

Robert P. Astorino
County Executive

Department of Budget

Lawrence C. Soule
Budget Director

#58190

DATE: July 20, 2017

TO: Honorable Board of Acquisition and Contract

FROM: Lawrence C. Soule
Budget Director

RE: Authority for the County of Westchester to enter into an agreement with Intralinks, Inc. for online document storage services, for the period from April 5, 2017 through October 5, 2017, with the term being extended automatically thereafter for successive monthly periods until all County document 'exchanges' are deleted from the online system by the County or at the written direction of the County, for an amount not-to-exceed \$100,000.00, payable based on a schedule of usage fees.

Authority is respectfully requested from your Honorable Board for the County of Westchester (the "County") to enter into an agreement (the "Agreement") with Intralinks, Inc. ("Intralinks"), pursuant to which Intralinks will provide online document storage services (the "Services"), for the period from April 5, 2017 through October 5, 2017, with the term being extended automatically thereafter for successive monthly periods until all County document 'exchanges' are deleted from the online system by the County or at the written direction of the County, for an amount not-to-exceed \$100,000.00, payable based on a schedule of usage fees. The County will use the Services to facilitate its request for proposals that seeks a public-private partnership for the lease, management, operation, maintenance and improvement of Westchester County Airport (the "Airport RFP").

Intralinks is requiring the County to include in the Agreement the following contractual protections for Intralinks (the "D&I Clauses"):

“(b) Client¹ will indemnify, defend and hold harmless Intralinks from and

¹ Under the Agreement, the "Client" is the County.

against any and all Losses² arising from or relating to any Action³ brought against Intralinks based on: (i) the material breach by Client of any of its representations in this Agreement; or (ii) the use of the Services⁴ or any End User Files⁵ by Client or any End Users⁶ acting for Client or its Affiliates⁷, in violation of this Agreement, any applicable law, regulation or third party rights, except, in any case, to the extent such Action is based on Intralinks' willful misconduct, negligence or Force Majeure Event⁸.

(c) Indemnification under subsections (a)⁹ and (b) hereof will be provided only on the conditions that: (i) the indemnifying party is given written notice within 15 calendar days after the indemnified party receives notice of the subject Action; provided, however, that late notice shall only excuse the indemnifying party from its obligations hereunder if such late notice materially prejudices the indemnifying party; (ii) the indemnifying party has sole control of the defense and all related settlement negotiations, provided any settlement that would impose any monetary or injunctive obligation upon the indemnified party shall be subject to such party's prior written approval; and (iii) the indemnified party provides cooperation and information in furtherance of such defense, as reasonably required by the indemnifying party. This Section 10 shall survive termination or

² Under the Agreement, "Losses" is defined as "any and all damages, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees)".

³ Under the Agreement, "Action" is defined as "any third-party claim, suit, action, investigation or proceeding".

⁴ Under the Agreement, "Services" is defined (with several defined terms within it) as "collectively all Intralinks Exchanges, collectively those Intralinks URLs, online Exchanges (also referred to as workspaces, dealrooms and virtual datarooms), web site contents and features provided to Client through which End Users may access, process, store and communicate End User Files.], Intralinks Courier [Intralinks' secure file transfer service which may be provided to Client through a web site, standalone software utility or plug-in], Intralinks VIA [Intralinks' ad hoc collaboration application, including the file synch and share capabilities, desktop, mobile and web applications and all included features and functions.], Intralinks web site features, software, application programming interfaces, systems delivered or accessible through any media or device, support, additional services and all related materials and documentation, provided by or on behalf of Intralinks to Client pursuant to this Agreement."

⁵ Under the Agreement, "End User Files" is defined as "any printed, electronic or digital document that is uploaded or copied to the Services."

⁶ Under the Agreement, "End User" is defined as "those persons (including without limitation, Client's employees, advisors, representatives, consultants, contractors or agents or any other third party) who are authorized by or on behalf of Client to use the Services and have been supplied user identifications and passwords for the Services."

