

64170

July 11, 2018

To: The Honorable Board of Acquisition and Contract

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

Re: Resolution to enter into Emergency Contract for Countywide Solid Waste Removal Services to City Carting & Recycling, LLC. (Agreement No. 18-203)

On February 16, 2017, your Honorable Board awarded Contract No. 16-205 for Countywide Solid Waste Removal Services (the "Contract") to the sole bidder, R&S Waste Services, LLC ("R&S") in the amount of \$1,407,124.00 for a three year term with a two-year option. The Contract was subsequently executed.

On May 21, 2018, the County received a subpoena seeking information about all County contracts with and payments to R&S. After further inquiries, it was learned that in an action entitled *Trustees of Local 813 Insurance Trust Fund, et al. v. Rogan Brothers Sanitation, Inc., et al* in the United States District Court for the Southern District of New York, R&S was found to have violated the Employee Retirement Income Security Act of 1974 ("ERISA"). Further, on March 29, 2018, a Default Judgment was entered against R&S in the amount of \$4,260,339.16 which remains unpaid.

The Contract requires R&S to comply, at its own expense, with the provisions of all applicable federal, state and local laws, rules and regulations, including but not limited to those applicable to the Contractor as an employer of labor or otherwise. The Contract also provides for termination in the event a breach is not cured within 48 hours of receiving written notice of the breach. Based on the Court's finding that R&S violated ERISA, on June 22, 2018, the County gave written notice to R&S that it had breached the Contract and allowed the contractor 48 hours to cure the breach. To date, R&S has not cured this default and the Contract was terminated.

As a result of this situation, and in consultation with the Law Department, 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. Pursuant to the County's Emergency Contract Procedure, quotes were solicited from vendors to provide Countywide Solid Waste Removal Services on an interim basis. City Carting & Recycling, LLC submitted the lowest quote, and has performed satisfactory work for the County in the past.

Therefore, it is requested that your Honorable Board authorize the County to enter into the Emergency Contract for Countywide Solid Waste Removal Services to City Carting & Recycling, LLC in order to remedy the situation in a timely manner for a total cost not to exceed \$720,000.00 payable pursuant to an approved budget. The contract will not exceed six (6) months, during which the County will undertake a formal bid process for these services.

A proposed Resolution is attached for your consideration.

HJG/DLV

RESOLUTION

Upon a communication from the Commissioner of Public Works and Transportation, be it hereby

RESOLVED, that the County of Westchester is authorized to enter into Emergency Contract No. 18-203 for Countywide Solid Waste Removal Services with City Carting & Recycling, LLC, 8 Viaduct Road, Stamford, Connecticut 06907 in an amount not to exceed \$720,000.00, payable pursuant to an approved budget; and be it further

RESOLVED, that the term of the contract shall not exceed six (6) months commencing upon execution; and be it further

RESOLVED, that this contract shall be subject to County appropriation; and be it further

RESOLVED, that this Agreement is also 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 an analysis of the impacts of any such State Budget on County finances. After such 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 duly authorized designee be and hereby is authorized to execute any and all documents necessary and appropriate to effectuate the purposes hereof.

Emergency Contract No. 18-203

Account to be Charged/Credited	Major Program, Program & Phase Or Unit						Trust Account	Dollars
	Fund	Dept.	Object/ Sub Object					
	101	46	3400	4380			\$370,000.00 (2018)	
	101	46	3300	4380			\$ 80,000.00 (2018)	
	165	42	7150	4380			\$ 80,000.00 (2018)	
	161	44	4110	4380			\$130,000.00 (2018)	
	101	46	3400	4380			\$ 30,000.00 (2019)	
	101	46	3300	4380			\$ 7,500.00 (2019)	
	165	42	7150	4380			\$ 7,500.00 (2019)	
	161	44	4110	4380			\$ 15,000.00 (2019)	

Budget Funding Year(s) 2018-2019 Start Date July 12, 2018 End Date January 11, 2019
 (must match resolution)

Funding Source: Tax Dollars \$575,000.00 County

State Aid _____

\$720,000.00 Federal Aid _____
 (must match resolution)

Other \$145,000.00 Airport Special Revenue Fund