shall be given at least ten (10) days prior to

Combined Single Limit	\$1,000,000 each occurrence
4. Professional Liability	\$1,000,000 per claim and annual aggregate

PVSC and its commissioners, officers, directors, employees, and agents shall be named as additional insureds on the Comprehensive General Liability and Comprehensive Automobile Liability policies before it commences the work to be performed under this Agreement. Consultant shall provide evidence of same in the form of certified endorsements specifically naming PVSC and its commissioners, officers, directors, employees, and agents as additional insureds and certified declaration page(s) for the policies. The Certified Endorsements and Declaration Page(s) shall be attached hereto as Exhibit E. The submission of a Certificate of Insurance will not serve as adequate proof that PVSC and its commissioners, officers, directors, employees, and agents have been named as additional insureds.

The Consultant will provide a minimum thirty (30) days' written notice to PVSC prior to any cancelation, material change, or refusal of renewal of Consultant's insurance. In the event of cancellation due to non-payment of premiums, said notice shall be given at least ten (10) days prior to cancellation. All insurance required pursuant to this section shall remain in full force and effect until final contract payment.

Each insurance policy except professional liability shall provide that neither Consultant nor its insurer shall have any right to subrogation against PVSC. Any and all policies of insurance maintained by Consultant shall be primary and without contribution from any insurance procured, carried, and/or maintained by PVSC.

In the event Consultant is permitted to utilize any subconsultant, Consultant shall require the subconsultant's insurance coverage to be at least equal to the requirements set forth above,

including, without limitation, the provisions regarding the naming of additional insureds and Consultant's insurance being primary. In the alternative, Consultant may insure the activities of its subconsultants under its own policies. Consultant is responsible for and will assume all liabilities for any insurance deficiency or delinquency of a subcontractor or any claim that may result because of the deficiency or delinquency.

IV. INDEMNIFICATION

Consultant shall, at all times, indemnify and keep indemnified PVSC, its employees, agents, successors and assigns and hold and save them harmless from and against any and all liability for damages, loss, costs, charges and expenses of whatever kind or nature, including but not limited to, court costs, reasonable attorney's fees and reasonable expert fees, for all claims for which PVSC, its employees, agents, successors, and assigns shall or may at any time sustain or incur by reason of or in consequence of, any negligence or any wrongful act or omission, whether intentional or unintentional, of Consultant, its agents, employees, successors or assigns, arising out of Consultant's performance under this Agreement, and will pay over, reimburse and make good to PVSC, its employees, agents, successor or assigns, all money, including, but not limited to, court costs and reasonable attorney's fees, which PVSC, its employees, agents, successors or assigns shall pay, or cause to be paid or become liable to pay by reason or in consequence of any negligence or any wrongful act or omission, whether intentional or unintentional, of Consultant, its agents, employees, successors or assigns, arising out of Consultant's performance of this Agreement, or in connection with any litigation, investigation or other matters connected therewith.

The failure of Consultant to obtain, maintain, or pay for any insurance coverage as will insure the provisions of this Agreement and/or the failure of Consultant's insurance carrier to provide insurance coverage shall not relieve Consultant of its indemnification obligations.

V. STANDARD OF CARE

The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of Consultant's profession practicing under similar conditions at the same time and in the same locality.

VI. PENALTIES AND FINES

In the event PVSC is penalized by any governmental authority, including but not limited to the Environmental Protection Agency and/or the New Jersey Department of Environmental Protection, due to any negligent act or omission by Consultant, Consultant shall be solely responsible for same, and shall reimburse PVSC for same within ten (10) days of receiving notice on a dollar for dollar basis. Any monies paid by Consultant pursuant to this provision shall not relieve Consultant of liability to PVSC for damages sustained by PVSC by virtue of any other provision of this Agreement.

VII. NEW JERSEY LAW

This Agreement shall be construed under the laws of the State of New Jersey. No suit concerning this Agreement shall be instituted in any jurisdiction other than the State of New Jersey.

VIII. CHANGES

PVSC may, at any time, by written order, make changes in the services or work to be performed within the general scope of this Agreement. If such changes cause an increase or

decrease in Consultant's cost of, or time required for, performance of any services under this Agreement, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly.

IX. SUSPENSION OR ABANDONMENT

If PVSC suspends or abandons all or any portion of the work to be performed under this Agreement, and PVSC provides at least thirty (30) days' prior written notice thereof, this Agreement shall be terminated as to the part suspended or abandoned, and all plans, documents, and completed and partially completed work required by this Agreement shall become and remain the property of PVSC. In the event that PVSC suspends or abandons the work to be performed under this Agreement, PVSC shall make payment to Consultant for all reasonable and necessary costs that Consultant incurs, but in no event shall PVSC make payment for damages and/or anticipated profits.

