

**AGENDA**  
**NIAGARA COUNTY LEGISLATURE**  
**MAY 7, 2013 – 7:00 P.M.**

**Resolutions not on previous agenda:**

**PW-054-13** Public Works, re Award of Contract – Brooks Building Upgrades & Enhancements to Security Management System – Approved

**Regular Meeting – May 7, 2013**

**IL-021-13** Legislators Richard E. Updegrave, Chereé J. Copelin, William L. Ross & Kathryn L. Lance, re Urging Department of Homeland Security to Cancel Proposals Levy a So-Called ‘Land Border Fee’ on Motorists & Pedestrians Crossing International Border & Calling Upon Congress to Reject the Same from Inclusion in the 2014 Federal Budget

**IL-022-13** Legislators Richard E. Updegrave, John Syracuse, Kathryn L. Lance & Michael A. Hill, re Calling Upon NYS Legislature to Block Construction of the Champlain Hudson Power Express 1,000-Megawatt Power Line to Provide Hydropower from Quebec to New York City to the Detriment of NYS-Based Power Suppliers

**IL-023-13** Legislators Richard E. Updegrave, John Syracuse, Anthony J. Nemi, Michael A. Hill, re Calling on the New York State Legislature to Pass and Enact S.3948/A.6094, Legislation Repealing the NY-Safe Act

**\*PW-055-13** Public Works, re Award Consultant Services for the Jail Elevator Rehabilitation Project

**\*PW-056-13** Public Works, re Agreement between the County of Niagara & the Lighthouse Classic Softball League

**\*PW-057-13** Public Works, re Agreement between the County of Niagara & the Olcott Fire Company Softball League

**\*PW-058-13** Public Works, re Mowing Agreement between Niagara County & Town of Niagara

**\*PW-059-13** Public Works, re Resolution Rejecting Bids on the Stone Road Reconstruction Project

**\*PW-060-13** Public Works, re Resolution to Rebid the Stone Road Reconstruction Project



Mary Jo Tamburlin, Clerk  
Niagara County Legislature

**\* Indicates Preferred Agenda items**

Attachments for resolutions may be obtained in the office of the Clerk of the Legislature upon request.

**The next meeting of the Legislature will be held on May 21, 2013.**

NIAGARA COUNTY LEGISLATURE

FROM: Legislators Richard E. Updegrove, Cheree J. Copelin, William L. Ross and Kathryn L. Lance DATE: 05/07/13 RESOLUTION # IL-021-13

APPROVED BY CO. ATTORNEY REVIEWED BY CO. MANAGER COMMITTEE ACTION LEGISLATIVE ACTION Approved: Ayes Abs. Noes Rejected: Ayes Abs. Noes Referred:

[Handwritten signature and date 5/17/2013]

RESOLUTION URGING DEPARTMENT OF HOMELAND SECURITY TO CANCEL PROPOSALS TO LEVY A SO-CALLED 'LAND BORDER FEE' ON MOTORISTS AND PEDESTRIANS CROSSING INTERNATIONAL BORDER AND CALLING UPON CONGRESS TO REJECT THE SAME FROM INCLUSION IN THE 2014 FEDERAL BUDGET

WHEREAS, Secretary of Homeland Security Janet Napolitano has proposed the inclusion of a "land border fee" on all pedestrians and motor vehicle traffic crossing the international borders of the United States, and

WHEREAS, the Department of Homeland Security (DHS) has previous incorporated similar fees into the price of airline tickets, and

WHEREAS, per Secretary Napolitano's own statistics as cited in the April 19, 2013 edition of the Buffalo News, individuals legally crossing into the United States generate approximately \$150 billion in what she termed "economic stimulus," and

WHEREAS, the Buffalo Niagara Enterprise has determined that border crossings in the Buffalo-Niagara Region facilitate \$81 billion in annual trade between the United States and Canada, and

