



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

To: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Iannello, Treasurer

CC: Terrence D. McCracken, Secretary
Russell Stoll, COO
Karen A. Prendergast, CFO
Mark S. Carney, Attorney

From: Jacqueline C. Mattina, Associate Attorney,
of counsel to
Mark S. Carney, General Counsel

Date: November 15, 2021

Subject: Facility Site Selection/Broker Proposals

The Erie County Water Authority (the “Authority”) recently authorized Harris Beach PLLC (“Harris Beach”) to approach commercial real estate firms to gauge interest in working with a confidential client (the Authority) to locate space for a new facility. Melanie Marotto, attorney with Harris Beach held a conference with General Counsel Mark Carney, Secretary to the Authority Terrence McCracken and COO Russell Stoll (collectively the “Review Committee”) to develop a set of criteria for any suggested site.

The criteria developed by the Review Committee was used by Harris Beach in selecting potential firms for contact. During the search, four (4) commercial real estate firms were contacted. Of the four contacted, three (3) provided written responses and are listed below:

Cushman Wakefield/Pyramid Brokerage
Hanna Commercial Real Estate (“Hanna”)
J.R. Militello Realty, Inc. (“Militello”)

Of the three submissions, Hanna and Militello included sample sites, proposed commission agreements and a summary of their experience in this area. The Cushman Wakefield submission did not have the detail the other proposals contained. The proposals were reviewed and discussed among the Review Committee and then presented to Executive Staff. After review, it appears Militello provides the most comprehensive approach, contract and explanation and has experience with this type of project.

With the support of the Executive Staff, it is recommended to the Board to authorize entering into an Agreement with Militello for real estate brokerage services for the purpose of locating space for a new facility. A resolution authorizing the Agreement is on the November 24, 2021 Board meeting for your review and authorization.

Budget Information:

Unit 3070: Facilities
Line No.: 101334, Comprehensive Facilities Plan

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract:	Project No.:
Project Description: <u>Authorization to Execute Agreement for Real Estate Brokerage Services</u>	
<u>With J.R. Militello Realty, Inc.</u>	

Item Description:

<input checked="" type="checkbox"/> Agreement	<input type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input type="checkbox"/> Contract Documents	<input type="checkbox"/> Addendum
<input type="checkbox"/> Recommendation for Award of Contract	<input type="checkbox"/> Recommendation to Reject Bids		
<input type="checkbox"/> Request for Proposals			
<input type="checkbox"/> Other _____			

Action Requested:

<input checked="" type="checkbox"/> Board Authorization to Execute	<input type="checkbox"/> Legal Approval
<input type="checkbox"/> Board Authorization to Award	<input type="checkbox"/> Execution by the Chairman
<input type="checkbox"/> Board Authorization to Advertise for Bids	<input type="checkbox"/> Execution by the Secretary to the Authority
<input type="checkbox"/> Board Authorization to Solicit Request for Proposals	
<input type="checkbox"/> Other _____	

Approvals Needed:

APPROVED AS TO CONTENT:

<input type="checkbox"/> Other (if Applicable)	_____	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer	<u><i>Russell J. Field</i></u>	Date: <u>11/16/2021</u>
<input checked="" type="checkbox"/> Executive Engineer	<u><i>Jeanard F. Koralik</i></u>	Date: <u>11/16/2021</u>
<input checked="" type="checkbox"/> Director of Administration	<u><i>Shawna L. Lister</i></u>	Date: <u>11/16/2021</u>
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer	<u><i>Karen A. Rendugast</i></u>	Date: <u>11/16/2021</u>
<input checked="" type="checkbox"/> Legal	<u><i>[Signature]</i></u>	Date: <u>11-16-2021</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority	<u><i>[Signature]</i></u>	Date: <u>11/16/21</u>
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Remarks: _____

Resolution Date: _____	Item No: _____
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J.R. Militello Realty, Inc.

API GLOBAL

268 Main St Buffalo, NY 14202
(716) 856-2872 fax 856-2833

September 14, 2021

Ms. Melanie C. Marotto
Partner
HARRIS BEACH PLLC
ATTORNEYS AT LAW
Larkin at Exchange
726 Exchange Street, Suite 1000
Buffalo, NY 14210

Re: Engagement of J.R. Militello Realty, Inc. for real estate brokerage services.

