



# City of Philadelphia

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

**BILL NO. 110518-A**  
**(As Amended on Floor 11/3/2011)**

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**Introduced June 16, 2011**

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**Councilmember Krajewski**

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**Referred to the  
Committee on Finance**

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## **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 Banc of America Public Capital Corp or its affiliate for the Project, and the City will undertake certain obligations of the Authority to AMERESCO, Inc. and Banc of America Public Capital Corp or its affiliate through the City's agreements with the Authority; now, therefore

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## *THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Subject to the conditions set forth in Section 2, 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 following conditions shall apply to the authority granted pursuant to Section 1.

(a) The Construction Agreement must be a firm, fixed price agreement. Such agreement may provide that price increases are permitted for the following reasons: (1) a change in law or permit requirements after the date hereof affecting the design or construction; (2) pre-existing hazardous materials, archeological artifacts, fossils, or endangered species discovered in the course of design or construction; (3) other unknown subsurface conditions discovered in the course of construction; (4) force majeure events occurring in the course of design or construction that are beyond the reasonable control of the affected party; (5) Authority-ordered changes to the scope of work or schedule; (6) Authority failure to provide the site, biogas fuel, and other consumables and services required to be provided by the Authority for the design and construction of the Project; or (7) Authority-ordered suspension of the work other than for Ameresco's default. Any price increase must be supported by a demonstration of additional costs to the Contractor resulting from one of the reasons enumerated above, and must be offset by any reduction in the construction costs resulting from such change.

(b) The Construction Agreement must provide that the Facility Cost of \$47,500,000 shall not be increased by more than ten percent without approval by an ordinance of City Council.

(c) The Construction Agreement must provide that Ameresco shall be required to utilize its best efforts as developer to establish the project's eligibility for payments for specified energy property in lieu of federal tax credits, as provided in Section 1603 of The American Recovery and Reinvestment Act of 2009, and shall support and assist Banc of America Public Capital Corp in its application for such energy payments.

SECTION 3. The City Solicitor is hereby authorized to review and to approve the agreements necessary to effectuate this Ordinance, and to impose such terms and

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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.

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## 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

<b>Agreement</b>	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, 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).
<b>The Facility</b>	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-owner ground located at the Northeast Water Pollution Control Plant (the “ <u>Plant</u> ”) at 3899 Richmond Street, Philadelphia, Pennsylvania (the “ <u>Facility Site</u> ”).
<b>Contractor</b>	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.
<b>Fuel</b>	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.
<b>Facility Output</b>	All heat and electricity produced by the Facility will be provided by the Facility to the City for its own use at the Plant.
<b>Site Lease</b>	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 access, construction and maintenance of the Facility as contemplated under the proposed Facility Lease as described herein. The Site Lease will have customary terms and conditions and will permit access by the Owner and Contractor both during the construction phase and the Term of the Facility Lease. The Authority will enter into a sublease (collectively with the Site Lease, the “ <u>Site Leases</u> ”) with the Lessor (as defined herein). The Site Lease will be authorized by a

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	separate ordinance (Bill 110517).
<b>Facility Cost</b>	The total Facility cost will be approximately \$46,500,000. The Facility has been designed by a private engineering firm, AECOM, under contract to the City. The City will assign its contract with the AECOM to Ameresco allowing Ameresco to have complete design/build responsibility for the Facility. In order to facilitate meeting deadlines for ARRA provisions, Ameresco will pay the City for the AECOM costs that have been made to date. This is approximately \$2,500,000 which will be paid the City. This same amount will then be added to the total Facility cost.
<b>Economic Opportunity Plan</b>	The project is subject to an Economic Opportunity Plan (“EOP”) 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. The EOP is attached as Exhibit “B’.

