



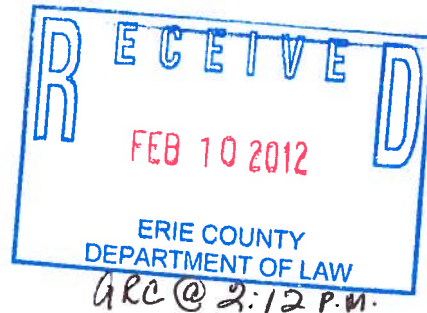
underberg & kessler LLP

GEORGE S. VAN NEST, PARTNER
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February 10, 2012

VIA HAND DELIVERY

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



**Re: Request for Proposal to Provide Legal Services in Connection with the Lease of the County's Professional Football Stadium
RFP #1202VF**

Dear Mr. Siragusa:

Underberg & Kessler LLP is pleased to have the opportunity to present our qualifications to represent the County of Erie in connection with the above-referenced work. We are enthusiastic about the possibility of growing our relationship with the County and in tailoring our services to fit its specific needs. We are confident that we can deliver legal services to the County in a competent, effective and cost-efficient manner that will meet - and exceed - your expectations. As reflected in Appendix A, we have significant experience representing owners of major professional sports franchises and stadium owners in the negotiation of transactions regarding stadium leases, real estate and related contractual arrangements and the preparation of necessary legal documents.

Introduction and Summary

Underberg & Kessler LLP has been serving clients in Western New York since 1926. We are a 39-attorney, limited liability partnership whose management committee, chaired by our managing partner, Anna Lynch, leads the firm's business operations. The firm is headquartered in Rochester, New York, with offices in Buffalo, Canandaigua, Geneseo, Greece and Newark, New York. In our 84-year history, the firm has been active in all areas of corporate and business law including extensive experience representing Fortune 500 companies, municipalities, financial institutions, closely-held businesses, not-for-profits and other entities in a wide variety of sophisticated matters. A copy of the firm brochure with relevant practice descriptions is enclosed.

Michael A. Siragusa, Esq.
February 10, 2012
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During the past year we have worked closely with and continue to work with the County Attorney's Office and department heads regarding significant environmental regulatory violations asserted by the United States Department of Justice for various County facilities. We have represented the County to successfully resolve the matter. That matter has allowed our office to develop an excellent working relationship with the County and we believe the experience will be beneficial if we are selected in this matter.

Our Real Estate & Municipal Experience

There is no such thing as a simple real estate transaction. Real estate today is complex, requiring skilled and seasoned legal expertise. Underberg & Kessler has been active in real estate law for over 80 years, including extensive experience serving municipalities, closely-held businesses, publicly-traded corporations, not-for-profit entities, lending institutions and individuals. Our attorneys have the experience to provide cost-effective solutions to the complexities facing developers and development projects today, and the practical knowledge to obtain timely results. The depth of our experience provides clients ongoing access to attorneys who specialize in diverse areas of law, including land use planning and zoning, environmental, and litigation. Specific examples of our relevant experience are referenced on the attached Appendix A.

Our Team

We believe strongly in a team approach to serving our clients. This team approach translates into efficient and effective delivery of services to our clients. Keeping in mind the need to minimize costs, we often utilize our qualified paralegal staff to assist in document preparation and review under the supervision of our attorneys.

While there is always a client relations attorney who is responsible for coordinating the legal work and for ensuring that client needs are met, additional attorneys are assigned to client matters in areas where they have specific experience. We have identified a team of attorneys with years of experience addressing issues relevant to the County, and have attached their resumes as Appendix B. These key team members include:

Client Relations Attorney: George Van Nest

Attorneys – Jim Coniglio, Kate Karl, Pat Cusato, Tony Adiutori, Ed Russell and Andrea Vossler

Paralegals – Marian Slavinski, David Gibbs

Pricing, Terms and Conditions

Our extensive experience with governmental entities has made us sensitive to cost control issues and, therefore, projects are assigned to the individual (lawyer or paralegal) who is capable of performing the task efficiently and effectively, and at the lowest billing rate. Our clients



Michael A. Siragusa, Esq.
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invest their trust in us, and we, in turn, make an investment in them by offering high quality services in a cost-effective manner.

One significant advantage to the County in using a seasoned regional firm such as Underberg & Kessler is our ability to offer quality legal services at very competitive rates. Our traditional method of determining legal fees is by billing time incurred at our standard billing rates. Our current hourly rates range from \$270 to \$345 for partners, from \$165 to \$350 for senior counsel and associates, and from \$100 to \$160 for paralegals. Our proposed hourly billing rates for the key team members are \$250 for partners, \$235 for senior counsel/associates, and \$95 for paralegals. These blended rates reflect a reduction against our standard billing rates, and is an indication of our commitment to the County as our client.

Effective Period of Proposal

This proposal shall remain in effect for a period of 200 days from submission and may be extended only on written approval of Underberg & Kessler LLP.