WHEREAS, the spokesman for the Embassy of Canada, the U.S.'s largest trading partner, did state that "the considerable economic damage any fee would do would greatly outweigh any revenue generated," and

WHEREAS, per statistics provided by the Peace Bridge, 75% of the traffic crossing that border was Canadian traffic bound for destinations in the Greater Buffalo region, and

WHEREAS, in 2007, of the \$71.1 billion in goods exported from New York State, \$15 billion was exported to Canada, which dwarfed all other trade partners, and

WHEREAS, as of 2011, there are 9,994 full-time jobs in the retail trade sector in Niagara County and 6,386 jobs in the accommodation and food services sector, and the largest and second-largest non-government employers in Niagara County, the Seneca Niagara Casino and the Fashion Outlets of Niagara, account for 3,383 jobs and are known to rely heavily on international traffic as part of their business models, and

WHEREAS, the Honorable Chris Collins, U.S. Representative, did term the proposed DHS fee "a money grab," and declare his opposition to enactment of the same, now, therefore, be it

RESOLVED, that the Legislature of the County of Niagara does oppose the imposition of the DHS Land Border Fee, and be it further

RESOLVED, that the Legislature of the County of Niagara does hereby commend Rep. Collins for his forthright language and his opposition to the imposition of the proposed DHS land border fee, and be it further

RESOLVED, that the Legislature of the County of Niagara does hereby call upon the Western New York delegation to the U.S. House of Representatives to oppose enactment of such a fee both in committee and on the floor of the House, as well as to vote in the negative for any inclusion of the same in a budget bill or as a "rider" on other legislation, and be it further

RESOLVED, that the Legislature of the County of Niagara does hereby urge U.S. Senators Charles E. Schumer and Kirsten E. Gillibrand to do the same, and be it further

RESOLVED, that the County of Niagara shall forward copies of this Resolution to Senator Schumer, Senator Gillibrand, Rep. Collins, Rep. Higgins, Secretary Napolitano, President Obama, and all others deemed necessary and proper.

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LEGISLATOR RICHARD E. UPDEGROVE

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LEGISLATOR CHEREÉ J. COPELIN

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LEGISLATOR WILLIAM L. ROSS

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LEGISLATOR KATHRYN L. LANCE

NIAGARA COUNTY LEGISLATURE

FROM: Legislators Richard E. Updegrave, John Syracuse, Kathryn L. Lance and Michael A. Hill DATE: 05/07/13 RESOLUTION # IL-022-13

APPROVED BY CO. ATTORNEY [Signature] REVIEWED BY CO. MANAGER COMMITTEE ACTION LEGISLATIVE ACTION Approved: Ayes Abs. Noes Rejected: Ayes Abs. Noes Referred:

RESOLUTION CALLING UPON NEW YORK STATE LEGISLATURE TO BLOCK CONSTRUCTION OF THE CHAMPLAIN HUDSON POWER EXPRESS 1,000-MEGAWATT POWER LINE TO PROVIDE HYDROPOWER FROM QUEBEC TO NEW YORK CITY TO THE DETRIMENT OF NEW YORK STATE-BASED POWER SUPPLIERS

WHEREAS, the New York Public Service Commission did, on April 18, 2013, approve construction of the Champlain Hudson Transmission Line, a line capable of moving 1,000 megawatts of hydropower from Quebec to New York City, and

WHEREAS, construction of said line would benefit Canadian state-owned power producers Hydro-Québec, as well as New York City-based international investment firm "The Blackstone Group," and

WHEREAS, according to a March 9, 1988 article about Hydro-Québec's long-term expansion plans in The New York Times, "from a start in the early 1970's, when the [United States and Canada] sold almost equal amounts of electricity to each other, Canada has built up a surplus of \$750 million to \$1 billion a year in its electricity trade with United States utilities. More than 70 percent of the Canadian electricity goes to New York State and New England...Canada's advantage in power generation lies in the fact that 80 percent of the country's electricity is produced by hydroelectric plants [which are] are largely immune to the fluctuating fuel costs that face most American utilities, which rely primarily on thermal power generation, involving coal, oil or nuclear power," and

