

June 1, 2004

ECONOMIC DEVELOPMENT  
COMMITTEE  
REPORT NO. 9

ALL MEMBERS PRESENT, EXCEPT LEGISLATOR SWANICK.

1. RESOLVED, that the following item is hereby received and referred to the FINANCE & MANAGEMENT COMMITTEE.

- |    |                     |  |       |               |
|----|---------------------|--|-------|---------------|
|    | Item                | Page   | -2004 | (Comm. 10E-3) |
| a. | <b>DEBENEDETTI:</b> | Letter to Empire State Development Re: Incentives to Bass Pro Shops.<br>(4-0) Legislator Swanick absent. |       |               |

2. RESOLVED, that the following item is hereby received and filed.

- |    |                   |   |       |               |
|----|-------------------|---|-------|---------------|
|    | Item              | Page  | -2004 | (Comm. 11E-4) |
| a. | <b>SCHROEDER:</b> | Copy of Letter to County Attorney Re: Prevailing Wage Enforcement Provisions of County Contracts.<br>(4-0) Legislator Swanick absent. |       |               |

- |    |                         |      |       |                |
|----|-------------------------|------|-------|----------------|
| 2. | Item                    | Page | -2004 | (Comm. 11E-15) |
|    | <b>COUNTY EXECUTIVE</b> |      |       |                |

WHEREAS, the Erie County Legislature approved a contract for the 2003 Culvert Replacement – Group 6 Contract, Project No. CG-06-03, at various locations in the Towns of Hamburg and Orchard Park, between Kandey Company, Incorporated and the County of Erie, in Meeting Number 15, held on September 11, 2003, Communication Number 15E-21, and

WHEREAS, additional work needs to be performed on the project that was not initially anticipated, and

WHEREAS, the cost for the additional work exceeds the contingency amount previously authorized for this project.

NOW, THEREFORE, BE IT

RESOLVED, that the construction contract with Kandey Company, Incorporated be increased by \$30,896.93, to be allocated from the 2003 Culvert Fabrication/AE/Construction Program (SFG 443-380) for a change order for the additional work, and be it further

RESOLVED, that the Clerk of the Legislature be instructed to forward three (3) certified copies of this resolution to the Deputy Commissioner-Highways, and one copy each to the County Executive, the Commissioner of Public Works, and to the County Comptroller.  
(4-0) Legislator Swanick absent.

- |    |                         |      |       |                |
|----|-------------------------|------|-------|----------------|
| 3. | Item                    | Page | -2004 | (Comm. 11E-16) |
|    | <b>COUNTY EXECUTIVE</b> |      |       |                |

WHEREAS, the Erie County Legislature approved contracts for the 2003 Culvert Replacements Group 3, Group 4, and Group 15), at various locations in the Towns of Alden,

Newstead, Cheektowaga, Lancaster, Marilla, Orchard Park, and Sardinia between Armand Cerrone, Inc. of Niagara Falls, New York (Project No.CG-03-03); UCC Constructors, Inc. of West Seneca, New York (Project No.CG-04-03); and Sicar, Inc. of Elma, New York (Project No.CG-15-03 and the County of Erie, in Meeting Number 15, held on September 11, 2003, Communication Number 15E-21, and

WHEREAS, additional work needs to be performed on the project that was not initially anticipated, and

WHEREAS, the costs for the additional work exceeds the contingency amount previously authorized for these projects.

NOW, THEREFORE, BE IT

RESOLVED, that the construction contracts with the above noted Contractors be increased as indicated:

CG-03-03	\$ 2,922.07
CG-04-03	\$ 5,253.07
CG-15-03	\$87,159.76

to be allocated from the 2003 Bridge Design and Construction Program (SFG 420-352) for change orders for the additional work, and be it further

RESOLVED, that the Clerk of the Legislature be instructed to forward three (3) certified copies of this resolution to the Deputy Commissioner-Highways, and one copy each to the County Executive, the Commissioner of Public Works, and to the County Comptroller.  
(4-0) Legislator Swanick absent.

