



**Phillips Lytle LLP**

**Via Hand Delivery**

February 10, 2012

Michael A. Siragusa, County Attorney  
Erie County Department of Law  
95 Franklin Street, Room 1634  
Buffalo, NY 14202



Re: Transmittal Letter

Dear Michael:

Phillips Lytle is pleased to provide the County of Erie (the "County") with a legal services proposal regarding the lease of the County's professional football stadium.

We can confidently say that there is no other local law firm who has been involved with leasing transactions with more stadiums and arenas across the United States than Phillips Lytle. In addition, our depth of legal expertise with respect to complex lease negotiations and real estate transactions puts us in a prime position to effectively negotiate the lease of the County's professional football stadium.

Moreover, Phillips Lytle has a vested interest in this project as we have been a part of the Buffalo Niagara Region for more than 175 years. As an institution of this region, we would be honored to be involved in preserving another community institution through our strong representation of the County.

The combination of Phillips Lytle's Lease Team, our bench strength in real estate transactions, and our strong knowledge base in project development transactions including multi-faceted economic development incentives and complex project financing alternatives, makes Phillips Lytle an invaluable resource for this project.

ATTORNEYS AT LAW

ALISA A. LUKASIEWICZ, SPECIAL COUNSEL DIRECT 716 504 5739 ALUKASIEWICZ@PHILLIPSLYTL.COM

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**Phillips Lytle LLP**

February 8, 2012

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Thank you for your consideration.

Very truly yours,

Phillips Lytle LLP

By

Alisa A. Lukasiewicz

Enclosures

AAL/REF2

Doc # 01-2553538.1

ATTORNEYS AT LAW

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Erie County Department of Law  
95 Franklin Street, Room 1634  
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February 10, 2012

Dear Michael:

Phillips Lytle is pleased to provide the County of Erie (the "County") with a legal services proposal regarding the lease of the County's professional football stadium.

Phillips Lytle is well positioned to assist the County with this important lease based on its depth of knowledge gained through representation of clients involving stadiums and arenas located across the United States.

In addition, we have earned such great respect for our lease negotiations, that we have a dedicated Phillips Lytle "Lease Team" (Team) comprised of seasoned attorneys who have gained expert knowledge throughout the years with their involvement in complex and sophisticated negotiations. This Team would be engaged in the professional football stadium lease negotiations.

- I. **EXPERIENCE. PLEASE DESCRIBE THE FIRM'S HISTORY AND EXPERIENCE WITH: PROVIDING LEGAL SERVICES RELATED TO LEASES OF PROFESSIONAL OR AMATEUR SPORTS FACILITIES, REAL ESTATE TRANSACTIONS AND COMPLEX CONTRACTUAL MATTERS; NEW YORK STATUTES AND CASE LAW GOVERNING THE COUNTY, POWERS, OBLIGATIONS, DUTIES AND OPERATIONS; NEGOTIATING AND DRAFTING CONTRACTS, INCLUDING, WITHOUT LIMITATION, VENDOR, SPORTS AND ENTERTAINMENT, CONSTRUCTION CONTRACTS, ETC.; PUBLIC BIDDING AND PROCUREMENT REQUIREMENTS.**

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Of greatest note, is Phillips Lytle's experience in representing America's largest communications holding companies in the world (by revenue) in connection with leasing transactions in stadiums and arenas located across the United States. These include the following:

**Professional Football**

- Heinz Field - Pittsburgh Steelers - Pittsburgh, PA
- Paul Brown Stadium - Cincinnati Bengals - Cincinnati, OH
- Gillette Stadium - New England Patriots - Foxborough, MA

**Major League Baseball**

- Oriole Park at Camden Yards - Baltimore Orioles - Baltimore, MD
- Nationals Park - Washington Nationals - Washington, DC
- Miller Park - Milwaukee Brewers - Milwaukee, WI
- Wrigley Field - Chicago Cubs - Chicago, IL
- Yankee Stadium - New York Yankees - Bronx, NY

**Professional Hockey**

- RBC Center - Carolina Hurricanes - Raleigh, NC

**Civic Centers**

- 1<sup>st</sup> Mariner Arena - Baltimore, MD

**Raceways**

- Indianapolis Motor Speedway - Indianapolis, IN

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**University Stadiums**

- Purdue University - Ross-Ade Stadium
- Vanderbilt University - Vanderbilt Stadium
- University of Minnesota - TFC Bank Stadium
- Boston College - Alumni Stadium
- University of Louisville - Papa John's Cardinal Stadium

In addition to the stadiums and arenas in which we have been involved with in respect to leasing, we have also handled significant project development for other sports-related companies, stadiums and arenas.