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<p><b>Construction</b></p>	<p>The Contractor will construct the Facility using a project design that was prepared for the City by AECOM 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, 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. The City will agree to perform Authority’s obligations under construction documents as required for facilitation of the construction. They will include providing utilities and similar responsibilities.</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 Contractor shall engage an independent engineer to provide applicable services with respect to evaluation of the construction and performance of the Facility.</p>
<p><b>Operation and Maintenance</b></p>	<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. Maintenance costs will vary in accordance with major maintenance requirements, but will average \$2,500,000 per year.</p>
<p><b>Construction Closing</b></p>	<p>Closing of the construction financing is expected to occur in 2011, subject to all necessary approvals, including required permits.</p>

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<b>Lease Financing</b>	Upon substantial completion of construction of the Facility, which is expected to occur in January 2013, the City will begin to have monthly payment obligations under a lease financing arrangement with the Authority for the Facility. In turn, the Authority as Lessee, will have lease payment obligations to Banc of America Public Capital Corp or its affiliate.
<b>Lease Term; Early Buyout and Purchase Options</b>	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 lease on agreed upon terms that would be structured to permit the Facility to remain eligible for all available U.S. federal income tax benefits.
<b>Federal Income Tax Benefits</b>	The lease and sublease are expected to enable the Facility and its owner 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 before December 31, 2011. These benefits are not available to the City or the Authority as governmental entities.
<b>Lease Payments</b>	The annual Lease Payment cost is expected to be approximately \$3.0 million per year based on current interest rates, the expected total Facility cost and anticipated federal income tax benefits. The Lease Payment shall be subject to adjustment based on the prevailing interest rates at the time of commencement of the 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 or (ii) the Facility is no longer eligible for certain anticipated federal income tax benefits, Lease Payments under the Lease may be adjusted in accordance with a process to be agreed upon by the parties.
<b>Lessor</b>	The owner of the 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 Banc of America Capital Corp or an affiliate, as “Owner Participant.”
<b>Appraisal</b>	All fair market value determinations with respect to the Facility, including stipulated loss and termination values shall be determined on the basis of an independent appraisal retained by the Facility Lessor and selected through procedures to be agreed upon in the Facility Lease.

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<b>Project Agreements</b>	<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="width: 50%; text-align: center;">Project Agreement</th> <th style="width: 50%; text-align: center;">Parties</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Participation Agreements</td> <td style="padding: 5px;">City and Authority; Authority, Contractor, Owner Participant and Lessor</td> </tr> <tr> <td style="padding: 5px;">Construction Agreements</td> <td style="padding: 5px;">City and Authority; Authority, Contractor and Lessor</td> </tr> <tr> <td style="padding: 5px;">Facility Leases</td> <td style="padding: 5px;">City and Authority; Authority and Lessor</td> </tr> <tr> <td style="padding: 5px;">Maintenance Agreements</td> <td style="padding: 5px;">City and Authority; Authority and Contractor</td> </tr> <tr> <td style="padding: 5px;">Site Leases</td> <td style="padding: 5px;">City and Authority; Authority, Contractor and 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, Owner Participant and Lessor	Construction Agreements	City and Authority; Authority, Contractor and Lessor	Facility Leases	City and Authority; Authority and Lessor	Maintenance Agreements	City and Authority; Authority and Contractor	Site Leases	City and Authority; Authority, Contractor and Lessor
Project Agreement	Parties												
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Maintenance Agreements	City and Authority; Authority and Contractor												
Site Leases	City and Authority; Authority, Contractor and Lessor												
<b>Authorizations</b>	<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>												

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## EXHIBIT B

### AMERESCO, INC. Economic Opportunity Plan

#### For Northeast Water Pollution Control Plant Biogas Cogeneration Project

#### I. Introduction, Definitions and Diversity Practices

A. Ameresco, Inc. (“Ameresco”) is the project developer for the electricity and thermal hot water biogas fueled co-generation facility to be located at the Northeast Water Pollution Control Plant (the “Project”). Ameresco will enter into an agreement with the Philadelphia Municipal Authority (the “Authority”), and a subsidiary of Banc of America (the “Facility Owner”) for the development of the Project. Ameresco will also enter into a Maintenance Agreement with the Authority for the maintenance of the Project over a 16 year period. The City will enter into a Facility Lease and a Maintenance Agreement with the Authority. The total Project budget for engineering, procurement and construction is \$46,500,000. The total project budget for maintenance is \$2,500,000 per year for a 16 year term.