WHEREAS, the same 1988 article states, "Some American critics have resisted the increasing Canadian sales, arguing that they make the United States too dependent on Canada, and that they result in cutbacks in production at United States power plants," and

WHEREAS, construction of a 335-mile line under Lake Champlain and the Hudson River would come at the expense of existing New York State-based power producers, including Upstate New York Power Producers, Inc., which has repeatedly taken its Somerset power generating plant offline due to fluctuations in price in the coal industry as well as non-industry costs including government regulation of the coal industry, and

WHEREAS, the New York Power Authority has previously approved construction of a 660-megawatt power transmission line to supply Midtown Manhattan with electrical power from the State of New Jersey, and

WHEREAS, Mr. Gavin J. Donohue, President and CEO of the Independent Power Producers of New York, called the Champlain-Hudson Transmission Line "basically an electrical extension cord from Canada just flooding the marketplace in New York...You have struggling areas in Upstate New York where smaller power plants are trying to make a go of it and this project will certainly take away huge ability of them to prosper in an economic development way," and

WHEREAS, Mr. Donohue also stated that there are approximately 3,000 megawatts of electricity being generated in New York State that are available for transmission, and

WHEREAS, such competition against private-sector companies by a foreign state-owned company constitutes an unbalanced system where a giant state-funded monopoly is being permitted to compete against small, privately-owned companies by the very regulatory agency set up to protect small companies against undue power of monopolies, namely the Public Service Commission, and

WHEREAS, Angie O'Connor, president of the New England Power Generators Association, called Hydro-Québec "a monopoly in the purest sense, and I don't think that's supportive of competition," and

WHEREAS, Upstate New York Power Producers, Inc. is Niagara County's largest taxpaying entity as well as a significant employer, and the loss of both tax revenue and jobs associated with Upstate New York Power Producers and its suppliers would devastate both Niagara County and the larger Western New York region, now, therefore, be it

RESOLVED, that the Legislature of the County of Niagara does oppose construction of the proposed Champlain Hudson Transmission Line, and be it further

RESOLVED, that the Legislature of the County of Niagara does hereby call upon the New York State Legislature to halt the actions of the City of New York, Transmission Developers Inc., Consolidated Edison, and the New York State Public Service Commission, the last of which has failed in its principal responsibility, and be it further

RESOLVED, that the Legislature of the County of Niagara calls upon the entire Western New York delegation to the New York State Legislature, and those chairmen and ranking minority members of relevant committees in the New York State Senate and Assembly, to use all oversight tools at their disposal to block construction of this transmission line which forces private businesses to compete with foreign state-run monopolies, and be it further

RESOLVED, that the County of Niagara shall forward copies of this Resolution to Governor Cuomo, Senate Vice President Pro Tem George D. Maziarz; Senate Temporary President Dean G. Skelos; Senate Majority Leader Thomas W. Libous; Member of the Assembly Jane L. Corwin; Member of the Assembly Ray Walter; Member of the Assembly John D. Ceretto; Member of the Assembly Robin Schimminger; Member of the Assembly Kevin Cahill; Member of the Assembly Philip A. Palmesano; Mr. Garry A. Brown, Chairman, New York State Public Service Commission; Mr. Gregg C. Sayre, Commissioner, Mr. James L. Larocca, Commissioner; Ms. Maureen F. Harris, Commissioner; Ms. Patricia L. Acampora, Commissioner, and all others deemed necessary and proper.