- Phillips Lytle was involved with the first privately financed professional football stadium – Joe Robbie Stadium. We collaborated with investors and banks to structure a complex private and industrial bond issue to fund the construction.
- Phillips Lytle represented New Era in connection with the acquisition and multi-layer financing of its global headquarters. The firm handled economic development incentive negotiations with Empire State Development, NYSERDA and the ECIDA.
- Phillips Lytle represented Jamestown Center City Development in a public/private partnership to develop the Jamestown Savings Bank Ice Arena.
- Phillips Lytle represented a public benefit corporation in connection with the possible taxable and/or tax exempt financing of a new or renovated multi-use arena, including use by an NHL team.

Our attorneys are well-respected for our real estate expertise as we provide successful representation on a broad range of real estate matters, including those involving the following:

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- The leasing, acquisition, and sale of special purpose and other commercial, retail and residential properties in suburban and urban locations – representing landlords, lenders, borrowers, sellers, purchasers, developers, and tenants.
- Ground, development and space leases; partnership and joint venture agreements; and construction and architectural agreements.
- The restructuring of real estate secured debt covering commercial, retail, office, and residential properties.
- The repositioning of properties, the early terminations of leases, alternative rent restructurings, and the sale of leaseholds.
- The construction and permanent financing of commercial, office, retail, and hotel properties.
- Assisting clients in the establishment of policies and procedures on issues involving the creation of standard forms of leases and lease abstracts, the establishment of procedures for review and processing of leases, insurance coverage and risk management, the implementation of real estate tracking software, and the establishment of standardized leasing requirements on key issues.
- Training in-house real estate personnel with respect to routine transactions such as estoppel requests, non-disturbance agreements, storage agreements and temporary licenses.
- Working with in-house construction departments and project managers, as well as outside consultants, with respect to architectural agreements, general contractor and subcontractor agreements, allocating build-out responsibility, and land use and zoning approvals.

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- Handling dispute resolution matters that involve gross sales audits; CAM audits; construction disputes, including mechanics liens, warranty claims and construction delays; additional rent and other charges; zoning and licensing issues; default notices; the allocation of environmental remediation responsibility; consents; and rent arbitrations.

Our real estate experience has included, but is not limited to:

- Representing the owners of data centers, energy generation and manufacturing facilities, utility infrastructures, shopping centers, hotels, armored truck and cash handling terminals, museums, precious metals and art storage facilities, hospitals, assisted living homes, research and other university and medical facilities, and other specialty properties.
- Representing an owner in connection with several retail art gallery leases in New York City, as well as in connection with art storage and shipping warehouses in Queens, New York, and New Jersey.
- Representing a Manhattan developer in connection with a master antique center lease and several retail antique dealer leases.
- Representing a New York Stock Exchange fashion retailer in connection with hundreds of shopping center and urban retail locations across the United States and Canada.
- Representing a major international bank in connection with hundreds of branch and office leases for urban, suburban and shopping center properties, including ground lease and Brownfield development transactions.

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**Government Operations**

Phillips Lytle has a long history of expertise in all aspects of law relating to the powers, procedures and operations of state and local governments, public authorities and governing bodies and boards. Our practice includes representing a wide range of clients for whom we have successfully challenged and defended the governance of state and local governments. Our Government Operations Practice is multi-disciplinary, with expertise in Municipal, Land Use, Environmental and Tax Law. Our areas of experience include:

- Drafting and reviewing statutes, ordinances and resolutions for municipal clients throughout the State of New York.
- Advising and assisting planning boards, zoning boards, water boards and other public entities.
- Challenging the constitutionality of federal, state and local laws on behalf of class actions and private sector entities.
- Representing state and local governments and governing boards in all aspects of litigation, in all judicial forums.
- Reviewing and advising boards on issues pertaining to the governance and fiduciary responsibilities of its body.

