

68105

DATE: February 27, 2019

TO: Honorable Members of the Board of Acquisition and Contract

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

SUBJECT: Authority for the County of Westchester (the "County") to enter into an agreement with Ameresco, Inc. (the "Contractor") pursuant to which the Contractor will provide emergency operators at the Central Heating Plant, Valhalla Campus, Valhalla, New York (the "CHP") due to personnel shortages which have resulted in a declaration of an emergency. (Contract No. 19-206)

Authority is hereby requested for the County, acting by and through its Department of Public Works and Transportation (the "Department"), to enter into an agreement with the Contractor pursuant to which the Contractor will provide operators at the CHP at a rate of \$150.00/person hour, which includes all overhead and expenses, for a term not to exceed six (6) months commencing upon approval by this Honorable Board and terminating six (6) months thereafter, for an amount not to exceed \$700,000.00 (the "Agreement").

Pursuant to the Agreement, the Contractor will provide the operators for the CHP in periods with the number of operators expanding with each period. During the Initial Period, which covers weeks 1-6, the Contractor will staff the CHP with 1-3 operators, and the County will provide training and assistance for the Contractor's operators. During the Interim Period, which covers weeks 6-12, the Contractor will expand the number of operators to provide full operations for the CHP to include 4-5 operators and a supervising plant operator. During the Extended Period, which cover weeks 12 through the end of the Term, the Contractor will provide full operations and possible maintenance consulting service for the CHP with the scope of such support to be set forth in an amendment to the Agreement, which must be in writing and subject to all necessary legal approvals. The Interim period will continue until the parties agree to the scope and fee for the Extended Period.

The Agreement requires the Contractor to indemnify the County in the area of general indemnity. The Agreement contains a cap on liability for the Contractor, which will apply except in the case of gross negligence or willful misconduct. The cap on liability is that the aggregate liability of the Contractor under the Agreement in any contract year (whether based on negligence, breach of contract or otherwise) arising out of or in connection with the performance of the Contractor of its obligations under the Agreement (including without limitation payment of any liquidated damages) shall not exceed an amount equal to the payments for services for that contract year plus the proceeds of insurance maintained by the Contractor pursuant to the requirements of the Agreement.

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In addition, the Agreement requires the County to indemnify, defend and hold the Contractor, its affiliates, officers, directors, employees, contractors and subcontractors ("Contractor Indemnified Party"), harmless against and from, any and all damages, losses, liabilities, claims, litigation, demands, proceedings, judgments, or suits of any kind or of any nature whatsoever (including reasonable legal, consultant, expert fees incurred in investigating, defending against, settlement or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against any Contractor Indemnified Party arising out of or relating to the presence of any Hazardous Materials which are (i) present on the facility prior to the commencement of Contractor's work, or (ii) improperly handled or disposed of by County or parties under County's supervision (other than Contractor, its subcontractors or any other parties under Contractor's supervision) or (iii) brought on to the facility or produced thereon by parties other than Contractor, its subcontractors or any other parties under Contractor's supervision. "Hazardous Materials" shall mean any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste material, raw material, chemical, finished product, byproduct, or any other material or article, that is defined, listed or regulated or as to which liability could be imposed, under Applicable Law as a "hazardous" or "toxic" substance or waste or material, or as a "pollutant" or contaminant," (or words of similar meaning or import) or is otherwise listed or regulated, or as to which liability could be imposed, under applicable laws; including without limitation, petroleum products, petroleum derived substances, radioactive materials, asbestos, asbestos containing materials, polychlorinated biphenyls, urea formaldehyde foam insulation, and lead-containing paints or coatings, including without limitation any "hazardous substance" or "petroleum" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801, et seq.), "hazardous wastes" as defined in the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601, et seq.), "toxic substances" as defined in the Toxic Substance Control Act as amended (15 U.S.C. §§ 2601 et seq.) and in the regulations adopted, published, and promulgated pursuant thereto, or in any other Laws.