We look forward to working with you and your colleagues. We are focused on helping you achieve the County's goals by applying our skills, experience and creativity to making that happen. If you have any questions or require additional information, please feel free to contact me. We look forward to hearing from you soon.

Very truly yours,

A handwritten signature in black ink that reads 'George S. Van Nest'. The signature is written in a cursive style and is followed by a long horizontal line that extends to the right.

George S. Van Nest, Partner

GSV/lag
Attachments
Enclosures: 4 copies of RFP Response



Appendix A

Relevant Transaction Experience

- Represented the purchaser of a National Hockey League (“NHL”) franchise and associated assets. Engagement included review and negotiations of Arena lease agreement and related subleases for concessionaries and advertising facilities. The transaction required acquiring U.S. Bankruptcy Court approval and the negotiation of the approval by the NHL of the transaction in general, the admission of the purchaser into the League as a franchise owner, as well as the approval of all related contractual commitments including leasehold interests.
- Represented a professional soccer franchise in connection with the construction and financing of a multi-purpose stadium. Engagement included coordination of agreements between City of Rochester, New York, State of New York Urban Development Corporation and negotiation of lease between the Stadium owner and franchise. Representation also involved negotiation of leases for concessionaries advertisers, as well as parking rights.
- Represented a city in the negotiation of leases for city owned parking garages and parking lots, including air rights and underground rights.
- Represented a municipality and a local development corporation in the negotiation and extension of a lease, sub-lease of a Penn-League professional baseball franchise and operating agreement with a local International League baseball franchise, including resolution of outstanding non-compliance issues asserted by the League against the franchise.
- Represented a privately held distribution company in an \$88 million acquisition by merger with a publicly held company. The legal work in the transaction involved coordination with investment bankers, assistance with due diligence, drafting and negotiating the merger agreement, advice to our client’s board of directors regarding its duties and obligations, tax advice and opinions to client shareholders, environmental review and completion of the closing.
- Represented a publicly traded company for decades in a wide variety of legal needs including a \$50 million asset acquisition of a chain of auto repair shops. The legal work involved obtaining, organizing and reviewing all real estate and environmental due diligence for approximately 200 retail shops, corporate due diligence, drafting and negotiating the asset purchase agreement, site leases and ancillary agreements, and closing the transaction.
- Represent a Penn-League baseball franchise in the potential sale of the franchise to third-party entity, including due diligence, evaluation of proposals, discussions with the Penn-League and coordination with the International League baseball franchise which is operating the team and holds an equity interest in the team.



- Representation of two upstate counties in the negotiation and lease of county-owned landfills and recycling facilities to a private-party operator, including SEQR reviews, DEC permit matters, operating agreements and host community agreements with the operator. Representation of the counties in connection with DEC permit modification proceedings, SEQR litigation, and modification of the operations related to waste-to-energy operations.
- Represented the New York State Common Retirement Fund in a \$150 million real estate joint venture. The legal work included negotiation with a publicly-held REIT and drafting provisions for the joint venture agreement, contribution agreement and sale agreement.
- Represented a management team in the acquisition from a public company of a convenience store chain with 200 New York State locations. The legal work included negotiation with the institutional venture capital fund financing the acquirer, assistance with all federal, state and local operating licenses, tax structure for the transaction, real estate due diligence, including existing leases and negotiation of new leases and negotiation of supplier agreements.
- Represented a privately held specialty physician practice in a \$45 million merger transaction that was part of a "roll-up" of seven physician practices by which the acquirer became a public company. The legal work involved extensive tax structuring to ensure a tax-deferred transaction, advice on federal and state health law compliance matters, negotiation of the merger agreement and participation in the closing.
- Represented numerous developers, not-for-profits and lenders in assisted, enriched and independent living facilities for senior citizens and affordable housing complexes and developments for mid to low income families. We have experience with tax exempt and taxable bond financing, low income housing tax credits, industrial development agency sale (lease) – leasebacks, real property and sales tax abatements, joint ventures, syndications, and not-for-profit and 501(c)(3) tax exempt status. Our clients are currently developing a \$32 million, 200 unit, senior living community utilizing a variety of housing concepts (apartments, townhouses, bungalows and cottages). We have been involved in all development stages from acquisition through subdivision, as well as the tax-exempt bond financing. We are also currently engaged in the development and financing of an \$11 million, 70 unit, independent senior housing complex. This project is financed through Low Income Housing Tax Credits, as well as through HUD's section 202 construction financing, New York State Housing Finance Agency tax exempt bond financing and loans through New York State Division of Housing and Community Renewal.
- Represented a court appointed receiver in a \$30 million auction transaction between two 50/50 owners of an industrial supply business. The legal work involved ensuring compliance with the New York Business Corporation Law and judicial orders in this matter, and coordination with counsel for the shareholders to ensure a smooth closing.
- Represented hundreds of buyers and sellers of businesses in all industries, from manufacturing to distribution to services, in transactions ranging from \$50,000 to \$20 million. Our legal work typically included all aspects leading to a successful transaction: structuring to minimize taxes to seller or maximize tax benefits to buyer, coordination of due diligence, drafting and negotiating confidentiality agreements, letters of intent, and definitive acquisition agreements (merger, stock purchase or asset purchase), obtaining contractual and governmental consents, assistance with transaction financing, conducting closing and resolution of post-closing issues.