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LEGISLATOR RICHARD E. UPDEGROVE

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LEGISLATOR JOHN SYRACUSE

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LEGISLATOR KATHRYN L. LANCE

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LEGISLATOR MICHAEL A. HILL

NIAGARA COUNTY LEGISLATURE

FROM: Legislators Richard E. Updegrave, John Syracuse, Anthony J. Nemi and Michael A. Hill DATE: 05/07/13 RESOLUTION #IL-023-13

APPROVED BY CO. ATTORNEY REVIEWED BY CO. MANAGER COMMITTEE ACTION LEGISLATIVE ACTION Approved: Ayes Abs. Noes Rejected: Ayes Abs. Noes Referred:

RESOLUTION CALLING ON THE NEW YORK STATE LEGISLATURE TO PASS AND ENACT S.3948/A.6094, LEGISLATION REPEALING THE NY-SAFE ACT

WHEREAS, the New York State Legislature did enact and Governor Andrew M. Cuomo did sign into law The New York Secure Ammunition and Firearms Enforcement Act of 2013 ("NY SAFE ACT"), and

WHEREAS, said legislation has since been found to have numerous substantial flaws in addition to serious doubts about its constitutionality, and

WHEREAS, this Legislature did pass, with 14 of its members voting in the affirmative, a resolution, IL-011-13, "A Resolution Calling on the New York State Legislature to repeal the NY-SAFE Act" on February 19, 2013, and

WHEREAS, the Honorable Patrick Gallivan, Senator for the 59th District and a former Erie County Sheriff, did introduce a bill, S.3948, to repeal the NY SAFE Act, and the Honorable Peter D. Lopez and the Honorable Annie Rabbitt, Members of the Assembly for the 102nd and 98th Assembly Districts, respectively, did introduce a bill, A.6094, an Assembly companion to S.3948, and

WHEREAS, the Honorable George D. Maziarz, Senator for the 62nd District, is a co-sponsor of S.3948, and the Honorable Ray Walter and the Honorable Jane Corwin, Members of the Assembly for the 146th and 144th Assembly Districts, respectively, are co-sponsors of A.6094, and

WHEREAS, the County of Niagara is home to a thriving sporting industry, as evidenced by the presence of the Fin-Feather-Fur Conservation Society, the Hartland Conservation Club, the Iroquois Arms Collectors Association, the Lake Ontario Trout & Salmon Association, the LaSalle Sportsman's Club, the Lockport Conservation Club, the Middleport Rod & Gun Club, the N.Y.S. Crossbow Hunter's Association, the Niagara County Chapter of SCOPE, the Niagara County Gobblers Chapter NWTF, the Niagara County Sportsmen's Association, the Niagara County Trappers Association, the Niagara Musky Association, the Niagara Frontier Friends of the NRA, the Niagara River Anglers Association, the North American Bear Foundation, the North Forest Rod & Gun Club, the Pheasants Forever of WNY #29 - Pioneer Conservation Sportsmen's of Niagara County, the Rapids Rod & Gun Club, the Somerset Conservation Club, the Tonawanda Sportsmen's Club, the Wheatfield Firearms Safety & Education Committee, the Wilson Conservation Club Auxiliary, the Wilson Conservation Club, and the Wolcottsville Rod & Gun Club, among others, and

RESOLVED, that the Legislature of the County of Niagara does hereby call upon the New York State Assembly, and the New York State Senate to take up and enact S.3948 and A.6094, and be it further

RESOLVED, that the Legislature of the County of Niagara does hereby commend Senator Maziarz, Assemblywoman Corwin, and Assemblyman Walter for being responsive to the expressed will of their constituents, resolutions calling for the repeal of the NY SAFE Act having been enacted by the County

Legislatures of Niagara, Erie, Orleans, and Monroe Counties, and County Legislatures of virtually every county in Upstate New York, and be it further

RESOLVED, that the Legislature of the County of Niagara does hereby call upon Governor Andrew M. Cuomo to sign S.3948/A.6094 into law, and be it further

