



TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

JOHN FENZ
TOWN ATTORNEY
jfenz@twsny.org

TO: The Honorable Town Board

FROM: John J. Fenz, Esq.
Town Attorney

DATE: June 11, 2015

RE: RKG Associates, Inc. – Professional Services Agreement
Seneca Place – Market Demand and Financial Feasibility Study

Kindly authorize the Supervisor to execute the necessary documents to enter into an Agreement with RKG Associates, Inc. to perform professional services to conduct and prepare a Market Demand and Financial Feasibility Study for the Town's contemplated development of a multi-purpose community athletic center and ice arena/events facility.

The fixed cost for the study is \$54,475.00 and this expense shall be borne by Seneca Place, the developer of a proposed private investment in an adjoining mixed use development, in accordance with Chapter 60 to the Town Code, entitled Development Review Fees.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT entered into this ____ day of _____ 2015, by and between the Town of West Seneca, New York, (hereinafter referred to as "Town"), and RKG Associates, Inc., (hereinafter referred to as "Consultant").

WITNESSETH:

WHEREAS, the Town has been approached by S&R Company of West Seneca ("S&R") with respect to developing a community center and arena (the "Project") to complement S&R's proposed development at Seneca Place; and

WHEREAS, the Town is supportive of efforts to return the Seneca Place property to a productive use and, in light of contemplated public investment, the Town requires responsible independent analysis of the Project; and

WHEREAS, the Town prepared and circulated a Request for Proposals seeking qualified firms to prepare an independent review of the market demand and financial feasibility of a potential project;

WHEREAS, the Town received three (3) responsive proposals and conducted interviews with each of the responding parties;

WHEREAS, following interviews the Town Board and its professional team engaged in healthy debate to select a consultant to prepare a study of the market demand and financial feasibility of the Project;

WHEREAS, the Town wishes to engage the Consultant to render certain professional services as are described in the Scope of Services prepared by the Consultant as set forth in this agreement; and,

WHEREAS, the Consultant is qualified, and has agreed to perform such services,

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. ENGAGEMENT OF THE CONSULTANT; FIXED COST CONTRACT; SERVICES TO BE RENDERED

1.1 Engagement of the Consultant: The Consultant agrees to perform that work and those services identified and more particularly described in the Scope of Services, attached hereto as Attachment A.

1.2 Fixed Cost Contract: This is a fixed cost contract. The cost shall not exceed, unless approved by an amendment, **Fifty Four thousand Four Hundred**

Seventy Five dollars (\$54,475.00).

1.3 Work Products: The Consultant will provide the Town with work products as outlined in the Scope of Services.

2. COMMENCEMENT; COMPLETION DATE

2.1 Commencement Date and Completion Date: Performance of Services shall begin within seven (7) days following the Town of West Seneca's execution of this Agreement (the "Commencement Date"), and except as otherwise specifically provided for herein, all Services shall be completed in their entirety within 120 days of the Commencement Date (the "Completion Date").

3. MEETING DATES

3.1 The Consultant will attend meetings with the Town or its representatives, or public hearings in order to discuss project activities and review draft and final work products, as prescribed in the Scope of Services.

4. PERSONNEL

4.1 Personnel: The Consultant represents that it has, or will secure at its own expense, all professionally qualified personnel required to perform the Services outlined in this Agreement. Such personnel shall not be employees of the Town. All key personnel are identified in the Scope of Services.

4.2 Qualifications of Personnel: All of the Services required hereunder will be performed by the Consultant or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under appropriate Local, State and Federal laws to perform such services.

4.3 Subcontracts: The Consultant intends to utilize the services of **Johnson Consulting** as subcontractors on this assignment. No additional work or services covered in this Agreement shall be subcontracted without the prior written approval of the Town.

4.4 Restrictions on Personnel: The Consultant shall not hire or employ, nor shall it permit any subconsultant to hire or employ, any individuals who have a contractual relationship with the Town, to perform any work under this agreement, without prior approval of the Town.

4.5 Consultant's Status as Independent Contractor: The Consultant shall not be an employee of the Town for any purpose. The Consultant shall have sole responsibility to employ, supervise and pay such professionals, subcontractors and subconsultants as are necessary for the efficient performance of this contract. Under no circumstances shall the Town be responsible for any employee, professional, principal, subcontractor or subconsultant of the Consultant for the

payment of wages, fees, taxes, withholding, workmen's compensation, unemployment insurance, or any other form of remuneration that would signify an employer/employee relationship between the Town and the Consultant or any employee, professional, principal, subcontractor or subconsultant of the Consultant.