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Appendix B Attorney Resumes



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George S. Van Nest

Superfund sites. Brownfields. Petroleum spills. Toxic tort actions. These are some of the most difficult issues in environmental law today. As a partner in the firm's Environmental, Municipal and Litigation Practice Groups, George has handled all of these—and more.

George has handled Superfund and petroleum spill site matters throughout the northeast; civil and criminal enforcement matters; defense of toxic tort actions claiming personal injury and property damage; cost recovery litigation; municipal and private Brownfields redevelopment; SEQR environmental impact review; landfill permitting; wetlands permitting; land use and rezoning, and litigation of related matters. George's construction practice includes the representation of owners, contractors and subcontractors in litigation and arbitration of Lien Law claims, delay and extra work claims, termination and breach of contract claims.

George's work at the EPA, Office of Regional Counsel in Chicago, focused on Superfund and hazardous waste remediation and cost recovery matters.

George is a member of the New York State (member: Environmental Law Section, Petroleum Task Force), Erie County (member and past chair, Environmental Law Committee) and Genesee County Bar Associations, the Air and Waste Management Association, Buffalo Niagara Partnership, and a former adjunct professor, environmental law, at the State University of New York at Buffalo. He is also a member of the Clarence, New York Planning Board.



George S. Van Nest

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Practice Areas

Environmental Law
Litigation
Municipal

Education

Valparaiso University School of Law,
J.D., 1994
Hartwick College, B.A., cum laude,
1991

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32 Main Street, Geneseo



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James A. Coniglio

From the waterfalls of Letchworth Park to the water authorities of Western New York, Jim thinks globally and acts locally. As partner and chair of the firm's Municipal Practice Group, he has actively advised and represented local and municipal governments and agencies for over 20 years. His experience is extensive in the areas of general municipal law, public finance, eminent domain, tax certiorari, legislative and administrative process, the planning and development of capital projects and improvement districts, as well as economic development, planning, zoning and litigation related to those areas.

As Bond Counsel for the City of Buffalo Municipal Water Finance Authority and numerous Western New York municipalities, he has been involved in the financing of all types of municipal capital projects as well as the refinancing of outstanding municipal debt. Jim has also acted as Underwriter's Counsel for major investment banking firms in connection with the underwriting and public sale of large scale public debt offerings.

In the twelve years he has served as Counsel to the Livingston County Industrial Development Agency, Jim has been involved in a wide variety of transactions including tax-exempt bond financings, sale leaseback PILOT transactions, real estate transactions, the acquisition and development of industrial parks, IDA corporate and organizational matters, as well as litigation.

He currently serves as General Counsel to the Towns of Geneseo, Mt. Morris, Springwater and Nunda and the Village of Caledonia. He also serves as special counsel on various projects to a number of cities and towns throughout Western New York.

In addition to his municipal clients, Jim represents private sector developers and non-profit organizations in capital commercial and industrial development projects, and advises them on a variety of issues ranging from the financing of projects to their planning and final construction.

Jim is a graduate of Syracuse University College of Law and holds a B.S. in Economics from St. Bonaventure University. He is a past Chairman of the Board of Directors of the Livingston County Chamber of Commerce and he currently chairs the Chamber's Public Policy Committee. He also is a member of the Board of Directors of the NOYES Hospital Foundation, the Genesee Valley Council on the Arts, and the Monroe County Volunteer Legal Services Project. He is a member of the National Association of Bond Lawyers, the New York Conference of Mayors, the New York State Association of Towns, the New York Government Finance Officers Association and the New York State Economic Development Council. He is the current author of the Thomson-West Publishing Company's treatise on Municipal Finance entitled *Private Activity Bond Tests*, and is a contributing author of the Thomson-West Treatise, *State and Local Debt Financing*.

Jim was selected a 2011, 2010, 2009, 2008 and 2007 Upstate New York Super Lawyer. The Super Lawyer group represents the top 5% of attorneys in Upstate New York who have attained a high degree of peer recognition and professional achievement. He was also named to the 2011 edition of *Best Lawyers in America*®.



James A. Coniglio

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Practice Areas

Banking

Corporate & Business

Environmental Law

Municipal

Education

Syracuse University College of Law,
J.D., 1977

St. Bonaventure University, B.S.,
1973

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Patrick L. Cusato

In 1999, Pat received *Rochester Business Journal's* "Forty Under 40" Award. He is a bit older now, but Pat continues to be one of our most dynamic attorneys.

A partner in the Real Estate Practice Group and a member of the firm's Executive Committee, Pat concentrates his practice in commercial real estate and mortgage banking. He has represented a major telecommunications company, developers, retailers, commercial lenders and mortgage brokers in a variety of real property transactions including acquisitions, sales, leasing, construction, development, title issues, zoning and mortgage financing. He also has represented housing development fund corporations in all aspects of affordable housing transactions, including Low Income Housing Tax Credits, Tax-exempt Bond Financing, Federal Housing Act HUD insured financing, development of assisted and independent living facilities, tax abatement and payment in lieu of tax agreements.

As supervising attorney for the firm's residential mortgage lending program, Pat counsels financial institutions regarding banking regulations and real property law.

As past president and current Executive Board member of the Mortgage Banker's Association for the Genesee Region, he focuses on issues affecting the mortgage banking industry on both a local and national level. He also advises the board on legislative developments.

Pat is active in the community, serving as an Executive Board member of the Bishop Sheen Ecumenical Housing Foundation. He is past president of the Foundation, past chair of the Project Development Committee, and current chair of the Foundation's annual fund raising Gala. Pat is also the president of the Board of Directors of the Webster Soccer Association, and sits on the Advisory Board for First American Title and Insurance Company of New York.

His tenure at Underberg & Kessler began in 1987 after he received his J.D., magna cum laude, from Syracuse University College of Law.

Pat was selected a 2010, 2009, 2008 and 2007 Upstate New York Super Lawyer. The Super Lawyer group represents the top 5% of attorneys in Upstate New York who have attained a high degree of peer recognition and professional achievement.



Patrick L. Cusato

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Practice Areas

Banking
Real Estate

Education

Syracuse University College of Law,
J.D., 1987
Canisius College, B.A., 1984

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Katherine H. Karl

Kate is an active presence in both the preservation and the development of our local community. As chair of our Real Estate and Banking Law Practice Groups, her legal expertise extends to commercial real estate, development, and finance. She works with commercial lenders to structure mortgage and asset-based loan transactions, and to handle environmental issues in a practical manner. She has broad experience representing commercial owners, developers, and a national retailer in all aspects of acquisitions, sales, construction, development and lease negotiations.

Tackling zoning and land use issues and environmental concerns are a part of Kate's everyday practice. She also represents institutional lenders in connection with a broad variety of loans including real estate secured financing, transactions with industrial development agencies and with Small Business Administration involvement, term loans and lines of credit.

A former law clerk to the New York State Supreme Court, Appellate Division, Third Department, Kate has practiced law in Rochester since 1988. She is a frequent presenter at Monroe County and New York State Bar Association seminars that focus on residential and commercial real estate topics.

As an active board member and participant on the Executive Committees of Rochester Downtown Development Corporation and The Landmark Society of Western New York, Inc., Kate remains involved in the vital decisions affecting the development of our region.

Kate is a cum laude graduate of Albany Law School and a magna cum laude graduate of Bucknell University.

Kate was selected a 2011, 2010, 2009, 2008 and 2007 Upstate New York Super Lawyer. The Super Lawyer group represents the top 5% of attorneys in Upstate New York who have attained a high degree of peer recognition and professional achievement.



Katherine H. Karl

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Practice Areas

Banking
Real Estate

Education

Union University at Albany Law School, J.D., 1987
Bucknell University, B.A., 1984



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Anthony J. Adiutori

He's not just an up and comer, he's a mover and shaker. Designated one of Rochester's "Up and Coming Attorneys" by *The Daily Record* and a *Rochester Business Journal* "Forty Under 40" Award recipient, Tony's expertise lies in the art of the deal. A partner in our Real Estate Practice Group with a specialty in commercial real estate and development, he is recognized for his ability to clear the obstacles that often arise in complex real estate transactions. His experience enables him to provide clear and cost-effective solutions for difficult environmental, zoning and title issues.

Tony represents lenders in loans involving industrial development agencies, Small Business Administration and the New York Business Development Corporation. He has extensive experience representing creditors in complex collection proceedings, as well as construction and leasing transactions for clients. He has successfully litigated mortgage foreclosure action involving a \$10 million apartment building and other tenant-based real estate assets. Tony's commercial experience is derived from his broad involvement in residential real estate transactions. He continues to represent lenders in residential mortgage lending, including those involving construction loans, and regularly works with buyers and sellers of homes.

He is a member of the Women's Council of Realtors and a frequent presenter at realtor education seminars on first-time home buying and other topics. Tony developed the "Greater Rochester Association of Realtors Rookie Program", a pilot program that educates realtors with less than three years experience about the residential closing process. He presents this program annually to the GRAR membership.

A strong proponent of neighborhood and community involvement, Tony serves as board attorney for the South Wedge Planning Committee, remaining active in the continued development of the South Wedge area of the City of Rochester. He is a member of the Dartmouth Lawyers Association, the Greater Rochester Association of Realtors®, Inc. Realtor/Bar Committee, and the New York State and Monroe County Bar Associations, where he is a regular presenter. Tony is a graduate of Dartmouth College and Brooklyn Law School.