RESOLVED, that the County of Niagara shall forward copies of this Resolution to Governor Andrew Cuomo, Senate Vice President Pro Tem George D. Maziarz; Senate Temporary President Dean G. Skelos; Senate Deputy Majority Leader Thomas W. Libous; Member of the Assembly Jane L. Corwin; Member of the Assembly John D. Ceretto; Member of the Assembly Ray Walter; Member of the Assembly Stephen Hawley; Member of the Assembly Robin Schimminger; Speaker of the Assembly Sheldon Silver; Assembly Majority Leader Joseph Morelle; Assembly Minority Leader Brian M. Kolb; President Barack H. Obama; U.S. Senator Charles E. Schumer; U.S. Senator Kirsten E. Gillibrand; U.S. Rep. Chris Collins; U.S. Rep. Brian M. Higgins; the New York State Association of Counties and its Board of Directors; the County Legislatures and Boards of Supervisors of all counties within the State of New York; the elected officers of the Niagara County Federation of Conservation Clubs; the Board of Directors of the New York State Rifle and Pistol Association; the Board of Directors of the National Rifle Association; the Board of Directors of SCOPE; Remington Arms Company, LLC, CEO Robert Nardelli; Kahr Arms CEO Justin Moon; Kimber America CEO Leslie Edelman; and all others deemed necessary and proper.

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LEGISLATOR RICHARD E. UPDEGROVE

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LEGISLATOR JOHN SYRACUSE

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LEGISLATOR ANTHONY J. NEMI

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LEGISLATOR MICHAEL A. HILL

NIAGARA COUNTY LEGISLATURE

FROM: Public Works Committee DATE: 05/07/13 RESOLUTION # PW-055-13

APPROVED BY CO. ATTORNEY	REVIEWED BY CO. MANAGER	COMMITTEE ACTION <u>PW - 4/22/13</u>	LEGISLATIVE ACTION Approved: Ayes _____ Abs. _____ Noes _____ Rejected: Ayes _____ Abs. _____ Noes _____ Referred: _____
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5/11/2013

**AWARD CONSULTANT SERVICES FOR THE  
JAIL ELEVATOR REHABILITATION PROJECT**

WHEREAS, the Department of Public Works, in accordance with Federal/State guidelines, evaluated proposals from pre-qualified consulting engineering firms to assist the county with the rehabilitation of the Jail elevator in Building No. 1, and

WHEREAS, funds are available in capital project account, H592.15.3150.000.72200.00, and

WHEREAS, prior to the execution of the required documents, the County Attorney will review them for approval as to legal form, language and compliance, now, therefore, be it

RESOLVED, that the consultant services to assist the County with the rehabilitation of the Jail Elevator in Building #1, be awarded to Trautman Associates, 470 Franklin Street, Buffalo, NY 14202, for a contract amount of \$36,500, and be it further

RESOLVED, that following the County Attorney's review, the Chairman of the Legislature be, and hereby is, authorized to execute the required documents.

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PUBLIC WORKS COMMITTEE



NIAGARA COUNTY LEGISLATURE

FROM: Public Works Committee

DATE: 05/07/13

RESOLUTION # PW-056-13

APPROVED BY  
CO. ATTORNEY

REVIEWED BY  
CO. MANAGER

COMMITTEE ACTION  
PW - 4/22/13

LEGISLATIVE ACTION  
Approved: Ayes \_\_\_\_\_ Abs. \_\_\_\_\_ Noes \_\_\_\_\_  
Rejected: Ayes \_\_\_\_\_ Abs. \_\_\_\_\_ Noes \_\_\_\_\_  
Referred: \_\_\_\_\_

*[Handwritten signature]*  
*5/1/2013*

**AGREEMENT BETWEEN THE COUNTY OF NIAGARA  
AND THE LIGHTHOUSE CLASSIC SOFTBALL LEAGUE**

WHEREAS, Lighthouse Classic Softball League has requested that the County of Niagara grant them permission to use existing ball fields in an area situated in the eastern portion of Krull Park for the purpose of softball games, and

