



ENGINEERING
DEPARTMENT

TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN

TOWN COUNCIL
EUGENE P. HART
JOHN M. RUSINSKI

October 10, 2013

Honorable Town Board
Town of West Seneca

Re: Economic and Fiscal Analysis Agreement

Honorable Board Members,

This request is to allow for the Supervisor to execute an agreement with Camoin Associates to conduct an economic and fiscal impact analysis for the Seneca Mall site.

Very truly yours,

Richard B. Henry III

Richard B. Henry III, P.E.
Town Engineer

RBH for

cc: Files: TB.
Project



AGREEMENT

This services agreement ("Agreement") is made this first day of October 2013 by and between the Town of West Seneca, with a mailing address of 1250 Union Road, West Seneca, NY 14224 (hereinafter "Client"), and Camoin Associates, Inc. (dba Camoin Associates) with a mailing address of 120 West Avenue, Suite #303, Saratoga Springs, New York 12866 (hereinafter "Consultant").

WITNESSETH:

WHEREAS, the Client has solicited the services of an economic development consultant; and

WHEREAS, the Consultant has offered to provide such assistance to the Client as requested,

NOW, THEREFORE, the parties hereby agree as follows:

SCOPE OF SERVICES

1. The Consultant will provide the services listed in Attachment A ("Scope of Services"), incorporated herein by reference. The Client agrees to cooperate and provide assistance to the Consultant as described in Attachment A.

REMUNERATION

2. As compensation for the performance of the services described in Attachment A, Client will pay Consultant in the amount and manner set forth in Attachment B ("Compensation and Payment"), incorporated herein by reference.
3. The Consultant shall submit invoices to the Client on a monthly basis. The invoices will include a reasonable description of the services provided and the value ascribed to each.
4. Notwithstanding any other provision of this Agreement, the Consultant shall not perform services outside the scope set forth in Attachment A, unless such services have been authorized by written amendment to this Agreement signed by both parties setting forth the services to be rendered and the associated fee.
5. Payment is due on all invoices within 30 days of the date of the invoice. Interest will accrue on all overdue invoices at a rate of 18% per annum commencing on the date payment becomes due. Should it be necessary for the Consultant to collect on any overdue invoices, the Client will be responsible for all costs of collection including reasonable attorney's fees.
6. Omitted

MISCELLANEOUS

7. The Consultant agrees that none of its officers or employees will hold themselves out as, or claim to be, an officer or employee of the Client or its agents, and that neither the Consultant, nor any of its officers or employees will by reason therefore, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Client.
8. The sole liability of either party to the other hereunder (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any and all claims in any manner related to this Agreement will be the payment of direct damages, not to exceed



(in the aggregate) the fees received by Consultant with respect to the services included in the Agreement as Attachment A. Except for the specific remedies expressly identified as such in this Agreement, Client's exclusive remedy for any claim arising out of this Agreement or any applicable work order will be for the Consultant, upon receipt of written notice, to use commercially reasonable efforts to cure the breach at its expense, or failing that, to return the fees paid to Consultant for the services related to the breach.

9. In no event will either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including, but not limited to, business interruption, lost business, lost profits or lost savings) even if it has been advised of their possible existence. Any action by either party must be brought within two (2) years after the cause of action arose. The parties agree that performance of all indemnification obligations included in this Agreement shall be considered direct damages regardless of the type of underlying claim or damages for which indemnification is being provided.
10. The allocations of liability under paragraphs 8 and 9 are the agreed and bargained-for understanding of the parties, and compensation for the services included in this Agreement as Attachment A reflects these allocations.
11. The Consultant acknowledges and agrees that neither Consultant nor its agents, officers, or employees shall be covered by any Worker's Compensation Insurance policy or Disability Insurance policy maintained by the Client, and that the Consultant shall be solely responsible for maintaining such coverage to the extent required by law.
12. This Agreement may not be amended or otherwise modified except upon the written agreement of the parties.
13. No remedies or rights conferred upon Consultant by this Agreement are intended to be exclusive of any remedy or right provided by law or equity, but each shall be cumulative and shall be in addition to every other remedy or right given herein or now or hereafter existing at law or in equity.
14. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this contract shall be construed in all respects as if any invalid or unenforceable provision were omitted.
15. This Agreement embodies the entire agreement and understanding between the parties pertaining to the subject matter of this Agreement, and supersedes all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of the parties, pertaining to that subject matter.
16. This Agreement shall be interpreted, governed and construed under the laws of the State of New York as if it were executed and performed wholly within the State of New York, without giving effect to any provision thereof that permits or requires the application of the laws of any other jurisdiction. Any litigation based hereon or arising out of or in connection with this Agreement shall be brought and maintained exclusively in the courts of the State of New York with a venue in Saratoga County, New York and the Parties hereby irrevocably waive all jurisdictional defenses and irrevocably agree to submit to the jurisdiction of such courts for the purpose of any such litigation and irrevocably agree to be bound by any judgment rendered thereby in connection with such litigation.
17. This Agreement may be signed in counterparts and/or delivered via facsimile or in PDF format via e-mail, each of which shall be deemed original and binding signatures and all of which shall constitute one and the same Agreement.



18. Each of the persons signing below warrants and represents that they are duly authorized to sign this Agreement on behalf of the party for which he or she is signing.

TERM OF AGREEMENT

19. This Agreement shall become effective as of the date first set forth above.

20. This Agreement may be terminated by either party at any time without cause to be effected by prior written notification to the non-terminating party at the address set forth above.

21. Upon termination, the Client shall reimburse the Consultant for all unpaid time and expenses as prescribed in the REMUNERATION section of this Agreement.

AGREED TO:

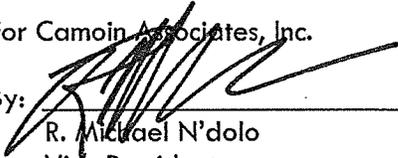
For Town of West Seneca

By: _____

Name: _____

Title: _____

For Camoin Associates, Inc.

By:  _____

R. Michael N'dolo
Vice President

ATTACHMENT A

Scope of Services

PROJECT UNDERSTANDING

The Client has been approached by a developer (the "Developer") who is interested in pursuing the Seneca Place project (the "Project") consisting of 3 million square feet of mixed uses including a community center, retail, residential, office two hotels, parking and ancillary uses. The Project is slated to occur on a 53.4 acre site (the "Site") upon which is currently situated a Tops supermarket, a Kmart and a branch office of First Niagara Bank (collectively the "Current Occupants").

The Developer has requested financial assistance from the Client (the "Assistance") of a substantial nature. The Developer has stated that the Assistance is essential for the Project to proceed. The Client desires an economic and fiscal impact study to be completed on the Project for a number of purposes:

- To understand how the Project would lead to new jobs, wages and sales within the Town,
- To understand how the Project would impact the fiscal condition of the Town, namely the costs of service delivery demands that the Project would impose on the Town, school district and miscellaneous districts, minus the various tax, fee and other revenues the Project may produce, and
- If that fiscal calculation is positive (i.e. if the new revenues exceed the new costs), the extent to which a positive net fiscal impact of the Project would justify, on financial grounds, the Town providing the Assistance to induce the Project.

SCOPE OF SERVICES

For the following, use of terms and pronouns "we", "us", "our" and "Consultant" will all refer to Camoin Associates; "you" and "your" will refer to the Client.

We will conduct an economic and fiscal impact analysis of the Project in conformity with standard methodologies in the field of economic analysis. To do so, the Consultant will collect data from multiple sources such as population, total number of Town and School District households, sales tax distribution formula(s), projected employment and taxable sales at the Project, and the property assessment methodology and tax calculations used by the Town and School District. This includes proprietary data sets published by EMSI (Economic Modeling Specialists) and ESRI (Environmental Systems Research Institute) specific to the regional economy, as well as other general data on industry-specific wages and employment per square foot. The Consultant will interview appropriate officials and staff members of the Town, School District, and Misc. Districts for any qualitative information required. Interviews are anticipated to include the DPW/Highway superintendent, relevant public safety officials (fire, police, EMS), the Town Supervisor and other department heads, and the School District's finance office.



To determine property tax revenues to be received from the Project, we will first rely on figures provided to us by the Client and/or Developer for the anticipated change in assessed valuation, including any anticipated tax abatements/exemptions, if applicable. The Consultant will then work with the Town's or County's property tax assessing unit to determine a reasonable projection of the phase-in of taxable value of the Project once construction is complete and occupancy has been achieved, taking into consideration any proposed property tax abatement request, if applicable. The Consultant will use current tax rates for the Town, School District, and Misc. Districts to calculate new property tax revenues for each jurisdiction and inflate such rates into the future as is reasonable.

The Consultant will estimate variable revenues (including the potential effects on the distribution of sales tax collected by the County, if applicable) and expenses associated with the Project. The Client, or the Client's representatives, will provide the Consultant with appropriate technical information to allow the Consultant to make said estimates, particularly with respect to engineering issues such as water, sewer and transportation infrastructure capacity and improvement costs, if applicable. Using this data, the Consultant will calculate the effect of the operations of the Project on the fiscal health of the Town, School District, and Misc. Districts. The Consultant will study each jurisdiction's particular financial situation and sources of revenues and expenses to gauge total changes in revenues and expenditures. We will use standard metrics (new residents, new school aged children, new highway lane miles, etc. as appropriate and applicable) to determine new costs to the municipalities and districts in question, using a "marginal costing" technique. The Consultant will generate an annual net fiscal impact (revenues less expenditures) for each jurisdiction.

The Consultant will also enumerate the economic impacts of the Project, to be expressed in terms of total jobs, wages and output that the Project will cause to occur in the area. The Consultant will use the EMSI modeling tool to take the "Direct Effects" – the jobs, wages and output of the economic activity of the tenants of the Project (the "Tenants") – and calculate the Indirect Effects and Induced Effects, described as follows. Indirect Effects are the additional jobs, wages and output caused by the Tenants making purchases in the local economy (this includes both commercial Tenants and household spending by residential Tenants). The Induced Effects are the additional jobs, wages and output caused by the commercial Tenants' employees spending their wages in the local economy. The total economic impacts are the sum of the Direct Effects, Indirect Effects and Induced Effects on the County.

The Consultant will require certain essential data from the Client. The Client must provide the Consultant with:

- A general description of the Project (e.g. square footage, building type, site transportation intensity, use type, etc.).
- Electronic copies of studies, plans and reports already submitted by the Developer.
- An estimated cost of construction and anticipated construction timeline, including anticipated timeline of occupancy of the Property by the Tenants.
- An estimate of anticipated consumption of utility services (e.g. water and wastewater usage) of the Project and any known capacity issues for those utilities.
- Information about the Tenants' projected hiring, wages and benefits, as well as the Tenant's anticipated purchases in the local economy, if known.



- Known or probable local impacts of the Project, such as traffic, congestion, safety, air quality or other public impact that the Consultant should be aware of.
- The Client estimate for the anticipated change in assessed valuation caused by the Project, including any anticipated tax abatements/exemptions.

The Consultant will provide a full report to the Client that details the analysis conducted, including an executive summary of the analysis of approximately three pages.

LIMITATIONS

This analysis will specifically not include a calculation of the changes in the State Aid to Schools formula for the school district, but will instead rely on an assumption that the school district will continue to get state aid roughly in proportion to its existing per-pupil state aid allocation.

As noted above, we will rely on the Client's estimate of changes to assessed value. We will make the assumption that all elements of the Project will be filled to capacity as per the Developer's proposed timeline and we will not be independently assessing the real estate market for likely absorption rates/schedules of the space. Our final report will include impacts of the (a) construction phase and (b) long-run average annual impacts of the Project.

The Consultant will conduct an objective analysis of the Project using standard assumptions and methodologies in the field of economic and fiscal impact analysis. As such, the Consultant cannot and does not guarantee a particular result to the Client.

This scope of services explicitly does not include any site visits/presentations nor does it include any work to respond to questions/comments received during the public review of the Project.

SCHEDULE

The Consultant will produce a technical memo outlining the assumptions to be used in the analysis within one month of contract execution (provided the Client is able to furnish the above information). The Consultant will produce a draft final report within one month following the technical memo.



ATTACHMENT B

Compensation and Payment

As remuneration for the scope of services attached as Attachment A, the Client shall pay the Consultant a fixed fee of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), such fee to include all labor, expenses, travel time, and mileage. The Fee for Services provided under this Agreement will be allocated and charged monthly on a progress-to-completion basis.

For services not included in the scope of services attached as Attachment A, and requested by the Client in writing, the Client shall pay the Consultant on a time-and-expenses basis, charged as follows:

a. Hourly labor rates

Principal	\$160.00 per hour
Senior Professional	\$105.00 per hour
Professional	\$85.00 per hour
Rate in travel status	\$65.00 per hour (all personnel)

- b. Travel by private automobile will be charged at the maximum federal reimbursement rate per mile.
- c. All other expenses (e.g. purchase of proprietary data, travel related expenses, etc.) will be charged at cost.