5. TERMINATION FOR CONVENIENCE OF TOWN

The Town shall have the right at any time, for any reason whatever, to interrupt or terminate any part of or all of the work or services required of the Consultant under this Agreement with a fourteen (14) day written notice of such interruption or termination transmitted to the Consultant by the Town. In the event of termination of any part of or all of this Agreement, without fault on the part of the Consultant, the Consultant shall be entitled to a pro-rata compensation for all work performed pursuant to this Agreement. In order that the Consultant shall be entitled to receive payment under termination notice of any part of the work, all plans, drawings, surveys, survey results, tracings, field notes, estimates, specifications, proposals, sketches, diagrams, and calculations, together with all other materials and data collected or prepared in connection with this Agreement shall be transmitted to the Town in a form acceptable to both parties.

6. TERMINATION FOR CAUSE

6.1 Events of Default: Anyone or more of the following acts or omissions by the Consultant shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

- 6.1.1 Failure to perform or complete any of the Services as scheduled or as required by this Agreement;
 - 6.1.2 Failure to maintain the records required hereunder or to permit access thereto;
 - 6.1.3 Failure in the performance of any of its remaining obligations hereunder or a default in any of the other covenants and conditions of this Agreement;
 - 6.1.4 The issuance of a court order permitting the attachment of any amount due to the Consultant under this Agreement;
 - 6.1.5 An assignment for the benefit of creditors, the appointment of a receiver, the insolvency, or the filing for relief in Federal Bankruptcy Court of or by the Consultant;
 - 6.1.6 Notice to the Town that one or more insurance policies, proof of which the Consultant has provided to the Town pursuant to Section 15 of this Agreement, has been canceled.
-

6.2 Termination: Upon the occurrence of any Event of Default, the Town shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof at least fourteen (14) days before the effective date of such termination. In such event, all program records and all finished or unfinished documents, data, studies, surveys, drawings, maps and reports prepared by the Consultant shall, at the option of the Town, become the Town's property and the Consultant shall be entitled to receive compensation for any work satisfactorily completed hereunder.

7. RECORDS AND AUDITS

The Consultant shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement. These records shall be made available for inspection and audit purposes to the Town or any of their duly authorized representatives, in the Consultant's offices during regular office hours. The Consultant shall preserve all such records for three years after the expiration of this Agreement.

8. DATA

8.1 Data: As used in this Agreement, the term "data" shall mean all plans, drawings, surveys, survey results, tracings, field notes, estimates, specifications, proposals, sketches, finished or unfinished documents, data, studies, maps, diagrams, calculations, reports, and correspondence prepared by the Consultant or any subcontractor or subconsultant in connection with performance under this Agreement.

8.2 Ownership of Data: All data shall be the property of the Town whether or not delivered to the Town, and shall, together with any materials furnished to the Consultant or any subcontractor or subconsultant by the Town, be delivered to the Town upon request, and in any event, upon termination or final completion of the services to be performed under this Agreement. The Consultant shall have the right to retain a copy or copies of any or all data items for the Consultant's records.

9. AMENDMENTS

9.1 The Town may request changes in the services to be performed hereunder by the Consultant. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon by and between the Town and the Consultant, shall be incorporated in written amendments to this Agreement.

9.2 Basis of Charges: The basis for any increase in the Project Budget shall not be incurred without prior written approval and shall be negotiated with the Town and the Consultant.

10. ASSIGNABILITY

The Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without the prior written consent of the Town.

11. COMPLIANCE WITH LOCAL LAWS AND REGULATIONS

The Consultant shall comply with and shall cause each subcontractor and subconsultant to comply with all applicable laws, ordinances and codes of the Federal, State, County and local governments.

12. CONFLICT OF INTEREST

12.1 Interest of Town and Employees: No member of the governing body of the municipalities and county in which the project is located and no other public official, officer, employee, or agent of the Town or its members, who exercises any functions or responsibilities in connection with the completion of the Town's functions to which this Agreement pertains, shall have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

12.1 Interest of the Consultant and Employees: The Consultant covenants that neither it, nor any of its agents, servants, or employees, presently has any interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder.

13. WAIVER OF BREACH

No Waiver by the Town of its right to enforce any provisions hereof after any default on the part of this Consultant shall be deemed a waiver of its right to enforce each and all of the provisions hereof upon any further or other default on the part of the Consultant.

