



STATE OF NEW JERSEY
Board of Public Utilities
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WATER

JERSEY CITY MUNICIPAL UTILITIES AUTHORITY)	ORDER APPROVING AN
DRAFT AMENDMENT AND EXTENSION AGREEMENT)	AMENDMENT AND
TO THE PROFESSIONAL OPERATIONS SERVICE)	EXTENSION TO THE
AGREEMENT FOR THE CITY OF JERSEY CITY'S)	PUBLIC-PRIVATE
WATER SUPPLY SYSTEM APPLICATION FOR)	CONTRACT BETWEEN THE
APPROVAL OF AMENDMENT AND EXTENSION)	JERSEY CITY MUNICIPAL
)	UTILITIES AUTHORITY AND
)	SUEZ WATER
)	ENVIRONMENTAL
)	SERVICES INC.
)	
)	DOCKET NO. WO18010053

Parties of Record:

Ryan J. Scerbo, Esq., DeCotiis, FitzPatrick, Cole & Gibling, LLP, on behalf of the Jersey City Municipal Utilities Authority

Danielle Capozzoli, Esq., **Corporate Counsel**, SUEZ Water Environmental Services Inc.

Stefanie A. Brand, Esq., **Director**, New Jersey Division of Rate Counsel

BY THE BOARD:¹

On January 24, 2018, the Jersey City Municipal Utilities Authority ("Petitioner" or "JCMUA") requested an amendment and extension to a previously entered into Professional Operations Agreement with United Water Jersey City, Inc. (now known as SUEZ Water Environmental Services, Inc.) ("SUEZ") dated April 1, 2008 (the "Original Agreement") pursuant to the New Jersey Water Supply Public-Private Contracting Act, N.J.S.A. 58:26-19 et seq. (the "Act"). This Amendment and Extension (referenced herein after as "Amendment") amends and extends the Original Agreement and is effective April 1, 2018 ("Amendment Effective Date"). The Original Agreement is due to expire on March 31, 2018 (the "Base Term").

The Petitioner requested approval from the New Jersey Board of Public Utilities ("Board"), the New Jersey Department of Community Affairs, Division of Local Government Services, Local

¹ Commissioner Richard S. Mroz recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

Finance Board ("DCA"), and the New Jersey Department of Environmental Protection ("NJDEP") in accordance with N.J.S.A. 58:26-24(f) and N.J.S.A. 58:26-25.

BACKGROUND/PROCEDURAL HISTORY

JCMUA is a municipal corporation within the County of Hudson. As the owner and operator of a water supply, transmission and distribution system, pursuant to the County and Municipal Water Supply Act, N.J.S.A. 40A:31-1 et seq., the Petitioner provides services to approximately 36,000 customers within the boundaries of the City of Jersey City.

The JCMUA has jurisdiction, pursuant to N.J.S.A. 40A:31-1 et seq., to determine the terms and conditions under which it supplies water to customers within its municipal limits.

A notice of public hearing was published in The Jersey Journal and The Star Ledger on Dec. 16, 2017. A public hearing was conducted on January 4, 2018 at 6:00 pm to solicit public comment concerning the amended agreement. A verbatim record of the hearing was produced as required pursuant to N.J.S.A. 58:26-24(d). Also, it is noted that the JCMUA allowed the public to submit written comments for a period of seven (7) days following the date of the public hearing. No written comments or statements were received as well as no public comment was received at the public hearing.

TERMS OF THE PUBLIC-PRIVATE CONTRACT

This Original Agreement, as amended by the Amendment, shall be extended for one four (4) year extension and one five (5) year extension for a total period of nine (9) years upon the expiration of the Base Term. The additional nine (9) years reflect the JCMUA's simultaneous exercising of both renewal options contained in the Original Agreement. The Extension Term shall commence on April 1, 2018 and shall expire on March 31, 2027. Notwithstanding the foregoing and for avoidance of doubt, the terms and conditions of this Amendment shall take full force and effect on the Amendment Effective Date and continue throughout the Extension Term. To the extent that there is any conflict or inconsistency between this Amendment and the Original Agreement, the terms and conditions of this Amendment shall govern. SUEZ shall pay to the JCMUA on or before the Amendment Effective Date an amount equal to the total amount set forth below as an Option Extension Payment.

The Option Extension Payment amount that SUEZ shall pay to the JCMUA on or before the Amendment Effective Date is \$316,581.14. Whereas the "Option Extension Amount" is the amount owed to the JCMUA due to annual volume production that fell below 45 mgd which resulted in reduced chemical costs. The amount paid to the JCMUA represents the total amount owed by SUEZ during the term of the Original Agreement.