This Project is subject to Chapter 17-1600 of The Philadelphia Code requires the development and implementation of “Economic Opportunity Plan(s)” for certain classes of contracts and covered projects as defined in Section 17-1601. The Economic Opportunity Plan (“Plan”) memorializes the Ameresco’s best and good faith efforts to provide meaningful and representative opportunities for Minority Business Enterprises (“MBEs”), Woman Business Enterprises (“WBEs”) and Disabled Business Enterprises (“DSBEs”) (collectively, “M/W/DSBEs” which also includes firms designated as Disadvantaged Business Enterprises or “DBEs”<sup>1</sup>) and an appropriately diverse workforce in connection with the Project.

This Project is subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, Ameresco makes a legally binding commitment to abide by the provisions of this Plan which include Ameresco’s commitment to exercise its best and good faith efforts throughout the contract term to provide meaningful and representative contracting opportunities for M/W/DSBEs and to employ an appropriately diverse workforce which should include minority and female persons in all phases of the Project. By submission of this Plan, Ameresco agrees that it shall and shall cause all its professional services providers and consultants retained by Ameresco (collectively, the “Participants” and each a “Participant”) to use their best and good faith efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the Project. This Plan expressly applies to all contracts awarded by Ameresco and subcontracts awarded by its Participants. The objectives set forth in this Plan shall be incorporated in all requests for proposals and solicitations and communicated to all Participant levels.

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<sup>1</sup> “DBE” or “Disadvantage Business Enterprise” means a socially and economically disadvantaged minority or woman owned business that is certified under 49 C.F.R. Part 26. If Ameresco makes solicitation(s) and commitment(s) with a DBE, Ameresco shall indicate which category, MBE or WBE, is submitted for counting.

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In particular, Ameresco, working in conjunction with its general subcontractor, will be included in all requests for proposals, bid packages, and solicitations for the project. Pro-active outreach efforts will also include:

- A review of Office of Economic Opportunity (OEO) Registry of Certified Firms and PA-UCP certified firms by specialty for submission of bid documents for phases of the project
- Require the general subcontractor to identify local, qualified sub-contractors for project components
- Review of recent EOP development project reports to identify qualified subcontractors for comparable services
- Identifying appropriate steps to publicize subcontractor opportunities
- Establish a working committee with owner representative, general contractor, and the monitor to review contractor opportunities prior to release of bids
- Execute recruitment activities outlined in previous section and provide a qualified M/W/DSBE list to all bidders prior to bid release
- Evaluate all qualified bid responses for M/W/DSBE/DBE inclusion
- Coordinate with Philadelphia Building Trade Council project liaison for Philadelphia resident initiative to pre-screen eligible trades members for contractor hiring
- Establishment of oversight committee. Ameresco anticipates that an oversight committee will conduct an ongoing review of the EOP execution and provide interim recommendations for compliance if Ameresco requires assistance in meeting program targets. A meeting will be held within two months of project commencement

B. For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity (“OEO”). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency<sup>2</sup> or identified in the OEO Registry will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at [www.phila.gov/oeo/directory](http://www.phila.gov/oeo/directory). If a firm is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

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<sup>2</sup> A list of “OEO approved certifying agencies” can be found at [www.phila.gov/oeo](http://www.phila.gov/oeo).

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C. Neither Ameresco nor any Participant shall discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, or handicap in the award and performance of contracts pertaining to this Project. Ameresco is required to submit a statement summarizing current and past practices relating to its diversity practices. Attachment "A" to this Plan provides additional information summarizing past diversity practices. Ameresco is committed to achieving and maintaining the diversity goals established within this Economic Opportunity Plan

**Ameresco and its Participant(s) hereby verify that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, are true and correct and are notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. Ameresco and its Participants also acknowledge that if awarded a contract/subcontract resulting from this PROJECT, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) if, in the course of the contract/subcontract, Ameresco and/or its Participant(s) fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.**

## II. Goals

For this Plan, the term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and achieve an appropriately diverse workforce. Best and Good Faith Efforts are rebuttably presumed met, when a Ameresco makes commitments within the M/W/DSBE Participation Ranges established for this Proposal and commits to employ a diverse workforce.

