

22-C TABLED ITEMS

1. (continued)

Councilman Hart noted that payment should be made to Clark Patterson Lee rather than Richard Henry. He further requested an analysis be conducted breaking down the hours since the town does not know what the actual cost will be and questioned if Clarke Patterson Lee will bill the town for any hours over the allotted \$5,000 stipend.

Town Engineer Richard Henry responded he is currently working on an analysis and the town will not be billed beyond the \$5,000 stipend without prior Town Board approval.

Motion by Supervisor Meegan, seconded by Councilman Rusinski, to appoint Richard Henry III as Stormwater Management Officer for the Town of West Seneca at an annual compensation of \$5000 payable to Clark Patterson Lee, noting the amount will be prorated for the remainder of the year.

Ayes: All

Noes: None

Motion Carried

22-D COMMUNICATIONS

1. Supervisor Meegan re Annual Crop Walk

Motion by Supervisor Meegan, seconded by Councilman Hart, to grant the request of the West Seneca Community of Churches to hold their annual Crop Walk on Sunday, October 27, 2013, 2:00 – 4:00 P.M. on designated streets in the Town of West Seneca.

Ayes: All

Noes: None

Motion Carried

2. Councilman Rusinski re Title change for Matthew Melski

Motion by Supervisor Meegan, seconded by Councilman Rusinski, to terminate Matthew Melski as part-time Recreation Supervisor and appoint Matthew Melski as part-time Youth Service Program Coordinator at a rate of \$18/HR, effective October 17, 2013 and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel.

On the question, Councilman Hart stated he was aware the position was advertised and that several people applied, but he questioned why no interviews were conducted and why there was no process in place to select an individual for this position. People who applied for the job never had a chance and others who were interested were discouraged from applying.

22-D COMMUNICATIONS

2. (continued)

Supervisor Meegan strongly disagreed and stated that Matt Wach was asked to put a calendar together and was afforded the opportunity to take on this position. A total of four people that work for the town applied for the position and all resumes received were reviewed. Mr. Melski currently works for the town and within the school system and letters of recommendation were received on his behalf.

Councilman Rusinski commented that all applicants are not necessarily interviewed when applying for a position.

Ayes: (2) Councilman Rusinski, Supervisor Meegan

Noes: (1) Councilman Hart

Motion Carried

3. Town Attorney re Time Warner Cable Franchise agreement

Motion by Supervisor Meegan, seconded by Councilman Rusinski, to execute the attached settlement agreement with Time Warner Cable for unpaid franchise fees in the amount of \$67,821 discovered during an audit.

On the question, Councilman Rusinski questioned how the settlement amount was reached.

Town Attorney Shawn Martin stated the calculations of all recipients of cable within the town were taken into consideration and he recommended acceptance of the settlement agreement.

Councilman Hart questioned if the actual amount due is greater than the settlement offer.

Mr. Martin responded that \$67,821 is the actual amount due, but does not include interest.

Ayes: All

Noes: None

Motion Carried
APPENDICES

4. Town Engineer re Erie County Community Development Block Grant Requests

Motion by Supervisor Meegan, seconded by Councilman Hart, to adopt the attached resolution and authorize the Supervisor to sign, submit and execute a contract for projects to be considered for funding and approval by the Erie County Community Development Block Grant Program during the 2014-15 grant cycle.

On the question, Councilman Hart questioned the scope of the town's first priority project at the Senior Citizens Center and if it included the bathrooms becoming fully compliant to ADA standards.

22-D COMMUNICATIONS

4. (continued)

Town Engineer Richard Henry responded that bathrooms will be included but they do not know the full scope of the project. The resolution has to be approved today to secure funding and they are continuing to work on the dollar amount.

Councilman Hart questioned the town's second priority project.

Mr. Henry responded after meeting with Highway Superintendent Matthew English he is recommending repaving North Avenue and Inter Drive, noting these streets fall within the CDBG eligible area.

Ayes: All

Noes: None

Motion Carried

5. Town Engineer re Economic and Fiscal Analysis Agreement

Motion by Supervisor Meegan, seconded by Councilman Rusinski, to authorize the Supervisor to execute the attached agreement with Camoin Associates to conduct an economic and fiscal impact analysis for the Seneca Mall site.

On the question, Councilman Rusinski stated he agrees with the study but expressed concern about the verbage. He referred to a previously passed resolution which states the dollar amount is not to exceed \$30,000, yet an attachment in the agreement shows a fixed fee of \$25,000.

