

RESOLUTION NO. 2020- 07

A RESOLUTION AUTHORIZING EXTRAORDINARY, UNSPECIFIABLE SERVICES AGREEMENTS FOR THE PURCHASE OF NOX, SO2, AND CO2 ALLOWANCES FOR THE CITY OF VINELAND ELECTRIC UTILITY.

WHEREAS, the Electric Utility has a continuing need to acquire NOx and SO2 emission allowances to remain in compliance with the State of New Jersey, Department of Environmental Protection (NJDEP) regulations and/or the EPA Cross-State Air Pollution Rule (CSAPR), Acid Rain Program (ARP), or other related programs; and

WHEREAS, the Electric Utility will also need to obtain CO2 emission allowances to comply with NJDEP initiatives and regulations designed to address global warming; and

WHEREAS, it has become standard for emission allowances to be acquired through open public auction and/or for the purchase and sale of allowances to be transacted through the use of brokers who determine the most cost effective sources at the time credits and allowances are needed, and the Electric Utility desires to enter into agreements through such transaction services as extraordinary, unspecifiable services; and

WHEREAS, the Local Public Contracts Law (N.J.S.A 40A:11-1 et seq.) requires that a resolution authorizing the award of contracts for “Extraordinary, Unspecifiable Services” without competitive bids, and the contract itself, must be available for public inspection; and

WHEREAS, the Business Administrator has certified that this meets the statute and regulations governing the award of said contracts because the transactions required to obtain emission allowances are specialized and immediate in nature and cannot be facilitated through the use of advance specifications and written expression; and

WHEREAS, the quantity of credits and allowances which may need to be acquired in 2020 and 2021 for current and future compliance with emission trading programs is anticipated to cost up to \$600,000.00;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vineland as follows:

1. THAT the Mayor or his designee are hereby authorized and directed to execute agreements as arranged by the Director of the Electric Utility with counsel of the City Solicitor for the purchase of NOx, SO2 and/or CO2 allowances from the most cost effective resources available, up to a maximum total amount of \$600,000.
2. THAT contracts to cover such agreements are awarded without competitive bidding as an “Extraordinary, Unspecifiable Services” in accordance with 40A:11-5(1)(a) of the Local Public Contracts Law.
3. THAT the Purchasing Agent is hereby authorized to issue purchase orders under this contract as directed by the Director of the Electric Utility to implement the executed agreements for the purchase of emission allowances.
4. THAT a notice of this action shall be published in the Daily Journal.

Adopted:

\_\_\_\_\_  
President of Council

ATTEST:

\_\_\_\_\_  
City Clerk

**STANDARD CERTIFICATION DECLARATION  
FOR AN EXTRAORDINARY UNSPECIFIABLE SERVICE**

TO: Members of the Governing Body

FROM: Robert Dickenson, Business Administrator

DATE: December 27, 2019

SUBJECT: This is regarding contracts for: Purchase of NOx and CO2 Emission Allowances

This is to request your approval of a resolution authorizing a contracts to be executed as follows:

Firm: (to be determined through market transactions)

Cost: (to be determined through market transactions)

Duration: 24 months

Purpose: compliance with state regulation

This is to request authorization of contract awards without the receipt of formal bids as an Extraordinary Unspecifiable Services [N.J.S.A. 40A:11-5(1)(a)(ii) and N.J.A.C. 5:34-2.3(b)].

I do hereby certify to the following:

**1. Provide a clear description of the nature of the work to be done:**

NOx and CO2 emission allowances, as defined and determined by the NJDEP, must be purchased by the Electric Utility to comply with environmental regulations. These credits and allowances represent authorizations to emit defined amounts of nitrogen oxide and carbon dioxide.

**2. Describe in detail why the contract meets the provisions of the statute and rules:**

Specifications cannot be used to procure emission allowances because sales and purchases are conducted in a fluid market or State-run open buyer auction, not in a seller-bid system. Competition, however, is an inherent part of the market process governing the trade of these commodities, thus meeting the intent of the purchasing statute and rules.

**3. The service(s) is of such a specialized and qualitative nature that the performance of the service(s) cannot be reasonably described by written specifications because:**

The trading of emission allowances, which is conducted primarily through brokers, is governed by an instantaneous competitive market in which price and availability fluctuate continually. The process cannot accommodate the use of specifications because of the necessarily quick timing involved in transactions. The allowances are basically a 'moving target' in terms of their attributes, price, and overall availability, and thus can not be described in advance.

**4. Describe the informal solicitation of quotations:**

Even though specifications are not used to obtain bids, competition is inherent in the market process. Offers to sell are communicated through brokers or defined by a public auction process. The lowest offers of sellers can be accepted, or lower bids to buy can be presented by the buyer.

**5. I have reviewed the rules of the Division of Local Government Services pursuant to N.J.A.C. 5:34-2.1 et seq. and certify that the proposed contract may be considered an extraordinary unspecifiable service in accordance with the requirements thereof.**



Respectfully,  
  
Robert Dickenson  
Business Administrator

(Original to be retained by governing body's Clerk with the affirmed copy of the resolution; signed duplicate to be kept by appropriate official.)



## MEMORANDUM

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**DATE:** December 27, 2019  
**TO:** Bob Dickenson, Business Administrator   
**FROM:** Lisa Fleming, Supervising Environmental Specialist   
**RE:** Purchase of environmental credits

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For some time, the utility has had to acquire and use NOx and SO2 emission allowances for compliance with various NJDEP and EPA regulations. Some allowances are allocated directly to the utility by NJDEP and/or EPA, but there is often a need to purchase more, and this has typically been done through various trading brokers. With the adoption of new rules over the past year by NJDEP, the Utility will also need to acquire CO2 allowances to cover unit operations. While these may also be purchased through brokers, the utility has an additional opportunity to acquire them through bidding auctions overseen by NJDEP.

In the past, City Council has passed resolutions allowing such purchases, as deemed necessary by the Utility Director, as extraordinary, unspecifiable services. The requirement for CO2 allowances will be great, and the Utility is therefore requesting a new resolution to make necessary purchases in the coming year.

Please reserve a space on the January 14 council agenda for the following resolution (suggested wording):

***“A resolution authorizing extraordinary, unspecifiable services agreements for the purchase of NOx and CO2 allowances for the City of Vineland Electric Utility”.***

Attached is suggested wording for the entire resolution which is based on those previously used for this purpose. Also attached is a memo to the Mayor and City Council describing the need for the resolution.

Questions concerning the NOx and CO2 emission trading programs or the utility's need for allowances can be directed to me at extension 4163.





## MEMORANDUM

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**DATE:** December 27, 2019  
**TO:** Mayor Fanucci and Vineland City Council Members  
**FROM:** Lisa Fleming, Supervising Environmental Specialist  
**RE:** Purchase of required NOx and CO2 allowances

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For many years now, VMEU has participated – as required by regulation - in various NJDEP and EPA emission trading programs, which have been an integral part of reducing air pollution in both the eastern half of the United States and the rest of the country as a whole. Under these programs, emission allowances equal to actual emissions are required to operate during each ozone season (summer operating period), as well as over the entire year in general. In the past, allowances primarily covered nitrogen oxide (NOx) and sulfur dioxide (SO2) emissions. Beginning in January, however, carbon dioxide (CO2) emissions will also be included in a trading program which is part of the Regional Greenhouse Gas Initiative (RGGI) covering the Northeastern states.

While some allowances are allocated by NJDEP and EPA - especially to encourage use of VMEU's low-emitting new generating turbines – other allowances must be purchased to supplement those that are allocated from the State in order to comply with the regulations described above. Purchases in the past have usually been made through commercial trading brokers, however CO2 allowances may now also need to be acquired through auctions held and overseen by the NJDEP. We are requesting authorization to purchase NOx and/or CO2 allowances up to a total amount of \$600,000 to meet the utility's needs. The total amount may not be used immediately, but it is necessary to fill accounts up front with sufficient allowances to cover reasonably expected emissions so as to not restrict operations. This process must begin very soon for the new CO2 program. It is also necessary to have authorization for purchases in place now to be able to react to changing conditions and circumstances quickly, as developments in operations and pricing unfold.

Allowance purchase arrangements will be overseen and approved by the Director of the Utility, with the wording of purchase agreements reviewed by the City Solicitor, as necessary. Allowance purchases will be paid for through the utility fuel budget and kept in an inventory account. (Both fuel and credits are 'burned' in tandem as the generating units operate, and the cost of allowances is factored into PJM unit costs, as prescribed by PJM.)

If you have any questions, please feel free to call Lisa Fleming at extension 4163.