SUSPENSION

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

May 25, 2016

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Department of Law on behalf of the 4th Department Appellate Division Commercial Real Estate Brokerage Services

Dear Honorable Members:

Please find enclosed a resolution from the Department of Law seeking legislative authorization to enter into a contract with HUNT Commercial Real Estate Corporation (hereinafter "HUNT") for brokerage services in order to locate office space to serve as local chambers for the County's resident 4th Department Appellate Court Justices. There will be no County funding associated with this contract and HUNT will work with prospective landlords to establish a commission.

Should your Honorable Body require further information, I encourage you to contact the Department of Law. Thank you for your consideration on this matter.

Sincerely,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP
Encl.

cc: Michael A. Siragusa, County Attorney

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Law
Re: Commercial Real Estate Brokerage Services for Appellate Division Offices
Date: May 25, 2016

SUMMARY

This resolution authorizes the County to enter into a contract for commercial real estate brokerage services with HUNT for the purposes to locating office space to be used as local chambers by the County's resident 4th Department Appellate Court Justices.

FISCAL IMPLICATIONS

None. HUNT will work with prospective landlords to establish a commission.

REASONS FOR RECOMMENDATION

Honorable Gerald J. Whelan, Presiding Justice of the 4th Department Appellate Division, along with the New York State Office of Court Administration, has requested that the County locate office space to be used as local chambers for Erie County's resident justices of the 4th Department. New York State Finance Law entitles municipalities to state assistance for providing such office space. Specifically, section 54-j (1-a)(a) of the State Finance Law, entitled "Court facilities incentive aid," states that political subdivisions, such as the County, shall be entitled to one-hundred percent reimbursement for any lease expenses associated with providing facilities for the transaction of business of an appellate division.

CONSEQUENCES OF NEGATIVE ACTION

The County's resident appellate court justices will be without local chambers, which are necessary to conduct business.

STEPS FOLLOWING APPROVAL

Upon approval of this resolution, the County Executive will be authorized to enter into a contract with HUNT, who will then begin the search for office space for Erie County's resident 4th Department Appellate Court Justices. A copy of the proposed contract is attached for your review.

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF LAW

RE: Commercial Real Estate Brokerage Services
4th Department Appellate Division – Local Chambers

WHEREAS, Honorable Gerald J. Whelan, Presiding Justice of the 4th Department Appellate Division, along with the New York State Office of Court Administration, has requested that Erie County locate office space to be used as local chambers for Erie County's resident justices of the 4th Department; and

WHEREAS, pursuant to New York State Finance Law §54-j(1-a)(a), the County is entitled to one hundred percent reimbursement from New York State for the cost associated with providing facilities for the transaction of business by an appellate division; and

WHEREAS, on April 26, 2016, Erie County issued a request for proposals to provide commercial real estate brokerage services for purposes of locating such office space; and

WHEREAS, the RFP specified that the awarded proposer will work with prospective landlord(s) to establish a commission to be paid solely by the prospective landlord; and

WHEREAS, the County conducted a proposal review and HUNT Commercial Real Estate Corporation was the proposer which scored the highest; and

WHEREAS, the County Executive is requesting authorization from the Legislature to enter into an agreement with HUNT Commercial Real Estate Corporation to provide commercial brokerage services for the purposes enumerated herein.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature does hereby authorize the County Executive to enter into a contract with HUNT Commercial Real Estate Corporation for commercial real estate brokerage services at no cost to the County; and be it further

RESOLVED, that the Clerk of the Legislature shall forward certified copies of this Resolution to the County Executive, the County Attorney, and the Director of the Division of Budget and Management.

County of Erie
Contract No.
Contract Period _____
Comptroller's #__
Tax Payer ID # _____

AGREEMENT

BY AND BETWEEN

THE COUNTY OF ERIE

AND

HUNT Commercial Real Estate Corp.

FOR THE PURCHASE OF

COMMERCIAL REAL ESTATE BROKERAGE SERVICES

AGREEMENT

This Agreement made this ____ day of _____, 2016 by and between the County of Erie, with its principal office located at the 95 Franklin St., Buffalo, New York 14202 (hereinafter referred to as the "County") and HUNT Commercial Real Estate Corp., located at 403 Main Street, Suite 400, Suite 160, Buffalo, New York 14203 (hereinafter called the "Contractor").