Town Engineer Richard Henry responded this was his mistake. The fixed fee language will be removed and the agreement will be amended to read "not to exceed."

Councilman Hart stated he has numerous concerns and commented if this project were to go forward it will be considered huge and impact all of Western New York, yet they do not have a lot of information about the developer. He did not feel they had enough information to go forward at this time and questioned spending \$25,000 when there are so many unanswered questions such as infrastructure and sewage.

Mr. Henry responded he has spoken with Camoin and they are aware they have to have more information from the developer in order to go forward. Upon approval, Camoin will present the developer with a list of questions. Mr. Henry stated the purpose of the study is to assess the fiscal impacts to get the answers so they can go forward.

Councilman Hart suggested the developer provide the town with \$25,000 and the town will spend it on their behalf and do the study.

22-D COMMUNICATIONS

5. (continued)

Town Attorney Shawn Martin responded the developer should not pay for a study that the town is requesting.

Supervisor Meegan stated they will be finding out what the potential is for the town's investment and whether or not the investment will have a return for taxpayers. She commented that the town has an opportunity to do something and they cannot continue to let the site sit there as it has for so many years. The developer is asking for assistance to pursue a Seneca Place project of 3 million square feet of mixed use buildings, community center, retail, residential, office, hotels, parking, etc. Supervisor Meegan stated this project will not go forward at risk to the Town of West Seneca taxpayers.

Councilman Rusinski stated that West Seneca is screaming for economic development and the town has made the mistake of being too idle in the past. The analysis will provide insight as to whether this type of development has economic potential for West Seneca. He did not feel any board member would put taxpayers at risk.

Councilman Hart stated there doesn't seem to be any involvement by the IDA's or the development corporation of New York State and he feels there should be more substance with regard to the developer's marketing and business plan. Councilman Hart questioned how soon information will be provided to the board members and if the recommendations and numbers will be made public at that time.

Mr. Henry responded they have a total of 60 days; 30 days to gather the information and another 30 days to compile the information and report back to the town.

Mr. Martin stated if the report has an exception with regard to acquiring property or contract negotiations involving costs, information will not be made public. He will have to see the report before he can make a determination as to whether or not the information provided will be made public at that time.

Councilman Hart stated he is ready to discuss the entire project with the public so they are fully aware of what the proposal is. He would like to see the Seneca Mall property developed and is willing to look for his own developer and take the property by eminent domain to acquire a reasonable project.

Ayes: All

Noes: None

Motion Carried
APPENDICES

22-D COMMUNICATIONS

6. Town Engineer re Purchase requiring Town Board approval
- Motion by Supervisor Meegan, seconded by Councilman Rusinski, to authorize payment of \$5,300 to SJB Services, Inc. to complete a subsurface investigation and geotechnical report to determine soil conditions for installation of a new 36" overflow sewer between the siphon under Cazenovia Creek and Plant 5.

Ayes: All Noes: None Motion Carried

7. Highway Supt. re Bid date to replace fuel pump & fuel system
- Motion by Supervisor Meegan, seconded by Councilman Hart, to set a date of November 6, 2013 at 10:00 AM for receipt of bids to replace the fuel pump and fuel system at the Highway Department.

On the question, Councilman Hart questioned if the engineers will be involved in this and Town Engineer Richard Henry responded that his department is not involved with this project.

Ayes: All Noes: None Motion Carried

8. Highway Supt. re Bid date to replace roof at Buildings & Grounds
- Motion by Supervisor Meegan, seconded by Councilman Hart, to set a date of November 6, 2013 at 10:10 AM for receipt of bids to replace the roof at the Buildings & Grounds Department located at 45 South Avenue.

Ayes: All Noes: None Motion Carried

9. Town Clerk re Budgetary amendment request
- Motion by Supervisor Meegan, seconded by Councilman Hart, to increase revenue account #01.0001.3060 (Records Management Grant) \$47,906 and increase expense accounts #01.1410.0442.3333 (Records Management) \$41,100; #01.1410.0139.3333 (PT Clerical) \$1,806; & #01.1410.0200.3333 (Equipment) \$5,000; noting that the source of funding for this request is grant money awarded from The State Education Dept.

On the question, Councilman Hart questioned what the \$41,100 will be used for.