14. NOTICE

Any notice by a party hereto, to the other party, shall be deemed to have been duly delivered or given at the time of mailing by registered or certified mail, postage prepaid, in a United States Post Office addressed to the parties at the address as follows:

(a) If to the Town: Sheila M. Meegan, Town Supervisor, 1250 Union Road, West Seneca, New York 14224, with a copy to John J. Fenz, Esq., Town Attorney, 1250 Union Road, West Seneca, New York 14224

(b) If to the Consultant: Craig R. Seymour, President, RKG Associates, Inc., 634 Central Avenue, Dover, New Hampshire 03820.

15. INSURANCE

The Consultant shall procure or continue in effect general liability insurance, including workers compensation and property damage insurance, in the amount of one million dollars (\$1,000,000.00). The Consultant shall provide to the Town certificates of such insurance and shall agree that the provider or insurance company shall be instructed to give the Town sixty (60) days written notice in advance of any cancellation or change in coverage.

16. PROJECT BUDGET

As noted in Attachment A, total project costs shall not exceed, unless approved by an amendment to this Agreement, **Fifty Four thousand Four Hundred Seventy Five dollars (\$54,475.00)**. This fee includes all professional services and normal out-of-pocket expenses including travel and communication costs.

17. BILLING/PAYMENTS

17.1 Payment: Payment under this Agreement shall be made to the Consultant by the Town upon receipt and approval by the Town of the Consultant's billing statement. Progress payments up to a total of 90% of the contract amount will be made monthly upon submission of the Consultant's invoice. The final 10% will be invoiced upon Town's acceptance of the final work product.

17.2 Invoices: Invoices for the Consultant's services shall be submitted to the Town for review and approval. All such invoices shall be payable within sixty (60) days after the date they are received. Invoices shall be submitted to the Town at the addresses provided in a paragraph 14(a).

18. CONSTRUCTION OF AGREEMENT AND TERMS

This Agreement is to be construed in accordance with the laws of the State of New York and is binding upon and insures to the benefit of the parties and their respective successors and assigns. The headings are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

19. CHANGES IN LAW

The parties recognize that during the performance of this Agreement, the statutes or other laws governing that performance may change. To the extent that such a change modifies the scope or substance of this Agreement, the parties agree to negotiate the effect of the change.

20. CONFIDENTIAL INFORMATION

No reports or information provided to the Consultant shall be made available to any organization or individual contrary to the Confidentiality Agreement, attached hereto as

Attachment B.

21. LIMITATION OF LIABILITY

The parties agree that the following mutual limitation of liability is agreed to in consideration of the fees to be charged and the nature of the Consultant's services under this Agreement. Consultant and Town agree that the following mutual limitation of liability is agreed to in consideration of the fees to be charged and the nature of Consultant's services under this Agreement. Consultant and Town agree that to the fullest extent permitted by applicable law, each party's and its Personnel's maximum aggregate and joint liability to the other party for claims and causes of action relating to this Agreement or to other services under this Agreement shall be limited to the total fees and costs charged by Consultant for the services that are the subject of the claim(s) or cause(s) of action. This limitation of liability extends to all types of claims or causes of action, whether in breach of contract or tort, including without limitation claims/causes of action for negligence, professional negligence or negligent misrepresentation on the part of either party or its Personnel, but excluding claims/causes of action for intentionally fraudulent conduct, criminal conduct or intentionally caused injury. The Personnel of each party are intended third-party beneficiaries of this limitation of liability. "Personnel," as used in this paragraph, means the respective party's staff, employees, contractors, members, partners and shareholders. Consultant and Town agree that they each have been free to negotiate different terms than stated above or contract with other parties.

22. NO KICKBACK CERTIFICATION

The Consultant warrants that no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no employee or elected official of the Town has any interest, financially or otherwise in the Consultant's organization.

23. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The Consultant certifies that it is not disbarred, suspended or otherwise ineligible for participation in Federal assistance programs under Executive Order 12549.

24. EQUAL EMPLOYMENT OPPORTUNITY

During performance of this Professional Services Agreement, the Consultant agrees to abide by the terms of Section 503, Public Law 93-112, and the regulations at 41 C.F.R. Part 60-741, Executive Order 11246, as amended, and the regulation at 41 C.F.R. Part 60-1 through 60-60 and Section 402, Public Law 93-508, and the regulations at 41 C.F.R. Part 60-2.