WHEREAS, on April 26, 2016, the County issued a request for proposals to secure commercial real estate brokerage services in order to locate and evaluate general office space for the County, on behalf of the Forth Department Appellate Justices; and

WHEREAS, after evaluation of proposals received, the County has selected Contractor to provide such brokerage services.

Now, therefore, in consideration of the mutual covenants, representations, promises and other consideration contained in this Agreement, the Parties agree as follows:

W I T N E S S E T H

1. **Term:** Twelve (12) months commencing upon the signing of this Agreement by both parties and to automatically renew unless notice to the contrary is given in writing by either party to the other prior to the expiration of this initial term.

2. **Specific Project:** The Contractor shall provide Brokerage Services ("Services") exclusively for the project regarding the need to locate office space for purposes of the Fourth Department Appellate Justices. This project is further defined in the request for proposal (RFP # 1619VF), issued by the County on April 26, 2016.

3. **Specific Services:** The Contractor's Services shall be as described in **Exhibit A**, attached hereto and made apart hereof. Additionally, the Contractor's Services will include the following:
    a. Produce and issue a customized Request for Proposal which shall effectively solicit responses which identify approximately Eight-Thousand Six Hundred (8,600) net programmable square feet or Twelve-Thousand (12,000) usable gross square feet of general office space located in or near the downtown Buffalo area.

    b. Review and analyze the responses to the RFP and provide the County a detailed comparative analysis of such with a recommendation for moving forward.

    c. Assist in the review, tours, inspections and design adaptation for a final site.

    d. Provide negotiation services of business terms for letters of intent/leases.

e. Monitor progress throughout the buildout and provide scheduled updates until project is completed.

4. **Right of Termination:** The County and the Contractor shall have the right to terminate this agreement at any time with sixty (60) days written notice to each party. However, the County shall recognize Contractor as their exclusive broker for any sites/properties that have been presented to the County prior to the termination date.

5. **Geographical Area:** Central Business District (CBD) Buffalo, New York

6. **Fees:** The Contractor will work with prospective landlords to establish a commission to be paid solely by the selected landlord. This is a no fee agreement with the County and County shall not be liable for any payments to contractor for services rendered hereunder.

7. **Representation:** Contractor will, at all times, use its best efforts to represent the County. Contractor's position as County representative will be disclosed to all Landlords.

8. **Accountability:** The Contractor shall be fully accountable for its performance under this Contract and its officers agree to answer, under oath, all questions relative to the performance thereof, and to any transaction, act or mission, had, done or omitted in connection herewith called before any judicial county, state or federal agency empowered to investigate this Contract or its performance.

9. **Amendment:** This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

10. **Severability**: In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

11. **Assignment:** The Contractor shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Contractor shall not subcontract any part of the Services without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Services under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Contractor that for the purposes of this Agreement, all Services performed by a County-approved subcontractor shall be deemed Work performed by the Contractor and the Contractor shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement.

12. **Confidentiality:** The Contractor represents and agrees to safeguard the confidentiality of all

information utilized by or in the possession of the Contractor under this Contract where such information is subject to Federal and State confidentiality statutes and regulations. Any breach of confidentiality by the Contractor, its agents or representatives pursuant to said statutes or regulations shall be cause for immediate termination of this Contract.

13. **Governing Law:** This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement shall be brought in the County of Erie.

    If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

14. **Headings:** The headings used in this Agreement are for convenience of the parties only and shall not be considered in interpreting the meaning of any provisions of this Agreement.

15. **Insurance:** The Contractor agrees to procure and maintain insurance naming the County as additional insured where indicated, as provided and described in **Exhibit B**, entitled "Standard Insurance Provisions", which is attached hereto and made part hereof.

16. **Indemnification:** The Contractor agrees: that except for the amount, if any, of damage contributed to, or resulting from the negligence of the County, the Contractor shall defend, indemnify and hold harmless the County, its officers, employees, and agents from and against the Contractor's proportional share of liability, damage, claim, demand, cost, judgment, fee attorneys' fees, or loss which the County may sustain, be subject to, or be caused to incur because of or as a result of (a) any wrongful act, error, or omission of the Contractor or third parties under the direction or control of the Contractor; or (b) any willful misconduct of the Contractor or third parties under the direction or control of the Contractor; or (c) any infringement of any claimed copyright or patent right of designs, plans, drawings, or specifications furnished by the Contractor or its sub-consultant. Nothing contained herein shall create or give to third parties any claim or right of action against the County or Contractor beyond such as may legally exist without regard to this provision.

