

84553

April 26, 2021

TO: BOARD OF ACQUISITION AND CONTRACT

FROM: VINCENT F. KOPICKI, P.E.
COMMISSIONER

RE: Third Amendment to Contract No. **EF-1907**
Authorization to extend the term of Agreement between the County of Westchester and ELQ Industries, Inc. until December 31, 2021 at no additional cost.

Pursuant to a resolution approved on September 5, 2019, your Honorable Board awarded Contract No. EF-1907 for Tide Gate Replacements and Regulator Improvements, North Yonkers, Central Yonkers and South Yonkers Sanitary Sewer Districts, City of Yonkers, Westchester County, New York, (the "Project") to ELQ Industries, Inc. ("ELQ"), 567 Fifth Avenue, New Rochelle, NY, 10801 in the amount not to exceed \$4,000,000.00 payable on a time and material basis. The term of the agreement commenced on September 1, 2019 and expires on December 31, 2020. Contract No. EF-1907 was subsequently executed on September 24, 2019.

Pursuant to a resolution approved on July 7, 2020, your Honorable Board authorized the County of Westchester (the "County"), acting by and through the Department of Environmental Facilities (the "Department") to enter into an entry permit (the "Entry Permit") with the MTA Bus Company (the "MTA") for a term commencing on May 1, 2020 and terminating on December 31, 2020 granting to the County and its contractors, subcontractors, access to certain real property leased by the MTA and located at 50 Babcock Place, Yonkers New York (SBL 2-2620-50 on the Official Tax Maps for the City of Yonkers) (the "Property"), in order for the County to perform certain work required for the Project at the Lamartine Avenue, City of Yonkers, Regulator 008 site (the "Lamartine Avenue Site"). The Entry Permit was subsequently executed on July 28, 2020.

Pursuant to a resolution approved on September 10, 2020 your Honorable Board authorized the County to amend Contract No. EF-1907 with ELQ to require ELQ comply with the terms of the Entry Permit. Those terms include the following: (i) procuring certain additional insurance as required by the Entry Permit (ii) providing certain additional indemnification as required by the Entry Permit, (iii) agreeing to pay an amount not to exceed \$50,000 to reimburse the MTA for certain costs and expenses reasonably incurred by the MTA in permitting access to and entry upon the Lamartine Site, as part and included in the \$4,000,000 not to exceed amount for Contract EF-1907, (iii) agreeing to a forum selection clause for disputes under the Entry Permit, (iv) waiving trial by jury for claims arising under the Entry Permit, (v) waiving consequential damages under the Entry Permit, and (vi) agreeing to a force majeure clause for work performed under the Entry Permit. The First Amendment was subsequently executed on September 10,

2020.

Pursuant to a resolution approved on December 23, 2020 your Honorable Board authorized the County to amend Contract No. EF-1907 with ELQ in order to extend the term of the contract to May 1, 2021 with no increase in the not to exceed amount of the contract of \$4,000,000.00. The purpose of the extension was to complete miscellaneous additional work items, site restoration and punch list items. The Second Amendment was subsequently executed on February 10, 2021.

Authorization is now sought from your Honorable Board to amend Contract No. EF-1907 with ELQ to extend the term of the contract until December 31, 2021. An emergency condition developed as a result of the United States Environmental Protection Agency having conducted a Compliance Evaluation Inspection which identified deficiencies with tide gates in the North Yonkers, Central Yonkers and South Yonkers Sanitary Sewer Districts, City of Yonkers, and on March 21, 2019, issued an Administrative Compliance Order (CWA-02-2019-3021) that requires the repair and/or replacement of all tide gates no later than December 31, 2020. The fabrication and delivery of the tide gates were delayed extensively due to COVID-19, and were delivered to the County on October 13, 2020. Installation of all tide gates were completed by December 3, 2020 in compliance with the EPA administrative order. The extension of this contract is for the purposes of completing miscellaneous additional work items, site restoration and punch list items. The extension will be completed at no additional cost to the County, so the amount of the contract remains at not to exceed \$4,000,000.00. It was determined that some of the items remaining on the list of work require specialty materials to complete. The specialty materials have a longer than normal lead time for manufacture and delivery. Also, the lead time has increased from what was originally estimated when preparing for the work, and could not have been anticipated when preparing for the Second Amendment. Except as specifically amended hereby, all remaining terms and conditions of Contract EF-1907 shall remain unchanged.

A proposed form of Resolution is attached.

RESOLUTION

Contract No. EF-1907 Third Amendment

Upon communication from The Commissioner of the Department of Environmental Facilities, be it hereby

RESOLVED, that the County of Westchester (the "County"), acting by and through the Department of Environmental Facilities (the "Department") is hereby authorized to amend Contract EF-1907, dated September 24, 2019, with ELQ Industries, Inc. ("ELQ") to extend the term of the contract until December 31, 2021; and be it further

RESOLVED, that the not to exceed amount of the contract shall not be increased from the original contract amount and shall remain at a not to exceed amount of \$4,000,000.00; and be it further

RESOLVED, that except as specifically amended hereby, all remaining terms and conditions of Contract EF-1907 shall remain unchanged; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby empowered to execute any and all instruments and take such other actions as may reasonably be necessary to effectuate the purposes thereof.

Contract # EF-1907 Third Amendment

Account to be Charged/Credited

		Major Program, Program & Phase	Object/ Sub Object	Trust Account	Dollars
	Fund	Dept Or Unit			
2019					
2020					
2021					

Budget Funding Year(s) 2019-2021 **Start Date** 09/01/2019 **End Date** 12/31/2021
 (must match resolution)

Funding Source

NTE \$4,000,000.00
 (must match resolution)

Tax Dollars 100%
State Aid _____
Federal Aid _____
Other _____

VFK/MP