The Agreement also provides that the Contractor will not assign or subcontract the Agreement without the written consent of the County. In the Agreement and this resolution, the Contractor seeks approval to use the following subcontractor to provide operators under the Agreement:

Aerotek, Inc.
7301 Parkway Drive
Hanover, MA 21076

The Resolution is being submitted pursuant to the Declaration of Emergency, dated February 14, 2019, submitted to your Honorable Board.

Accordingly, I most respectfully recommend the adoption of the annexed proposed Resolution.

HJG/ran
Encl.

RESOLUTION

Contract No. 19-206

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

RESOLVED, that the County of Westchester (the "County"), acting by and through its Department of Public Works and Transportation (the "Department"), is hereby authorized to enter into an agreement with Ameresco, Inc. (the "Contractor") pursuant to which the Contractor will provide operators at the Central Heating Plant, Valhalla Campus, Valhalla, New York (the "CHP") for a term of six (6) months based upon a rate of \$150.00/person hour, which includes all overhead and expenses, for an amount not to exceed \$700,000.00 (the "Agreement"); and be it further

RESOLVED, that the Agreement will contain a general cap on liability for the Contractor, which will apply except in the case of gross negligence or willful misconduct. The cap is that the aggregate liability of Contractor under the Agreement in any contract year (whether based on negligence, breach of contract or otherwise) arising out of or in connection with the performance of Contractor of its obligations under the Agreement (including without limitation payment of any liquidated damages) shall not exceed an amount equal to the payments for services for that contract year plus the proceeds of insurance maintained by Contractor pursuant to the requirements of the Agreement; and be it further

RESOLVED, the County is authorized to indemnify, defend and hold the Contractor, its affiliates, officers, directors, employees, contractors and subcontractors ("Contractor Indemnified Party"), harmless against and from, any and all damages, losses, liabilities, claims, litigation, demands, proceedings, judgments, or suits of any kind or of any nature whatsoever (including reasonable legal, consultant, expert fees incurred in investigating, defending against, settlement or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against any Contractor Indemnified Party arising out of or relating to the presence of any Hazardous Materials which are (i) present on the facility prior to the commencement of Contractor's work, or (ii) improperly handled or disposed of by County or parties under County's supervision (other than Contractor, its subcontractors or any other parties under Contractor's supervision) or (iii) brought on to the facility or produced thereon by parties other than Contractor, its subcontractors or any other parties under Contractor's supervision. "Hazardous Materials" shall mean any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste material, raw material, chemical, finished product, byproduct, or any other material or article, that is defined, listed or regulated or as to which liability could be imposed, under Applicable Law as a "hazardous" or "toxic" substance or waste or material, or as a "pollutant" or contaminant," (or words of similar meaning or import) or is otherwise listed or regulated, or as to which liability could be imposed, under applicable laws; including without limitation, petroleum products, petroleum derived substances, radioactive materials, asbestos, asbestos containing materials, polychlorinated biphenyls, urea formaldehyde foam insulation, and lead-containing paints or coatings, including without limitation any "hazardous substance" or "petroleum" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801, et seq.), "hazardous wastes" as defined in the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601, et seq.), "toxic substances" as defined in the Toxic Substance Control Act as amended (15 U.S.C. §§ 2601 et seq.) and in the regulations adopted, published, and promulgated pursuant thereto, or in any other Laws; and be it further

RESOLUTION

Contract No. 19-206

RESOLVED, the following subcontractor is hereby approved to provide work under the Agreement:

Aerotek, Inc.
7301 Parkway Drive
Hanover, MA 21076

and be it further

RESOLVED, that this contract is subject to County appropriations; 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 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	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	101	46	3400	4380		\$700,000.00

Budget Funding Year(s): 2019
(must match resolution)

Start Date: February 28, 2019

End Date: August 30, 2019

Funding Source: **Tax Dollars** 100% County

State Aid _____

\$700,000.00 **Federal Aid** _____
(must match resolution)

Other _____