17. **Independent Contractor:** The Contractor and the County agree that the Contractor and its officers, employees, agents, contractors, subcontractors, and/or consultants are independent contractors and not employees of the County, agency, or unit thereof. In accordance with their status as independent contractors, the Contractor covenants and agrees that neither the Contractor nor any of its officers, employees, agents, contractors, subcontractors and/or consultants will hold themselves out as, or claim to be, officers or employees of the County, agency or unit thereof, and that it will not by reason thereof, make any claim, demand or

application to or for any right or privilege applicable to an officer or employee of the State of New York or the County, including but not limited to Worker's Compensation coverage or retirement membership or credits.

18. **Laws Applicable:** The Contractor agrees to comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations. The Contractor shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and others employed to render the Services hereunder.

19. **Non-Discrimination:** The Contractor expressly agrees that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status or any other status protected by New York State or Federal laws during the term of or in connection with this Agreement.

20. **Waiver:** Failure of the County to insist, in any one or more instances, upon strict performances of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect.

21. **Equal Pay:** The Contractor shall comply with Erie County Executive Order 13 (2014) and agrees to complete the Certificate collectively attached hereto as **Exhibit C** and made a part hereof. The Contractor shall make such records available, upon request, to the County's Division of Equal Employment Opportunity for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Contractor, for the purpose of verifying information supplied in the Erie County Equal Pay Certification and for any other purpose reasonably related to confirming the Contractor's compliance with Erie County Executive Order 13 (2014). Notwithstanding the termination provisions contained herein, violation of the provisions of Executive Order 13 (2014), may constitute grounds for the immediate termination of this Agreement and may constitute grounds for determining that the Contractor is not qualified to participate in future County contracts.

[END TEXT]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their duly authorized officers on the day and year first above written.

COUNTY OF ERIE

By: _____
Name: Mark C. Poloncarz/Maria Whyte
Title: County Executive/Deputy County Executive

HUNT Commercial Real Estate Corporation

By: _____
Name:
Title:

APPROVED AS TO FORM and CONTENT

By: _____
Name: Michael Siragusa
Title: County Attorney
Document No.: _____
Date: _____

CORPORATE ACKNOWLEDGEMENT

State of New York} ss.:
County of Erie...}

On this _____ day of _____, 2016, before me personally came to me known, who, being by me duly sworn, did depose and say that he resides in ; that he is the _____ of the _____,the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; and that it was so affixed by the order of the Board of Directors of the said corporation, and that he signed his name thereto by like order.

EXHIBIT A
[HUNT's Proposal]

EXHIBIT B
[Insurance Requirements]

EXHIBIT C
[EQUAL PAY CERTIFICATION]

Erie County Equal Pay Certification

In order to comply with Executive Order 13 dated November 6, 2014, we hereby certify that we are in compliance with federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together " Equal Pay Law"). We understand that this certification is a material component of this contract. Violation of the provisions of Executive Order 13, which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

We have evaluated wages and benefits to ensure compliance with the Equal Pay Law.
We certify that we have not been the subject of an adverse finding under the Equal Pay Law within the previous five years and, in the alternative, if we were the subject of an adverse finding under the Equal Pay Law within the previous five years, we have annexed a detailed description of the finding(s). In addition, we have annexed a detailed description of any currently pending claims under the Equal Pay Law in which we are involved.

_____
Signature

Verification

STATE OF _____)
COUNTY OF _____) SS:
A)
_____, being duly sworn, states he or she is the owner of (or a partner in) _____, and is making the foregoing Certification and that the statements and representations made in the Certification are true to his or her own knowledge.

B)
_____, being duly sworn, states that he or she is the Name of Corporate Officer _____, of _____, Title of Corporate Officer Name of Corporation the enterprise making the foregoing Certification, that he or she has read the Certification and knows its contents, that the statements and representations made in the Certification are true to his or her own knowledge, and that the Certification is made at the direction of the Board of Directors of the Corporation.

Sworn to before me this _____
Day of _____, 20__
_____