4. Item Page -2004 (Comm. 11E-17)

**COUNTY EXECUTIVE**

WHEREAS, the Department of Public Works received bids for the EC Courts Master Plan Implementation Renovation on May 22, 2002, and

WHEREAS, your Honorable Body has previously awarded contracts to the lowest responsible bidders in an amount not to exceed \$42,731,953.00, and

WHEREAS, many design changes and unforeseen conditions related to asbestos buried piping and conduits in walls and floors and structural conditions for 77 West Eagle, 25 Delaware Avenue, and Old County Hall have exhausted our construction contingency fund, and

WHEREAS, due to the many changes and increased scope of this very complicated project, the general contingency which includes:

- Owner's Contingency
- Architect/Engineer's Contracts
- Construction Manager's Contracts
- A/E & CM Contingencies
- Miscellaneous Contingency
- Inspection Contingency

Department of Public Works' Consultants' Service Agreement, and salary costs for the Commissioner's Office, and Commissioning and Testing, need to be fully funded, and

WHEREAS, the skylights and curbing on the roof of Old County Hall were not part of the original scope of work but have deteriorated to the point where they have become a safety concern and need to be replaced, and

WHEREAS, the Unified Court System, Office of Court Administration, has requested changes to the scope of the project, increasing the appropriations for the project in an amount not to exceed \$200,000,

NOW, THEREFORE, BE IT

RESOLVED, that the construction contingency fund be increased by \$4,500,000.00 from \$6,227,195.00 to \$10,727,195.00, with authorization for the Commissioner of Public Works to approve change orders, not to exceed the construction contingency, and be it further,

RESOLVED, that deduct change orders will result in funds being returned to the contingency account, and be it further,

RESOLVED, that the general contingency which includes –

Owner's Contingency,

Architect/Engineer's Contracts

Construction Manager's Contracts

A/E and CM Contingencies

Miscellaneous contingencies

Inspection contingencies

Department of Public Works' engineers and consultants service agreements,

and Commissioning and testing fees be increased by \$800,000 from \$11,027,000.00 to \$11,827,000.00 with authorization for the Commissioner of Public Works to approve change orders, not to exceed the general contingency, and be it further,

RESOLVED, that the project's appropriations be increased in the amount of \$200,000.00 by Office of Courts Administration funds, and be it further,

RESOLVED, that the Comptroller's Office be authorized to make payments from the following: 2004 Courts Renovations, Project A.00018 for \$5,000,000 and 2003 Roof and Waterproofing, Project A.00070 for \$300,000, and be it further,

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

(4-0) Legislator Swanick absent.

5       Item                   Page                                   -2004                   (Comm. 11E-18)

**COUNTY EXECUTIVE**

WHEREAS, The County of Erie desires to participate in the planning and design of the Lancaster Rail Industrial Park project in the Town of Lancaster; and

WHEREAS, The Erie County-owned rail line 1242 currently extends through the Town of Cheektowaga, the Village of Depew, and the Village of Lancaster; and

WHEREAS, The development of the rail corridor to serve new industrial parks is a key part of the effort towards the attraction of new industry to the Buffalo Niagara region; and

WHEREAS, A non-binding Memorandum of Understanding by and among the County of Erie, the Erie County Industrial Development Agency, the Town of Lancaster, the Lancaster Industrial Development Agency, and Casilio Seneca LLC has been prepared,

NOW, THEREFORE, BE IT

RESOLVED, That the non-binding Memorandum of Understanding by and among the County of Erie, the Erie County Industrial Development Agency, the Town of Lancaster, the Lancaster Industrial Development Agency, and Casilio Seneca LLC is approved; and be it further

RESOLVED, That the County Executive is authorized to sign the Memorandum of Understanding; and be it further

RESOLVED, That the Clerk of the Legislature be directed to send certified copies of this resolution to the County Executive; the Director of the Division of Budget, Management and Finance; the Comptroller; the Commissioner of the Department of Environment and Planning; and the County Attorney.

**MEMORANDUM OF UNDERSTANDING**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is a non-binding MOU, except as otherwise stated herein, by and between Casilio Seneca LLC, the County of Erie, the Erie County Industrial Development Agency, the Town of Lancaster, and the Lancaster Industrial Development Agency.

Casilio Seneca LLC, the County of Erie, the Erie County Industrial Development Agency, the Town of Lancaster, and the Lancaster Industrial Development Agency may be referred to as “Party” or collectively as “Parties.”

**BACKGROUND:**

**A)** Casilio Seneca LLC is a joint venture involving the two real estate development firms of Seneca Development & Management Corp. and the Casilio Companies.

**B)** Casilio Seneca LLC presently has a large tract of vacant land under option in the Town of Lancaster that it is developing as an industrial park.

