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JEREMY A. COLBY
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

CHRIS COLLINS

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MARTIN A. POLOWY
FIRST ASSISTANT COUNTY ATTORNEY

THOMAS F. KIRKPATRICK, JR.
SECOND ASSISTANT COUNTY ATTORNEY

September 22, 2011

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

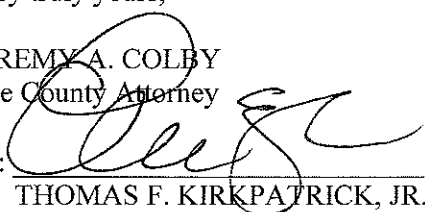
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Brown, Paul as President of the Building and Construction Trades Council of Buffalo and Vicinity vs County of Erie, Amherst Paving, Inc. and All American Companies Inc.</i>
Document Received:	Verified Petition
Name of Claimant:	Paul Brown, as President of Building and Construction Trades Council of Buffalo and Vicinity
Claimant's attorney:	Anna Falicov, Esq. Creighton, Johnsen & Giroux 560 Ellicott Square Building 295 Main Street Buffalo, New ork 14203

Should you have any questions, please call.

Very truly yours,

JEREMY A. COLBY
Erie County Attorney

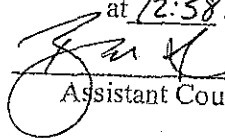
By: 
THOMAS F. KIRKPATRICK, JR.
Second Assistant County Attorney
thomas.kirkpatrick@erie.gov

TFK/mow
Enc.

cc: JEREMY A. COLBY, Erie County Attorney

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

This paper received at the
Erie County Attorney's Office
from Jennifer Ferrusion
the 19th day of Sept., 2011
at 12:58 a.m./p.m.


Brian B. Liebenow
Assistant County Attorney

In the Matter of the Application of:

PAUL BROWN, as President of the BUILDING AND
CONSTRUCTION TRADES COUNCIL OF
BUFFALO AND VICINITY, and the BUILDING AND
CONSTRUCTION TRADES COUNCIL OF BUFFALO
AND VICINITY,

Petitioners,

Index No. 2011-3737

For An Order and Judgment Pursuant to
Article 78 of the Civil Practice Law and Rules

-against-

COUNTY OF ERIE; and AMHERST PAVING INC.
and ALL AMERICAN COMPANIES INC.

Respondents.

NOTICE OF PETITION

PLEASE TAKE NOTICE, that upon the annexed Verified Petition, verified
September 9, 2011, and upon exhibit attached thereto, an application will be made to this
Court at a term thereof, to be held at the Supreme Court for the County of Erie, Part
21 before the Hon. John F. O'Donnell on the 6th
day of October 2011, at 11:00 o'clock in the fore noon of that day, or as soon
thereafter as counsel can be heard, for a Judgment and Order pursuant to Article 78 of the
Civil Practice Law and Rules declaring that Respondents have violated the requirements
of General Municipal Law §103 with respect to the awarding of a certain Public Works
Project, and seeking a declaration that the public works contract or agreement entered

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ERIE COUNTY CLERK
RCPT # 11129402
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into by the County of Erie and All American Companies and Amherst Paving Inc. on the Project is invalid because it was not awarded in compliance with the General Municipal Law §103.

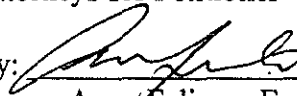
PLEASE TAKE FURTHER NOTICE that a verified answer and supporting affidavits, if any, must be served at least five days before the aforesaid date of hearing.

DATED: September 12, 2011
Buffalo, New York

Respectfully submitted,

CREIGHTON, JOHNSEN & GIROUX
Attorneys for Petitioner

By:



Anna Falicov, Esq.
560 Ellicott Square Building
295 Main St
Buffalo, NY 14203
716-854-0007

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of:

PAUL BROWN, as President of the BUILDING AND
CONSTRUCTION TRADES COUNCIL OF
BUFFALO AND VICINITY, and the BUILDING AND
CONSTRUCTION TRADES COUNCIL OF BUFFALO
AND VICINITY,

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and ALL AMERICAN COMPANIES INC.