WHEREAS, this program benefits the residents of Niagara County as a whole, and

WHEREAS, such program is operated on a not-for-profit basis, and

WHEREAS, the event coordinator will provide all insurances required by the Risk Management Office, and agree to cover all extraordinary expenses associated with event, and

WHEREAS, it is the desire of Niagara to enter into a formal agreement with the Lighthouse Classic Softball League, and

WHEREAS, prior to the execution of the required documents, the County Attorney will review them for approval as to legal form, language and compliance, now, therefore, be it

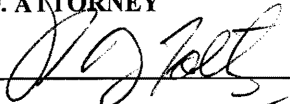
RESOLVED, that the terms and conditions of the agreement between the County of Niagara and the Lighthouse Classic Softball League, as appears on the proposed agreement, is hereby approved in all respects, and be it further

RESOLVED, that following the County Attorney's review, the Chairman of the county Legislature be, and hereby is, authorized to execute the License Agreement with the Lighthouse Classic Softball League.

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PUBLIC WORKS COMMITTEE

NIAGARA COUNTY LEGISLATURE

FROM: Public Works Committee DATE: 05/07/13 RESOLUTION # PW-057-13

<b>APPROVED BY</b>	<b>REVIEWED BY</b>	<b>COMMITTEE ACTION</b>	<b>LEGISLATIVE ACTION</b>
<b>CO. ATTORNEY</b>	<b>CO. MANAGER</b>	<u>PW - 4/22/13</u>	Approved: Ayes _____ Abs. _____ Noes _____
		_____	Rejected: Ayes _____ Abs. _____ Noes _____
		_____	Referred: _____

5/1/2013

**AGREEMENT BETWEEN THE COUNTY OF NIAGARA AND THE OLCOTT FIRE COMPANY SOFTBALL LEAGUE**

WHEREAS, the Olcott Fire Company Softball League has requested that the County of Niagara grant them permission to use existing ball fields in an area situated in the eastern portion of Krull Park for the purpose of softball games, and

WHEREAS, this program benefits the residents of Niagara County as a whole, and

WHEREAS, such program is operated on a not-for-profit basis, and

WHEREAS, the event coordinator will provide all insurances required by the Risk Management Office, and agree to cover all extraordinary expenses associated with event, and

WHEREAS, it is the desire of Niagara to enter into a formal agreement with the Olcott Fire Company Softball League, and

WHEREAS, prior to the execution of the required documents, the County Attorney will review them for approval as to legal form, language and compliance, now, therefore, be it

RESOLVED, that the terms and conditions of the agreement between the County of Niagara and the Olcott Fire Company Softball League, as appears on the proposed agreement, is hereby approved in all respects, and be it further

RESOLVED, that following the County Attorney's review, the Chairman of the County Legislature be, and hereby is, authorized to execute the License Agreement with the Olcott Fire Company Softball League.

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PUBLIC WORKS COMMITTEE

NIAGARA COUNTY LEGISLATURE

FROM: Public Works Committee

DATE: 05/07/13

RESOLUTION # PW-058-13

APPROVED BY  
CO. ATTORNEY

REVIEWED BY  
CO. MANAGER

COMMITTEE ACTION  
PW - 4/22/13

LEGISLATIVE ACTION

Approved: Ayes \_\_\_\_\_ Abs. \_\_\_\_\_ Noes \_\_\_\_\_  
Rejected: Ayes \_\_\_\_\_ Abs. \_\_\_\_\_ Noes \_\_\_\_\_  
Referred: \_\_\_\_\_

**MOWING AGREEMENT BETWEEN NIAGARA COUNTY AND TOWN OF NIAGARA**

WHEREAS, under Section 135-0 of the Highway Law, the County is empowered to enter into agreements with towns for the cutting of noxious weeds, briars and brush within the boundary of County roads, hereafter referred to as "mowing," and

WHEREAS, it is recommended by the Public Works Committee and the Commissioner of Public Works that the County enter into an agreement with the town of Niagara for mowing, said town to receive an annual payment based upon the actual costs incurred upon presentation of certified cost records for equipment, rental of same, and labor by said town, and

WHEREAS, prior to the execution of the required documents, the County Attorney will review the documents for approval as to legal form, language and compliance, now, therefore, be it

RESOLVED, that following the County Attorney's review, the Chairman of the Legislature be, and hereby is, authorized to execute the required documents.

