

**RESOLUTION OF THE HUDSON COUNTY IMPROVEMENT AUTHORITY  
AUTHORIZING THE EXTENSION OF THE EARTHWORK SERVICES  
AGREEMENT TO FACILITATE THE SUPPLY OF CERTAIN FILL  
MATERIAL FOR THE PROJECT UNTIL SEPTEMBER 15, 2013, AS  
AWARDED TO PERSISTENT CONSTRUCTION, INC. IN CONNECTION  
WITH THE DEVELOPMENT OF THE LINCOLN PARK WEST SITE  
LOCATED WITHIN THE CITY OF JERSEY CITY, NEW JERSEY**

**WHEREAS**, the Hudson County Improvement Authority (the "Authority") was duly created by resolution of the Board of Chosen Freeholders of the County of Hudson (the "County"), State of New Jersey, duly adopted September 25, 1974, as a public body corporate and politic of the State of New Jersey pursuant to and in accordance with the County Improvement Authorities Law, *N.J.S.A.* 40:37A-44 et seq.; and

**WHEREAS**, the County created the Authority for the express purpose, among other things, of facilitating the development and financing of public facilities and development projects within the County; and

**WHEREAS**, the County is the fee simple owner of approximately 160 acres of property located along the Hackensack River near the intersection of Duncan Avenue and Routes 1 & 9 (also known as Route 440), known as Block 16002, Lot 1 in Jersey City, New Jersey (the "Lincoln Park West Site"); and

**WHEREAS**, pursuant to its express purpose the Authority desires to facilitate the development of the Lincoln Park West Site consisting of the closure of the existing landfill area, a New Jersey Department of Environmental Protection ("NJDEP") Wetland Restoration Project, and construction of a nine-hole golf course, all in accordance with various NJDEP approvals, including: Landfill Closure and Post-Closure Plan Approval, May 20, 2009, revised September 27, 2012, and Waterfront Development Permit, Freshwater Wetlands General Permits, Transition Area Waiver-Averaging Plan and Flood Hazard Area Permits, most recently dated December 15, 2011, (the "Project"); and

**WHEREAS**, Resolution No. 10-2010-6 duly adopted by the Authority on or about October 13, 2010 further authorized the Authority to enter into agreements to accept fill material for the Project; and

**WHEREAS**, to further effectuate the completion of the Project the Authority determined that supply and placement of fill material, as well as rough grading services, were required and desired to engage non-Authority personnel to perform such earthwork services (“Earthwork Services”); and

**WHEREAS**, pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., on or about January 19, 2011, the Authority publically advertised a request for bids (“Request for Bids”) to provide such Earthwork Services to the Lincoln Park West Site; and

**WHEREAS**, on or about February 2, 2011 the Authority issued an addendum to the Request for Bids; and

**WHEREAS**, following a thorough evaluation of the bids the Authority determined that the bid submitted by Persistent Construction, Inc., with an address of 58 Industrial Avenue, Fairview, New Jersey 07022 (“Persistent”) was complete and that Persistent was the bidder providing the most advantageous offer to the Authority; and

**WHEREAS**, on or about May 26, 2011, the Authority executed a contract with Persistent for the performance of Earthwork Services in accordance with the bid specifications (the “Earthwork Services Agreement”); and

**WHEREAS**, the initial primary objective of the Earthwork Services was to procure and manage, in accordance with the Project specifications which include the NJDEP-approved Materials Acceptance Protocol (“MAP”), a total of approximately 600,000 cubic yards (“CY”) of fill material for the Lincoln Park West Site Project of which approximately 300,000 CY must meet the NJDEP’s residential direct contact soil remediation standards (“RDCSRS”) and approximately 300,000 CY must meet the NJDEP’s non-residential direct contact soil remediation standards (“NRDCSRS”); and

**WHEREAS**, the final determination as to the suitability of fill material used for the Project is subject to the approval of the Authority's Project Engineer and Third Party Review Engineer; and

**WHEREAS**, as a result of factors such as revisions to the design of the golf course, as well as, the revenue stream created by the acceptance of fill material, thereby defraying the costs of the Project, the volume of fill material the Site could accept has increased to approximately 1,100,000 CY; and

