

**70371**

**TO:** Board of Acquisition and Contract

**FROM:** Hugh J. Greechan, Jr., PE  
Commissioner of Public Works and Transportation

**DATE:** June 25, 2019

**SUBJECT:** Authorization for the County of Westchester to enter into an agreement with the Power Authority of the State of New York, also known as the New York Power Authority, (“NYPA”) for the study, design and construction of Energy Efficiency & Clean Energy Projects at various County facilities for the period of May 1, 2019 through April 30, 2024, with the County having the option to extend the agreement for an additional five years. (Agreement No. 19-916)

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The County of Westchester (“County”) purchases electricity for its own use from the Power Authority of the State of New York, also known as the New York Power Authority, (“NYPA”). The Agreement under which the County purchases electricity from NYPA provides, among other things, that NYPA and the County will work in partnership to identify energy efficiency projects and clean energy technology projects at County facilities and will undertake such projects as are deemed economically feasible and agreeable to the parties. NYPA has indicated that it is willing to undertake a review of the feasibility of energy efficiency and clean energy projects at various County facilities, including conducting energy audits for the County. If projects are deemed feasible, NYPA proposes, at the County's sole discretion, to undertake those projects using either its own forces or contractors procured by it, or the County may undertake those projects with NYPA providing oversight and/or financing.

In order to proceed with this program, NYPA and the County will have to enter into an agreement known as the “Energy Services Program Master Cost Recovery Agreement” or “Master Agreement” which contains the terms and conditions by which each Customer Project Commitment (defined below) will be governed. The County and NYPA entered into similar agreements in 2002, 2008 and in 2014. The 2014 agreement expired on April 30, 2019. Authority is now being sought to enter into a new Master agreement for the period May 1, 2019 through April 30, 2024, with the County having the option to extend the agreement for an additional five years, subject to future appropriations, and subject to Board of Legislators authorization of bonding legislation for the additional components of this project, as required.

For any and all projects undertaken under this program, the County and NYPA, subject to your Honorable Board’s approval, will enter into a separate agreement known as a Customer Installation Commitment also referred to as a Customer Project Commitment (“CIC/CPC”), each of which will state the specific terms and conditions applicable to such project(s), segregating the project(s) into logical phases to be performed consecutively. Each CPC will include the phasing plan setting forth how the project(s) will proceed, the location of County’s facility, scope of work, projected costs, and payment terms. The terms and conditions of the Master Agreement will be incorporated by reference into each CIC/CPC.

The Master Agreement will contain the following provision regarding environmental indemnification (the County is referred to as “Customer”):

“Customer shall be solely responsible for any and all loss, damage or injury to persons or property and for any cleanup costs associated with any site where Waste and Debris are disposed of or comes to be situated including, but not limited to, response and remedial costs. In addition, to the extent permitted by law, the Customer shall, at its sole cost and expense, indemnify, defend and hold harmless Authority and the State of New York against any loss, liability (including, without limitation, judgments, attorney’s fees, court costs, penalties or fines), or expenses of any type (including, but not limited to, required corrective actions) which Authority or the State of New York incurs because of injury to, or death of any person, or on account of damage to property, or any other claim arising out of, in connection with, or as a consequence of (a) the disposition or use of retained equipment by the Customer or anyone for whose acts the Customer may be liable, and (b) any cleanup costs associated with any site where Waste and Debris are disposed of or come to be situated traceable to such Waste and Debris including, but not limited to, response and remedial costs.”

It should be noted that if the County decides to discontinue a particular project at any time, the County will be responsible for the costs and expenses incurred by NYPA to the date of discontinuance.

The goal of this program is for the energy efficiency projects to result in sufficient energy savings that the projects will pay for themselves over a defined period of time. The goals and objectives of the proposed agreement promote the public health, protect the environment and serve a public purpose by identifying and potentially reducing energy use by the County, thereby reducing the County’s carbon footprint. The goals and objectives of the proposed agreement shall be monitored by the Department of Public Works and Transportation.

This matter has been reviewed by the Director of Energy Conservation and Sustainability, and he is in concurrence.

This agreement is exempt from the procedures of the Procurement Policy under Section 3(a)(iii) of said policy.

Your approval of the attached resolution is respectfully requested.

HJG/RJA/jrc

# RESOLUTION

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

**RESOLVED**, that the County of Westchester (“County”) is hereby authorized to enter into an Energy Services Program Master Cost Recovery Agreement with the Power Authority of the State of New York, also known as the New York Power Authority (“NYPA”), the terms of which govern any and all other agreements, known as Customer Installation Commitments or Customer Project Commitments (“CIC/CPCs”), with NYPA for the study, design and construction of Energy Efficiency and Clean Energy Projects at various County facilities, for the period of May 1, 2019 through April 30, 2024 with the County having the sole option to renew the Agreement for an additional five years; and be it further

**RESOLVED**, that NYPA shall not commence any phase of any project (study, design and construction) for any project without the prior written approval of the Commissioner of Public Works and Transportation under a separate CIC/CPC, subject to further authorization of the Board of Acquisition and Contract; and be it further

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

Agreement No. 19-916

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase or Unit	Object/ Sub Object	Trust Account	Dollars
					N/A

Budget Funding Year(s): 2019 – 2024 Start Date: 5/1/2019 End Date: 4/30/2024  
 (must match resolution)

Funding Source: Tax Dollars: \_\_\_\_\_ Contractor Federal I.D. No./  
 State Aid: \_\_\_\_\_ Social Security No.: \_\_\_\_\_  
 \$ \_\_\_\_\_ Federal Aid: \_\_\_\_\_ Vendor No.: \_\_\_\_\_  
 (must match resolution) Other: \_\_\_\_\_ Encumbrance No.: \_\_\_\_\_