X. TERMINATION OF AGREEMENT

A. Termination For Cause. If Consultant, for any cause whatsoever within its control, shall fail or refuse to complete the work or any portion thereof to be performed under this Agreement within the time prescribed herein, or should violate any of the terms, conditions or covenants of this Agreement and fail to remedy such violation within thirty (30) days after receiving written notice thereof from PVSC, PVSC shall have the right to cancel this Agreement.

B. Termination Without Cause. PVSC, in its sole discretion, may terminate this Agreement at any time by giving Consultant thirty (30) days' notice thereof.

C. Return of Property. If PVSC shall terminate this Agreement, all data, documents, and completed and partially completed work in connection with this Agreement

shall become and remain the property of PVSC upon payment to Consultant for all work deemed satisfactory to PVSC, including costs and overhead expenses incurred up to the termination date, but in no event shall PVSC make payment for damages and/or anticipated profits.

D. Non-Waiver. If PVSC elects to terminate this Agreement, said termination will be without prejudice to PVSC's right to pursue any other remedies in law or in equity, including PVSC's right to proceed against Consultant for breach of contract.

XI. SUCCESSORS AND ASSIGNS

Consultant shall neither assign its rights nor delegate its duties under this Agreement or any of the payments becoming due hereunder without the prior written consent of PVSC. Notwithstanding the foregoing, all agreements and covenants herein contained shall extend to and be binding upon the successors and assigns of Consultant and PVSC, it being understood however that no contractual relationship shall exist between PVSC and any Consultant subcontractors consented to by PVSC. Any assignment or delegation by Consultant in violation of this section shall be void.

XII. AFFIRMATIVE ACTION

Consultant agrees to comply with the requirements of P.L. 1975, c. 127 (N.J.A.C. 17:27.1, et seq.). The mandatory language which is more specifically set forth in Exhibit F and applicable regulations promulgated by the Treasurer of the State of New Jersey pursuant thereto are hereby incorporated herein by reference and made part of this Agreement.

XIII. CERTIFICATE OF AUTHORIZATION

If Consultant is a corporation, other than a professional corporation established pursuant to N.J.S.A. 14A:17-1, et seq., and will be offering or practicing professional consulting services

in New Jersey as part of this Agreement, it shall, upon execution of this Agreement, provide a Certificate of Authorization in compliance with N.J.S.A. 45:8-56. Further, Consultant shall be responsible for complying with all statutory requirements of N.J.S.A. 45:8-27, et seq. (including N.J.S.A. 45:8-56), as they apply to Consultant, and any of Consultant's subcontractors and/or successors and assigns.

XIV. BUSINESS REGISTRATION CERTIFICATE

Consultant shall comply with the requirements of the Business Registration Law, N.J.S.A. 52:32-44 (P.L. 2004, c. 57). Consultant shall provide a copy of its business registration to PVSC upon execution of this Agreement. Consultant, as a contractor of PVSC, agrees to the following mandatory language:

N.J.S.A. 52:32-44 (P.L. 2004, c. 57) (Business Registration Law) amends and supplements the business registration provisions of N.J.S.A. 52:32-44, which impose certain requirements upon a business competing for, or entering into, a contract with a local contracting agency whose contracting activities are subject to the requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1, et seq.), or the Public School Contracts Law (N.J.S.A. 18A:18A-1, et seq.)

The contractor shall provide written notice to its subcontractors and suppliers of the responsibility to submit proof of business registration to the contractor;

Before final payment on the contract is made by the contracting agency, the contractor must submit to the contracting agency an accurate list and the proof of business registration of all subcontractors or suppliers used in the fulfillment of the contract, or shall attest that no subcontractors or suppliers were used;

For the term of the contract, the contractor and each of its affiliates and subcontractors of its affiliates [N.J.S.A. 52:32-44(g)(3)] shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1, et seq.) on all sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

A business organization that fails to provide a copy of a proof of business registration as required pursuant to the Business Registration Law, N.J.S.A. 52:32-44, or that provides false business registration information, shall be liable to a penalty of \$25.00 for each day of violation, not to exceed \$50,000.00 for

each business registration not properly provided or maintained under a contract with a contracting agency.

XV. PUBLIC LAW 2005, C. 51 (FORMERLY EXECUTIVE ORDER NO. 134)

A. Requirements. In order to safeguard the integrity of New Jersey State government procurement by imposing restrictions to insulate the award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, Public Law 2005, c. 51, signed into law March 22, 2005 (hereinafter, "Chapter 51"), the Certification and Disclosure Form in Exhibit G, and the Statement of Ownership in Exhibit H have been completed and executed and are attached hereto. The terms and conditions set forth in this Section are material terms.