Respondents.

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ACTIONS & PROCEEDINGS

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ERIE COUNTY
CLERK'S OFFICE

VERIFIED PETITION

This Verified Petition is submitted on behalf of Paul Brown, as the President of the Building and Construction Trades Council of Buffalo and Vicinity, and the Building and Construction Trades Council of Buffalo and Vicinity (the "Council") seeking an Order, pursuant to Article 78 of the New York State Civil Practice Law and Rules ("CPLR"), that the Respondent the County of Erie ("County") has violated the provisions of Municipal Law §103, the competitive bidding law, with respect to a particular project performed on Eden Evans Center Road, and seeking a declaration that any contract or agreement entered into by the County and Amherst Paving and/or All American

Companies Inc. for work performed on said project is invalid because it is not in compliance with State Law.

1. Petitioner Council is made up of various labor unions representing organized labor within the City of Buffalo and nearby regions, and is affiliated with the Building Trades Department & AFL-CIO. The Council includes seventeen member unions.

2. Petitioner, Paul Brown is the President of the Council.

3. Upon information and belief, Respondent County of Erie is a municipal corporation under County Law and pursuant to the Municipal Home Rule Law and has been governed by its County Charter and Code since 1959, as amended by Local Law.

4. Upon information and belief, Respondent Amherst Paving Inc. is a New York Corporation with its principal place of business located in Amherst in the County of Erie, New York. The Company was improperly granted the right to perform work on Eden Evans Center Road, and is therefore a necessary party to this action.

5. Upon information and belief, Respondent All American Companies of WNY is a Florida Corporation licensed to do business in New York State. Upon information and belief, All American Companies Executive officer Bart Ciambella is former Erie County Department of Public Works Senior Civil Engineer who retired to Florida. All American Companies is performing or performed work on the Eden Evans Center Road project in contravention of the competitive public bidding laws and is therefore a necessary party to this action.

6. Eden Evans Center Road is a major thoroughfare connecting the Town of Eden with the Town of Evans in the County of Erie.

7. The road is approximately 6.6 miles long.
8. The road is badly deteriorated with many uneven portions of pavement and “heaving” from frost. Erie County Public Works Commissioner Mr. Gerry Sentz has publicly stated that the road is one of the most “troubled” roads in the area because of its condition and the difficulty in finding the right solution. Mr. Sentz explained that the County had tried several ideas such as more drainage and other improvements, but nothing worked.
9. The road was in such bad condition that residents organized a Facebook page in January 2011 labeled “Fix Eden Evans Center Road!”
10. Upon information and belief, the County hired a Cornell University highway engineer to review the problem and issue a report in the Spring of 2011. The “Cornell Road” program recommended that the sub-base material, or slag, be removed and the road completely reconstructed. Slag is a subbase material that is a byproduct of coal processing and is associated with frost heave due to its tendency to expand and retain moisture.
11. On June 23, 2011, the Erie County Executive appeared before the Erie County Legislature and proposed a resolution funding reconstruction of Eden Evans Center Road. The Resolution, a full copy of which is attached hereto as **EXHIBIT A**, states in relevant part:

WHEREAS, when Eden Center Evans Road [sic] was reconstructed about 40 years ago, slag was used as a subbase material which at the time, it was thought that slag was an acceptable material for this purpose; and

WHEREAS, long stretches of this road have been heaving in the winter months making the road difficult to drive in those months due to the wicking of water in the subbase; and

WHEREAS, over the years, the Department of Public Works has tried several solutions to mitigate the heaving but with no success; and
WHEREAS, the only solution is to fully remove the slag subbase and replace it with gravel material and new pavement; and
WHEREAS, it is desired to begin the Project as soon as possible; and
WHEREAS, funding has been identified and authorization is sought to move those funds to this project; and
WHEREAS, the source of funding is the annual budget for Federal Medical Assistance Percentage (FMAP) that has already exceeded the annual budget for 2011.
NOW THEREFORE BE IT RESOLVED, that an increase in the 2011 Budget is hereby authorized for the purpose of reconstruction Eden Center Evans Road.

