

**PROFESSIONAL SERVICES AGREEMENT
CITY OF PORTSMOUTH, NEW HAMPSHIRE**

This Agreement is by and between the City of Portsmouth of 1 Junkins Avenue, Portsmouth, NH 03801 ("City"), and RKG Associates, Inc. ("Consultant") with a principal place of business at 2121 Eisenhower Avenue, Suite #402, Alexandria, VA 22314 entered into on JANUARY 18, 2023.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. DESCRIPTION OF SERVICES

This Agreement establishes the scope of services, schedule of work, and fees for professional services for the McIntyre Property at 62 Daniel Street, Portsmouth, NH, (the "Project"). The project seeks a Qualified Real Estate Consultant to review the Preliminary Pro Forma provided to the City from Redgate Kane, the City's Development Partner in the McIntyre Project. Consultant will also work with the City to develop and present various alternative pro forma models based on financial/development program alternatives to the Preliminary Pro Forma. The detailed project understanding, scope of services and fees are more fully set forth in Exhibit A, a letter from Consultant to City dated December 29, 2022, attached and incorporated hereto.

In addition to the services set forth in Exhibit A, RKG will compare and contrast the PPF with the original Pro Forma provided by SoBow Square in 2019, in order to explain the differences in how the rates of return were calculated in each. Also, RKG will evaluate alternative ways to calculate the rate of return for the Developer in the PPF as detailed in the Settlement Agreement which provides, "The updated pro forma will project a rate of return on Developer's invested capital of an unlevered return on Developer invested capital of 7.4%." This analysis should determine if there are other ways to calculate that rate of return to avoid a lump sum up front payment by the City.

B. STANDARD OF CARE

In performing the Scope of Services, Consultant will exercise that degree of care and skill ordinarily practiced under similar circumstances by consultants in the Portsmouth, NH area providing similar services.

C. PROJECT SCHEDULE

Consultant's performance of this Agreement shall commence immediately following the signing of this Agreement and be substantially completed as outlined in Exhibit A.

D. PROJECT BUDGET

The Consultant will provide the services described in this Scope of Services detailed in Exhibit A for the costs set forth in Exhibit A.

The budget for the additional services above Exhibit A (detailed in the second paragraph of Section A – Description of Services) will be billed at RKG's hourly rates for time used and any reimbursable expenses billed at cost. While the total cost is unknown at this time, RKG will bill

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against a not-to-exceed amount totaling \$7,500. RKG will alert the client if the labor and reimbursable expenses for these additional services have reached 90% of the not-to-exceed budget. RKG will submit a request in writing to the client prior to executing any work that will surpass the not-to-exceed amount for approval to continue those services.

Principal - \$275 / hour

Project Manager - \$225 / hour

Analyst - \$150 / hour

E. PAYMENT

Consultant shall submit monthly invoices detailing work performed and based on the hours worked and expenses incurred as of the invoice date. Invoices shall be payable net 30 days from time of submission to the City.

F. CITY'S RESPONSIBILITIES

Nicholas Cracknell, Principal Planner, will be responsible for administering the project and overseeing Consultant's work on the Project and will be Consultant's principal point of contact. City staff will provide Consultant with available municipal information necessary for the project and supplementary information that may be requested by Consultant from time-to-time during the course of the Project.

G. OWNERSHIP AND CONFIDENTIALITY OF INFORMATION

All information, data, documents, photos, reports, computer records, and other materials of any kind acquired or developed by Consultant pursuant to the Agreement and delivered to the City of Portsmouth shall be property of the City. This work product shall be kept strictly confidential by the consultant and not released to the public or any third party without the City's express written consent. The City acknowledges that such documents are not intended or represented to be suitable for reuse by the City or others on extensions of this project or on any other project. Any reuse without written verification or adaption by the Consultant for the specific purpose intended shall be at the City's sole risk.

H. INDEMNIFICATION

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City of Portsmouth against damages, liabilities and costs arising from the negligent acts of Consultant in the performance of professional services under this Agreement, to the extent that Consultant is responsible for such damages, liabilities and costs on a comparative basis of fault between Consultant and the City, Consultant shall not be obligated to indemnify the City for the City's negligence or for the negligence of others.

I. TERMINATION OF AGREEMENT

1. Termination of Agreement for Cause. If through any cause, Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, the City shall have the right to terminate this Agreement by giving written notice to Consultant of such termination and specify the effective date of such termination. Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to the date of termination. Notwithstanding the above, Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by

Consultant, and the City may withhold any payments until such time as the exact amount of damages to the City from Consultant is determined.