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PUBLIC WORKS COMMITTEE

NIAGARA COUNTY LEGISLATURE

FROM: Public Works Committee DATE: 05/07/2013 RESOLUTION # PW,-059-13

APPROVED BY CO. ATTORNEY <u><i>Thomas D. Murphy</i></u>	REVIEWED BY CO. MANAGER _____	COMMITTEE ACTION <u>PW - 4/30/13</u> _____ _____	LEGISLATIVE ACTION Approved: Ayes _____ Abs. _____ Noes _____ Rejected: Ayes _____ Abs. _____ Noes _____ Referred: _____
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**RESOLUTION REJECTING BIDS ON THE STONE ROAD RECONSTRUCTION PROJECT**

WHEREAS, the County of Niagara, Department of Public Works, advertised for sealed bids to be received on Thursday April 18, 2013 for the Reconstruction and Rehabilitation of Stone Road from Johnson Road to Warren Corners [i.e. Route 93] to remedy narrow lane widths, provide stabilized shoulders and provide drainage improvements, and

WHEREAS, prior to the receipt of such sealed bids on Thursday April 18, 2013 it was determined that the bid specifications, which such sealed bids were in response to, were "deficient" and/or were "materially incomplete", and

WHEREAS, due to such "deficient" and/or were "materially incomplete" bid specifications, all responding bidders were advised that such sealed bids would not be opened on Thursday April 18, 2013 and further such responding bidders were given the option of holding such bids pending further notification, and

WHEREAS, due to such "deficient" and/or were "materially incomplete" bid specifications such responding bidders may have made different sealed bid submissions in response to Niagara County's request for sealed bids for the Reconstruction and Rehabilitation of Stone Road from Johnson Road to Warren Corners [i.e. Route 93] project, now, therefore, be it

RESOLVED, that the sealed bids which were received on Thursday April 18, 2013, and thereafter returned to the responding bidders are hereby rejected and the County of Niagara, Department of Public Works, shall re-advertise for the Reconstruction and Rehabilitation of Stone Road from Johnson Road to Warren Corners [i.e. Route 93] project.

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PUBLIC WORKS COMMITTEE

NIAGARA COUNTY LEGISLATURE

FROM: Public Works Committee

DATE: 05/07/2013

RESOLUTION # PW-060-13

APPROVED BY  
CO. ATTORNEY

*Katherine D. Alexander*

REVIEWED BY  
CO. MANAGER

COMMITTEE ACTION  
PW - 4/30/13

LEGISLATIVE ACTION

Approved: Ayes \_\_\_\_\_ Abs. \_\_\_\_\_ Noes \_\_\_\_\_  
Rejected: Ayes \_\_\_\_\_ Abs. \_\_\_\_\_ Noes \_\_\_\_\_  
Referred: \_\_\_\_\_

**RESOLUTION TO REBID THE STONE ROAD RECONSTRUCTION PROJECT**

WHEREAS, the County of Niagara, Department of Public Works, has appropriated funds for the Reconstruction and Rehabilitation of Stone Road from Johnson Road to Warren Corners [i.e. Route 93] to remedy narrow lane widths, provide stabilized shoulders and provide drainage improvements, and

WHEREAS, it is anticipated that the cost for the Reconstruction and Rehabilitation of Stone Road from Johnson Road to Warren Corners [i.e. Route 93] to remedy narrow lane widths, provide stabilized shoulders and provide drainage improvements will be in excess of 1.5 million dollars, and