**C)** There presently is a recognized shortage of shovel ready 'greenfield' industrial acreage with rail access.

**D)** The Town of Lancaster presently owns an abandoned former railroad right-of-way that passes through the proposed industrial park.

**E)** The Town of Lancaster has agreed to sell the former railroad right-of-way to the Lancaster Industrial Development Agency.

**F)** The Erie County Industrial Development Agency serves as Erie County's primary economic development arm.

**G)** Erie County presently owns an active shortline railroad line that runs up to the western boundary of the proposed industrial park.

**H)** The Parties along with the State of New York (except for the Lancaster Industrial Development Agency) are presently contributing financially toward a major \$150,000 engineering contract for the design and engineering of the proposed park, the preliminary design of which has been agreed upon by the Parties.

**I)** The Parties wish to work together to bring rail service to the proposed industrial park to enhance the marketability of the site and to provide shovel ready rail serviced industrial sites.

The Parties intend to contribute information and resources in connection with bringing rail service to the proposed industrial park and have therefore reached the following understanding:

**1)** Each Party will devote such time and resources as it shall in its sole discretion determine appropriate in achieving the objective of bringing rail service to the proposed industrial park.

**2)** Each Party agrees that it will from time to time disclose to the other Parties developments and information obtained in connection with and useful for the agreed upon objective.

**3)** The Town of Lancaster will sell the abandoned rail right-of-way that it owns to the Lancaster Industrial Development Agency.

**4)** Casilio Seneca LLC will prepare a survey map and legal description of a 66' wide proposed rail right-of-way that lies within this abandoned rail right-of-way and that will extend from the western boundary of the proposed industrial park at Walter Winter Drive to Cemetery Road on the eastern boundary.

**5)** The Lancaster Industrial Development Agency, in turn, will transfer title of this 66' wide strip to the County of Erie for use as a railroad right-of-way to serve the proposed industrial park.

**6)** The survey map will also identify land at the eastern portion of the proposed industrial park that lies within the abandoned rail right-of-way that will need to be included in the proposed public road right-of-way that will be serving the proposed industrial park.

7) Any lands that presently lie within the Town owned abandoned rail right-of-way that are not included in the 66' wide proposed rail right-of-way and that are not required to be part of the aforementioned proposed public road right-of-way and that will not be deeded back to the Town of Lancaster as open space (surplus lands) will be sold to Casilio Seneca LLC at the appraised value and will be incorporated into the proposed industrial park.

8) The surplus lands that will be sold to Casilio Seneca LLC comprise approximately 12.51 acres.

9) Erie County Industrial Development Agency will use its resources to obtain one or more sources of public funding for the installation of all or a portion of the proposed rail line.

10) Casilio Seneca LLC will develop a marketing plan acceptable to the Parties that will market the rail serviced industrial land.

11) This MOU is entered into between the Parties in good faith and in contemplation of mutual cooperation between them. Each Party agrees with the others to be just and fair in its dealings with the other Parties and will use all its reasonable endeavors to promote the objectives of this MOU. The Parties agree that the areas for cooperation will be reviewed at regular meetings, the frequency of which is to be mutually agreed upon.

12) Each Party will be responsible for its own costs and expenses.

13) The Parties are hereby creating this MOU, intending solely to set forth the present understanding of the Parties with regard to selected terms and aspects of their relationship. This MOU is not intended to, and does not, constitute a complete statement of the terms or relationship, or create any legally binding obligations between the Parties, except as expressly provided herein. In addition, this MOU does not impose on any Party a duty or obligation to negotiate towards or conclude any definitive agreement or any other commitment.

14) Any Party may terminate this Agreement at any time upon (30) days notice to the other Parties, and no Party shall have further liability or obligation to any other Party.

CASILIO SENECA LLC

ERIE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

LANCASTER INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_

Dated: \_\_\_\_\_

COUNTY OF ERIE

TOWN OF LANCASTER

By: \_\_\_\_\_  
HON. JOEL A. GIAMBRA  
County Executive

By: \_\_\_\_\_  
HON. ROBERT H. GIZA  
Supervisor

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO CONTENT

APPROVED AS TO FORM

\_\_\_\_\_  
LAURENCE K. RUBIN, Commissioner  
Department of Environment  
and Planning

\_\_\_\_\_  
FREDERICK A. WOLF  
County Attorney

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Doc. No.: \_\_\_\_\_

(4-0) Legislator Swanick absent.

**MARK J. F. SCHROEDER**  
**CHAIRMAN**