



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 110518

Introduced June 16, 2011

Councilmember Krajewski

**Referred to the
Committee on Finance**

AN ORDINANCE

Authorizing the Procurement Commissioner, on behalf of the City of Philadelphia, to enter into a lease and related agreements with the Philadelphia Municipal Authority, for use by the City of certain cogeneration facilities to be located at the Northeast Water Pollution Control Plant, 3899 Richmond Street, Philadelphia, Pennsylvania, all under certain terms and conditions.

WHEREAS, The Philadelphia Municipal Authority (the "Authority") is authorized by Ordinance approved August 3, 1989 (Bill No. 447, 1989 Ordinances 1199) to develop and operate facilities for cogeneration systems related to sewage treatment plants using digester gas as the primary fuel and located at the Northeast Water Pollution Control Plant on behalf of the Water Department or other designated City department; and

WHEREAS, The Water Department and the Procurement Department have requested that the Authority undertake a project to provide a cogeneration system utilizing digester gas with a proposed term of sixteen years (the "Project"); and

WHEREAS, AMERESCO, Inc., has been selected through a competitive process, to develop the Project in accordance with a Request for Proposals issued on September 17, 2010; and

WHEREAS, The Project will require the Authority to enter into agreements with AMERESCO, Inc. and Sumitomo Mitsui Banking Corporation for the Project, and the City will undertake certain obligations of the Authority to AMERESCO, Inc. and Sumitomo Mitsui Banking Corporation through the City's agreements with the Authority; now, therefore

City of Philadelphia

BILL NO. 110518 continued

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Procurement Commissioner, on behalf of the City of Philadelphia, is hereby authorized to enter into agreements with the Philadelphia Municipal Authority, for the provision and maintenance of cogeneration equipment utilizing biogas produced at the Northeast Water Pollution Control Plant to be located at 3899 Richmond Street, Philadelphia, Pennsylvania, pursuant to terms substantially set forth in the document attached hereto as Exhibit "A".

SECTION 2. The City Solicitor is hereby authorized to review and to approve the agreements necessary to effectuate this Ordinance, and to impose such terms and conditions on them as the City Solicitor may deem necessary and proper to protect the interests of the City of Philadelphia and to carry out the purpose of this Ordinance.

City of Philadelphia

BILL NO. 110518 continued

EXHIBIT "A"

GENERAL TERMS AND CONDITIONS OF AGREEMENTS AMONG THE CITY OF PHILADELPHIA, THE PHILADELPHIA MUNICIPAL AUTHORITY AND THE OTHER PARTIES THERETO REGARDING THE CONSTRUCTION AND FINANCING OF A BIOGAS COGENERATION PLANT

Agreement	This Term Sheet sets forth the principal terms and conditions to be reflected in Agreements (the " <u>Agreements</u> "), which will set forth the commitments, conditions and obligations of the City acting through its Water Department and Water Revenue Bureau, the Philadelphia Municipal Authority and other parties relating to a transaction involving the leasing, construction, financing, operation and ongoing maintenance with respect to the Facility (as defined herein).
The Facility	The Facility will consist of a new combined heat and power plant (the " <u>Facility</u> ") to be constructed on a portion of a parcel of City-owned ground located at the Northeast Water Pollution Control Plant (the " <u>Plant</u> ") at 3899 Richmond Street, Philadelphia, Pennsylvania (the " <u>Facility Site</u> ").
Contractor	Ameresco, Inc. (" <u>Ameresco</u> " or the " <u>Contractor</u> ") will construct the Facility. Ameresco is a leading independent provider of comprehensive energy efficiency and renewable energy solutions for similar facilities throughout North America.
Fuel	The Facility will be fueled by (i) digester gas produced from the City's wastewater treatment processes at the Plant; and (ii) natural gas procured by the City.
Facility Output	All heat and electricity produced by the Facility during the facility lease term will be provided by the Facility to the City for its own use at the Plant.
Site Lease	The City, as landlord, will enter into a site lease agreement with the Authority with respect to the Facility Site (the " <u>Site Lease</u> "), with a term that will permit construction and operation of the Facility as contemplated under the proposed transaction. The Site Lease will have customary terms and conditions and will permit access by the Contractor and Facility Lessor (as defined herein)

City of Philadelphia

BILL NO. 110518 continued

	both during the construction phase and following completion for purposes of maintaining the Facility. The Authority will enter into a sublease (collectively with the Site Lease, the “ <u>Site Leases</u> ”) with the Facility Lessor. The Site Lease will be authorized by a separate ordinance.
Facility Cost	The total Facility cost will be approximately \$47,300,000. Financing of the Facility will be accomplished through a construction period financing followed by a lease financing upon substantial completion of construction of the Facility as described further herein.
Economic Opportunity Plan	The project is subject to an Economic Opportunity Plan which will provide significant opportunities for women, minority and disabled person owned businesses. The Contractor is committed to creating opportunities for local hiring, including women and minorities, during the Construction period and during the Operations and Maintenance period.

City of Philadelphia

BILL NO. 110518 continued

Construction	<p>The Contractor will construct the Facility using a project design that was prepared for the City by a third party engineering firm and such changes as approved by the parties (the “<u>Project Design</u>”) pursuant to an Engineering, Procurement and Construction Agreement (the “<u>Construction Agreement</u>”), with terms and conditions customary in the industry with respect to the construction of similar projects.</p> <p>Pursuant to the Construction Agreement, the Contractor shall perform and provide all engineering (other than any engineering incorporated within the Project Design), procurement, construction permitting, fabrication, construction, installation, commissioning, start-up, testing and related services required to complete the Facility in a manner consistent with the Project Design.</p> <p>The City is responsible for permits and approvals that can be obtained only by the owner of the Plant.</p> <p>Construction is expected to commence immediately following closing of the construction financing described below.</p> <p>To the extent that change orders (each, a “<u>Change Order</u>”) are required relating to the Project Design or otherwise, the Facility cost may be subject to certain adjustments in accordance with a mechanism to be agreed upon by the parties.</p> <p>The Owner Participant (as defined herein) shall engage an independent engineer to provide applicable services with respect to evaluation of the construction and performance of the Facility.</p>
Operation and Maintenance	<p>The Facility will be operated by the City using City personnel. Significant maintenance, including the rebuilding of generators, will be required during the lease term. The Contractor will be engaged by the Authority pursuant to a long-term maintenance agreement (the “<u>Maintenance Agreement</u>”) to provide ongoing maintenance for the Facility throughout the term of the proposed project.</p>
Construction Financing	<p>The Contractor will obtain construction financing for the Facility. Neither the City nor the Authority will be a party to, nor an obligor under the construction loan financing arrangement, but will have certain responsibilities during the construction period for the</p>

City of Philadelphia

BILL NO. 110518 continued

	Facility in order to, among other things, verify that the Facility is being constructed in accordance with the Project Design.
Construction Closing	Closing of the construction financing is expected to occur in 2011, subject to all necessary approvals, including required permits.
Facility Lease	Upon substantial completion of construction of the Facility, which is currently expected to occur on or around January 2013, the City will begin to have monthly payment obligations pursuant a lease agreement with the Authority for the Facility. In turn, the Authority as Facility Lessee, will have lease payment obligations to the Facility Lessor pursuant to a lease agreement (the "Facility Lease"). The Facility Lease will have terms and conditions compliant with City ordinances and customary in the industry with respect to lease financing of similar projects.
Lease Term; Early Buyout and Purchase Options	The lease will have a 16-year term under which the City would have both an early buyout option and the right to purchase the Facility at the end of the term of the Facility Lease on agreed upon terms.
Federal Income Tax Benefits	The Facility Lessor, as owner of the Facility, expects to be eligible for certain U.S. federal tax incentives, including a 1603 Cash Grant in lieu of an Investment Tax Credit and enhanced depreciation benefits. The 1603 Cash Grant is only available for qualifying facilities that commence construction on or December 31, 2011.

City of Philadelphia

BILL NO. 110518 continued

<p>Facility Lease Payments</p>	<p>The annual Facility Lease Payment cost is expected to be approximately \$2.9 million per year based on current interest rates, the expected total Facility cost and anticipated federal income tax benefits. The Facility Lease Payment shall be subject to adjustment based on the prevailing interest rates at the time of commencement of the Facility Lease in accordance with an index to be agreed upon by the parties. In the event that (i) the Facility cost is more than initially anticipated due to one or more Change Orders (ii) the lease commencement date changes, or (iii) certain tax assumptions made by Facility Lessor (as defined below) in connection with the Facility change including the Facility is no longer eligible for certain anticipated federal income tax benefits, Facility Lease Payments under the Facility Lease may be adjusted in accordance with a process to be agreed upon by the parties.</p>
<p>Facility Lessor</p>	<p>The owner of the Facility (“Facility <u>Lessor</u>”) will be a special purpose entity organized as either an owner trust or a limited liability company established for the purpose of holding the Facility assets, which will be beneficially owned by SMBC Leasing and Finance, Inc. (“SMBCLF”), or its assignee, as “Owner Participant.”</p>
<p>Appraisal</p>	<p>All fair market value determinations with respect to the Facility, including early buyout, and stipulated loss and termination values shall be determined on the basis of an independent appraisal report by an appraiser retained by SMBCLF and identified in the Project Agreements (as defined below).</p>

City of Philadelphia

BILL NO. 110518 continued

Project Agreements	<p>At the time of execution of the Agreement, it is expected that the following key project documents will be executed by the City and the other parties as indicated below:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="text-align: center;">Project Agreement</th> <th style="text-align: center;">Parties</th> </tr> </thead> <tbody> <tr> <td>Participation Agreements</td> <td>City and Authority; Authority, Contractor, Construction Lender, Owner Participant and Facility Lessor</td> </tr> <tr> <td>Construction Agreements</td> <td>City and Authority; Authority, Contractor and Facility Lessor</td> </tr> <tr> <td>Facility Leases</td> <td>City and Authority; Authority and Facility Lessor</td> </tr> <tr> <td>Maintenance Agreements</td> <td>City and Authority; Authority and Contractor</td> </tr> <tr> <td>Site Leases</td> <td>City and Authority; Authority, and Facility Lessor</td> </tr> </tbody> </table> <p>Other customary collateral documentation for a project of this type is expected to be executed upon closing of the construction financing.</p>	Project Agreement	Parties	Participation Agreements	City and Authority; Authority, Contractor, Construction Lender, Owner Participant and Facility Lessor	Construction Agreements	City and Authority; Authority, Contractor and Facility Lessor	Facility Leases	City and Authority; Authority and Facility Lessor	Maintenance Agreements	City and Authority; Authority and Contractor	Site Leases	City and Authority; Authority, and Facility Lessor
Project Agreement	Parties												
Participation Agreements	City and Authority; Authority, Contractor, Construction Lender, Owner Participant and Facility Lessor												
Construction Agreements	City and Authority; Authority, Contractor and Facility Lessor												
Facility Leases	City and Authority; Authority and Facility Lessor												
Maintenance Agreements	City and Authority; Authority and Contractor												
Site Leases	City and Authority; Authority, and Facility Lessor												
Authorizations	<p>Each party shall furnish, at or immediately prior to execution of the Agreement, or at such other date as may be applicable under the circumstances, reasonably satisfactory evidence of all required authorizations and approvals.</p>												