### 1. M/W/DSBE Participation Ranges

As a benchmark for the Ameresco's expression of its Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, the following participation ranges have been developed. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

PROJECT PHASE	MBE	WBE
Construction/installation of Project*	35% to 45%	5% to 10%
Maintenance of Project*	30% to 35%	5/5 to 10%

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\*These Participation ranges are based on, and percentages shall be calculated based on, all costs of the entire facility LESS the cost of the specialty equipment: digester gas preparation equipment (e.g., Siloxane removal), cogeneration engines and generation sets related electrical switch gear, as well as the selective catalytic reduction pollution control equipment and heat recovery equipment.

## 2. Employment Goals

Ameresco agrees to exhaust its Best and Good Faith Efforts to employ an appropriately diverse workforce which includes minority persons and females at all tiers of employment and management. Ameresco shall also cause its Participants to employ an appropriately diverse workforce. For this Plan, an appropriately diverse workforce is one which reflects the local availability of professionals possessing the requisite education, licenses, where appropriate, and skills to work on this project.

PROJECT PHASE	Minority Males	Women
Construction/installation of Project	32%	7%
Maintenance of Project	30% to 35%	5% to 10%

Ameresco shall use its Best and Good Faith Efforts to employ an workforce that has up to 50% City Residents in all phases of the Project.

## III. Ameresco Responsiveness and Responsibility

A. Ameresco identified all its M/W/DSBE commitments and evidence its agreement to employ a diverse workforce on the form entitled, "M/W/DSBE Participation and Workforce Commitments." The Ameresco's identified commitment to use an M/W/DSBE on this form constitutes a representation by Ameresco, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that Ameresco or its subcontractor A.P. Construction, Inc. has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Ameresco further represents that if Ameresco is awarded the contract, Ameresco will subcontract with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, Ameresco shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. Ameresco is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases. In the event Ameresco's contract is increased by change order and/or modification, or amendment, it shall be the responsibility of Ameresco to apply its Best and Good Faith Efforts to the amended amount in order

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to maintain any participation ranges committed to on the total dollar amount of the contract at the time of contract completion.

## 1. Commercially Acceptable Function

An Ameresco that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function (“CAF”). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with the PROJECT), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the Ameresco receives towards the participation ranges. Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Any change in commitment, including but not limited to termination of the subcontract, reduction in the scope of committed work, substitutions for the listed firms, changes or reductions in the listed dollar/percentage amounts, must be pre-approved in writing by OEO. Throughout the term of the contract, Ameresco is required to continue its Best and Good Faith Efforts.

**B. In the event Ameresco does not identify on the M/W/DSBE Participation and Workforce Commitments Form that it has made M/W/DSBE commitments within the participation ranges established for this Project and/or does not agree to employ a diverse workforce as described herein, Ameresco must complete and submit a Documentation of Best and Good Faith Efforts Form (“BGFE Form”), documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the contract and to employ a diverse workforce.** The submission of the BGFE Form is an element of proposal responsiveness and failure to include this form may result in the rejection of the Proposal. The BGFE Form must include at a minimum, certification and documentary evidence that the following actions were taken:

1. Solicitation directed to both qualified M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Ameresco must provide a list of all certification directories used for soliciting participation for this PROJECT. Ameresco must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and

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2. Ameresco provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation; and

3. Ameresco negotiated in good faith with interested M/W/DSBEs. An Ameresco using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of the Plan into consideration; and

4. Documentation of the following:

i. Any commitments to use M/W/DSBEs in its proposal for subcontracted services and materials supply even when Ameresco would otherwise prefer to self-perform/supply these items; and

ii. Correspondence between the Ameresco and any M/W/DSBE(s) related to this Proposal; and

iii. Attendance logs and/or records of any scheduled pre-proposal meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

i. Any arms length business assistance provided to interested M/W/DSBEs; and

ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and

iii. Telephone logs of communications related to this Project; and

iv. Notification of and access to proposal documents at the Ameresco's office or other office locations for open and timely review; and

v. Ameresco sought assistance from the Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation to perform employment outreach; and

vi. Ameresco published its policy of nondiscrimination in the hiring, retention and promotion of employees; and

vii. Any agreement with a training program that targets the employment of minority persons, disabled persons and women.