**WHEREAS**, while the Earthwork Services Agreement provided that services should be completed by January 31, 2012, Article 17 of the Earthwork Services Agreement allowed the Authority to extend the term of said Agreement if it was in the best interest of the Authority and to ensure the successful completion of the Project; and

**WHEREAS**, on or about April 13, 2012, in accordance with Article 17 of the Earthwork Services Agreement, the Authority extended its term to December 31, 2012; and

**WHEREAS**, on or about November 28, 2012, in accordance with Article 17 of the Earthwork Services Agreement and by way of duly adopted Resolution No. 11-2012-7, the Authority extended the term to June 30, 2013; and

**WHEREAS**, because June 30, 2013 fell on a Sunday, at the close of business on June 28, 2013 Persistent was no longer permitted to supply fill material to the Site; and

**WHEREAS**, as of June 30, 2013, Persistent provided approximately 568,000 CY of NRDCSRS fill material and 476,000 CY of RDCSRS fill material to the Site for a total of approximately 1,044,000 CY; and

**WHEREAS**, as of June 30, 2013, sufficient quantities of NRDCSRS fill material have been received at the Site, however, approximately 40,000 to 60,000 CY of RDCSRS is still needed to complete the grading for the current Project plans; and

**WHEREAS**, the determination of how much and when a sufficient quantity of fill material has been received remains at the sole discretion of the Authority; and

**WHEREAS**, on July 2, 2013, representatives of the Authority met with the Hudson County Board of Chosen Freeholders Public Resources Committee to discuss the status of the Project and specifically to decide upon a course of action to procure the remaining estimated 40,000 to 60,000 CY of RDCSRS fill material; and

**WHEREAS**, it was mutually agreed at the July 2, 2013 meeting that obtaining the remaining estimated 40,000 to 60,000 CY of RDCSRS fill material for the Project should be accomplished in the quickest, most economic manner, and for approved sources; and

**WHEREAS**, after considering various alternatives, it was mutually agreed at the July 2, 2013 meeting that subject to certain terms and conditions discussed *infra*, the best alternative to complete the importation of the RDCSRS fill material was to permit Persistent to continue to supply said fill material until the earlier of September 15, 2013 or when the Authority determined a sufficient quantity had been received; and

**WHEREAS**, in consideration for extending the Earthwork Services Agreement, Persistent is required to accept the most readily available RDCSRS fill material so long as it has: 1) received approval from the Authority's Project Engineer and Third Party Review Engineer; 2) is of sufficient quantity (defined herein as not less than approximately 2,000 CY); and, 3) the supplier of the fill material agrees to pay Persistent a tipping fee of not less than \$7.00/ton and not more than \$17.00/ton depending upon the physical characteristics of the fill material; and

**WHEREAS**, in consideration for extending the Earthwork Services Agreement, the Authority shall publish a notice intending to notify any additional interested parties of the Project's need for RDCSRS fill material, however, sources that have already received approval or conditional approval from the Authority's Project Engineer or Third Party Review Engineer for acceptance at the Site are neither required nor permitted to respond; and

**WHEREAS**, in consideration for extending the Earthwork Services Agreement, should Persistent fail to reach an agreement with a supplier of RDCSRS fill material that has received either approval or conditional approval from the Authority's Project Engineer or Third Party Review

Engineer, thereby preventing its delivery to the Site, then with Persistent's consent the Authority may contract directly with said supplier in accordance with the terms and conditions of the public notice and conversely if a new source of RDCSRS fill material is identified in response to the public notice for which neither conditional, nor final approval has been issued by the Authority's Project Engineer or Third Party Review Engineer, then subject to receipt of the requisite approvals, Persistent's consent is not required for the Authority to contract directly with the supplier of that RDCSRS fill material; and

**WHEREAS**, in consideration for extending the Earthwork Services Agreement, any RDCSRS fill material procured by the Authority pursuant to the public notice shall be managed on Site (spread and placed in an accordance with the Project specifications) by Persistent; and

**WHEREAS**, in consideration for extending the Earthwork Services Agreement, the Authority, in its sole discretion has the authority to determine which RDCSRS fill materials should be accepted based on a time is of the essence approach since failure to deliver the RDCSRS fill material in such a manner could further delay the construction of the golf course and result in additional costs to the Authority and the County of Hudson; and