12. The Federal Medical Assistance Percentage program is money distributed to the County through the American Recovery and Reinvestment Act, or the Stimulus. Upon information and belief, the County received these monies in 2008-2009, but held them in reserve until now.

13. Despite the specific allocation for public work to be performed, the project never appeared in any newspaper or industry publications where public works projects are normally published in order to solicit project bids.

14. On July 28, 2011, Erie County issued a press statement announcing reconstruction of Eden Evans Center Road to begin August 1, 2011. The press statement, attached hereto as **EXHIBIT B**, indicates that 1.6 miles of the road would be reconstructed at an approximate cost of \$1.8 million dollars. The press statement states that the work is estimated to be complete in mid-September.

15. Upon information and belief, work began on the project on July 28, 2011.

16. Two private contractors – All American Companies Inc. and Amherst Paving Inc. – are performing or have performed work on the site.

17. As set forth more fully in Petitioner's Memorandum of Law, General Municipal Law §103 states that an awarding agency must follow the competitive bidding process on public works projects exceeding \$35,000.

18. The process set forth in General Municipal Law §103 requires that the awarding agency advertise the public work in newspaper or industry publications to solicit bid offers. General Municipal Law §103[1]. The bid must specify the time and place where all bids will be received, publicly opened and read. Section 103[2]. The agency selects the lowest responsible bidder after it reviews the bids and the responsibility (i.e. the financial stability, the past performance, insurance coverage etc.) of the bidding contractors. Id.

19. The Eden Evans Center Road projects cost an estimated \$1.8 million dollars, an amount far above the \$35,000 threshold.

20. The County failed to advertise and let the project in accordance with the public bidding law, and is therefore in violation of General Municipal Law §103.

21. As set forth more fully in Petitioners' Memorandum of Law, Competitive bidding laws are strictly enforced. Where a contract is let in contravention of the competitive bidding laws, Courts declare such contracts null and void.

22. In some instances, the Court may order that the awarding agency withhold payment to the contractor or, if the contractor has already been paid, require full forfeiture of the contract price by the contractor.

23. Where there is no direct evidence of fraud or collusion by the contractor awarded the contract, Courts have imposed a remedy that is less than full forfeiture. To assess the measure of damages, a Court may hold a hearing in which expert testimony is presented on the true value of the contract compared to the value awarded. The contractor is required to pay the difference, representing the bargain lost by the taxpayer.

WHEREFORE, Petitioners request that this Court find that the County failed to abide by General Municipal Law §103 in failing to publicly advertise and solicit bids on the Eden Evans Center Road project. Petitioner further requests that this Court declare any agreement between the County and the Respondent contractors null and void, order withholding of payment on the contract, hold a hearing to determine damages, and award attorney's fees and other further relief as deemed just and proper.

Dated: Buffalo, New York
September 12, 2011

CREIGHTON, JOHNSEN & GIROUX
Attorneys for Petitioners

By:

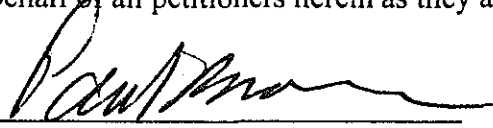


Anna Falicov, Esq.
560 Ellicott Square Building
295 Main Street
Buffalo, NY 14203
(716) 854-0007

VERIFICATION

STATE OF NEW YORK)
) :
COUNTY OF ERIE)

The undersigned, being duly sworn, deposes and says that deponent is the President of the Building and Construction Trades Council of Buffalo and Vicinity, that deponent has read the foregoing Verified Petition and knows the contents thereof, that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true; and that deponent verifies on behalf of all petitioners herein as they are united in interest.



Paul Brown

Sworn to before me this
9 Day of September, 2011



Notary Public

ANNA MARIEL FALICOV
Notary Public, State of New York
No. 02FA6237809
Qualified in Erie County
Commission Expires March 28, 2015