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## IV. Evaluation of Responsiveness and Responsibility

### A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate the responsiveness of the Ameresco's Plan to these requirements. OEO reserves the right to request further documentation and/or clarifying information at any time prior to the award of the contract which may result in Ameresco's amendment of its M/W/DSBE Participation and Workforce Commitments Form or BGFE Form.

Ameresco has identified two criteria to assess the inclusion of M/W/DS-BE and/or DBE firms as contractors and vendors, and minority/female/local residents as Project site workforce participants:

M/W/DSBE Contracting and Vending Participation Levels: the basis for each determination will be the total dollar amount of the bid/contract OR the total dollar amount of the bid/contract for the identified Project task. These Participation ranges are based on, and percentages shall be calculated based on, all costs of the entire facility LESS the cost of the specialty equipment: digester gas preparation equipment (e.g., Siloxane removal), cogeneration engines and related electrical switch gear, as well as the selective catalytic reduction pollution control equipment and heat recovery equipment.

Minority/Female/Local Resident Employment Participation Levels: the basis for each determination will be the projected total on-site field employee hours divided by the number of minority, female and local residents' employee hours anticipated to be performed on the Contractor's payroll, and each of the Contractor's on-site subcontractors payrolls.

### B. Administrative Reconsideration

1. If the OEO determines that the Ameresco has not made sufficient Best and Good Faith Efforts, the Ameresco will be notified that its proposal is nonresponsive and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that the Ameresco did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all proposals as deemed in the best interest of the City.

## V. Compliance and Monitoring of Best and Good Faith Efforts

A. Ameresco agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. Ameresco must provide

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as required and maintain the following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments.

**B. Prompt Payment of M/W/DSBEs**

1. Ameresco shall within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, Ameresco agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

2. Each month of the contract term and at the conclusion of the contract, Ameresco shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the Plan.

**C. Oversight Committee**

1. For this project, the City, in its sole discretion, may establish a Project Oversight Committee consisting of representatives from the Ameresco's company and the City ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.

2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed.

**VI. Remedies and Penalties for Non-Compliance**

A. Ameresco agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the contract. It is further agreed and understood that in the event the City determines that the Ameresco hereunder has failed to comply with these requirements the City may, in addition to remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies below, which shall be deemed cumulative and concurrent:

- a. Withhold payment(s) or any part thereof until corrective action is taken.

# City of Philadelphia

BILL NO. 110518-A, as amended continued

- b. Terminate the Ameresco's contract, in whole or in part.
- c. Suspend/Debar Ameresco from proposing on and/or participating in any future City contracts for a period of up to three (3) years.
- d. Recover as liquidated damages as outlined in the Plan.

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this PROJECT nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in any contract resulting from this PROJECT. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of any contract resulting from this PROJECT except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

[See Forms on following pages; these Forms, as completed by Ameresco, must be submitted with the Proposal as a matter of Responsiveness and Responsibility]