SUEZ will provide properly trained employees of SUEZ for the staffing of the facilities as is necessary to operate, maintain, administer and manage the facilities continuously, twenty-four (24) hours per day, seven (7) days per week, including holidays, in a professional, safe, efficient and economical manner. SUEZ, at its own expense, will provide all labor, including the services of a full-time, on-site Project Manager and the required number of full-time, on-site licensed operators with each license type and level required by the State for facilities whose licenses are the licenses of record for facilities. The Project Manager may be a licensed operator. The JCMUA shall have the right to approve in writing any Project Manager, which approval shall not be unreasonably withheld. The Project Manager shall be responsible for the management and oversight of the services required by SUEZ. The Project Manager will be SUEZ's liaison with the JCMUA. In the event that an unworkable relationship develops between the JCMUA and

the Project Manager, the JCMUA and SUEZ will work together in good faith to try and resolve the issues, however, if a workable relationship cannot be attained after such attempts have been made or corrective actions implemented, then SUEZ shall replace the Project Manager with another employee who possesses the required qualifications for said position. SUEZ will provide appropriate initial and ongoing training for its employees with respect to safety, supervisory skills, and regulatory compliance. SUEZ shall be deemed to be an independent contractor for purposes of applicable wage, fringe benefit, and worker compensation laws.

SUEZ shall provide adequate and reasonable security of the facilities in a manner deemed appropriate given SUEZ's experience and expertise, provided such manner of security is approved by the JCMUA in its reasonable judgment. SUEZ shall, within three (3) months following the Amendment Effective Date, complete and submit to the JCMUA an updated security plan ("Security Plan") that will satisfy the requirements of Section A-16 wherein the Security Plan will replace the existing plan. The JCMUA shall have two (2) weeks to review and comment upon the Security Plan and SUEZ shall have two (2) weeks to address the JCMUA's comments and finalize the Security Plan.

SUEZ shall employ Jersey City Police Officers or other similar contracted services at excavation sites for traffic direction. SUEZ must comply with the requirements for traffic direction provided by Jersey City. All costs associated with police presence or other similar contracted services for traffic direction shall be at the sole cost and expense of the JCMUA and not SUEZ.

The Annual Service Fee ("ASF") includes a budgeted amount ("Annual Maintenance Cap") of \$1,200,000 to provide for necessary predictive, preventative, routine and minor corrective maintenance and repair required for the continued operation of the facilities. The Annual Maintenance Cap shall be paid in equal monthly installments. Actual Maintenance and Repair expenditures shall be accounted for in SUEZ's Monthly Report to the JCMUA as further described in Article III, Section B-10. For the avoidance of doubt, the Annual Maintenance Cap is not an additional amount, but is part of the ASF. The Annual Maintenance Cap, beginning on April 1, 2018, shall be increased each year for inflation based on CPI for all Urban Consumers in the Northeast Area.

In addition to the Maintenance and Repair work, SUEZ will oversee the design, procurement, construction and implementation of an Advanced Metering Infrastructure ("AMI") network for the JCMUA (hereinafter referred to as the "AMI Implementation") and shall operate the AMI network for the extension term. The JCMUA will ensure that SUEZ will be provided access to jointly identified rooftop locations to collocate base station equipment on municipally owned buildings to ensure adequate network coverage (at no cost for SUEZ). Two (2) or three (3) base stations and antennas will be installed in order to provide coverage throughout Jersey City. Approximately 35,400 endpoint transmitters will be installed for JCMUA's customers and it is estimated that this will take approximately three (3) years for completion of said installations, provided current conditions remain unchanged.

SUEZ shall also implement a One-Time Water Meter Replacement Program (the "Water Meter Replacement Program") to achieve the additional revenue goals set forth below. It is anticipated substantial completion will take approximately three (3) years to complete. The meters installed as a result of the Water Meter Replacement Program shall be the property of the JCMUA in perpetuity.

The JCMUA shall pay SUEZ the fixed fee cost for the AMI Implementation described above and the Water Meter Replacement Program in the amount of \$9,858,000. This amount includes

overhead and margin to SUEZ accounting for eight percent (8%) of the total cost of \$730,000. The aforementioned fixed fee, excluding overhead and margin, is subject to Force Majeure Events. In addition, the aforementioned fixed fee, excluding overhead and margin is also subject to any circumstances beyond the reasonable control of SUEZ that prevents SUEZ from gaining access to meter locations necessary to achieve Substantial Completion of the Water Meter Replacement Program and AMI Implementation.

The JCMUA agrees to pay SUEZ, as compensation for the services to be performed as described in the Scope of Services, an ASF in the amount of \$13,845,000.

The provisions of the Amendment and Extension Agreement are intended to provide efficiencies discovered over the past 10 years of the existing contract. Since the Amendment and Extension Agreement Annual Service Fee is less than the existing contract annual service fee, it is anticipated that there should be a positive impact on rates by allowing the JCMUA to maintain its existing rate structure for customers.

On January 23, 2018, the Petitioner submitted a Hearing Report to the NJDEP, which, pursuant to N.J.S.A. 58:26-25(a), must complete its review and submit its comments to the Board and DCA within 60 days of its receipt thereof. To date, the Board has received no comments from the NJDEP and is unaware of any prevailing issues.

By letter dated February 16, 2018, Petitioner consented to an extension for the Board to act on its application through April 1, 2018. Also, by letter dated March 1, 2018, Petitioner requested an expedited Board order with an April 1, 2018 effective date.

The amended contract was approved at the DCA's March agenda meeting.

DISCUSSIONS AND FINDINGS

N.J.S.A. 58:26-25(c)(4) states that once the Board approves a proposed contract, the jurisdiction of the Board terminates until or unless the contract is amended to change the formula or other basis of determining charges contained therein.

After review of the record herein, the Board **FINDS** that the statutory criteria listed hereinabove have been met.

1. SUEZ has the financial capacity, technical and administrative experience to ensure continuity of service over the terms of the contract. N.J.S.A. 58:26-25(c)(1). SUEZ is a wholly owned subsidiary of SUEZ Water, Inc., which in turn owns SUEZ Water Resources, a Delaware Corporation, of which certain of its subsidiaries are Board regulated entities. SUEZ Water, Inc. is a wholly owned subsidiary of SUEZ North America Inc., which is itself a wholly owned subsidiary of SUEZ Groupe SAS, a French corporation which is a wholly owned subsidiary of SUEZ SA, a French limited liability company. SUEZ (and its predecessors) has demonstrated over the years that it has the financial capacity, and technical and administrative expertise to meet all the demands of the amended contract.
2. The terms of the amended contract are not unreasonable given the services that are to be performed by SUEZ. N.J.S.A. 58:26-25(c)(2). The Board believes that under the circumstances of this matter and as set forth in the contract, a nine (9) year extension (including one four (4) year extension and one five (5) year extension) is appropriate.

3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of the JCMUA. There is no subsidization of customers outside the municipal boundaries.
4. The contract contains provisions addressing the following:

N.J.S.A. 58:26-23(e)(1): The charges, rates, fees or formulas to be used to determine the charges, rates, or fees to be charged by the public entity for the water supply services to be provided.

N.J.S.A. 58:26-23(e)(2): The allocation of the risks of financing and constructing planned capital additions or upgrades to existing water supply facilities are incorporated.

N.J.S.A. 58:26-23(e)(6): The employment of current employees of the public entity whose positions of employment will be affected by the terms of the contract are addressed.

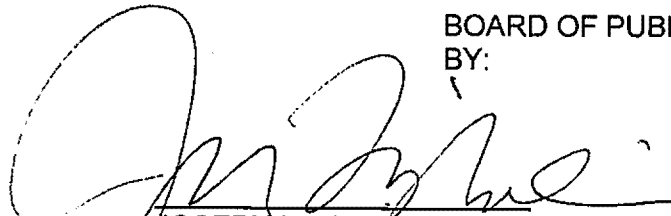
Therefore, based upon the above, the Board **HEREBY APPROVES** the amended Public-Private Contract between the Jersey City Municipal Utilities Authority and SUEZ Water Environmental Services Inc. subject to the following provision:

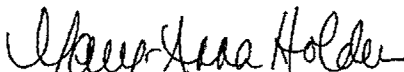
Any extension of the contract beyond the 9-year extension term pursuant to N.J.S.A. 58:26-25(c)(4), and any amendment of the contract to change the formula or other basis of determining charges contained therein, shall be subject to Board review and approval.

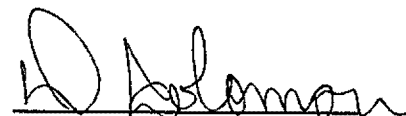
This Order shall be effective on April 1, 2018.


DATED: 3/26/18

BOARD OF PUBLIC UTILITIES
BY:

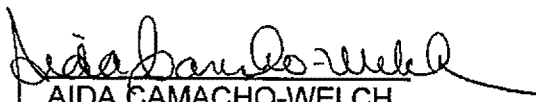

JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


AIDA CAMACHO-WELCH
SECRETARY

**Jersey City Municipal Utilities Authority Draft Amendment and Extension Agreement to
the Professional Operation Service Agreement for the City of Jersey City's Water Supply
System Application for Approval of Amendment and Extension**

BPU DOCKET NO. WO18010053

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