25. INDEMNIFICATION

The Consultant will defend, indemnify, save harmless and exempt the Town and its subcommittees and elected officials, its staff and all their officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees incident to any work done in the performance of this Agreement arising out of a willful or negligent act or omission of the Consultant, its officers, agents, subconsultants, servants, or employees: provided however, that the Consultant shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees arising out of a willful or negligent act or omission of the Town, its offices, agents, servants and employees, or third parties.

26. SEVERABILITY

Should any provision in any section of this Agreement be found to be illegal or otherwise unenforceable, all other provisions and sections of this Agreement shall remain in full force and effect.

27. SIGNATURES

Town of West Seneca

By: _____
Name: Sheila M. Meegan
Title: Town Supervisor

RKG & Associates, Inc.

By: _____
Name: Craig R. Seymour
Title: Managing Principal

ATTACHMENT A

SCOPE OF SERVICES

**Market & Financial Analysis
for the Proposed Town-Owned
Facilities at Seneca Place**

West Seneca, New York

March 2, 2015

Prepared for:

The Town of West Seneca, New York
c/o The Honorable Sheila Meegan
Town Supervisor
1250 Union Road
West Seneca, NY 14224

Prepared by:

RKG ASSOCIATES, INC.
Economic, Planning and Real Estate Consultants
634 Central Avenue
Dover, New Hampshire 03820
Tel: 603-953-0202
www.rkgassociates.com

in co-operation with

Johnson Consulting
6 East Monroe, Suite 500
Chicago, IL 6063
Tel: (312)-447-2010

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I. INTRODUCTION AND EXECUTIVE SUMMARY

RKG Associates, Inc. (RKG) in co-operation with the Johnson Consulting (JC), are pleased to offer their services to the Town of West Seneca in completing a market/financial analysis of the proposed Town-owned "Facilities", which includes a 135,000 square feet (SF) multi-purpose community/athletic center (the Community Center) and a 57,000 SF ice arena/events center facility (the Arena) representing a public investment in conjunction with a proposed private investment in an adjoining mixed-use development, referred to as Seneca Place, to include a 65,000 SF cinema complex; 1.2 million SF of retail/residential; 300,000 SF of office; two hotels; as well as parking and green space. As our team sees it, critical questions before the Town include:

- What is the need or market demand for the Facilities, from both a local and regional competitive setting? Would the Facilities capture unmet demand, expand demand or detract from existing community venues?
 - If market demand is "on the margins", what marketing and/or operational procedures could be initiated to broaden utilization?
- Would the Facilities generate a "net, new" revenue stream from operations that could effectively retire the Town's general obligation bonding debt for development, infrastructure and other public investment, as may be required?
 - This requires developing a cost/benefit model of the Facilities through estimating expenses and revenues, allowing for sensitivity measures, such as the contributory value, if any, from the adjoining mixed-use project.

We believe our team offers a market based approach and practical mix of experience to assist the Town in answering these and other questions. As an example, RKG and JC are serving as consultants to the City of Memphis in their efforts to reposition a portion of the former Mid-South Fairgrounds, home of the Liberty Bowl, as a destination multi-use, multi-functional sports and recreation complex. Repayment of the public investment in this complex is to be realized from the incremental sales tax resulting from its utilization.

II. QUALIFICATIONS

Summary qualifications of the RKG and JC firms are presented next, including examples of similar and/relevant projects to this Scope of Services, by the individual firms and the personnel that will be responsible for this work effort with the Town.

A. RKG ASSOCIATES, INC.

Founded in 1981, RKG Associates, Inc. provides public, private, and institutional clients a comprehensive range of advisory, planning, and strategic consulting services related to real estate, land use, and economic development. We take pride in knowing that most of the assignments for which we have been engaged involve projects that are built... projects that happen... projects that work... with tangible results that can be measured in terms of new jobs, new investments, new and higher-quality housing units, expanded tax bases, or new master plans based on strong community consensus.

Our firm has successfully blended the in-house expertise of professionals with backgrounds in market research, economics, finance, real estate development, planning, and policy analysis. We also call upon an extensive network of other professionals to provide complementary technical expertise in such areas as architecture, engineering, legal services, and environmental science. Whether it is a large-scale project or a smaller undertaking, we make our full range of skills and disciplines available to every client.