Dear Melanie:

You have requested that J. R. Militello Realty, Inc. (the "Broker") act as the agent and nominee of the Erie County Water Authority (the "Buyer") and serve as the Buyer's exclusive broker and representative, in connection with the acquisition of approximately 15+ acres of light industrial zoned land, or an existing building suitable for the Buyer's operation (collectively the Property"). The Buyer has agreed to consider locations in Cheektowaga, Depew, West Seneca or Southern Amherst. The acquired site or building will be used as an 112,600 square foot office/garage facility.

Furthermore the Broker has assigned Carl Buzak and James R. Militello, licensed brokers (the "Agents") at J. R. Militello Realty, Inc. to exclusively represent the Buyer in any transaction.

Our agreement is as follows:

1. Engagement. Pursuant to the terms set forth in this letter agreement, the Buyer hereby agrees to engage the Broker as its exclusive agent to acquire the Property on a single parcel or a number of contiguous, assembled parcels, located in Cheektowaga, Depew, West Seneca or Southern Amherst. The Broker understands that the sole objective of the engagement is to acquire this Property for the Buyer and that the Broker will not be a part of, nor compensated for, any other actions related to this land acquisition such as a rezoning or the implementation of improvements related to the redevelopment of the building unless engaged to do so under a separate agreement.

The Broker may engage the services and cooperation of other licensed real estate brokers who will be acting through or under the Broker to in the acquisition of the Property under such arrangements as may be acceptable to the Broker. The Broker has no liability for any broker who is not acting by, through or under the Broker. The Broker agrees that any fee payment to

other brokers, whom the Broker has engaged, will be a part of the fees payable to the Broker as outlined in paragraph 3 below.

Notwithstanding anything contained herein, the parties acknowledge that the Broker currently has listed, as exclusive agent, certain properties for purchase (see exhibit A). The parties agree that, in the event that the Buyer expresses an interest in pursuing the purchase of one of these properties, the Broker may with the Buyer's prior approval (i) arrange to have an agent of the Broker, who is removed from any conflict, represent the Buyer in the negotiations or (ii) with the consent of all involved parties, act as the representative of both sides of the transaction ("Dual Agency") or (iii) the Broker will continue to act exclusively on behalf of the of the owners of such property and the Buyer will have the right to cancel this agreement as to the listed property in question and seek third party representation.

Additionally the Broker agrees not to take any future listings that are in conflict with this assignment unless all such listings contain a clause that discloses and allows the Broker's relationship and responsibilities to the Buyer to continue unaffected

The Broker has made arrangements to protect the interests of the Buyer. All records and communications between the Buyer and the Broker will be segregated from other activity at J. R. Militello Realty, Inc. and kept in the exclusive and confidential control of the Agents.

2. Scope of Work. The Broker may use its corporate shell, J. R. Militello Realty, Inc., as the acquiring entity in order to maintain confidentiality of the Buyer's actions. The intention is for the Broker to negotiate and execute a purchase and sale agreement with an owner, or multiple owners, of the Property, which is fully assignable to the Buyer or an entity to be formed by the Buyer. The price and terms of the purchase and sale agreement must be approved in advance by the Buyer before the Broker executes such agreement. Subject to the Broker's compliance with the foregoing approval requirement, the Buyer agrees to fund the transaction through the Broker by advancing funds in a timely manner to the Broker's escrow account.

The Broker is merely facilitating the negotiation of a purchase and sale agreement on behalf of the Buyer and it is not intended by either party for the Broker to be responsible for any costs or risks with this action. With the exception of the Broker's negligence or willful misconduct, the Buyer is agreeing to indemnify the Broker for any actions taken on behalf of the Buyer and under the direction of the Buyer. In the event that there are any disputes resulting from the executed contract the Buyer agrees to pay for all legal costs of the Broker in defending its interests.

In all circumstances, the Broker will proceed to negotiate on the Buyer's behalf with the Seller or its agents, but shall have no authority to bind the Buyer without its prior written approval. The Broker will coordinate such negotiations with both the Buyer and its advisors as directed.

This work is further described in the attached Scope of Work and Process Outline. The parties agree that this Scope of Work may be modified from time to time to accommodate the Buyer's needs.

