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COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

OPEN

February 21, 2012

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

**RE: County Wide Petroleum Based Storage Tanks and
Environmental Concerns**

Dear Honorable Members:

The County has been notified by the United States of America, US Department of Justice, that the County is in non-compliance with the Resource Conservation and Recovery Act (RCRA) and Section 311 of the Clean Water Act (CWA) for violations stemming from non-compliance with regulations for petroleum based storage tanks and environmental concerns. The Department of Justice has lodged a Consent Decree against the County for the violations.

The County has previously retained the firm of Wendel-Duchscherer to provide A/E consulting services for a portion of the remediation projects. This resolution is requesting authorization for the County Executive to enter into an agreement amendment with the firm of Wendel-Duchscherer to provide professional A/E consulting services and project administration for the initial phase of correcting the violations. The County will have only 30 days to correct the violations when the United States District Court for the Western District of New York, enters judgment for the Consent Decree against the County. The Department of Justice submitted a motion to the Court on February 7, 2012, to enter the Consent Decree.

Should your honorable body require further information, I encourage you to contact the Department of Public Works. Thank you for your consideration on this matter.

Sincerely,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/bb
Enclosure

cc: John Loffredo, Department of Public Works

4E-4

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Public Works
Re: Countywide Petroleum Based Storage Tanks and Environmental Concerns
Date: February 9, 2012

SUMMARY

The County has been notified by the United States of America, US Department of Justice (DOJ) that the County is in non-compliance with the Resource Conservation and Recovery Act (RCRA) and Section 311 of the Clean Water Act (CWA) for violations stemming from non-compliance with regulations for petroleum based storage tanks and environmental concerns. The Department of Justice has lodged a Consent Decree against the County for the violations. The Department of Justice attorney has filed a motion to enter the Consent Decree on February 7, 2012. When the Consent Decree is signed by the judge or the United States District Court for the Western District of New York, the County will have 30 days to comply with the violations listed in the Consent decree.

This resolution is requesting authorization for the County Executive to enter into an agreement amendment with the firm of Wendel-Duchscherer for providing professional A/E consulting services and project administration for the initial phase of correcting the violations. If the violations are not corrected within 30 days or the court's order, the County would receive additional fines.

FISCAL IMPLICATIONS

Funds for the project are available from the previously approved 2009 capital budget, Project A.20917 – Countywide Code & Environmental Compliance.

REASONS FOR RECOMMENDATION

The attorney for the Department of Justice has filed a motion on February 7, 2012 to enter the Consent Decree for the County to fully correct the violation contained in the Consent Decree within 30 days of issuance. If the County does not comply with the Consent Decree within the 30 day time period, the County will be subject to additional fines and/or penalties

BACKGROUND INFORMATION

The County has been found in non-compliance with the Resource Conservation & Recovery Act (RCRA) and Section 311 of the Clean Water Act (CWA) for violations stemming from the non-compliance with federal and state regulations for petroleum based storage tanks and environmental concerns. The Department of Justice has fined the County for the violations cited in the Consent Decree. On February 7, 2012, the attorney for the Department of Justice has filed a motion to enter the Consent Decree with the United States District Court for the Western District of New York. When the Court signs the Consent Decree, the County will have 30 days to correct the violations. The County has previously retained the firm of Wendel-Duchscherer to professional A/E services for correcting some of the violations. This resolution is requesting authorization from the County Executive to enter into an agreement amendment with Wendel-

Duchscherer for providing professional A/E consulting services and project administration for the initial phase of correcting the violations.

CONSEQUENCES OF NEGATIVE ACTION

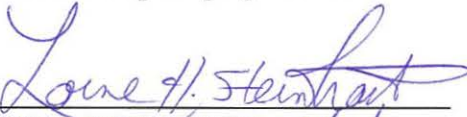
If the County does not correct the cited violations noted in the Consent Decree within 30 days of issuance, the County will be in violation and will be assessed additional fines and penalties.

STEPS FOLLOWING APPROVAL

The County Executive will enter into an Agreement Amendment with the firm of Wendel-Duchscherer for professional A/E services so the corrective work and project administration can begin.

COMPTROLLER'S OFFICE REVIEW

The proposed legislation has been reviewed by the Comptroller's Office and is related to an authorized capital project for which there are sufficient appropriations for the action proposed.