Phillips Lytle has counseled and represented an extensive list of government and quasi-government clients in a variety of matters, including those involving:

- Public bidding and contracts
- Public financing projects, including sports facilities
- The Freedom of Information Act (FOIA)
- Licensing issues
- Procurement issues
- Land acquisition and development
- Land use regulation

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- Environmental law
- Internal investigations
- Tort defense
- Eminent domain
- The State public records law

**Project Development, Environmental, Land Use and Zoning Matters**

Phillips Lytle has appeared before hundreds of land use planning and zoning agencies across New York State and participated in many important land use litigation matters. We have assisted a variety of clients including municipalities, local business owners, developers, and *Fortune* 500 companies with matters involving the National Environmental Policy Act (NEPA); SEQRA; the State Historic Preservation Office; the United States Corps of Engineers; the New York State Department of Environmental Conservation; Cluster and Planned Unit Developments; Site Plan Reviews; Special, Restricted, and Conditional Use Permits; Area and Use Variances; and Rezoning.

Phillips Lytle's noteworthy experience includes the following:

- Obtaining prompt government approvals for more than 500 projects, including SEQRA, zoning and SHPO reviews, from more than 200 separate communities across the state including manufacturing plant expansions, telecommunication facilities, residential projects, office buildings, and retail operations, many of which were the subject of significant community opposition.
- Providing the Erie Canal Harbor Development Corporation with Environmental and Real Estate counsel for a \$500+ million mixed-use project involving the redevelopment of waterfront property in Upstate New York.
- Providing Empire State Development Corporation with Real Estate, Land Use, Construction and Environmental legal services for the groundbreaking Midtown Plaza project in Rochester, New York.

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- Representing the City of Buffalo in SEQRA and Land Use matters, including segmentation findings related to a Native American casino and defending the city in a subsequent Article 78 challenge by community opponents. We also prevented the Native American casino from being built outside of the city's borders
- Representing Harlem Community Development Corporation in the redevelopment of the historic Victoria Theatre along with the construction of a 34-story mixed-use tower that will house a hotel, private residential condominiums, a jazz museum, one or more restaurants, and community facilities. The project budget is approximately \$160 million. This engagement involves zoning and land use issues, environmental reviews and filings, ground lease documentation, purchase and sale documentation, condominium conversion, and commercial leasing.

**II. PERSONNEL. PLEASE IDENTIFY THE INDIVIDUALS WHO WOULD BE ASSIGNED TO PROVIDE LEGAL SERVICES, INCLUDING INFORMATION ABOUT THEIR RELEVANT EXPERIENCE AND ABILITIES.**

The following Phillips Lytle attorneys would take the lead in the lease negotiations:

**Douglas W. Dimitroff – Partner:** Mr. Dimitroff would be positioned as the leader on this important project. He has extensive commercial real estate expertise having represented a broad range of clients on office, industrial, retail and mixed-use projects. He also represents investors and lenders in commercial real estate financing, including construction lending, real estate finance and government incentives. In addition, Mr. Dimitroff focuses in the areas of commercial real estate and telecommunications law. He is the leader of the firm's Telecommunications Team and represents some of the largest telecommunications companies in the world, as well as regional telecommunications service providers, and large and small telecommunications site owners and managers.

**John A. Pappano – Partner:** Mr. Pappano concentrates his practice in commercial real estate sales and acquisitions, leases, mortgage lending, mortgage foreclosures, easements, rights-of-way and zoning matters.

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**Kenneth R. Crystal - Partner:** Mr. Crystal focuses his practice in the field of commercial real estate, including real estate leasing, finance, development and construction, restructurings, sales and acquisitions of shopping centers, office buildings, hotel properties, residential developments, manufacturing and mixed-use facilities.

These lead attorneys would be supported by the following attorneys in the firm:

**Albert M. Mercury - Partner:** Mr. Mercury focuses in the areas of real estate transactions and financing including leasing, acquisitions, dispositions and recoveries, secured lending, permitting, liquidations, foreclosures and distressed loan resolutions, condominium and planned unit development offerings and environmental matters; commercial, industrial, residential, mobile home and retail projects; as well as general corporate, banking and franchise work.

**Milan K. Tyler - Partner:** Mr. Tyler concentrates in the area of municipal finance and real estate law, and is experienced in the areas of leasing, loan transactions and workouts, conveyancing, title, survey and environmental issues and cooperative and condominium projects.

**Adam S. Walters - Partner:** Mr. Walters, the Land, Environment & Energy Practice Group Leader, practices in the areas of environmental law and land use planning focusing, in particular, on environmental impact review pursuant to SEQRA and the NEPA, and land use laws including zoning, site plan reviews, historic preservation law and wetlands permitting. Mr. Walters also has extensive experience in regulatory permitting and processing pursuant to the Clean Air Act, particularly in relation to energy generation facilities.