RKG is led by three principals: Craig R. Seymour, Managing President; Russell A. Archambault, Vice President and Principal; and Kyle S. Talente, Principal. Our ten employees are senior professionals with many years of experience, working from:

RKG ASSOCIATES, INC.)

Headquarters Office:	Massachusetts Office:	Virginia Office:
634 Central Avenue	1359 Hancock Street, Suite 10	300 Montgomery Street, Suite 203
Dover, NH 03820	Quincy, MA 02169	Alexandria, VA 22314
(603) 953-0202	(617) 847-8912	(703) 739-0965

Summary qualifications and full resumes are presented in the Appendix.

1. Principal-in-Charge and Project Staff

Craig R. Seymour, Principal-in-Charge – Since joining RKG Associates in 1987, Craig has focused on providing sound advice and in-depth analysis to both public and private sector clients in order to create value from real estate assets. Many of his assignments have involved communities seeking to increase jobs and tax base, ranging from site-specific redevelopment projects to regional economic development plans. Other assignments involve financial and economic analysis, business planning, strategic market studies and target industry analyses. He is a licensed commercial real estate broker and

certified general appraiser with extensive valuation experience with business parks, development opportunities and hospitality facilities, including the Utah State Fair project.

Judi Barrett, Director of Municipal Services - Judi will serve as RKG's point of contact with the Town in relation to all public input and involvement. She will coordinate our team's project activities with the Town, schedule public meetings and other public consultation activities. Judi has over twenty-five years of experience in planning and community development prior to joining RKG.

Fred Pulitzer, Senior Project Manager - Mr. Pulitzer is a senior professional who joined with RKG in 1991. He has performed market studies, financial analysis, fiscal impact studies, and development feasibility studies for a wide variety of project types throughout the United States. His assignments have included residential, commercial, office, hotel and industrial projects. Mr. Pulitzer will be responsible, in part, for reviewing competitive market demand/supply indicators, fiscal impacts and modeling.

Lawrence Cranor, Senior Project Manager - Mr. Cranor brings over 30 years of experience in applied demography, market research, fiscal/economic analyses in order to assist both private and public sector clients in preparing market based, workable implementation plans and development strategies for numerous real estate and housing projects; consumer surveys and spending research; site/market analysis; urban revitalization/marketing strategies; and general economic development. Mr. Cranor will review socio-economic trends impacting the general market area and potentially the Facilities as well as the fiscal impacts and modeling of the project.

B. JOHNSON CONSULTING

Johnson Consulting has provided services to hundreds of satisfied cities, counties, and a variety of other clients, creating unique strategies and solutions to reap the maximum impacts from real estate and tourism strategy projects. Johnson Consulting is a boutique firm that has significant experience in sports and real estate consulting. Below are the staff members available and dedicated to all components of the proposed Scope of Services (summary qualifications and full resumes are presented in the Appendix).

1. Principal-in-Charge and Project Staff

Charles H. Johnson, Principal-in-Charge - Charles is a nationally recognized consultant with more than 35 years of experience in the sports, convention, tourism, hospitality, and general real estate consulting fields. His experience with sports facilities, stadiums, arenas, convention centers, and real estate, hotels, and sports tourism development strategies ideally suits him for this assignment. Charles has worked on over 600 stadium, tourism, and urban development consulting assignments in the U.S. and abroad. Charles will lead the JC team on this assignment.

Brandon Dowling, Director of Sports - Brandon specializes in market and financial analysis for multi-purpose sports complexes, stadiums, arenas and retail based mixed-use and transit oriented developments that relate to them. He recently managed the market

and financial feasibility study for South Dakota State University's new football stadium and indoor human performance practice facility. The \$30 million indoor practice facility at SDSU just opened in October and the \$65 million new on campus football stadium, which was approved for funding by the Governor this past March, is scheduled to open for the start of 2016 season.

Ayu Listiowati - Ayu specializes in market and financial analysis, room tax analysis, and economic and fiscal impact analysis for sports and real estate projects such as community sports facilities, stadiums, arenas, hotels, convention centers, and other public assembly venues, including equestrian facilities. She has conducted rooms and meals tax collection projections in over 50 jurisdictions and is currently conducting an economic impact analysis for a proposed minor league stadium in Central Florida.

Ryan Johnson - Ryan specializes in market and financial analysis for fairgrounds, hospitality, sports, and mixed-use real estate projects. He helped devise the operating plan and then managed the operator selection process for the Capital City Convention Center in Jackson, Mississippi. He also worked on a financial and market strategy and operational review for the Sears Centre Arena in Hoffman Estates as part of expert witness testimony and analyzed the Volusia County (Daytona) fairgrounds complex.