Town Clerk Jacqueline Felser responded the money will be used for digital conversion of building/property records with the work performed by Biel's Information Technology.

Ayes: All Noes: None Motion Carried

22-D COMMUNICATIONS

10. Town Clerk re Purchase requiring Town Board approval

Motion by Supervisor Meegan, seconded by Councilman Rusinski, to authorize payment of \$41,100 to Biel's Information Technology Services for digital conversion of building/property history data file records in the Code Enforcement Office as specified in the 2013-2014 Local Records Management Improvement Fund Grant awarded to the Town of West Seneca, Line Item #01.1410.0442.333.

Ayes: All Noes: None Motion Carried

11. Code Enforcement Officer re Rezoning request for Clinton St. from R-65 and R-100A to R-50

Motion by Supervisor Meegan, seconded by Councilman Hart, to refer the rezoning request for Clinton Street to the Planning Board for recommendation.

Ayes: All Noes: None Motion Carried

12. Supervisor Meegan re Solicitor's permit for Clinton Brown

Town Attorney Shawn Martin stated Clinton Brown has had his solicitor's permit previously revoked on two occasions and is seeking reinstatement. A number of complaints were lodged against Mr. Brown by West Seneca residents, one of which occurred after his permit was revoked. Mr. Martin stated the determination of the Town Clerk refusing to award Mr. Clinton a new permit is justified, appropriate and proper in order to provide protection to the residents of West Seneca under the town's ordinance governing solicitors and peddlers.

Mr. Brown stated his permit was revoked because he was the manager responsible for problematic individuals who no longer work for the company. He currently oversees six employees who are issued individual permits and anytime an issue arises he personally speaks with residents/police officers to rectify the situation. Mr. Brown feels his permit was revoked because of problems created by individuals that are no longer employed by the company.

Mr. Martin submitted records outlining complaints maintained by the Police Department and Town Clerk to the Town Board for consideration.

Mr. Brown stated his company is not selling anything. Employees go door-to-door offering residents price protection on their gas and electric rates and it is a voluntary agreement between the resident and agent.

Town Clerk Jacqueline Felser added her office along with the Police Department has received several complaints and some individuals who do not have permits are soliciting in groups of two or three which is intimidating to the residents.

22-D COMMUNICATIONS

12. (continued)

Mr. Brown stated employees are trained on the job and will at times be in small groups when soliciting. Individual permits are \$200/EA and it is not cost efficient to seek a permit for all applicants since it is unknown whether or not they will stay with the company.

Mr. Martin responded it may not be cost efficient to permit all individuals who apply; however, it is in compliance with the rules of West Seneca. He advised Mr. Brown that a determination for re-issuance of his solicitor's permit will be provided to him in writing within thirty days.

Ayes: All

Noes: None

Motion Carried

22-E REPORTS

- Jacqueline A. Felser, Town Clerk's report for September 2013 received and filed.
- John A. Gullo, Code Enforcement Officer's report and plumbing report for September 2013 received and filed.

22-F APPROVAL OF WARRANT

Motion by Supervisor Meegan, seconded by Councilman Hart, to approve the vouchers submitted for audit, chargeable to the respective funds as follows:

General Fund - \$165,714.58; Highway Fund - \$102,311.84; Special Districts - \$42,033.11; Capital Fund - \$826,108.60 (voucher #'s 80477-80818); Trust & Agency Fund - \$34,180.31 (voucher #'s 18347-18363)

Ayes: All

Noes: None

Motion Carried

ISSUES OF THE PUBLIC

CAMELOT SQUARE PHASE 3

Lynn Jentsch questioned if a tree survey was done for Camelot Square Phase 3.

Code Enforcement Officer John Gullo responded that a tree survey was completed and he did not have an exact number of trees taken down but estimated approximately 110 trees will be replaced on the new lots (2 trees per lot). The developer will attempt to save as many trees as possible on the west side of the property; however, problems do arise when attempting to complete final grading on these types of projects.

ISSUES OF THE PUBLIC

CAMELOT SQUARE PHASE 3 (continued)

Councilman Rusinski suggested the homeowners talk to the developer and ask for consideration.

Mrs. Jentsch stated the deer have become a problem in her neighborhood since the property was cleared and suggested laws be put in place for areas of development.

Supervisor Meegan responded there are laws in place. The developer has an approved plan and is able to develop his property. The displacement of wildlife is a concern, but no rules were broken and the property is zoned properly to develop.