WHEREAS, pursuant to Niagara County Legislature Resolutions IL-047-99 and the subsequent Resolution of the Niagara County Legislature PW-052-00, which amended Resolution IL-047-99, the Niagara County Legislature is required to consider a Project Labor Agreement (PLA) for any Niagara County Public Works project which has an anticipated cost in excess of 1.5 million dollars, and

WHEREAS, Niagara County is required to follow the law of the State of New York when determining the propriety of the use of a PLA in the administration of a public works project; among those relevant and controlling cases are: New York State Ch., Inc. v New York State Thruway Auth., 88 NY2d 56, 65-69 [1996]; and Empire State Ch. of Associated Builders and Contractors, Inc. v City of Oswego, 239 AD2d 875 [4th Dept 1997]; In addition, the holding of the court in Nelcorp Electrical Contracting Corp. v. County of Broome, 859 NYS2d 896 [Sup. Ct, Broome County 2008], and

WHEREAS, the New York State Court of Appeals in New York State Ch., Inc. v New York State Thruway Auth., 88 NY2d 56, 65-69 [1996] has rejected the following reason for entering into a PLA for a public works project:

The adoption of the PLA is not justified simply by the county's desire for labor stability so that the work will be completed on time; such a rationalization is tantamount to wholesale approval of PLAs—every public entity wants its projects completed on time, and public projects are presumptively important to the public. The competitive bidding requirements, however, demand that something more be shown in order to justify the significant restrictions imposed by PLAs,

and

WHEREAS, the New York State Court of Appeals in New York State Ch., Inc. v New York State Thruway Auth., 88 NY2d 56, 65-69 [1996] stated:

New York has a multitude of procurement statutes applicable to public entities, but the underlying purpose is uniform: to assure prudent use of public moneys and to facilitate the acquisition of high quality goods and services at the lowest possible cost (*see, e.g., General Municipal Law § 100-a*),

and

WHEREAS, the New York State Court of Appeals in New York State Ch., Inc. v New York State Thruway Auth., 88 NY2d 56, 65-69 [1996] set forth the following considerations before a PLA can be entered into for a project:

- Contemporaneous projection of cost savings as a result of a PLA;
- Any unique feature of the project;
- An exceptional specification; or
- Labor unrest threatening the project, and

WHEREAS, the Commissioner of Public Works for Niagara County has reviewed the specifications for the Reconstruction and Rehabilitation of Stone Road from Johnson Road to Warren Corners [i.e. Route 93] to remedy narrow lane widths, provide stabilized shoulders and provide drainage improvements and has prepared a report for the Niagara County Legislature to review, which shows that there will be no cost savings anticipated to Niagara County if there were to be a negotiated PLA in such project; in addition, the report further reveals that the project is not extraordinary in size or complexity, and contains no unique feature, and

WHEREAS, based upon the specifications and the review of the Commissioner of Public Works for Niagara County, the standard of “more than a rational basis” required by the court in New York State Ch., Inc. v New York State Thruway Auth., 88 NY2d 56, 65-69 [1996] to permit the use of a PLA for a Niagara County Public Works project has not been satisfied, now, therefore, be it

RESOLVED, that the Commissioner of Public Works for Niagara County is hereby directed to re-advertise for construction bids for the Niagara County project for the Reconstruction and Rehabilitation of Stone Road from Johnson Road to Warren Corners [i.e. Route 93] to remedy narrow lane widths, provide stabilized shoulders and provide drainage improvements, and be it further

RESOLVED, that that the Commissioner of Public Works for Niagara County shall not negotiate and/or otherwise cause Niagara County to enter into a PLA for the Reconstruction and Rehabilitation of Stone Road from Johnson Road to Warren Corners [i.e. Route 93] to remedy narrow lane widths, provide stabilized shoulders and provide drainage improvements project and a PLA shall not be included within the bid documents.