Anthony J. Adiutori

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Practice Areas

Banking
Creditors' Rights
Real Estate

Education

Brooklyn Law School, J.D., 1995
Dartmouth College, B.A., 1990



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Edmund J. Russell III

When it comes to corporate law, the devil is in the details. As an a partner in the firm's Corporate & Business, Banking and Municipal Practice Groups, Ed brings meticulous attention to detail to his work with clients. He counsels financial institutions, businesses, not-for-profit organizations and municipal entities on matters regarding private and public financing, negotiating contracts, mergers and acquisitions, business planning and compliance issues. In addition, Ed has formed and advised local development corporations and assisted them in obtaining both federal and state tax exemptions.

Prior to joining Underberg & Kessler, Ed concentrated his practice in public finance law for a number of years. He has experience drafting financial and corporate documents for Industrial Development Agency, Dormitory Authority, Water Authority and Housing Authority bond offerings. He serves as bond counsel and represents underwriters, letter of credit banks and borrowers in financing transactions for health care, manufacturing, education and housing infrastructure.

Ed received his B.A. from McGill University and graduated with a J.D. from the University at Buffalo Law School, where he was articles editor of the Buffalo Law Review.

He is Chair of the Business Law Council for the Monroe County Bar Association, and is a member of the National Association of Bond Lawyers. Additionally, he is a guest speaker for SCORE Counselors to America's Small Business. Ed also serves the community as Vice President of the Brighton Memorial Library board, President of The Montessori School of Rochester board, a member of the Board of Directors of Veterans Outreach Center Inc., and as a member of the AFS Congress-Bundestag Scholarship Selection Committee.



Edmund J. Russell III

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Practice Areas

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Education

University at Buffalo Law School,

J.D., 1999

McGill University, B.A., 1994

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Andrea H. Vossler

Andrea's interest in corporate problem-solving began when she took a drafting class in law school at Georgetown University Law Center. There, she drafted difficult business concepts into legal documents, and worked on solving complex corporate problems. After graduation, she worked as a corporate and securities associate for a prestigious New York City law firm on multinational deals where she helped to negotiate large-scale international corporate transactions.

Andrea continues evolving her skills to tackle some of today's most critical business issues. The corporate environment is dynamic and ever-evolving, and Andrea helps her clients succeed in a world where the only constant is change. She has broad-based experience in all aspects of corporate transactions, from negotiating mergers and acquisitions, to SEC compliance, to corporate governance issues. She is passionate about her work, always accessible to clients, and believes client/attorney communication is the key to a smooth and successful process. Andrea understands that to be an effective advocate for her clients requires hard work, communication skills and ability to successfully juggle many projects.

Andrea received her law degree from the Georgetown University Law Center, and then worked at Mayer Brown LLP in New York City. Proficient in French, she was a Fulbright scholar after receiving her undergraduate degree from SUNY Buffalo.



Andrea H. Vossler

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Practice Areas

Corporate
Technology & New Media

Education

Georgetown University Law Center,
J.D., 2007
State University of New York at
Buffalo, B.A., 2002

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Appendix C Vendor Information

Underberg & Kessler is a 84-year old, highly-stable, successful law firm that will undoubtedly remain in business during the term of the contract with the County.

Equal Employment Opportunity

Underberg & Kessler's Equal Employment Policy indicates that we will recruit, hire, train and promote for all positions without regard to race, color, creed, age, national origin, marital status, religion, sex or disability. We will continue to ensure that minority group members and women are afforded equal employment opportunities with our firm, without discrimination. The firm has endeavored and continues to endeavor to form alliances with qualified minority attorneys for collaboration on a variety of legal matters, when appropriate.

Malpractice

Risk management is an important aspect of doing business for any law firm. Underberg & Kessler is committed to proactive risk management and all attorneys are covered by a \$5 million claims-based, \$5 million aggregate Lawyers Professional Liability Insurance policy that the firm maintains. The firm has a Risk Management Committee that, in addition to creating policies and procedures to reduce risk, provides ongoing education to the professional staff and partners. Underberg & Kessler and its attorneys have not been subject to any disciplinary action, administrative proceeding, malpractice claim or other like proceeding during the past five years. Our Certificate of Insurance will be provided upon request.

Potential Conflicts

We are currently working with the County on an environmental matter. However, we have run an updated conflict check in connection with this submission and have found no material or threatened litigation, contractual or business relationship that would constitute a conflict of interest in representing the County. If a potential conflict arises, we will notify the County and work with you to resolve the issue to our mutual satisfaction.



Appendix D Underberg & Kessler References

B. Thomas Golisano

Former Owner of The Buffalo Sabres
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Monro Muffler Brake and Service

Maureen Mulholland, Esq., General Counsel
200 Holleder Parkway
Rochester, New York 14615
(585) 784-3452

City of Buffalo Municipal Water Finance Authority

Richard Calipari, Chief Investment and Debt Manager
1225 City Hall
Buffalo, New York 14202
(716) 851-5255



Appendix E Required Forms

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.



Proposer Name

By: George S. VanNest, Partner
Name and Title



About Underberg & Kessler LLP

The first law of business? Build a good team.



Four lads from Liverpool pick up their instruments and begin to play a new style of music. An unheralded women's soccer team takes to the pitch to play for the world championship. When the right combination of people join forces, great things happen. At Underberg & Kessler, we have assembled a renaissance team of attorneys who are dedicated to helping you turn legal options into opportunities.

In today's complex business climate, legal situations often call for more than one area of law. A client might need a real estate attorney, a tax lawyer, and an environmental law expert, all at once. At Underberg & Kessler, you will find a team of attorneys who specialize in a wide range of practice areas. Every specialty is different, but our attorneys all share one thing in common—a thorough knowledge of business. We know how it works. What it takes. What the goal is. We are up

to date on the quicksilver rules, regulations and trends of today's ever-changing business world. And if we don't know something, one of our colleagues will.

When you have a dedicated legal team protecting your business, you have complete coverage and support and access to a diverse knowledge base. Of course, sometimes you may have a simple transaction that requires only one attorney—we can handle that too. But for those complex business issues, our team will plan a legal endgame that minimizes risk, and serves your goal. Working closely with you, with a keen insight into both business and law, our attorneys will help you leap over legal hurdles and remove stumbling blocks to success. Whether you are a start-up, a franchise, or a large corporation, we will present you with options and review possible outcomes. We will prepare the right legal conditions to help your business grow. And we will do so quickly, cost-effectively, and with the responsiveness business people appreciate.



About Our Attorneys

Practical. Precise. Passionate.

Three things you'll find in an Underberg & Kessler attorney.



Power suits and 90 hour work weeks. That's the picture most people have of attorneys. But an Underberg & Kessler attorney is just as apt to be found in jeans, coaching a basketball game. Or sitting on an ethics board. Or mentoring at-risk kids. Our attorneys serve the community, and we think that serves our clients as well, because they bring that same passion and energy to their work. And yes, we admit—they do have some very nice suits.

Our attorneys are first and foremost, superb lawyers. They have razor-sharp legal minds that can pare a complex problem down to its essence. They have a voluminous knowledge of law and statutes. They are able to view issues from all angles, dig out facts, and assess risk. They have analytical ability, precision of thought, and assertiveness. But they also know how to listen, how to translate legalese into a language clients can understand, how to be strategic from a business standpoint, and how to read people—always an asset in any situation.

Many of our attorneys have worked in the corporate and financial sectors, and some have MBAs. They are active and highly visible in the business community. Collectively, they have worked with hundreds of companies. They will provide vital assistance in almost every aspect of your business, from restructuring to lawsuits to real estate acquisition. As lawyers and business people, our attorneys will help you survey the legal landscape to minimize risk and help your business grow.



Real Estate Practice Group

Success comes when you know the lay of the land.



In real estate law, you have to know the terrain. Who the players are. Where the opportunities lie. Where the minefields are — those hidden surprises that can make or break a deal. Underberg and Kessler's Real Estate Group knows the territory well. Collectively, we have successfully handled hundreds of real estate transactions, from commercial properties to residential homes.

Zoning. Tax assessment. Land use. Environmental compliance. Today, there is no such thing as a simple real estate transaction. Real estate today is complex, requiring skilled and seasoned legal expertise. We counsel clients regarding the structure of transactions to maximize the utilization of various governmental incentive programs. We have in-depth experience in commercial and residential real estate matters for individuals, municipalities, businesses, national retailers, and financial institutions.

Our Real Estate services include:

- Commercial Development Projects
- Financing
- Tax
- Land Use And Zoning
- Environmental
- Leasing
- Acquisitions
- Sales
- Mortgage Lending
- Affordable Housing Transactions
- Government Lending
- Residential



Real Estate Relevant Experience

Development and Financing

Extensive experience in representation of institutional lenders, manufacturers, distributors, hotel developers and health care providers with Department of Housing and Urban Development, Industrial Development Agency, Small Business Administration and New York Job Development Authority financing.

Negotiated and drafted construction contracts for major projects such as expansion construction of a local hospital and related parking facilities. Representation of developers and institutional lenders in construction loan financing.

Representation of developers to maximize benefits available under various economic incentive programs authorized by federal, state and local laws in connection with private and public development and business expansion.

Representation of developers in assisted, enriched and independent living facilities for senior citizens, including tax exempt and taxable bond financing, low income Housing Tax Credits, industrial development agency sale-leasebacks, real property and sales tax abatements, payment in lieu of tax agreements, and not-for-profit and 501(c)(3) tax exempt status.

Representation of developers of affordable housing units and the related financing, including transactions involving New York State Housing Trust Fund Corporation, New York State Division of Housing and Community Renewal, New York State Affordable Housing Corporation, and United States Department of Housing and Urban Development. Counsel to Housing Development Fund Corporations and to developers and lenders in low income Housing Tax Credit transactions.

Representation of institutional lenders in residential and commercial lending, including construction and permanent mortgage financing of one to four family units (conventional and non-conventional, wholesale and retail lending), shopping centers, office buildings, manufacturing centers, hotels, senior living facilities and nursing homes, strip plazas, apartment buildings and farms.

Representation of major hotel developer in acquisition, construction, financing, and zoning of nationally franchised hotels, including industrial development agency sale-leasebacks, real property and sales tax abatements, securitized financing, franchise agreements, environmental issues and like-kind exchanges.

Representation of developers in formation and sale of real estate syndications.

Establishment of streamlined systems for site acquisitions for a major retail client and a major telecommunications company.

Real Estate Relevant Experience (Cont.)

Environmental Aspects of Real Property

Experienced in the review of environmental assessments, NYSDEC and NEPA regulatory practice, and environmental remediation of commercial sites.

Zoning and Land Use

Representation of developers and municipalities on all issues of zoning law including local agency and appellate practice.

Residential Transactions

Annually represent hundreds of clients in purchase, sale, construction and refinance of their homes.

Title Examination

Experienced in all phases of real estate title work including examination, certification and related proceedings and litigation. Represent a major title company in title claim matters.

Landlords and Tenants

Representation of both landlord and tenant in commercial leasing of shopping centers, retail chain stores, athletic stadiums, student housing complexes, telecommunications towers, medical buildings, hospitals and government agencies including direct leasing, subleasing, leaseback, and ground leases. Experience in lease termination and eviction.

Foreclosures

Representation of institutional lenders, banks, and insurance companies in major commercial foreclosure of shopping centers, sports facilities, marinas, hotels, retail and commercial buildings, apartment complexes, condominiums and residential dwellings. Participated in major workouts and deficiency actions. Representation of a municipality in tax foreclosure of commercial and residential parcels.

Tax Certiorari

Representation of taxpayers and municipality in successful tax certiorari proceedings for large apartment complexes, warehouses, manufacturing facilities and homesteads.

Home Owner Associations/Condos

Experienced in condominium law, having participated in the formation or conversion of numerous residential and commercial condominiums and the establishment of home owner associations and their respective governance.



Municipal Practice Group

Bringing together a community of interests.



Working with municipalities and school districts requires the tact and persuasiveness of a diplomat. That's because cases involving communities and their governments usually have a diverse number of stakeholders who are often at odds.

Whether it's a village, a county, a city, or Public Authority or related Public Agencies, Underberg & Kessler's Municipal Practice Group works at bringing people together to achieve consensus on difficult issues. We defend municipalities and school districts when actions are taken against them, and in public liability claims. We also take care of the day-to-day

legal responsibilities of municipal governments, such as zoning and planning, tax assessment, and legislative drafting.

We represent towns, villages, cities, school districts and public authorities in all aspects of municipal law, including:

- Public finance/Bond counsel services
- Preparation of local legislation
- Environmental and tort law
- Land use
- Capital and public works projects
- Planning, financing and construction
- Creation of improvement districts
- Tax certiorari matters
- Contract preparation
- Zoning and planning
- Public liability claims
- Tax assessment
- Real estate development
- Municipal malpractice
- Collective bargaining
- Civil Service proceedings
- Economic development



Municipal Relevant Experience

- Acted as Bond Counsel for a Public Authority in connection with a \$63 million Bond Issuance consisting of new construction funding in the amount of \$8 million, for water utility improvements and refunding \$55 million of outstanding bonds which were issued from 1995 through 2002. The total Issue was sold as Variable Rate Debt utilizing Auction Rate Securities and the transaction utilized a Qualified Hedge in the form of an Interest Rate Swap Agreement to hedge a synthetic fixed rate against fluctuations in the variable rate interest costs.
- Served as Bond Counsel for a number of different municipalities in connection with financings with the New York State Environmental Facilities Corporation. Such transactions consisted of bond sales and notes sales under the New York State Clean Water Revolving Fund for sanitary sewer facilities and under the New York State Drinking Water Revolving Fund for water facilities.
- Acted as Issuer's Counsel for various County Industrial Development Agencies in connection with the sale of Civic Facility Industrial Revenue Bonds for the construction of additions to and renovations of various hospitals throughout New York State.
- Acted as Underwriter's Counsel to major Wall Street Investment Banks in transactions involving short term tax free municipal securities such as Revenue Anticipation Notes (RANS) including a sale of RANS in the amount of \$125 million to assist a large municipality in funding short term budget deficits.
- Assisted communities in the formation and organization of Improvement Districts such as water, sewer and drainage districts including the financing of related infrastructure through the issuance of Bonds, Bond Anticipation Notes, and various Federal and State funding programs.
- Representing numerous municipalities in connection with large scale manufacturing/industrial projects. Engagements have involved all aspects of permitting including planning, zoning, infrastructure development, related Article 78 litigation and appeals, as well as the negotiation of tax and economic incentives.
- Acted as Counsel on behalf of Industrial Development Agencies in the acquisition, financing, development and sale of Agency owned industrial parks as well as the implementation of various New York State economic development programs such as the New York State Governor's Office of Small Cities Grant program, the New York State Department of Transportation Industrial Access Program and Multi Modal Program and various programs in conjunction with the Empire State Development Corporation.

Municipal Relevant Experience (Cont.)

- Assisting many municipalities in the development of major capital projects such as town/village offices, public safety facilities, highways, water treatment plants and utility systems. Engagements have involved such things as collaborating with project engineers in the design phase, the acquisition of necessary lands either through negotiation or eminent domain proceedings, the management and administration of construction contracts and the financing of such improvements through bond sales.
- Representation of municipalities in negotiation and contract preparation for water and sewer extension projects and use agreements involving multiple local governments and Industrial Development Agencies.
- Successfully represented two Counties in transactions to privatize county owned landfills. Engagements involved significant contractual negotiations, SEQR proceedings, legislative hearings, defense of Article 78 proceedings and related appeals. Transactions resulted in Counties acquiring millions of dollars of new revenues sources.
- Drafted local laws for numerous communities covering such topics as the regulation of cell towers, wind turbines, solid waste, sign regulations and general zoning regulations.
- Formation of Local Development Companies to assist municipalities and public agencies in economic development.
- Representation of local governments in Brownfield investigations, BOA projects, regulatory enforcement and redevelopment matters.
- Representation of municipalities in construction litigation related to capital improvements involving claims for extra work, delays, unforeseen site conditions and breach of contract.
- Litigated numerous Article 75 proceedings concerning employee terminations and other disciplinary actions, including issuance of charges, hearing, post-hearing briefs, and appeal to State court, as well as grievances involving employee discipline and other collective bargaining agreement issues.
- Represented many municipal entities in litigation in both State and Federal Court, as well as administrative agencies (EEOC, Division of Human Rights, PERB), regarding employment discrimination claims, labor law issues, reasonable accommodation issues, and constitutional claims (such as First Amendment speech claims, First Amendment political affiliation claims, and due process claims).
- Representing municipalities in negotiation of collective bargaining agreements with labor unions representing municipal employees.
- Successfully defended many different municipalities in a variety of litigation matters ranging from Article 78 proceedings challenging zoning decisions and other board actions, construction claims, personal injury claims and contract claims.

Municipal Relevant Experience (Cont.)

- Assisting Town and Village Planning Boards and Zoning Boards of Appeal in large scale development projects including residential subdivisions, multifamily developments and commercial development. Engagements include assistance in site plan and subdivision approvals, rezoning applications, variance applications, and special use permit applications, SEQR compliance as well defense of such actions in Article 78 proceedings.

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Banking Practice Group

When navigating today's financial waters, you need a good compass.



In the old days, navigators used a sextant to sight the horizon. But what do you do when the horizon shifts on a daily basis? That's the dilemma financial and banking institutions face in today's market. Mergers. Regulatory compliance. Delinquent borrowers. Waffling on Wall St. The global economy. The list is endless. So how do banks and financial entities keep it all straight? They hire Underberg & Kessler. We are immersed in the latest financial law, and have a practical knowledge of financial institutions and how they work. We help financial clients chart a position to stave off loss and

risk even as sudden storms arise.

For these reasons, a number of banks and financial institutions have selected Underberg & Kessler as their law firm. They come to us for assistance in areas such as:

- Capital structure
- Regulatory compliance
- Holding company formation and operation
- Investment companies
- Environmental issues
- Capital financing
- Commercial and mortgage lending
- Litigation
- Trust and investment services, and more

Our financial clients range from small independent banks to multi-billion dollar bank holding companies. We assist them in everything from day-to-day legal representation to large, complicated transactions, all with the goal of staying the course of fiscal stability.



Banking Relevant Experience

- All phases of bank mergers and acquisitions, including negotiation, document preparation and filing.
- Closing of loan transactions of many types, both secured and unsecured, ranging from complex syndicated loans to small term loans and mortgages, including most advantageous structuring of loans with industrial development agencies and certified development corporations involvement, SBA guaranties, SBA 504 transactions, NYSERDA, Linked Deposit and other incentive programs.
- Formation of bank holding companies, including issues regarding capital structure, takeover defenses and financing, as well as, preparation of bank holding company applications, proxy material and other securities related material.
- Representation of numerous banks and mortgage bankers in high volume residential mortgage loans while meeting and exceeding the reporting and timing requirements of the lenders.
- Representation of banks and trustees, as fiduciaries or co-fiduciaries, in complicated trust administrative matters, including defense of clients in Surrogate Court proceedings and appeals.
- Consultation and negotiation with federal and New York State bank examiners on a variety of regulatory issues.
- Ongoing legal advice to an investment advisory firm, including compliance with the Investment Advisors Act of 1940 with respect to disclosure, SEC filings and compliance with blue sky requirements of several states.
- Establishment of collective investment funds (such as common trust funds and pooled funds), advice regarding fund mergers and divisions and ongoing legal compliance.
- Advice to banks and bank holding companies regarding permissible securities activities of banks, such as the establishment of proprietary mutual funds and their compliance with applicable regulations.
- Advice to banking clients relating to many legal disciplines other than banking law, including environmental, litigation, securities, tax and real estate matters.
- Representation of banks in collection matters ranging from large complicated bankruptcy proceedings to routine foreclosures.