Christopher Budd - Chris has conducted numerous case studies on sports facilities, recently completing an economic impact and feasibility analysis of an aquatic center for the City of Doral, Florida to evaluate the need, projected costs and projected impact of a new aquatic center for the City.

C. REFERENCES

RKG ASSOCIATES, INC.

Robert Lipscomb
Director
Division of Housing and Community Development
City of Memphis, TN 38107-2311
Email: Robert.Lipscomb@memphistn.gov

Mr. Edmund Starzec
Director, Land Entitlement - MassDevelopment
Devens, MA 01434
Email: estarzec@Massdevelopment.com

Keith Craig, LEED AP
Project Manager
New Balance Guest Street Associates, LLC
Brighton, MA 02135-2028
Email: kcraig@nbguest.com

JOHNSON CONSULTING

Hyannis Youth Community Center (Barnstable, MA)

Contact: John Jurros, Project Manager

P: 508-790-6324

E: john.jurros@town.barnstable.ma.us

Mid-South Fairgrounds (Memphis, TN)

Contact: Robert Lipscomb, Housing and Community Development Director

P: 901-576-7300

E: Robert.Lipscomb@memphistn.gov

Cedar Park Multi-Purpose Center (Cedar Park, TX)

Contact: Phil Brewer, Economic Development Director

P: 512-401-5014

E: Phil.brewer@cedarparktexas.gov

III. PROJECT WORK PLAN

The RKG/JC proposes the following work plan for this endeavor. Where possible we have incorporated the text and scope as presented in the Town's RFP. Overall, RKG will be the prime consultant and serve as the project lead.

A. SCOPE OF SERVICES

As our team understands the goals and objectives put forth by the Town for the Facilities, they include the desire for a diverse a base (geographically and practically) as is possible of ongoing utilization of the Facilities, reflecting market trends and competitive positioning, in order to maximize revenue in order to retire debt. This includes two broad categories of effort, market and financial analyses, to wit:

1. Task 1 - Project Kick-Off

The RKG/JC team proposes a kick-off meeting with the Town and project representatives/stakeholders in order to establish basic project parameters and scheduling; complete a site visit; obtain existing studies for review and comment; and, any other relevant information. Among the important considerations to review at the project kick-off include, but are not limited to:

- Does the Town have site control and if not how/ who will assemble the parcels for development?
- Is there adequate infrastructure and sufficient capacity (utilities) in place?
- Are the existing commercial/retail uses to remain on site or otherwise in the Town?
- Will the Facilities be tax-exempt?
- How does the Town envision day-to-day operations and management of the Facilities?

2. Task 2 - Market Analysis

Task 2.1 - Socioeconomics – RKG will review selected baseline and projected socioeconomic indicators for the Town of West Seneca, Erie County and the Buffalo metropolitan area, as may impact utilization of the Facilities. This would include, but not necessarily be limited to population; age structure; school enrollment, housing; consumer demand and spending, employment trends and wages.

Task 2.2 - Competitive Positioning – RKG/JC will identify and evaluate competitive venues to the proposed Facilities within a 25-mile± radius of West Seneca, summarizing amenities, usage, operations and financial performance (as available from public data). Of particular concern will be the potential impacts on/from existing facilities in the Town.

Task 2.3 - Demand and Supply – From the above findings, the RKG/JC team will offer their best professional opinion on whether there is unmet demand for venues such as the proposed Facilities, this will in turn form the basis of utilization estimates.

~~Task 2.4 – Attendance/Spending Modeling~~ - Based on the proposed offerings/amenities at the Facilities, and in light of the preceding findings, JC will develop an excel spreadsheet model to estimate attendance by venue at the Facilities, and to the extent possible, from local versus non-local attendees. The model will be interactive, allowing for the user (the Town) to alter inputs and assumptions. The RKG/JC team will also identify varying assumptions and inputs for typical attendee spending per event in order to estimate on-site venue revenues.

Task 2.5 - Other Revenues - JC will draw on experiences in other venues and markets in order to present order of magnitude estimates of revenues from naming rights, sponsorships and other sources not specific to on-site activities. It is also likely that any unmet demand or general drawing capacity of the Facilities would influence the type of potential sponsors and their marketing/advertising expenditures. Simply put, the bigger the audience reached, the greater the opportunity for a diversified sponsorship base.

