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August 28, 2020

TO: BOARD OF ACQUISITION AND CONTRACT

FROM: VINCENT F. KOPICKI, P.E.
COMMISSIONER

RE: Resolution to Award an Emergency Contract

CONTRACT NO. EF-2008
SECONDARY CLARIFIER EMERGENCY REPLACEMENT PROJECT
BLIND BROOK WASTEWATER TREATMENT PLANT
RYE, NEW YORK

CONTRACTOR: ELQ Industries, Inc.
AMOUNT: Not to Exceed \$4,000,000.00

Attached for your consideration is a resolution, which, if approved by your Honorable Board, would authorize the award of Contract EF-2008 for Secondary Clarifier Emergency Replacement Project, Blind Brook Wastewater Treatment Plant, Rye, New York, on an emergency basis to ELQ Industries, Inc., 567 Fifth Avenue, New Rochelle, NY, 10801 in the amount not to exceed \$4,000,000.00 paid for on a negotiated lump sum basis subject to appropriations, for a two- year term commencing on September 1, 2020 and termination on August 31, 2022. This Resolution is being submitted pursuant to a memorandum dated May 21, 2020 that was submitted to your Honorable Board on May 28, 2020 (the "Emergency Declaration").

The Department of Environmental Facilities has outlined the reason and nature of the emergency basis in the Emergency Declaration, a copy of which is attached hereto.

As described in the Emergency Declaration, the emergency work (the "Work") includes the expedited construction (anticipated to be 12 months per tank) of two new secondary clarifier process units to replace the current unrepairable Secondary Clarifier Number 1 and the unreliable Secondary Clarifier Number 2, respectively. Additional work associated with the new clarifiers will also be performed at this time. The design of the clarifiers has already been prepared under separate contract.

In consultation with the Law Department and based on the facts related by Department of Environmental Facility's staff, it has been determined that this is a condition that was unforeseen, affects the life, health, safety and property of the County's inhabitants and requires immediate attention and therefore meets the legal requirements for an emergency contract which cannot await competitive bidding. The Department, following its standard emergency contract

protocols, selected the firm of ELQ Industries, Inc., to perform the Work.

The Contractor selected by the Department has been investigated and found that:

has performed satisfactory work in the past for the County.

Past experience has been investigated and found satisfactory.

Funds for this project are available in the:

Capital Budget

MNRR

Operating Budgets

This contract is deemed to fulfill a public purpose as the services provided under this contract promotes the public health and welfare by enabling the County to conduct its basic mission of providing proper sanitary sewage collection, thereby promoting public health policies and laws. The response and work will monitored by representatives of the Department of Environmental Facilities and Department of Public Works and Transportation throughout the work to make sure all applicable regulations, safety precautions and codes regarding the protection of persons and property are adhered to and that a cost-effective project is the end product.

It is recommended that Contract No. EF-2008 be awarded on an Emergency Basis to ELQ Industries, Inc. in the amount not to exceed \$4,000,000.00 paid for on a negotiated lump sum basis subject to appropriations. In lieu of a performance and payment bond, the County will retain five percent (5%) of all contractor payments for work completed on an annual basis as security for the full and faithful performance of this work.

A proposed form of Resolution is attached.

RESOLUTION

Contract No. EF-2008

Upon communication from The Commissioner of the Department of Environmental Facilities,

WHEREAS, an emergency condition which could affect the health and safety of the public and employees developed as a result of damage and outages to both Secondary Clarifiers 1 and 2 at the Blind Brook Wastewater Treatment Plant, Rye, New York, which resulted in nine non-compliance reports with a total of eighteen SPDES discharge violations reported to New York State Department of Environmental Conservation (“DEC”) for failing to meet discharge permit requirements and could result in continuous violations of DEC regulations and associated fines and penalties until both clarifiers are replaced; be it hereby

RESOLVED, that Contract No. EF-2008 for Secondary Clarifier Emergency Replacement Project, Blind Brook Wastewater Treatment Plant, Rye, New York is awarded on an Emergency Basis to ELQ Industries, Inc., 567 Fifth Avenue, New Rochelle, NY, 10801 in the amount not to exceed \$4,000,000.00 paid for on a time and material basis for a term commencing on September 1, 2020 and expiring on August 31, 2022; and be it further

RESOLVED, that the retention of five percent (5%) of all contractor payments by the County for work completed on an annual basis be deemed adequate and sufficient security for the full and faithful performance of this work in lieu of a performance bond; and be it further

RESOLVED, that this Agreement is subject to County appropriations; and be it further

RESOLVED, that this Agreement subject to further financial analysis of the impact of any New York State Budget (the “State Budget”) proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Contractor, then the Contractor shall have the right to terminate this Agreement upon reasonable prior written notice; and be it further

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

Account to be
Charged/Credited

		Major Program, Program & Phase	Object/ Sub Object	Bond Act	Dollars
Fund	Dept	Or Unit			
322	60	SBB07-01-C	6120	103-2020	\$4,000,000

Budget Funding Year(s) 2020-22 **Start Date** 09/01/2020 **End Date** 8/31/2022
(must match resolution)

Funding Source

Tax Dollars _____ **100%** _____

State Aid _____

NTE \$4,000,000.00

Federal Aid _____

(must match resolution)

Other _____