**Alisa A. Lukasiewicz - Special Counsel:** Ms. Lukasiewicz has over 15 years of experience in all aspects of litigation, representing both private and public sector clients. Prior to joining Phillips Lytle, she served as Corporation Counsel for the City of Buffalo. As the Chief Legal Counsel to the City, she represented and counseled the Mayor, the Common Council, the Buffalo Board of Education and all Departments, related Boards and municipal entities. Having also represented various counties, towns and villages, Ms. Lukasiewicz has extensive experience in representing municipalities in all aspects of civil litigation.

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**IV. CONFLICTS OF INTEREST. PLEASE IDENTIFY ANY ACTUAL OR POTENTIAL CONFLICTS OF INTEREST WHICH MAY PRESENT THEMSELVES IN THE EVENT THAT YOUR FIRM IS SELECTED TO PROVIDE LEGAL REPRESENTATION SERVICES TO THE COUNTY. FURTHER, PLEASE ADVISE HOW SUCH CONFLICTS WOULD BE RESOLVED.**

Phillips Lytle has a thorough and comprehensive computerized conflict of interest check system, and it is our policy to run a check before proceeding with any potential new matter. Phillips Lytle will either certify in writing that our representation of the County does not create a conflict of interest or that necessary waivers and consents have been obtained. In addition, the firm circulates a New Matter Memo list to all firm attorneys on a daily basis to help the firm further identify any conflicts, and all attorneys are required to understand our conflict of interest policies set forth in our Risk Management ("RM") Manual, a copy of which can be provided upon request.

**COSTS/FEES**

The hourly billing rates for the Phillips Lytle attorneys who would handle this assignment for the County are as follows:

Lead Attorneys

Douglas W. Dimitroff, Partner	\$400
John A. Pappano, Partner	\$390
Kenneth R. Crystal, Partner	\$575

Supporting Attorneys

Albert M. Mercury, Partner	\$395
Milan K. Tyler, Partner	\$450
Adam S. Walters, Partner	\$340
Alisa A. Lukasiewicz, Special Counsel	\$275
Paul V. O'Brien, Special Counsel	\$400
Katherine L. Hesch, Associate	\$250

Paralegals	\$115-\$200
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**Phillips Lytle** LLP

February 10, 2012

It is worth noting that Phillips Lytle's hourly rates compare favorably with those of other firms in New York State, and national surveys demonstrate that our rates are below the median rates for firms of similar size and service areas. However, Phillips Lytle would be willing to further discuss a fee structure that is mutually beneficial to all parties.

We will bill in tenth-of-an-hour increments. I will review monthly reports for accuracy before a final bill is prepared for that month.

Photo copying will be billed at \$0.10/per copy. The following additional disbursements will be charged at actual cost: computer research, postage, telephone, telecopy, search and filing fees, overnight courier, advertising and public notices, third-party professional fees, travel costs (which will be minimal because we have an office in downtown Buffalo), and printing. Due to periodic delays in the posting or billing of certain costs and disbursements, the County may be billed for them after the month in which services were actually performed and expenses were actually incurred.

Thank you for considering us. We look forward to working with you and answering any questions you may have.

Sincerely yours,

Phillips Lytle LLP

By

Alisa A. Lukasiewicz

REF2  
Doc # 01-2553112.3

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**SCHEDULE "A"**

**PROPOSER CERTIFICATION**

The undersigned agrees and understands that this proposal and all attachments, additional information, etc. submitted herewith constitute merely an offer to negotiate with the County of Erie and is NOT A BID. Submission of this proposal, attachments, and additional information shall not obligate or entitle the proposing entity to enter into a service agreement with the County of Erie for the required services. The undersigned agrees and understands that the County of Erie is not obligated to respond to this proposal nor is it legally bound in any manner whatsoever by the submission of same. Further, the undersigned agrees and understands that any and all proposals and negotiations shall not be binding or valid against the County of Erie, its directors, officers, employees or agents unless an agreement is signed by a duly authorized officer of the County of Erie and, if necessary, approved by the Erie County Legislature and the Office of the County Attorney.

It is understood and agreed that the County of Erie reserves the right to reject consideration of any and all proposals including, but not limited to, proposals which are conditional or incomplete. It is further understood and agreed that the County of Erie reserves all rights specified in the Request for Proposals.

It is represented and warranted by those submitting this proposal that except as disclosed in the proposal, no officer or employee of the County of Erie is directly or indirectly a party to or in any other manner interested in this proposal or any subsequent service agreement that may be entered into.

Phillips Lytle LLP  
Proposer Name

By: Chloe C. Lehman Special  
Name and Title Counsel