## Philadelphia Municipal Authority

DATE: \_\_\_\_\_

By: \_\_\_\_\_

**AMERESCO, INC.**

DATE: \_\_\_\_\_

By: \_\_\_\_\_

## Office of Economic Opportunity

DATE: 10/14/2011

By: Angela Lowd-Burton  
Title: Executive Director

# City of Philadelphia

**PART - A**

BILL NO. 110518-A, as amended continued

## DOCUMENTATION OF BEST AND GOOD FAITH EFFORTS FORM

Minority (MBE), Women (WBE), and Disabled (DSBE) Business Enterprises <sup>1</sup>		DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)	
RFP TITLE - Cogeneration Facility at the NE WPCP		NAME OF PROPOSER -	
		A.P. Construction, Inc.	
		PROPOSAL SUBMISSION DATE -	
		2-Dec-10	
<i>List below ALL MBE/WBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.</i>			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE	<b>Please Specify Work to be Performed and/or Type of Supply Effort</b>	<b>Date Solicited-</b>	<b>Commitment Made</b>
Company Name Clark Resources, Inc. ✓	Construction Management Services	By Phone	By Mail
Address Harrisburg, PA		11/10/10	
Contact Person Fred Clark		By Advertisement	YES <input type="checkbox"/> NO <input type="checkbox"/>
Telephone Number      Fax # 717.230.8861			(If Yes, give date and Proceed to Part C) 12/01/10
<input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier MBE			(If No Commitment Proceed to Part B And then Part C)
OEO CERTIFICATION # See attached certification			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE	<b>Please Specify Work to be Performed and/or Type of Supply Effort</b>	<b>Date Solicited</b>	<b>Commitment Made</b>
Company Name Bell Concrete, Inc.	Concrete Material and Delivery	By Phone	By Mail
Address Sharon Hill, PA		11/12/10	
Contact Person Beverly Bell		By Advertisement	YES <input type="checkbox"/> NO <input type="checkbox"/>
Telephone Number      Fax # 215.239.4772			(If Yes, give date and Proceed to Part C) 11/30/10
<input type="checkbox"/> Subcontractor <input checked="" type="checkbox"/> Supplier MBE			(If No Commitment Proceed to Part B And then Part C)
OEO CERTIFICATION # See attached certification			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE	<b>Please Specify Work to be Performed and/or Type of Supply Effort</b>	<b>Date Solicited</b>	<b>Commitment Made</b>
Company Name Decision Distribution, LLC ✓	Building and Piping Material / Building Material	By Phone	By Mail
Address Yardley, PA		11/12/10	
Contact Person Dan Goldman		By Advertisement	YES <input type="checkbox"/> NO <input type="checkbox"/>
Telephone Number      Fax # 215.493.4400			(If Yes, give date and Proceed to Part C) 11/30/10
<input type="checkbox"/> Subcontractor <input checked="" type="checkbox"/> Supplier MBE			(If No Commitment Proceed to Part B And then Part C)
OEO CERTIFICATION # See attached certification			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE	<b>Please Specify Work to be Performed and/or Type of Supply Effort</b>	<b>Date Solicited</b>	<b>Commitment Made</b>
Company Name Cruz, Inc. ✓	Sitework	By Phone	By Mail
Address Philadelphia, PA		11/12/10	
Contact Person Luis Cruz		By Advertisement	YES <input type="checkbox"/> NO <input type="checkbox"/>
Telephone Number      Fax # 215.634.0768			(If Yes, give date and Proceed to Part C) 11/30/10
<input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier			(If No Commitment Proceed to Part B And then Part C)
OEO CERTIFICATION #			

<sup>1</sup>MBE/WBE/DSBEs Listed above must be certified by the OEO prior to bid submission date.

<sup>2</sup>Proposer should attach quotation with this form, but the City reserves the right to request this information which shall be submitted by proposer within 48 hours of the City's request.