Ms. Jentsch suggested changing the codes.

Councilman Hart stated he feels the Master Plan and Town Code need to be reviewed and revised if necessary and questioned the last time codes were reviewed. He suggested the possibility of having contractors notify adjoining property owners prior to development.

Code Enforcement Officer John Gullo responded a number of codes were changed approximately ten years and commented that the process takes time.

Paula Minklei stated the public should be informed and involved when the Town Code is being reviewed and suggested possible weekly work sessions.

TREE REPLACEMENT ON RECONSTRUCTED STREETS

Karen Lucachik referred to a previous board meeting where she suggested board members consider a law requiring mandatory tree replacement on reconstructed streets similar to the code used for trees in new build areas. She questioned whether the board members had reconsidered her suggestion.

Supervisor Meegan responded that residents have the option as to whether or not they would like a new tree in reconstructed areas, but a different approach was initiated in 2012. Residents are now invited to meetings and given a calendar of events outlining the project in their neighborhood.

STATUS OF AMERICORPS PAYMENTS

Karen Lucachik questioned the status of the AmeriCorps payments.

Finance Director Patrick Clancy responded that a payment was received for October.

ISSUES OF THE PUBLIC

YES PROGRAM

Karen Lucachik questioned why the town is involved with the YES program.

Supervisor Meegan responded they are attempting to bring the program up to today's standards to see if it is viable, noting that requests for assistance have been received from the school districts.

Mrs. Lucachik did not believe the YES program is needed and stated that volunteerism is conducted directly through the West Seneca School system. She questioned the hiring of Mr. Melski as Youth Service Program Coordinator earlier in the meeting.

Supervisor Meegan responded that Mr. Melski currently works within the schools in the before and after programs and will help coordinate and inevitably conclude whether this is a viable program.

Ms. Lucachik did not believe the town should be involved and questioned why Councilman Rusinski knew about the hiring and Councilman Hart did not.

Supervisor Meegan responded that Councilman Rusinski is the liaison for the Recreation Department; however, both councilmen were aware of Mr. Melski's hiring.

Councilman Rusinski stated he had consulted with Recreation Director Craig Kroll and asked him specifically if he felt this program needed to continue.

Mr. Kroll stated he feels this program provides a great service to the town and noted that it is partially funded by the state.

Mrs. Lucachik stated the schools are already taking care of this program and the town should not be hiring someone for this position, noting other towns run their program solely through the school system. Mrs. Lucachik further commented on the hiring of Mary Josefiak for the position of Senior Recreation Therapist of Senior Services.

Supervisor Meegan responded that she and Mrs. Josefiak had both volunteered at different events involving the leukemia society and Queen of Heaven carnival, but she did not know her personally before she was hired by the town.

Senior Recreation Therapist of Senior Services Mary Josefiak stated she was made aware of a job opening from an article she had read in the West Seneca Bee and was one of twelve applicants who applied. Mrs. Josefiak stated she had 25 years experience working at the Developmental Center prior to being hired by the town and the title is competitive and was changed to conform to the title she previously held when working for the state.

ISSUES OF THE PUBLIC

YES PROGRAM (continued)

Frank Russo questioned why the town is involved with the YES program and commented on the pay rate of \$18/HR.

Supervisor Meegan responded it was necessary to fill the position in order to receive grant money and \$18/HR was the rate of pay when the program was previously overseen by Jolynn Keane.

Councilman Rusinski clarified that this is not a newly created position.

Mr. Russo questioned if this position was monitored and work hours checked when Ms. Keane was appointed last year. He commented on the simplicity of the work, stating once it is established no further work is involved. Mr. Russo further referred to other part-time employees in the Recreation Department and questioned why they are not capable of performing the work.

Supervisor Meegan stated the position is monitored.

Councilman Rusinski stated the Recreation Director position has gone from a full-time position to a part-time position and part-time employees have limited hours.

Mr. Russo questioned how many hours per week Mr. Melski will work and commented on the lack of interviews for the position.

Supervisor Meegan responded that Mr. Melski will work approximately 5 – 10 hours weekly and he was interviewed by the entire board when previously hired as part-time Recreation Supervisor.

Councilman Rusinski stated there are times applicants are over qualified and other times when individuals have already performed a job and performed it well.

Mr. Russo questioned how many hours per week Ms. Keane worked.

