

19401

**TO:** Board of Acquisition and Contract

**FROM:** John J. Hsu, P.E.  
Commissioner of Public Works and Transportation

**DATE:** May 26, 2011

**SUBJECT:** Authorization to Default Ortega Group LLC in connection with Contract No. 09-505, Playland Bathhouse Restoration, Playland Park, Rye, New York and Authorization to Enter into a Takeover Agreement with Westchester Fire Insurance Company or its designee, and to Take All Necessary Measures to Complete This Project.

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On November 5, 2009, the County of Westchester awarded Contract No. 09-505, Playland Bathhouse Restoration, Playland Park, Rye, New York to Ortega Group LLC, 17 South MacQuesten Parkway, Mount Vernon, New York 10550, in the amount of \$6,171,000.00. The parties subsequently entered into a contract dated December 24, 2009 (the "Contract"). As part of the Contract, Ortega Group LLC provided a Performance and Payment Bond issued by Westchester Fire Insurance Company as surety for this project.

Ortega Group LLC has failed, among other things, to: comply with the terms of the Contract's Project Labor Agreement ("PLA"); provide sufficient properly skilled Union workers on the work site; provide necessary materials for completion of the project; and submit to the County timely and complete shop drawings and other required submittals. As a result of the aforementioned issues, the work has not been completed in a timely manner. The County has attempted to resolve this matter with Ortega Group LLC, without success. Copies of correspondence to and from Ortega Group LLC are herewith submitted as a separate document. As required by the terms of the Contract and by letter dated May 10, 2011, the County provided Ortega Group LLC with formal written notice that due to the above issues, the County would exercise its options under the Contract, including the right to terminate the Contract and proceed with default proceedings.

Therefore, I recommend that Ortega Group LLC be declared in default of the Contract, that the Contract be terminated, that Westchester Fire Insurance Company or its Designee (the "Surety"), 140 Broadway, New York, New York 10036, the Surety for this Contract, be directed to complete the remaining work and that the County be authorized to enter into a Takeover Agreement with the Surety. Further, if the Surety does not promptly proceed to undertake the work, authority is requested to advertise for bids to undertake the remaining Contract work.

This matter has been reviewed by the Law Department and a Resolution to accomplish the foregoing is attached.

# RESOLUTION

Contract No. 09-505

Upon communication from the Commissioner of Public Works and Transportation, be it

**RESOLVED**, that Ortega Group LLC be declared in default of Contract No. 09-505, Playland Bathhouse Restoration, Playland Park, Rye, New York, between Ortega Group LLC and the County of Westchester in accordance with the terms of the Contract, and be it further

**RESOLVED**, that Contract No. 09-505 between Ortega Group LLC and the County of Westchester be hereby terminated in its entirety; and be it further

**RESOLVED**, that the County shall proceed upon the bond issued by Westchester Fire Insurance Company or its designee (the "Surety"), 140 Broadway, New York, New York 10036, the Surety for this Contract; and be it further

**RESOLVED**, that the Commissioner of Public Works and Transportation, on behalf of the County, is authorized to enter into a Takeover Agreement with the Surety in connection with Contract No. 09-505; and to take all necessary measures to complete this project, and be it further

**RESOLVED**, that if the Surety does not promptly proceed to undertake the work, the County Executive or his duly authorized designee, is hereby authorized to advertise for bids in the Journal News (Southern Edition) for the work required under Contract No. 09-505; and be it further

**RESOLVED**, that the Commissioner of Public Works and Transportation or his duly authorized designee is hereby empowered to execute any and all instruments and take such actions as may reasonably be necessary to effectuate the purposes thereof; and be it further

**RESOLVED**, that this Resolution shall take effect immediately.

| Account to be Charged/credited | Fund | Dept | Major Program, Program & Phase Or Unit | Object/ Sub Object | Trust Account | Dollars |
|--------------------------------|------|------|--|--------------------|---------------|---------|
|                                | 372  | 42   | RP23C03C                               | 6210-99            |               | N/A     |

Budget Funding Year(s) 2011      Start Date 05/26/2011      End Date 08/18/2011  
 (must match resolution)

|  |             |  |
|--|-------------|--|
| Funding Source                           | Tax Dollars |  |
|  | State Aid   |  |
|  | Federal Aid |  |
| <u>\$ N/A</u><br>(must match resolution) | Other       |  |