Task 2.6 - Comparative Centers - RKG and JC will comment on a sample other similar public-financed venues, with regard to available attendance figures, performance and financials, as are publicly available.

Task 2.7 - Spin-Off Impacts - To the extent that use of the Facilities results in non-local attendance, RKG and JC will develop preliminary estimates of associated hotel and other spending from out-of-towners.

3. Task 3 – Financial Analysis

Task 3.1 – Financial Pro-Forma - The findings of the market study, coupled with the experience of the RKG/JC team, will form the basis for developing a ten-year pro forma analysis that reviews expenses and revenues associated with operating the Facilities. This spreadsheet model will allow for sensitivity analysis and would result in the “bottom-line” estimate of net revenues for retiring general obligation bonding debt.

Task 3.1 – Alternative Financing - RKG and JC will explore with the Town of West Seneca the potential for alternative/additional financing sources for construction of the Facilities.

Task 3.2 – Fiscal Analysis - RKG will develop estimates of the “cost” to the Town of West Seneca of providing municipal services, such as fire, police, etc., to the Facilities.

4. Task 4 – Conclusions and Recommendations

All of RKG/JC research, findings and conclusions will be delivered in a final report (paper and electronic copy) to the Town of West Seneca. Also, copies of the excel spreadsheet models developed as a part of this analysis will be rendered. A summary PowerPoint presentation of the analysis will be included, if desired.

B. PROJECT TIMING AND FEE

The RKG/JC proposed fee for completion of the above outlined Scope of Services is \$54,475 on a firm, fixed fee basis including all out of pocket expenses, field research and deliverables. The following table presents the RKG/JC proposed work schedule by task with associated costs. The RKG/JC team anticipates completion of the Scope of Service for West Seneca within a 60-day timeframe of being awarded the contract and authorization to proceed.

**Market and Financial Analysis
Town of West Seneca, NY
Cost Proposal**

RKG

TASK DESCRIPTION	RKG	JCG	BUDGET
Task 1.1 Project Kick-Off	\$1,350	\$1,600	\$2,950
Task 2.1 Socioeconomics	\$4,000	\$1,000	\$5,000
Task 2.2 Competitive Positioning	\$3,175	\$3,300	\$6,475
Task 2.3 Demand and Supply	\$1,000	\$2,300	\$3,300
Task 2.4 Attendance / Spending Modeling	\$1,675	\$3,800	\$5,475
Task 2.5 Other Revenues	\$1,000	\$2,800	\$3,800
Task 2.6 Comparative Centers	\$2,300	\$2,000	\$4,300
Task 2.7 Spin-Off Impacts	\$1,500	\$1,000	\$2,500
Task 3.1 Financial Pro-Forma	\$4,350	\$1,800	\$6,150
Task 3.2 Alternative Financing	\$2,000	\$2,050	\$4,050
Task 3.3 Fiscal Analysis	\$2,475	\$0	\$2,475
Task 4.0 Conclusions / Recommendations	\$3,800	\$4,200	\$8,000
Total - Professional Fee & Expenses	\$28,625	\$25,850	\$54,475

Additional meetings or presentations beyond those offered in the Scope of Services will be billed separately at the consultant's daily rates plus travel expenses. Payment is due within 60 days of receipt of written deliverables.



IV. APPENDIX

Summary qualifications, resumes of the RKG and JC personnel that will work this Scope of Services from beginning to end are presented next, as well as a select sample of projects highlighting the team's experience in similar undertakings.

ATTACHMENT B
CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is hereby entered into as of June ___, 2015, by and between the Town of West Seneca (the "Town"), RKG Associates, Inc. and Johnson Consulting, (the "Consultants"), and S&R Company of West Seneca (the "Company").

In order for the Consultants to provide its consulting services to the Town in connection with the Professional Services Agreement, dated June ___, 2015, the Parties recognize that there is a need for the Town to disclose to the Consultants certain confidential proprietary, technical and business information delivered by the Company to the Town. The Parties also recognize the need to restrict the use of such information to the pursuit of the Consultants' work for the Town.