Mr. Kroll responded that Ms. Keane worked 19 hours per week.

Councilman Hart stated that Ms. Keane also performed other office work within the Recreation Department and attended scheduled evening events.

ISSUES OF THE PUBLIC

SENECA MALL SITE

Amy Carpenter questioned if the Seneca Mall site is a public/private venture.

Councilman Hart responded according to the developer, having the site be a public/private venture may be the only way to move forward.

Beverly Leising questioned what line item in the proposed 2014 budget the \$30,000 allotment for the Economic and Fiscal Analysis Agreement will be taken.

Supervisor Meegan responded the allotment is in the 2013 sewer budget line #03.8100.0445.

TREE POLICY

Amy Carpenter stated she is very concerned about trees being cut in town and the displacement of animals and commented it is time for the Town Board to seriously consider changes to the Town Code.

Councilman Hart questioned the language of the current code regarding trees.

Code Enforcement Officer John Gullo responded that two trees per lot are required in a new subdivision and most communities clearcut trees and then require the developer to replant because issues of grading and drainage are common in new subdivisions when areas are not clearcut. Mr. Gullo further stated a tree removal permit is required by residents who own an acre or more of land and want to remove a tree and the removed tree is required to be replaced.

Beverly Leising questioned who is responsible for keeping trees trimmed in a development, stating the trees in her neighborhood need trimming.

Code Enforcement Officer John Gullo responded the Highway Department is responsible for trimming trees in the right-of-way and Supervisor Meegan stated she will tell Highway Supt. Matthew English to check it out.

Mrs. Leising questioned if an individual can trim the trees.

Supervisor Meegan responded individuals trim trees all the time; however, she recommended residents contact the Highway Department.

Mrs. Leising suggested the Highway Department return to reconstructed streets every five years to check whether the trees need trimming.

ISSUES OF THE PUBLIC

WELCOME PACKAGES FOR NEW HOMEOWNERS

Beverly Leising questioned if the welcome letter included in the packet for new residents contains information regarding do's and don'ts in town and suggested it include information on the negatives involved with birdfeeders and feeding deer.

Councilman Rusinski responded the welcome packet contains brochures from different departments outlining the services each department provides and the brochures are modified to address issues and questions that are frequently asked. He further stated that additional information and education will be provided when the totes are distributed.

PUBLIC AWARENESS DAY OF QUIET

James Hanlonson suggested designating a public awareness day of quiet on lawn equipment in the spring and summer of 2014 and proposed that residential neighborhoods have a day of quiet one day each week. Mr. Hanlonson stated this is a quality of life issue and used to be common practice.

RAT PROBLEM

Nunzio Esposito questioned the status of the rat problem.

Supervisor Meegan responded the town is getting garbage totes to help alleviate the existing rat problem. Paperwork was recently finalized with the contractor and totes will begin to be rolled out on January 6th, a process that will take approximately 28 days to complete. Public education will also be provided on rat control, feeding the deer and the use of bird feeders.

GREENMEADOW DRIVE RECONSTRUCTION

Nunzio Esposito complimented the town on the reconstruction work that took place on Greenmeadow Drive last year.

HIRING IN TOWN

Johanna Guenther voiced her concern that the town continues to hire people even though population in West Seneca has decreased in the last 13 years. She read and referred to an article written about West Seneca from a couple years ago that commented on how the West Seneca Town Board needs to work for the people and stated that not much has changed since then.

PRESENTATION OF COMMUNICATIONS BY BOARD MEMBERS AND DEPARTMENT HEADS

2013 TAX SEASON

Town Clerk Jacqueline Felser thanked her office staff for their work during the school tax season.

GARBAGE /RECYCLING TOTES

Supervisor Meegan announced garbage and recycling totes will begin to be distributed on January 6th. The garbage tote (95 gallon) and lid will be blue in color and the recycling tote (65 gallon) will be blue in color with a green lid.

BICYCLE PATH ON UNION ROAD

Supervisor Meegan stated that New York State will be stenciling a bicycle path along Union Road within the next six weeks.

MORTGAGE SEMINAR

Supervisor Meegan announced the Town of Cheektowaga is sponsoring a NYS Mortgage Assistance program on October 24th 9:00 A.M. – 5:00 P.M. at Cheektowaga Town Hall.

HEALTH CARE FAIR

Senior Recreation Therapist of Senior Services Mary Josefiak announced a Health Care Fair will take place tomorrow at the Senior Citizens Center.

DAY CAMP PRESENTATION

Recreation Director Craig Kroll stated he will be doing a power point presentation on Day Camp at the next work session.

EXECUTIVE SESSION

Motion by Councilman Hart, seconded by Supervisor Meegan, to recess to Executive Session at 3:50 P.M. to discuss one litigation matter and one contract matter.

Ayes: All

Noes: None

Motion Carried

The board members returned from Executive Session at 4:25 P.M.

ADJOURNMENT

Motion by Supervisor Meegan, seconded by Councilman Hart, to adjourn the meeting at 4:25 P.M.

Ayes: All

Noes: None

Motion Carried



JACQUELINE A FELSER, TOWN CLERK

Settlement Agreement & Limited Release

THIS SETTLEMENT AGREEMENT is made as of (date) between the Town of West Seneca (the "Town") and Time Warner NY Cable LLC ("TWC") (collectively referred to as the "Parties"):

WHEREAS, the Parties have entered into a cable franchise agreement whereunder TWC, *inter alia*, is obligated to pay franchise fees to the Town; and

WHEREAS, a dispute arose in which the Town alleged that TWC only partially paid the franchise fees which were to the cable Franchise Agreement for the time period August 1, 2006 to December 31, 2010 (the "Disputed Franchise Fees"); and

WHEREAS, the Parties have agreed to compromise their dispute over the Disputed Franchise Fees solely to avoid the expense, effort, uncertainty and inconvenience entailed in continuing the dispute and in potential litigation and the Parties agree that there has been no finding, admission, or inference of liability or wrongdoing of any kind, and that this Agreement may not be deemed to create any inference of liability;

NOW, THEREFORE, in consideration of the terms set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. TWC agrees to pay the Town the total sum of \$67,821 (the "Settlement Sum") contemporaneous with its execution of this Settlement Agreement and Limited Release which shall then constitute full and final settlement of the Parties' dispute over the Disputed Franchise Fees.
2. The Town releases and discharges TWC from all actions, claims, counterclaims, cross claims, third-party actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, premises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law or

in equity, which against TWC, the Town and its affiliates, heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for the payment of franchise fees for the period between August 1, 2006 and December 31, 2010. This Release shall not release any other claims the Town may have against TWC.

3. This Settlement Agreement and Limited Release incorporates and merges all prior negotiations, and may not be changed orally.

4. The undersigned agree that this Settlement Agreement and Limited Release may be executed in counterparts, and facsimile signatures shall be deemed sufficient.

5. The Parties to this Settlement Agreement and Limited Release agree that the terms and provisions of the Agreement shall be interpreted by, and according to, the laws of the State of New York.

6. The Parties to this Settlement Agreement and Limited Release agree that should any provision of the Agreement be deemed unenforceable by a court of law, such finding shall not affect enforceability of the remaining provisions.

IN WITNESS THEREOF:

The Town of West Seneca

Time Warner NY Cable LLC

By: _____

By: _____

ERIE COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT REQUESTS

WHEREAS, following the Public Hearing of September 30, 2013 which was held at the West Seneca Town Hall for suggestions by the public for Community Development Block Grant projects to be submitted for funding,

NOW, THEREFORE BE IT RESOLVED, that the West Seneca Town Board submits the following projects to be considered for funding by the Erie County Community Development Block Grant Program during the 2014-15 grant cycle:

1st Priority - Town Hall & Senior Citizens Center - ADA compliant restroom improvements;

2nd Priority - North Avenue reconstruction (west side of Union Road and Inter Drive);

NOW, THEREFORE, BE IT RESOLVED, that the West Seneca Town Board authorizes Town Supervisor Sheila M. Meegan, to sign, submit and execute a contract with Erie County Community Development Block Grant (ECCDBG) Program for the cited projects upon approval of the ECCDBG.

BE IT FURTHER RESOLVED, that the West Seneca Town Board provides a 50 percent match of \$100,000 for the 1st Priority, the restroom improvements project, which has a total estimated cost of \$200,000 using cash from the 2014 budget; and

BE IT FURTHER RESOLVED, that the West Seneca Town Board provides a 50 percent match of \$80,000 for the 2nd Priority, North Avenue reconstruction, which has a total estimated cost of \$160,000 using cash from the 2014 budget.

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.

