

RESOLUTION 237-19

**RESOLUTION AWARDING A CONTRACT FOR UNDERGROUND STORAGE
TANK REMOVAL & REMEDIATION SERVICES (FORMER WAYNE'S AUTO)
IN THE BOROUGH OF CLAYTON**

WHEREAS, the Borough of Clayton has a need to award a contract for underground storage tank removal & remediation services (former Wayne's Auto) in the Borough of Clayton; and

WHEREAS, the Borough of Clayton solicited for and received sealed bids for the needed Services on October 22, 2019; and

WHEREAS, three (3) bid proposals were received and opened on October 22, 2019 as follows:

<u>Bidder</u>	<u>Amount</u>
The Ambient Group, LLC	\$35,090.00
American Petroleum Equipment & Construction Co., Inc.	\$55,157.75
Brinks Tank Services, Inc.	\$55,780.00

WHEREAS, The Ambient Group, LLC was the successful lowest responsible bidder, complying with all other bid requirements and specifications.

WHEREAS, Donna Nestore, CFO, for the Borough of Clayton certifies that \$35,090.00 is available through Ordinance 9-2012.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Clayton, County of Gloucester and State of New Jersey that The Ambient Group, LLC be and hereby is awarded the contract in the amount of \$35,090.00 for

underground storage tank removal & remediation services (former Wayne's Auto) in accordance with and as more particularly described in the bid proposal submitted by said bidder and in accordance with the terms and conditions set forth in the specifications promulgated by the Borough of Clayton.

BE IT FURTHER RESOLVED that the Mayor and/or Borough Administrator be and hereby are authorized to execute a contract for said services on behalf of the Borough of Clayton.

ADOPTED, at a regular meeting of the Mayor and Council of the Borough of Clayton, County of Gloucester and State of New Jersey on Thursday, November 14, 2019.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor


Attest:



CHRISTINE NEWCOMB, Borough Clerk

CERTIFICATION

I, Christine Newcomb, Clerk of the Borough of Clayton, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton, held on Thursday, November 14, 2019.



CHRISTINE NEWCOMB, Borough Clerk

**CONTRACT FOR UNDERGROUND STORAGE TANK REMOVAL AND
REMEDIAL SERVICES AT THE FORMER SITE OF WAYNE'S AUTO (719
NORTH DELSEA DRIVE, CLAYTON, NEW JERSEY) BETWEEN THE BOROUGH OF
CLAYTON AND THE AMBIENT GROUP LLC**

THIS CONTRACT, is made on this 14th day of November, 2019 by and between the BOROUGH OF CLAYTON, a municipal corporation, with offices located at 125 N. Delsea Drive, Clayton, New Jersey 08312, hereinafter referred to as the "BOROUGH", and THE AMBIENT GROUP LLC, hereinafter referred to as "CONTRACTOR", located at 222 Thies Road Sewell, New Jersey 08080.

RECITALS

WHEREAS, there exists a need for the Borough to award a contract for underground storage tank removal and soil remediation at the former site of Wayne's Auto (719 Delsea Drive, Clayton, New Jersey) ("Services"); and

WHEREAS, the Borough has received a bid proposal from Contractor for said services in the Borough of Clayton dated October 29, 2019; and

WHEREAS, the Contractor is qualified to perform the Services and desires to so perform pursuant to the terms and conditions proposed by the Borough and incorporated into this Contract.

NOW, THEREFORE, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the Borough and the Contractor do hereby agree as follows:

1. TERM. The term of this Contract shall be for a sixty day period commencing on the date of execution.

2. COMPENSATION. In consideration for the Services performed by Contractor during the Term, Borough agrees to pay Contractor such compensation as is identified in the bid proposal attached hereto as Exhibit "A".

Upon receipt of an invoice and a properly executed voucher, and after approval by the Borough, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all work performed during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided. It is also agreed and understood that the acceptance of the final payment by the Contractor shall be considered a release in full of all claims against the Borough arising out of, or by reason of, the work done and materials furnished under the contract.

This Contract is subject to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. Contractor shall provide certified payroll to the Borough with invoices for payment.

Contractor shall be responsible for all costs and expenses incident to the performance of the services provided for Borough, including but not limited to, costs of any fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all of Contractor's other general costs of doing business. Borough shall not be responsible for expenses incurred by Contractor in performing Services for the Borough except as provided in the bid proposal or as specifically agreed upon in writing by the Borough.

3. DUTIES OF CONTRACTOR. The specific duties of the Contractor shall be as set forth in the bid proposal, which is incorporated in its entirety and made a part of this Contract and attached hereto as Exhibit "A". Should there occur a conflict between the description of the scope of work set forth in this Contract and the bid proposal, this Contract shall prevail.

Contractor agrees that it has or will comply with, and where applicable shall continue throughout the period of this Contract to comply with, all of the requirements of the bid proposal.