LORNE STEINHART 2/10/2012
Acting Comptroller
Comptroller's Office

Cash in Project / Availability of Funds:
782,287.01

JCL:dab
File Copy (DPW.Environmental.Issues)

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF PUBLIC WORKS

RE: County Wide Petroleum Based Storage Tanks
and Environmental Concerns

WHEREAS, the County has been cited by the United States of America, on behalf of the United States Environmental Protection Agency for non-compliance with Section 9006 of the Resource Conservation & Recovery Act (RCRA) and Section 311 of the Clean Water Act (CWA) for violations stemming from non-compliance of state and federal regulations for petroleum based storage tanks and environmental concerns; and

WHEREAS, the attorneys for the Department of Justice have filed a motion to enter the Consent Decree with the United States District Court for Western New York on February 7, 2012; and

WHEREAS, the County will have 30 days for correcting the violations contained in the Consent Decree; and

WHEREAS, your Honorable Body has previously approved a general A/E term agreement with the firm of Wendel-Duchscherer for providing professional A/E services on County projects; and

WHEREAS, the firm of Wendel-Duchscherer has previously provided professional A/E consulting services on a portion of this work.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive be authorized to enter into an Agreement Amendment with the firm of Wendel-Duchscherer for providing professional A/E consulting services and project administration for the initial phase of the project for an amount not to exceed \$50,000; and be it further

RESOLVED, that the Comptroller's Office be authorized to make payment for all the above from SAP-Project A.20917 – Countywide Code and Environmental Compliance for an amount not to exceed \$50,000; and be it further

RESOLVED, that two certified copies of this resolution be sent to the Department of Public Works, Office of the Commissioner, and one copy each to the Office of the County Executive, the Division of Budget and Management, and the Office of the Comptroller.

PROJECT TITLE: A.20917 2009 Countywide Code & Environmental Compliance

1) IS THE REASON FOR THIS CONTRACT CONSISTENT WITH THE PURPOSE OF THE PROJECT: YES NO

IF NO, RETURN THIS REQUEST TO THE DEPARTMENT

IF YES, COMPLETE THE FOLLOWING VERIFICATION

2) PROJECT AVAILABLE APPROPRIATION

TOTAL PROJECT REVENUES	\$	<u>1,000,000.00</u>
TOTAL PROJECT APPROPRIATIONS	\$	<u>1,000,000.00</u>
LESS: TOTAL EXPENDITURE TO DATE	\$	<u>217,712.99</u>
TOTAL COMMITMENTS	\$	<u>156,187.06</u>
AVAILABLE APPROPRIATIONS AS OF DATE OF REQUEST	\$	<u>626,099.95</u>
LESS: CONTRACT AMOUNT:		<u>50,000.00</u>
NET AVAILABLE APPROPRIATIONS	\$	<u>576,099.95</u>

COMMENTS: Cash in project: \$782,287.01

REQUEST APPROVED: *Lorne H. Steinhart*

REQUEST DENIED: _____

DATE: *February 10, 2012*

COMPTROLLER'S
RECEIVED

TO: LORNE STEINHART, COMPTROLLER'S OFFICE

12 FEB -9 AM 10:27

PROPOSED RESOLUTIONS REQUIRING RULE 55

CONTRACT APPROVAL CHECKLIST
CONFIRMATION OF AVAILABILITY OF FUNDS IN CAPITAL PROJECTS

REQUESTING DEPARTMENT

COMPLETE ITEMS 1 THROUGH 5

1. CONTRACTOR'S NAME

Wendel-Duchscherer

2. AMOUNT OF CONTRACT

\$50,000

3. PROJECT NUMBER

A.20917

4. PROJECT TITLE

County Wide Petroleum Based Storage Tanks
And Environmental Concerns

5. DEPARTMENT CONTACT

Funding questions: Jeffrey P. Zack #8824
Letter pickup: Diane Bukowski at 8301

COMPTROLLER'S OFFICE

COMPLETE ITEMS 6 AND 7

6. AVAILABILITY OF FUNDS

\$ 782,287.01

7. PERFORMED BY

Debbie Pulsoifer

Date Sent to Comptroller's Office:

February 9, 2012