B. Definitions. For the purpose of this Agreement, the following shall be defined as follows:

a) Contribution – means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act." P.L. 1973, c. 83 (N.J.S.A. 19:44A-1, et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1, et seq. Contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws as of January 1, 2005, for all contracts awarded in excess of \$17,500.00 after October 15, 2006.

b) Business Entity – means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent

of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under 26 U.S.C.A. 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing in the same household.

C. Breach of Terms of Chapter 51 Deemed Breach of Contract. It shall be a breach of the terms of this Agreement for the Business Entity to (i) make or solicit a contribution in violation of Chapter 51, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or selected by the business entity itself, would subject that entity to the restrictions of Chapter 51; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of Chapter 51; or (viii) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of Chapter 51.

D. Continuing Disclosure. The business entity is required, on a continuing basis, to report any contributions it makes during the term of this contract, and any extension(s) thereof, at the time any such contribution is made. A separate disclosure is required for each person or

organization defined above as a business entity. Such disclosure shall be submitted to PVSC using the standard certification and disclosure form on the Department of Treasury, Division of Purchase and Property website: <http://www.state.nj.us/treasury/purchase/execorder134.htm>.

E. Consultant's Obligations. This Agreement is not intended to recite verbatim Consultant's obligations under Chapter 51 (N.J.S.A. 19:44A-20.13 to -20.25). Questions regarding the interpretation or application of Public Law 2005, Chapter 51 may be directed to the New Jersey Department of Treasury, Division of Purchase and Property website:

<http://www.state.nj.us/treasury/purchase/execorder134.htm>.

XVI. NOTICE TO ALL STATE VENDORS: SET-OFF FOR STATE TAX

Please be advised that, pursuant to L. 1995, c. 159, effective January 1, 1996, and codified at N.J.S.A. 59:49-19 and N.J.S.A. 59:49-20, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods and services or construction projects, at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's, partner's or shareholder's share of the payment of that indebtedness. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off. The Division of Taxation may initiate procedures to set off the tax debt of a specific vendor upon the expiration of ninety (90) days after either the issuance by the Division of a notice and demand for payment of any state tax owed by the taxpayer or the issuance by the Division of a final determination on any protest filed by the taxpayer against an assessment or final audit

determination. A set-off reduces the contract payment due to a vendor by the amount of that vendor's state tax indebtedness or, in the case of a vendor-partnership or vendor-S corporation, by the amount of state tax indebtedness of any member-partner or shareholder of the partnership or S corporation, respectively. N.J.A.C. 18:2-8.3. The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and shall provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No requests for conference, protest or subsequent appeal to the Tax Court from any protest permitted under N.J.S.A. 59:49-19 shall stay the collection of the indebtedness. Interest that may be payable by the State to the taxpayer, pursuant to L. 1987, c. 184 (N.J.S.A. 52:32-35) shall be stayed.

XVII. AMERICANS WITH DISABILITIES ACT OF 1990

Discrimination on the basis of disability in contracting for the purchase of bids and services is prohibited. The Consultant is required to read the Americans with Disabilities language attached hereto and made a part of this Contract as Exhibit I and agrees that the provision of Title 11 of the Act will be made a part of the contract. The Consultant is obligated to comply with the Act and to hold PVSC harmless.

XVIII. CLAUSES REQUIRED BY LAW

All clauses required to be included in this Agreement, pursuant to the provisions of federal or state law or regulation, are hereby incorporated by reference and shall apply to this Agreement as if set forth at length herein.

XIX. AUTHORITY TO AUDIT OR REVIEW CONTRACT RECORDS

Pursuant to N.J.S.A. 52:15C-14(d), et seq., the Consultant shall maintain all documentation related to products, transactions or services under this contract for a period of five

(5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

XX. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but the several counterparts shall constitute one and the same instrument.

XXI. INCORPORATION OF RECITALS

The recital paragraphs and Exhibits attached hereto are incorporated herein by reference as if set forth at length herein.

XXII. COMPLETE AGREEMENT

This Agreement, together with Exhibits A through J, represents the entire understanding and agreement between PVSC and Consultant for services pertaining to the project and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement and the Exhibits attached hereto may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by both PVSC and Consultant.

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IN WITNESS WHEREOF, PVSC and Consultant, acting herein by their duly authorized representatives, have hereunto set their hands this day and year first above written.

Attest:

PASSAIC VALLEY SEWERAGE COMMISSION

Joseph F. Kelly
Joseph F. Kelly
Clerk

By: Gregory A. Tramontozzi
Gregory A. Tramontozzi
Executive Director

Dated: 1/9/2017

Dated: 1/9/17

Attest:

CH2M HILL ENGINEERS, INC.

Miriam Fabel

By: Jerry J. Notte
Jerry J. Notte
Vice President

Printed Name:

Title: _____

Dated: 1/3/17

Dated: 1/3/17