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COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

OPEN

April 16, 2012

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

IMMEDIATE CONSIDERATION REQUESTED

RE: County Wide Petroleum Based Storage Tanks and Environmental Compliance – Phase II

Dear Honorable Members:

As you are aware, the County was notified by the 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 lodged a Consent Decree against the County for the violations and your Honorable Body has previously approved payment of \$275,000 to the federal government for penalties.

The County previously retained Wendel-Duchscherer to provide architectural and engineering (A/E) consulting services for Phase I of the project and your Honorable Body previously approved a portion of the Phase I fees for Wendel-Duchscherer. This resolution is requesting authorization for the County Executive to enter into an agreement amendment with Wendel-Duchscherer to provide A/E consulting services and project administration for completing Phase I and performing the Phase II compliance work.

The County has successfully completed the requirements of the Consent Decree on time without additional penalties and fines. It is imperative that the County continue these efforts with the firm of Wendel-Duchscherer to have a seamless completion of the Phase II work so the County can avoid additional penalties and fines from the Department of Justice.

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

Enclosure

cc: John Loffredo, Department of Public Works

8E-11

COMPTROLLER'S
RECEIVED

12 APR 10 PM 2:40

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Public Works
Re: Countywide Petroleum Based Storage Tanks and
Environmental Compliance
Date: April 10, 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 County has successfully completed the work required by the Consent Decree within the 30 day time period. It is imperative that the County complete Phase II of the environmental work in an aggressive and timely manner to avoid additional penalties and fines by the Department of Justice.

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 completing Phase I and Phase II work of the violations.

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 County has successfully completed the 30 day requirements for the Consent Decree with the firm of Wendel-Duchscherer without any additional penalties or fines from the Department of Justice. In order to complete all the Phase I and Phase II work in a timely manner, it is imperative that Wendel-Duchscherer continue working on the project to completion in a seamless manner to avoid additional penalties and fines by the Department of Justice.

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. The County has previously retained the firm of Wendel-Duchscherer to provide professional A/E services for correcting the Phase I portion 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 completing Phase I and Phase II seamlessly.

CONSEQUENCES OF NEGATIVE ACTION

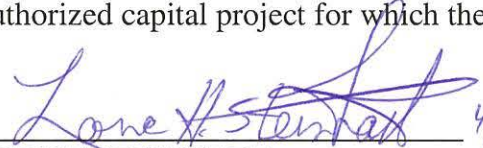
If the County does not continue the corrective work in a timely manner, additional penalties and fines could be levied against the County by the Department of Justice.


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 be completed.

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
~~Acting Comptroller~~ *deputy Comptroller* 
Comptroller's Office

CASH IN PROJECT A. 20917: \$766,155.2

JCL:dab
File Copy (DPW.4.10.12.Environmental.Phase II)

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF PUBLIC WORKS

RE: County Wide Petroleum Based Storage Tanks and Environmental Compliance

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, this Honorable Body has previously approved a general architectural and engineering (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 and administrative services for Phase I of the project and it is imperative to have a seamless and timely completion of Phase I and Phase II.

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 completing Phase I and Phase II of the project for an amount not to exceed \$392,500.00; and be it further

RESOLVED, that a not to exceed sum of \$29,000.00 be included in the agreement amendment for reimbursable expenses; and be it further

RESOLVED, that the sum of \$43,500.00 be allocated to a contingency fund with authorization for the County Executive and/or Commissioner of Public Works to approve change in the scope of work in an amount no to exceed the contingency; 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 \$465,000.00; 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 \$ 1,000,000.00

TOTAL PROJECT APPROPRIATIONS \$ 1,000,000.00

LESS: TOTAL EXPENDITURE TO DATE \$ 238,844.75

TOTAL COMMITMENTS \$ 147,798.06

AVAILABLE APPROPRIATIONS AS OF DATE OF REQUEST \$ 613,357.19

LESS: CONTRACT AMOUNT: 465,000.00

NET AVAILABLE APPROPRIATIONS \$ 148,357.19

COMMENTS: Cash in project: \$761,155.25

REQUEST APPROVED: Lorne H. Steinhart

REQUEST DENIED: _____

DATE: April 12, 2012