**WHEREAS**, in consideration for extending the Earthwork Services Agreement, Persistent must get the written approval of the Authority before any RDCSRS fill material is received on Site (notice the Authority 5 days prior to delivery) and conversely the Authority must notify Persistent at least 5 business days before the delivery of any RDCSRS fill material that the Authority and its consultant have deemed acceptable per the review requirements; and

**WHEREAS**, in consideration for extending the Earthwork Services Agreement, by the earlier of September 15, 2013 or when a sufficient quantity of RDCSRS fill material has been delivered to the Site (as determined exclusively by the Authority), any and all remaining earthwork services and contractual obligations of Persistent associated with the Site shall be completed by no later than October 15, 2013;

**WHEREAS**, for any earthwork services or contractual obligations of Persistent that are not completed by October 15, 2013, subject to Force Majeure provisions as that term is defined in the

Earthwork Services Agreement, the Authority may call upon the surety who issued the Performance Bond to complete said earthwork services or contractual obligations; and

**WHEREAS**, the Authority shall not grant any further extensions of the Earthwork Services Agreement; and

**WHEREAS**, should additional RDCSRS fill material continue to be required for the Project after September 15, 2013 or if Persistent does not agree to the terms and conditions recited herein as consideration for extending the Earthwork Services Agreement, then the Authority shall include as an alternate in the Request for Bids for Golf Course Construction Services the provision and spreading of said fill material, and may also proceed with obtaining RDCSRS fill material at the Site pursuant to the public notice described herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE HUDSON COUNTY IMPROVEMENT AUTHORITY**, as follows:

Section 1. The aforementioned recitals are incorporated herein as though fully set forth at length.

Section 2. Consistent with terms and conditions recited herein, the Authority hereby authorizes the Chief Executive Officer and/or Executive Director/Chief Financial Officer to extend the term of the Earthwork Services Agreement.

Section 3. A copy of this Resolution shall be available for public inspection at the offices of the Authority.

Section 4. This resolution shall take effect immediately in accordance with Law.

**RECORDED VOTE:**

	YES	NO	ABSTAIN	NOT PRESENT
Fred M. Bado				X
Oren K. Dabney, Sr.				X
James P. Doran, ED.D.				X
Stephen J. Gallo	X			
Frank Lorenzo	X			
Martin T. Martinetti	X			
John A. Peneda	X			
Frank Pestana	X			
John L. Shinnick				X

The foregoing is a true and complete copy of a resolution of the Hudson County Improvement Authority adopted at a meeting thereof duly called and held on Wednesday, July 24, 2013.



**CARMEN LOZANO, ASSISTANT SECRETARY  
(SEAL)**

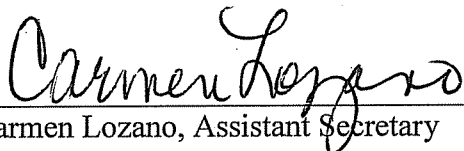
## CERTIFICATE

I, Carmen Lozano, Assistant Secretary of The Hudson County Improvement Authority, a public body corporate and politic of the State of New Jersey, HEREBY CERTIFY, that the foregoing resolution entitled "RESOLUTION OF THE HUDSON COUNTY IMPROVEMENT AUTHORITY AUTHORIZING THE EXTENSION OF THE EARTHWORK SERVICES AGREEMENT TO FACILITATE THE SUPPLY OF CERTAIN FILL MATERIAL FOR THE PROJECT UNTIL SEPTEMBER 15, 2013, AS AWARDED TO PERSISTENT CONSTRUCTION, INC. IN CONNECTION WITH THE DEVELOPMENT OF THE LINCOLN PARK WEST SITE LOCATED WITHIN THE CITY OF JERSEY CITY, NEW JERSEY" is a true copy of an original resolution which was duly adopted by said Authority at a meeting thereof which was duly called and held on July 10, 2013, and at which a quorum was present and acted throughout, and that said copy has been compared by me with the original resolution recorded in the records of the Authority and that it is a correct transcript thereof and of the whole of said resolution, and that said original resolution has not been altered, amended or repealed but is in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Authority this 10<sup>th</sup> day of July, 2013.

[SEAL]

THE HUDSON COUNTY IMPROVEMENT  
AUTHORITY

By:   
Carmen Lozano, Assistant Secretary