3. Compensation/ Brokerage Fees. As set forth above, the Broker's work effort will include the identification and procurement of land or an existing building for the Buyer's use and/or investment. For this work the Broker will be entitled to earn a traditional brokerage commission,

payable by the seller of the acquired property. The Broker agrees to seek a commission from the seller not to exceed five (5%) percent of the value of an existing building and eight percent (8%) for the purchase of a parcel of land. This fee will be paid in full by the seller at the closing of the transaction.

Additionally in the event of an acquisition through an exchange of property in which the exchange value does not reflect the negotiated price, or the acquisition of a publicly owned parcel for a nominal amount, the commission due the Broker will be calculated on the reasonable market value of the property as if it were a traditional "arm's length" transaction.

The Buyer agrees to support or acknowledge the Broker as the procuring cause in its attempt to obtain this commission from the seller of a property in any consummated transaction in which the Buyer is involved. Where circumstances dictate, and with the Buyer's prior approval, this commission amount may be paid directly by the Buyer and not the seller.

We further agree that the Broker will be entitled to, and the Buyer will support the Broker's claim for, the above mentioned brokerage commissions on any property which the Broker has shown to the Buyer during the term of this agreement and which the Buyer purchases or otherwise acquires within six (6) months after the expiration of the term of this agreement or any extension thereof.

4. Cooperation; Forwarding of Information and Other Inquiries. The Buyer agrees to cooperate with the Broker and forward to it information reasonably requested in furtherance of the performance of the Scope of Work.

5. Term of Agreement. Our agreement to provide brokerage services to the Buyer shall be for a term of twelve (12) months commencing on the date this letter agreement is accepted by the Buyer. Such term may be extended by the parties in writing.

6. Entire Agreement. This letter will serve to constitute the parties' entire agreement as to the work to be performed by the Broker, and the Broker's compensation for such work.

Please sign the enclosed duplicate original of this letter on behalf of the Buyer and return same to us in order to acknowledge the Buyer's agreement to the above terms and conditions.

Again, we appreciate the opportunity to be of service to Erie County Water Authority and we are looking forward to working with your office with respect to this project.

Sincerely,
J.R. Militello Realty, Inc.

By _____
James R. Militello, SIOR
President

The undersigned hereby agrees to the above terms and conditions as of the _____ day of September, 2021.

By: _____

Scope of Work – Methodology and Deliverables

Following confirmation of the site and/or building requirements with the Buyer, the Broker will catalog and map available buildings and land within the Eire County Water Authority target area including detailed characterization of quality and marketability of sites and buildings. The goal is to identify 2 or 3 locations meeting the requirements.

- Meet with Water Authority officials and if relevant, tour existing facilities.
- Establish boundaries of the Study Area and interview Water Authority officials to indentify significant properties, industrial parks, or target areas of interest to staff.
- Within the agreed-upon Study Area – document the inventory of available buildings meeting the space program requirements and available vacant parcels of 15 or more acres zoned for industrial and/or office related activities.

Information to be Included in the Inventory:

For Vacant Property (15 acres or larger)

- General Information
 - Location (street address, single parcel or industrial park, etc.), SBL #
 - Ownership
 - Availability: Currently for sale or lease (with broker contact information if applicable). This will be provided for (1) properties listed or sale/lease or (2) if unlisted, following contact with owners if possible
 - Zoning
 - Acreage (as available from public records)
 - Assessed Value
 - Last Sale date and price (as available from public records)
- Characteristics
 - Configuration (regular or irregular)
 - Potential for land assembly based on characteristics of adjacent property
 - Road Access:
 - Availability of Public Utilities

Buildings

- All of the site related information as for vacant land (see above)
- Age (year built) if available from public records or interviews
- Total square footage/Available square footage by category: office, industrial, other
- Asking Price and Terms to the extent available

- **Building characteristics:** utilities, building materials (exterior), ceiling heights, HVAC, cranes, loading docks, etc. (to the extent provided by owner) – general condition and appearance

Deliverables:

- **Inventory** – Electronic and hard copy report with photo documentation – street view (for buildings, aerial view (for vacant land) - for each inventoried property
- **Mapping deliverables** subject to the review of data collected in the survey stage

Schedule

Militello Realty, Inc. would be available to initiate the project upon award of a contract and notice to proceed. We expect completion of the inventory of sites in 4 weeks.