2. Termination for the Convenience of the City. The City may terminate or suspend this Agreement at any time for any reason by giving at least five (5) days-notice writing to Consultant. If the Agreement is terminated or suspended by the City for its convenience, the City shall pay Consultant for all work and expenses satisfactorily completed up to the date of termination.

J. INSURANCE REQUIREMENTS

1. Consultant shall carry: Commercial General Liability insurance with combined single limits not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage and \$2,000,000 for general aggregate; Professional Liability Insurance in an amount of not less than \$1,000,000 in the aggregate, covering acts, errors, or omissions related to the Scope of Professional Services to be rendered under this Contract and workers compensation coverage for all employees in the amounts required by law. Coverage amounts can be met through umbrella/excess policies.

2. The City of Portsmouth shall be named as an additional insurance on the Commercial Liability Policy as follows: City of Portsmouth, Attn: Legal Department, 1 Junkins Avenue, Portsmouth, NH 03801.

3. Coverages shall remain in effect for a period consistent with the Statutes of Limitations under the Law of New Hampshire.

- K. PROJECT COMMUNICATIONS.** All contact with the press, the public, and other third parties shall be coordinated with the City. Press inquiries should be directed to the City's representative as described in Paragraph F above unless direction is given otherwise. Communications to the public shall be reviewed and approved by the City.

Marketing and promotional material developed by Consultant related to this Project and products delivered under this Agreement shall be developed with the City and express permission granted for reuse of images, plans, and other specific work products resulting from this project. This obligation shall survive the termination and or completion of this Agreement.

L. CHANGES TO THE SCOPE OF WORK AND ADDITIONAL SERVICES

Any change to the professional services described in this Agreement shall not be authorized unless documented in writing by an appropriate Change Order. A Change Order is a written instrument duly signed by authorized representatives of both the Consultant and Client, in which both parties agree to: (1) Change the Scope of Services; (2) Adjust the total fees, if any; and/or (3) Change the schedule, as appropriate.

M. DELAY OR PREVENTION OF SERVICES DUE TO FORCE MAJEURE

A party will not be considered in breach of or in default because of, and will not be liable to the other party for, any delay or failure to perform its obligations under this agreement by reason of fire, earthquake, flood, explosion, strike, riot, war, terrorism, pandemic, or similar event beyond

that party's reasonable control (each a "Force Majeure Event"). However, if a Force Majeure Event occurs, the affected party shall, as soon as practicable notify the other party of the Force Majeure Event and its impact on performance under this agreement and use reasonable efforts to resolve any issues resulting from the Force Majeure Event and perform its obligations under this agreement.

N. MISCELLANEOUS PROVISIONS

1. The City and the Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives of the other party to the Agreement and to the partners, successors, assigns, and legal representatives of the City with respect to all covenants of the Agreement. Neither the City nor the Consultant shall assign the Agreement without the written consent of the other.
2. The Agreement represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements either written or oral. The Agreement may only be amended in writing, signed by both the City and the Consultant.
3. For purposes of this Agreement, any officers, employees, agents, applicants, or beneficiaries of Consultant act in an independent capacity and are not officers or employees or agents of the City.
4. Nothing contained in the Agreements shall create a contractual relationship and/or a third party beneficiary relationship with a third party.
5. No officer, employee or agent of the City, or any other person who exercises any functions or responsibilities in connection with the City, shall have any personal or financial interest, direct or indirect, in this Agreement. Consultant shall take appropriate steps to assure compliance.
6. No waiver or breach of any provision of the Agreement shall constitute a waiver of any subsequent breach of the same or any provision hereof, and no waiver shall be effective unless made in writing.
7. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in force.
8. The terms of this Agreement shall be covered by the laws of the State of New Hampshire. Jurisdiction and venue shall lie in Rockingham County Superior Court.
9. All notices and communications given pursuant to the Agreement shall be in writing and delivered by email, personal service, or by registered mail to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served or received; or, if by mail, on the fifth day after being post-marked or the date of the actual receipt, whichever is earlier.

CITY:

Attention: Nicholas Cracknell
Title: Principal Planner
1 Junkins Ave
Portsmouth, NH 03801
Njcracknell@cityofportsmouth.com

CONSULTANT:

RKG Associates, Inc.
Attention: Kyle Talente, President
2121 Eisenhower Avenue, Suite # 402
Alexandria, VA 22314
kst@rkassociates.com


With a copy to:
City Attorney Susan G. Morrell
1 Junkins Ave
Portsmouth, NH 03801
sgmorrell@cityofportsmouth.com

VSC
KTS

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.