⁷ Under the Agreement, "Affiliate" is defined as "any entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with Intralinks or Client, as the case may be."

⁸ Under the Agreement, "Force Majeure Event" is defined as "any event beyond the reasonable control of such party including, but not limited to, acts of God, acts of civil or military authorities, strikes or other labor disputes, fires, interruptions in telecommunications or Internet or network provider services, problems due to Client equipment, whether owned, lease or otherwise, power outages, and governmental restrictions".

⁹ Subsection (a) concerns Intralinks' indemnification of the County in certain circumstances.

expiration of this Agreement.”

Accordingly, the County requests, as part of its above-described request for authority to enter into the Agreement, specific authorization to agree to the inclusion of the D&I Clauses.

The proposed Agreement will serve a public purpose by providing the County with the online document storage services it needs to facilitate the Airport RFP.

The goal and objective of the proposed Agreement is to provide the County with the online document storage services it needs to facilitate the Airport RFP.

The goal and objective of the proposed Agreement is in the best interests of the County in terms of fiscal responsibility, as providing the County with the online document storage services it needs to facilitate the Airport RFP is intended to ultimately lead to the County receiving the most well-informed, most favorably-written proposals possible.

The goals and objectives of the proposed Agreement will be tracked and monitored by the staff of the Department of the Budget.

Authority to exempt the proposed Agreement from the requirements of the Westchester County Procurement Policy, pursuant to Section 3(a)(xxi) thereof, has been submitted to your Honorable Board in accordance with a separate resolution of even date herewith.

I respectfully recommend the adoption of the attached resolution.

LCS/MM/bcm/nn

RESOLUTION

Upon a communication from the Budget Director, be it hereby:

RESOLVED, that the County of Westchester (the “County”) is hereby authorized to enter into an agreement with Intralinks, Inc. (“Intralinks”), pursuant to which Intralinks will provide online document storage services, for the period from April 5, 2017 through October 5, 2017, with the term being extended automatically thereafter for successive monthly periods until all County document ‘exchanges’ are deleted from the online system by the County or at the written direction of the County, for an amount not-to-exceed \$100,000.00, payable based on a schedule of usage fees (the “Agreement”); and be it further

RESOLVED, that the County is authorized to agree to the inclusion of the following provisions as part of the Agreement:

“(b) Client¹⁰ will indemnify, defend and hold harmless Intralinks from and against any and all Losses¹¹ arising from or relating to any Action¹² brought against Intralinks based on: (i) the material breach by Client of any of its representations in this Agreement; or (ii) the use of the Services¹³ or any End User Files¹⁴ by Client or any End Users¹⁵ acting for Client or its Affiliates¹⁶, in violation of this Agreement, any applicable law, regulation or third party rights, except, in any case, to the extent such Action is based on Intralinks' willful misconduct, negligence or Force

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; and be it further

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

RESOLVED, that the 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 the 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 the 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 the Agreement upon reasonable prior written notice; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute any documents and take any actions reasonably necessary and appropriate to effectuate the purposes of this Resolution.

¹⁷ Under the Agreement, “Force Majeure Event” is defined as “any event beyond the reasonable control of such party including, but not limited to, acts of God, acts of civil or military authorities, strikes or other labor disputes, fires, interruptions in telecommunications or Internet or network provider services, problems due to Client equipment, whether owned, lease or otherwise, power outages, and governmental restrictions”.

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Account to be charged/credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object	Trust Account	Dollars
161	44	4110	4420		\$100,000.00

Budget Funding Year(s): _____
 (must match resolution)

Start Date: 04/05/17

End Date: 10/05/17, with automatic monthly renewals thereafter until all County document 'exchanges' are deleted from the online system by the County or at the written direction of the County.

Funding Source

\$100,000.00
 (must match resolution)

Tax Dollars _____
 State Aid _____
 Federal Aid _____
 Other Airport Special Revenue Fund

APPROVED BOARD OF ACQUISITION CONTRACT - 07/20/2017 - LISA MOLLAJ, SECRETARY