

69243

DATE: April 16, 2019

TO: Board of Acquisition and Contract

FROM: Sherlita Amler, M.D.
Commissioner of Health

RE: Authorization to Enter into an Agreement with the New York State Department of Environmental Conservation (“NYSDEC”) to Accept Continued Funding in order for the County of Westchester to Fulfill Requirements under the Clean Water Act and Environmental Conservation Law, for the period from April 1, 2019 through March 31, 2024, in the amount not-to-exceed \$274,518, payable at mutually agreed upon reimbursement unit costs, and for the County to defend and indemnify the NYSDEC and State of New York as described below

The County of Westchester (“County”), acting by and through its of Health (the “WCDH”), seeks authorization to enter into an agreement with the New York State Department of Environmental Conservation (the “NYSDEC”), to accept continued funding in order for the WCDH to fulfill requirements under the Clean Water Act and Environmental Conservation Law, for the multi-year period from 4/1/19 through 3/31/24, in the amount not-to-exceed amount \$274,518, payable at mutually agreed upon reimbursement unit costs.

The agreement will also require the County to defend and indemnify the NYSDEC and State of New York as follows:

“The Contractor (the “County”) shall be responsible for all damage to life and property due to activities of the Contractor, its subcontractors, agents or employees, in connection with its Services under this Contract, and this obligation is in no way limited by the enumeration of insurances coverages hereunder. Further, it is expressly understood that the Contractor shall indemnify and save harmless the Department, its officers, employees, agents, and assigns in accordance with the provisions of Appendix B, Clause II, excerpted here –

“The Contractor agrees that it will indemnify and save harmless the Department and State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgements of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractor in this performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or State of New York”

Nothing in this Article or in this Contract shall create or give to third parties any claim or right of action against Contractor or the State of New York beyond such as may legally exist irrespective of this Article or this Contract.”

This program will promote the public health, safety and general welfare of County residents by preserving, protecting and conserving the water resources of Westchester County.

The goals and objectives of this program are to fulfill requirements under the Clean Water Act and Environmental Conservation Law by addressing various issues that could compromise water quality by performing plan and specification reviews, “annual and reconnaissance inspections”, and complaint investigations relating to water quality issues. The program will be tracked and monitored by the WCDH’s submission of quarterly progress reports and an annual report to NYSDEC detailing work performed and expenditures incurred. On an annual basis, the WCDH will conduct approximately 310 reviews, inspections and complaint investigations.

The requirements of the Westchester County Procurement Policy were followed. The procurement is exempt under Section 3 (a) iii of the procurement policy, which provides for the exception, “transactions or contracts with the United States of America, any State Agency...”. This agreement is a transaction/contract with the NYSDEC.

Approval of the attached resolution is respectfully requested.

/dc
Attachment

RESOLUTION

UPON A COMMUNICATION FROM THE COMMISSIONER OF HEALTH, be it hereby

RESOLVED, that the County of Westchester ("County"), acting by and through its Department of Health (the "WCDH"), is authorized to enter into an agreement with the New York State Department of Environmental Conservation (the "NYSDEC") to accept continued funding in order for the WCDH to fulfill requirements under the Clean Water Act and Environmental Conservation Law, for the period from April 1, 2019 through March 31, 2024, in the amount not-to-exceed \$274,518, payable at mutually agreed upon reimbursement unit costs; and, be it further

RESOLVED, that in order to accomplish the NYSDEC's water quality management program goals, the WCDH agrees to perform plan and specification reviews, "annual and reconnaissance inspections" and complaint investigations; and, be it further

RESOLVED, that the Agreement will also require the County to defend and indemnify the NYSDEC and State of New York as follows:

"The Contractor (the "County") shall be responsible for all damage to life and property due to activities of the Contractor, its subcontractors, agents or employees, in connection with its Services under this Contract, and this obligation is in no way limited by the enumeration of insurances coverages hereunder. Further, it is expressly understood that the Contractor shall indemnify and save harmless the Department, its officers, employees, agents, and assigns in accordance with the provisions of Appendix B, Clause II, excerpted here –

"The Contractor agrees that it will indemnify and save harmless the Department and State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgements of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractor in this performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or State of New York"

Nothing in this Article or in this Contract shall create or give to third parties any claim or right of action against Contractor or the State of New York beyond such as may legally exist irrespective of this Article or this Contract"; and, be it further

RESOLVED, that this Agreement 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 duly authorized designee be and hereby is authorized and empowered to execute all appropriate contracts or documents necessary to effectuate the purposes of this resolution in the manner prescribed by law.

Department of Health
 County of Westchester
 10 County Center Road, 2nd Floor
 White Plains, New York 10607
 April 16, 2019

Original Agreement \$
 First Amendment \$
This Amendment \$
 TOTAL \$ _____

Agreement #

Account to be Charged/Credited	Fund	Dept	Major Program, Program & Phase or Unit	Object/ Sub-Object	Trust Account	Dollars
		101	27	0010	9706	
	101	27	0010	9706		\$54,904 '20
	101	27	0010	9706		\$54,904 '21
	101	27	0010	9706		\$54,904 '22
	101	27	0010	9706		\$54,904 '23
	101	27	0010	9706		\$13,724 '24

Budget Funding Year(s)
 (must match resolution) 2019-2024 Start Date 04/01/19 End Date 03/31/24

Funding Source Tax Dollars
 State Aid 274,518
\$274,518 Federal Aid _____
 (must match resolution) Other _____