In consideration of the mutual promises contained herein, the Parties agree as follows:

1. Definition of Confidential Information

(a) For purposes of this Agreement, "Confidential Information" shall mean all information or material, whether communicated or transmitted orally, visually, or in tangible or electronic form, disclosed to the Consultants by the Town that is of a sensitive and proprietary nature, including, but not limited to: trade secrets, business strategies and procedures, sales and marketing data, specifications, drawings, site plans, development plans, surveys, engineering and traffic reports, and information regarding future business, development, and financial data. Such Confidential Information includes, without limitation, the following documents included in the package of information delivered to the Town's advisory group on or about September 20, 2014:

1. document prepared by Jefferies LLC dated July 2014 and entitled "Seneca Public Infrastructure Improvements Financing Considerations" (Exhibit B);
2. document entitled Seneca Components (Exhibit C); and
3. Document prepared by the Sports Facilities Advisory, LLC dated July 2014 and entitled "Executive Summary – Seneca Place" (Exhibit D);

2. Obligations of Confidentiality and Disclosure of Company Information

- (a) The Consultants understands and agrees that it will be deemed to be in a relationship of confidence with respect to the Confidential Information disclosed to it. The Consultants agrees to hold the Confidential Information in confidence and not to disclose such Confidential Information to any third party, unless it is ordered to do so by a court of competent jurisdiction or required to do so under New York state or federal law, or to use it for any purpose other than to complete the analysis as set forth in the RFP.
- (b) The Consultants agrees that it will employ reasonable steps to protect the Confidential Information from unauthorized or inadvertent disclosure,

including but not limited to all steps that it takes to protect its own information that it considers proprietary and trade secret.

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- (c) The Consultants may disclose the Confidential Information to its responsible employees as necessary to accomplish its consulting services, and the Consultants agrees to instruct its employees to carry out their respective obligations under this Agreement not to disclose such Confidential Information to the public, and not to use it for any other purpose without the prior written permission of the Town.

3. Return of Materials

Upon the completion or termination of the Consultants' engagement with the Town, and in any event upon the written request of the Town at any time, whether before or after the completion or termination of such engagement, the Consultants shall immediately return all documents, plans, drawings, specifications or other tangible items representing or embodying the Confidential Information, and all copies thereof.

4. Ownership of Confidential Information

The Company is the owner of all Confidential Information disclosed hereunder. Each Party recognizes and agrees that nothing contained in this Agreement shall be construed as granting any rights, by license or otherwise, in or to any Confidential Information disclosed pursuant to this Agreement or in or to any such intellectual property rights therein.

5. Injunctive Relief

Each Party hereby acknowledges that the unauthorized disclosure, use or disposition of Confidential Information could cause irreparable harm and substantial injury to the competitive position of the Town and/or the Company, which harm would be difficult to ascertain. Accordingly, the Parties agree that the Town and/or the Company shall have the right to seek an immediate injunction in the event of any alleged breach of the obligations set forth in this Agreement, in addition to any other remedies that may be available at law or in equity. Any such action shall be commenced and prosecuted in the New York State courts, with venue in the Erie County Supreme Court. Nothing in this section shall prevent the Parties from agreeing to resolve any disputes regarding this Agreement by way of mediation or other forms of alternative dispute resolution.

6. Severability

If any provision of this Agreement or any portion of any such provision shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall remain in full force and effect, and the provision or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible.

7. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to or application of choice of law rules or principles.

8. Entire Agreement

This Agreement constitutes the entire agreement of the Parties regarding the subject matter hereof and may not be modified except by a written instrument signed by an authorized representative of each Party. This Agreement shall be for the benefit of the Parties and their respective subsidiaries and affiliates.

9. Representation of Parties

The Parties acknowledge that they have had the benefit of access to counsel of their choosing in the negotiation and drafting of this Agreement.

10. Notices

All notices to be given pursuant to this Agreement shall be made to the Parties by U.S. Postal Service Certified or Express Mail, or other documented delivery services as follows:

If to the Town:

Sheila M. Meegan, Supervisor
1250 Union Road
West Seneca, New York 14224

If to the Consultants:

Craig R. Seymour, President
634 Central Avenue
Dover, New Hampshire 03820

Brandon M. Dowling
6 East Monroe Street, 5th Floor
Chicago, Illinois 60603

If to the Company:

Steven M. Casey, Chief Executive Officer
35 Park Lane South
East Aurora, New York 14216

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

Town of West Seneca

By: _____
Name: Sheila M. Meegan
Title: Town Supervisor

RKG & Associates, Inc.

By: _____
Name:
Title:

Johnson Consulting

By: _____
Name:
Title:

S&R Company of West Seneca:

By: _____
Name:
Title: