



Town of West Seneca

TINA M. HAWTHORNE
TOWN ATTORNEY
thawthorne@twyny.org

MEMO

To: The Honorable Town Board

From: Tina M. Hawthorne, Town Attorney

Date: December 21, 2020

Subject: West Seneca Chamber of Commerce, Inc.
Contract

Please see attached proposed contract between the Town of West Seneca and West Seneca Chamber of Commerce, Inc., and a resolution authorizing the Supervisor to execute the contract.

RESOLUTION
WEST SENECA CHAMBER OF COMMERCE, INC.
2021

WHEREAS, the Town of West Seneca (hereinafter referred to as "Town") recognizes that it requires professional services to plan, organize, coordinate and implement a variety of economic development related operations; and

WHEREAS, the West Seneca Chamber of Commerce's (hereinafter referred to as "Chamber") Mission is consistent with the Town's vision to promote economic development in the Town; and

WHEREAS, the Town desires to enhance continued efforts to expand its tax base for the benefit of the taxpayers by enlisting the services of a community economic development coordinator; and

WHEREAS, the Chamber possesses a variety of professional and technical skills to provide support to the Town by providing services to plan, organize, coordinate, and implement a variety of economic development related operations.

NOW THEREFORE, be it resolved that the Town Board of the Town of West Seneca authorizes the Supervisor to execute the Professional Services Agreement with the West Seneca Chamber of Commerce, Inc., for certain professional services related to planning, organizing, coordinating, and implementing a variety of economic development related operations for the 2021 calendar year.

**PROFESSIONAL SERVICES AGREEMENT
WEST SENECA CHAMBER OF COMMERCE, INC.**

THIS AGREEMENT, entered into this ___ day of _____, 2021, by and between the Town of West Seneca, New York (the "Town"), a municipal corporation organized and existing under the laws of the State of New York, with offices located at 1250 Union Road, West Seneca, New York, and the West Seneca Chamber of Commerce, Inc., (the "Chamber") a not-for-profit corporation organized and existing under the laws of the New York, with offices located at 1300 Union Road, West Seneca, New York.

WHEREAS, the Town recognizes that it requires professional services to plan, organize, coordinate and implement a variety of economic development related operations; and

WHEREAS, the Chamber's Mission is consistent with the Town's vision to promote economic development in the Town; and

WHEREAS, the Town desires to enhance continued efforts to expand its tax base for the benefit of the taxpayers by enlisting the services of a community economic development coordinator; and

WHEREAS, the Chamber possesses a variety of professional and technical skills to provide support to the Town by providing services to plan, organize, coordinate, and implement a variety of economic development related operations.

NOW THEREFORE, the Town and the Chamber, for and in consideration of the mutual promises and undertakings herein set forth, agree as follows:

1. SERVICES TO BE RENDERED; FIXED COST CONTRACT

1.1 Services of the Chamber: The Chamber agrees to perform that work and those services identified and more particularly described as follows:

- a.) Maintain regular office hours;
- b.) Attend scheduled manager meetings with the Erie County Industrial Development Agency (the "ECIDA");
- c.) Actively solicit businesses to locate within the Town's boundaries;
- d.) Assist West Seneca businesses interested in relocation or expansion within the Town;
- e.) Act as a liaison between the ECIDA and West Seneca businesses;
- f.) Inform and educate West Seneca businesses about the ECIDA programs and other economic development programs;
- g.) Participate in community development activities;
- h.) Work in conjunction with the Town Code Enforcement Office and the Town Attorney to assist businesses with understanding the various Town approval processes.

- 1.2 Fixed Cost Contract: This is a fixed cost contract. The cost shall not exceed, unless approved by an amendment, **FIFTEEN THOUSAND DOLLARS (\$15,000.00) annually.**
- 1.3 Quarterly Reports: The Chamber shall provide the Town with a quarterly report of its services on or before January 1st, April 1st, July 1st, and October 1st. Further, at the request of the Town, the Chamber shall meet with its representatives to review ongoing initiatives and progress.

2. COMMENCEMENT; TERM

- 2.1 Commencement Date: Performance of Services shall begin on January 1, 2021.
- 2.2 Term: The Term of this Agreement shall be from January 1, 2021 through December 31, 2021.

3. PERSONNEL

- 3.1 Personnel: The Chamber represents that it has, or will secure at its own expense, all professionally qualified personnel required to perform the services outlined in this Agreement.
- 3.2 Chamber's Status as Independent Contractor: The Chamber and its personnel shall not be employees of the Town for any purpose. The Chamber shall have sole responsibility to employ, supervise and pay such employees, professionals, subcontractors, and sub-consultants as are necessary for the efficient performance of this Agreement. Under no circumstances shall the Town be responsible for any employee, professional, principal, subcontractor, or sub-consultant of the Chamber for the payment of wages, fees, taxes, withholding, workers' compensation, unemployment insurance, or any other form of remuneration that would signify an employer/employee relationship between the Town and the Chamber or any employee, professional, principal, subcontractor or sub-consultant of the Chamber.

4. TERMINATION FOR CAUSE

- 4.1 Events of Default: Any one or more of the following acts or omissions by the Chamber shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):
 - a. Failure to perform or complete any of the Services as scheduled or as required by this Agreement;
 - b. Failure to maintain the records required hereunder or to permit access thereto;

- c. 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;

4.2 Termination:

- a. Upon the occurrence of any Event of Default, Town shall thereupon have the right to terminate this Agreement by giving written notice to the Chamber of such termination and specifying the effective date of termination, which shall be on at least fourteen (14) days' notice.
- b. The Town further reserves the right, upon thirty (30) days' written notice, to terminate this Agreement for reason other than upon the occurrence of any Event of Default after discussion and attempt to resolve the underlying basis for the termination of this Agreement.
- c. In such event, the Chamber shall refund, if applicable, the Town with a pro-rata share of the fixed cost paid pursuant to the terms of this Agreement as of the date of the written notice to terminate.

5. RECORDS AND AUDITS

The Chamber 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. The Chamber shall preserve all such records for three years after the expiration of this Agreement.

6. AMENDMENTS

The Town may request changes in the services to be performed hereunder by the Chamber. Such changes shall be mutually agreed upon by and between the Town and the Chamber. Any mutually agreed upon changes shall be incorporated in written amendments to this Agreement.

7. ASSIGNABILITY

The Chamber 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.

8. WAIVER OF BREACH

No waiver by the Town of its right to enforce any provisions hereof after any default on the part of the Chamber 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.

9. PAYMENT

Payment under this Agreement shall be made to the Chamber by the Town in four (4) equal installments of \$3,750.00. The first payment shall be due upon execution of the Agreement, and the remaining payments shall be made upon receipt of the second, third and fourth quarterly reports as set forth above.

10. INDEMNIFICATION

The Chamber will defend, indemnify, hold 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 Chamber, its officers, agents, subconsultants, servants, or employees: provided however, that the Chamber 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 Client, its offices, agents, servants and employees, or third parties.

11. 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.

12. ENTIRETY

This Agreement constitutes the entire Agreement between the parties and supersedes any and all prior proposals, negotiations and agreements, whether written or oral. Any amendment to this Agreement shall be void unless it is in writing and subscribed by the party against whom the amendment is sought to be enforced.

13. VENUE

This Agreement shall be governed by and under the laws of the State of New York. In the event that a dispute arises between the parties, the venue for the resolution of such a dispute shall be the County of Erie, State of New York.

TOWN OF WEST SENECA

By: _____

Title: Supervisor

WEST SENECA CHAMBER
OF COMMERCE, INC.

By: _____

Title: _____