# City of Philadelphia

**PART - A**

BILL NO. 110518-A, as amended continued

## DOCUMENTATION OF BEST AND GOOD FAITH EFFORTS FORM

Minority (MBE), Women (WBE), and Disabled (DSBE) Business Enterprises <sup>1</sup>		DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)			
RFP TITLE - Cogeneration Facility at the NE WPCP		NAME OF PROPOSER -		PROPOSAL SUBMISSION DATE -	
		A.P. Construction, Inc.		2-Dec-10	
<i>List below ALL MBE/WBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.</i>					
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE	<b>Please Specify Work to be Performed and/or Type of Supply Effort</b>	<b>Date Solicited-</b>		<b>Commitment Made</b>	
Company Name Jabb of PA, LLC	General Construction	By Phone	By Mail	By Advertisement	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Address Philadelphia, PA		11/11/10			(If Yes, give date and Proceed to Part C) 11/30/10
Contact Person Brian Jones		<b>Quote Received</b>		<b>Amount Committed To</b>	
Telephone Number      Fax # 267.249.2422		YES <sup>2</sup>	NO	Dollar Amount \$      see %	
<input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier MBE		11/30/10			Percent of Total Proposal %      3.20%
OEO CERTIFICATION # See attached certification					
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE	<b>Please Specify Work to be Performed and/or Type of Supply Effort</b>	<b>Date Solicited</b>		<b>Commitment Made</b>	
Company Name KS Engineers, PC	Engineering	By Phone	By Mail	By Advertisement	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Address Philadelphia, PA		11/11/10			(If Yes, give date and Proceed to Part C) 11/30/10
Contact Person Kamal Shahid		<b>Quote Received</b>		<b>Amount Committed To</b>	
Telephone Number      Fax # 973.242.2955		YES <sup>2</sup>	NO	Dollar Amount \$      see %	
<input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier MBE		11/29/10			Percent of Total Proposal %      0.70%
OEO CERTIFICATION # See attached certification					
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE	<b>Please Specify Work to be Performed and/or Type of Supply Effort</b>	<b>Date Solicited</b>		<b>Commitment Made</b>	
Company Name AKM Construction Services, Inc.	Quality Control Testing and Inspection	By Phone	By Mail	By Advertisement	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Address Lester, PA		11/12/10			(If Yes, give date and Proceed to Part C) 11/30/10
Contact Person Kim Moore		<b>Quote Received</b>		<b>Amount Committed To</b>	
Telephone Number      Fax # 610.362.0210		YES <sup>2</sup>	NO	Dollar Amount \$      see %	
<input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier WBE		11/29/10			Percent of Total Proposal %      0.20%
OEO CERTIFICATION # See attached certification					
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE	<b>Please Specify Work to be Performed and/or Type of Supply Effort</b>	<b>Date Solicited</b>		<b>Commitment Made</b>	
Company Name American Indian Builders / Suppliers	HVAC and Electrical Materials	By Phone	By Mail	By Advertisement	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Address Lewiston, NY		11/12/10			(If Yes, give date and Proceed to Part C) 11/30/10
Contact Person Elma Patterson		<b>Quote Received</b>		<b>Amount Committed To</b>	
Telephone Number      Fax # 716.754.8385		YES <sup>2</sup>	NO	Dollar Amount \$      see %	
<input type="checkbox"/> Subcontractor <input checked="" type="checkbox"/> Supplier		11/29/10			Percent of Total Proposal %      5.60%
OEO CERTIFICATION #					

<sup>1</sup>MBE/WBE/DSBEs Listed above must be certified by the OEO prior to bid submission date.

<sup>2</sup>Proposer should attach quotation with this form, but the City reserves the right to request this information which shall be submitted by proposer within 48 hours of the City's request.