4. FURTHER OBLIGATIONS OF THE CONTRACTOR. During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor or Subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Contractor or Subcontractor will ensure that equal employment opportunity is afforded to such applicants recruitment and employment and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor or Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth the provisions of this nondiscrimination clause.
- b. The Contractor or Subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor or Subcontractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- c. The Contractor or Subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative

of the Contractor's or Subcontractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- d. The Contractor or Subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as amended and supplemented from time to time and the Americans with Disabilities Act.
- e. The Contractor or Subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2 or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.
- f. The Contractor or Subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
- g. The Contractor or Subcontractor agrees to inform in writing its appropriate recruitment agencies, including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- h. The Contractor or Subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal Law and applicable Federal Court decisions.
- i. In conforming with the targeted employment goals, the Contractor or Subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal Law and applicable Federal Court decisions.
- j. The Contractor or Subcontractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:
 - 1) Letter of Federal Affirmative Action Plan Approval
 - 2) Certificate of Employee Information Report

3) Employee Information Report from AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

- k. The Contractor or Subcontractor shall furnish such reports or other documents to the Division of Contract Compliance and EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

5. DUTIES AND RESPONSIBILITIES OF THE BOROUGH. During the performance of this Contract, the Borough agrees to:

- a. Provide any and all supervision, direction and control of all Assigned Employees of the Contractor for the duration of the Contract.
- b. Properly supervise, control and safeguard Borough premises, processes, or systems, and not permit Assigned Employees of the Contractor to operate any vehicle, mobile equipment, or entrust them with unattended premises, cash, checks, keys, credit cards, merchandise, confidential or trade secret information, negotiable instruments, or other valuables without the Contractor's express prior written approval or as strictly required by the job description provided to the Contractor.
- c. Provide Assigned Employees of the Contractor with a safe work site and provide appropriate information, training, and safety equipment with respect to any hazardous substance or conditions to which they may be exposed at the work site.
- d. Not change Assigned Employees of the Contractor job duties without Contractor's express written approval; and
- e. Exclude Assigned Employees of Contractor from the Borough's benefit plans, policies, and practices, and not make any offer or promise relating to Assigned Employees' compensation or benefits.

6. LICENSING. If the Contractor is required to maintain a license in order to perform the services which are the subject of this Contract, then, prior to the effective date of this Contract and as a condition precedent to its taking effect, Contractor shall provide to the Borough a copy of all current license to operate in the State of New Jersey, which license(s) shall be in good standing and shall not be subject to any current action to revoke or suspend and shall remain so throughout the term of this Contract.

Contractor shall at all times conduct him or herself in compliance with all applicable federal, state and local laws, rules and regulations and canons of professional ethics; and shall carry out their duties in accordance with the professional standard of care adhered to by firms performing services of a like or similar nature under like or similar circumstances.

Contractor must comply with all requirements of New Jersey law and regulations applicable to the Borough.

Contractor shall notify the Borough immediately should the Contractor, or such key personnel of the Contractor as determined in the sole and reasonable judgment of the Borough: (i) become the subject of any disciplinary actions, sanctions or other actions as a result of investigative proceedings by a state or federal agency, accrediting body, or professional association; (ii) be indicted or otherwise involved in a state or federal criminal prosecution or names as a party in any litigation that relates in whole or in part to the Contractor's professional ethics; and/or (iii) have its license suspended, revoked or changed in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Contractor.

7. TERMINATION. This Contract may be terminated as follows:

- a. If Contractor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by Borough in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Contractor's license suspended or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.
- b. If, through any cause, the Contractor, where applicable, shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the Borough shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this Contract, shall be forthwith delivered to the Borough.
- c. Bankruptcy or insolvency of the Contractor; sale of the business of the Contractor, or death or permanent disability of the Contractor in the event the Contractor is an individual.
- d. Should the Borough default in the performance of this Contract or materially breach any of its provisions, which remain uncured after thirty (30) days after notice is given to the Borough, the Contractor may terminate this Contract, subject to the terms of Article 12 hereof.
- e. Should the Borough fail to pay Contractor all or any part of the compensation earned for services rendered within sixty (60) days after the date due, the Contractor may at its option, terminate this Contract.
- f. The Borough may terminate this Contract any time by a notice in writing from the Borough to the Contractor. If the Contract is terminated by the Borough as provided herein, the Contractor will be paid for the Services rendered to the time of termination.

- g. Notwithstanding the above, the Contractor, where applicable, shall not be relieved of liability to the Borough for damages sustained by the Borough by virtue of any breach of the Contract by the Contractor, and the Borough may withhold any payments to the Contractor for the purpose of set – off until such time as the exact amount of damages due to the Borough from the Contractor is determined.
- h. Termination shall not operate to affect the validity of the indemnification provisions of this Contract.

8. NO ASSIGNMENT OR SUBCONTRACT. This Contract may not be assigned or subcontracted by the Contractor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the Borough, and no obligation on the Borough's part to the assignee shall arise, unless the Borough shall elect to accept and to consent to such assignment or subcontract.