CITY OF PORTSMOUTH

DATE 1/18/2023

BY: 
Karen Conard, City Manager

RKG ASSOCIATES, INC.

DATE 1/18/2023

BY: 
Kyle Talente, President

December 29, 2022

Mr. Nicholas J. Cracknell, AICP, Principal Planner
Portsmouth, NH Planning Department
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Dear Nicholas:

As per our correspondence, I am pleased to submit the following proposal for providing Financial Real Estate Consulting services related to the Federal McIntyre Property located at 62 Daniel Street in downtown Portsmouth. Please do not hesitate to contact me if you have any questions or concerns about RKG Associates or this proposal.

Project Understanding

As part of the city's effort to obtain ownership of the Federal McIntyre Property, located at 62 Daniel Street in downtown Portsmouth, the city has developed community consensus on a redevelopment plan (the Community Plan) and is currently working with a Development Partner to implement the project. For over 6 months, the city has worked collaboratively with the Development Partners, Redgate/Kane (R/K) to develop a final design for the project and to develop a Preliminary Pro Forma, a Development Agreement, and eventually a Ground Lease for the project. As part of the Development Agreement with R/K, the city is working toward design, permitting, and eventual construction of the Community Plan that was initially developed by the Principle Group for the city. The Community Plan includes over 125,000 SF of leasable space and a host of public improvements including a covered public market hall.

The city is seeking to retain a qualified Financial Real Estate Consultant (FREC) to review the Preliminary Pro Forma (PPF) provided to the city from R/K. The city is seeking to have this work completed in 4-6 weeks (commencing work the week of January 2nd, 2023).

The purpose of this agreement is for the (contractor) to assist the City and its development partner in producing a mutually acceptable application to the National Park Service under which the McIntyre Federal Building may be acquired under the Federal Monument Program and redeveloped into the Community Plan as previously approved by the City and its development partner



Proposed Scope of Services

The following tasks are proposed for RKG to complete the city's analysis needs within the available timeframe.

TASK 1: PRELIMINARY PRO FORMA REVIEW

RKG will review the Preliminary Pro Forma (PPF) to assess the soundness of approach and to test the market assumptions used to determine financial feasibility. The market review will include, but is not limited to:

- Net Leasable Space
- Rents (both residential and commercial)
- Operating Expenses
- Tenant Improvements
- Commissions
- Financing Terms

RKG will document recent and current market performance indicators for these development variables, providing the city with any recommended modifications or alterations. Within each category, RKG will provide an assessment of the PPF variable and the potential impact/change to using an alternative input.

Task 1 will culminate in a technical memorandum to the city detailing RKG Associates' approach, findings, and potential recommendations. RKG will submit the draft report by January 31, 2023. RKG will hold one (1) work session with the city to review the document and come to agreement on any modifications or changes. RKG will submit the final document within one (1) week of the work session date.

NB – It is RKG Associates' understanding that a separate process is being completed that is assessing the construction cost assumptions from the PPF. RKG expects that the results of that analysis will be shared to run any alternative feasibility scenarios from Task 2.

COST - \$23,500

TASK 2: ALTERNATIVE PRO FORMA MODELING

If needed, RKG Associates will run alternative scenarios on behalf of the city to assess approaches to improve the financial viability of the proposed development project. RKG will work with city staff to develop financing/development program alternatives and then model those alternatives. This task is intended to allow the city to assess any number of "what if?" scenarios to understand the financial sensitivity of alternative strategies while determining if there are different approaches to reaching more beneficial financial returns.



RKG Associates assumes there will be three (3) virtual meetings as part of this task. First, a coordination meeting to discuss and arrive at the alternate scenarios to be modeled. Second, a meeting to present the findings and determine if additional scenarios need to be considered. Finally, a presentation of the results of the analysis. RKG will provide a technical memorandum that details each scenario run, including alternate assumptions used, explanation for the alternate approach, and results of the alternate approach.

NB – It is RKG Associates assumption that the city will provide RKG Associates with the functioning model and not a static (e.g., Adobe PDF) print out of the pro forma model. Without the functioning model, RKG will have to recreate a functioning model for Task 2, which will have an additional cost. RKG Associates also assumes that any variation in construction costs or approach will be provided by the Construction Cost Estimate (CCE) consultant.

Cost – \$1,525 per scenario

Sincerely,

A handwritten signature in blue ink that reads "Kyle Talente". The signature is written in a cursive, flowing style.

Kyle Talente, President
RKG Associates, Inc.