# City of Philadelphia

**PART - A**

BILL NO. 110518-A, as amended continued

## DOCUMENTATION OF BEST AND GOOD FAITH EFFORTS FORM

Minority (MBE), Women (WBE), and Disabled (DSBE) Business Enterprises <sup>1</sup>		DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)					
RFP TITLE - Cogeneration Facility at the NE WPCP		NAME OF PROPOSER -		PROPOSAL SUBMISSION DATE -			
		A.P. Construction, Inc.		2-Dec-10			
<i>List below ALL MBE/WBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.</i>							
<input type="checkbox"/> MBE <input checked="" type="checkbox"/> WBE <input type="checkbox"/> DSBE Company Name Molly Construction, Inc.		Please Specify Work to be Performed and/or Type of Supply Effort  Cast in Place Concrete Placement		Date Solicited- By Phone <input type="checkbox"/> By Mail <input type="checkbox"/> By Advertisement <input checked="" type="checkbox"/>		Commitment Made <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
Address Philadelphia, PA Contact Person Melinda DeNofa Telephone Number      Fax # 215.535.2484 <input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier WBE OEO CERTIFICATION # See attached certification				11/04/10		(If Yes, give date and Proceed to Part C) 11/30/10 (If No Commitment Proceed to Part B And then Part C)	
				Quote Received		Amount Committed To	
				YES <sup>2</sup>		NO	
				11/30/10		Dollar Amount \$ see %	
						Percent of Total Proposal 3.00%	
<input type="checkbox"/> MBE <input checked="" type="checkbox"/> WBE <input type="checkbox"/> DSBE Company Name Swipes Heavy Hauling, LLC		Please Specify Work to be Performed and/or Type of Supply Effort  Trucking and Dumpsters		Date Solicited- By Phone <input type="checkbox"/> By Mail <input type="checkbox"/> By Advertisement <input checked="" type="checkbox"/>		Commitment Made <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
Address Philadelphia, PA Contact Person Donna Telephone Number      Fax # 856.467.2980 <input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier WBE OEO CERTIFICATION # See attached certification				11/16/10		(If Yes, give date and Proceed to Part C) 11/30/10 (If No Commitment Proceed to Part B And then Part C)	
				Quote Received		Amount Committed To	
				YES <sup>2</sup>		NO	
				11/29/10		Dollar Amount \$ see %	
						Percent of Total Proposal 1.20%	
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE Company Name		Please Specify Work to be Performed and/or Type of Supply Effort		Date Solicited- By Phone <input type="checkbox"/> By Mail <input type="checkbox"/> By Advertisement <input type="checkbox"/>		Commitment Made <input type="checkbox"/> YES <input type="checkbox"/> NO	
Address  Contact Person  Telephone Number      Fax #  <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier  OEO CERTIFICATION #						(If Yes, give date and Proceed to Part C)  (If No Commitment Proceed to Part B And then Part C)	
				Quote Received		Amount Committed To	
				YES <sup>2</sup>		NO	
						Dollar Amount \$	
						Percent of Total Proposal %	
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE Company Name		Please Specify Work to be Performed and/or Type of Supply Effort		Date Solicited- By Phone <input type="checkbox"/> By Mail <input type="checkbox"/> By Advertisement <input type="checkbox"/>		Commitment Made <input type="checkbox"/> YES <input type="checkbox"/> NO	
Address  Contact Person  Telephone Number      Fax #  <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier  OEO CERTIFICATION #						(If Yes, give date and Proceed to Part C)  (If No Commitment Proceed to Part B And then Part C)	
				Quote Received		Amount Committed To	
				YES <sup>2</sup>		NO	
						Dollar Amount \$	
						Percent of Total Proposal %	

<sup>1</sup>MBE/WBE/DSBEs Listed above must be certified by the OEO prior to bid submission date.

<sup>2</sup>Proposer should attach quotation with this form, but the City reserves the right to request this information which shall be submitted by proposer within 48 hours of the City's request.

# City of Philadelphia

BILL NO. 110518-A, as amended continued DOCUMENTATION OF BEST AND GOOD FAITH EFFORTS FORM

PART - B

<b>Minority (MBE), Women (WBE), and Disabled (DSBE) Business Enterprises</b>	<b>DEPARTMENT OF COMMERCE</b>	<b>OFFICE OF ECONOMIC OPPORTUNITY (OEO)</b>
<b>RFP TITLE - Cogeneration Facility at the NE WPCP</b>	<b>NAME OF PROPOSER -</b>	<b>RFP SUBMISSION DATE -</b>
	A.P. Construction, Inc.	
<i>Photocopy this form as necessary</i>		
<b>Company Name:</b>		
<b><u>If no commitment resulted from the solicitation, please explain what best and good faith efforts were made and why they were unsuccessful:</u></b>		
N/A		
<b><u>Did you attempt to negotiate price and scope (please be specific, attaching any dated price quotations and correspondence):</u></b>		
N/A		
<b><u>What kind of business assistance did you offer the M/W/DSBE (e.g., introduction to manufacturer, helped provide access to line of credit, access to union hall, etc.):</u></b>		
N/A		
<b><u>What efforts were made to provide to M/W/DSBEs information about the scope of work required:</u></b>		
N/A		
<b><u>Are you planning to award this work or supply effort to a non-M/W/DSBE? If so, please explain why. Identify the name of the awarded firm(s), provide the awarded firms' quotation and price adjusted quotation, scope of work, and experience of the awarded firm(s):</u></b>		
N/A		

OEO 4/08/2010