9. INDEMNIFICATION. The Contractor, where applicable, shall be responsible for, shall keep, save and hold the Borough harmless from, and shall indemnify the Borough against any claim, loss, liability, expense (specifically including, but not limited to costs, counsel fees and/or expert fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Contractor's services or to any other persons, or from any damage to any property sustained in connection with this Contract to the extent caused by any acts or omissions attributable to the negligence or malpractice of any of its officers, directors, employees, agents, servants or independent contractors, or from the Contractor's failure to perform pursuant to the terms of this Contract. The Contractor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

10. INSURANCE. Contractor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builders and Workers' Compensation insurance in amounts and with companies deemed reasonably satisfactory by the Borough. Said policies shall be in compliance with any applicable requirements of the State of New Jersey and of the United States.

If Contractor is a member of a profession which is subject to suit for professional malpractice, then Contractor shall maintain and continue in full force and effect an insurance policy for professional liability / malpractice with a minimum limit of \$1,000,000 per claim and in the aggregate. Contractor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking effect, provide to Borough a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the terms of this Contract. The Borough shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. Contractor also hereby agrees to continue said policy in full force and effect for a period of two years following the termination of this Contract and shall provide the Borough with copies of certificates of insurance as the certificates may be renewed during that period of time.

11. SET-OFF. Should Contractor either refuse or neglect to perform the service which Contractor is required to perform in accordance with the terms of this Contract, and if expense is incurred by the Borough by reason of Contractor's failure to perform, then and in

that event, such expense shall be deducted from any payment due to Contractor. Exercise of such set-off shall not operate to prevent the Borough from pursuing any other remedy to which it may be entitled.

12. PREVENTION OF PERFORMANCE BY THE BOROUGH. In the event that the Borough is prevented from performing this Contract by circumstances beyond its control, then any obligations (other than any to pay Contractor for services performed prior to any suspension of services for which the Contractor has not been paid) owing by the Borough to the Contractor shall be suspended without liability for the period during which the Borough is so prevented.

13. NON-WAIVER. The failure of either party hereto insist in any one or more instances upon strict compliance with the performance of this Contract or to take advantage of any respective rights hereunder shall not be construed to be a waiver of such provisions or the relinquishments of such rights in other instances, but the same shall continue and remain in full force and effect.

14. PARTIAL INVALIDITY. In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

15. NOTICES. Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the Borough, Attn: Sue Miller, Administrator, 125 N. Delsea Drive, Clayton, New Jersey 08312, or the Contractor at P.O. Box 70, Winslow, New Jersey 08095, or by personal service, or, if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

16. COMPLIANCE WITH APPLICABLE LAW. Contractor shall at all times during the course of the effective period of this Contract comply with and be subject to all applicable laws, rules and regulations of the State of New Jersey and of the United States and or any other entity having jurisdiction pertaining to the performance of Contractor's services.

17. INDEPENDENT CONTRACTOR STATUS. It is the express intention and understanding of the parties that Contractor is an independent contractor and not an employee, agent, joint venture or partner of the Borough. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between Borough and Contractor and/or any employee or agent of Contractor.

18. TAXES AND BENEFITS. Both parties acknowledge and agree that Contractor is not an employee of the Borough for state or federal tax purposes, and that Borough has no obligation to provide to Contractor or Contractor's agents and employees any benefits including, but not limited to Workers' Compensation, Social Security, Federal and State withholding taxes, group insurance, retirement benefits or other contributing benefits and sick leave or vacation pay, customarily provided by an employer with respect to an employee.

19. CONFLICT OF INTEREST. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services pursuant to this Contract. Contractor further

covenants that, in the performance of this Contract, no person having any such interest shall be employed.

20. CONFIDENTIALITY. Contractor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorize Borough personnel or upon prior approval of the Borough.

21. BINDING EFFECT. This Contract shall be binding on the undersigned and their successors and assigns.

22. CONTRACT PARTS. This Contract consists of this Contract document and the bid proposal, which are referred to and incorporated herein.

THIS CONTRACT is dated this 14th day of November, 2019.

The parties of this contract agree to incorporate into this Agreement mandatory language of Section 5.3 of the Regulations promulgated by the Treasurer of the State of New Jersey pursuant to P.L. 1975, c.127, as amended and supplemented from time to time and Attorney agrees to comply fully with the terms, provisions and obligations of said Section 5.3.

IN WITNESS WHEREOF, the Borough has caused this instrument to be signed by its Mayor, Attested by its Borough Clerk, and its corporate seal affixed hereunto, pursuant to a Resolution of the said party of the first passed for that purpose, and Contractor has caused this instrument to be signed by its properly authorized representative and its corporate seal affixed the day and year first above written.

BOROUGH OF CLAYTON

BY: 

TOM BIANCO, Mayor

ATTEST:


CHRISTINE NEWCOMB, Borough Clerk

THE AMBIENT GROUP, LLC

BY: _____

(Printed Name and Title)

ATTEST: