Professional Services Agreement No. 1086

By and between

Town of Bloomfield CT

And

Goman + York Property Advisors, LLC

For

Economic Development Consulting Services

This Agreement is by and between the Town of Bloomfield, CT having its principal address at 800 Bloomfield Avenue Bloomfield, Connecticut 06002 acting herein by Its Town Manager, duly authorized hereinafter referred to as "TOWN", and Goman + York Property Advisors, LLC , a limited liability company with its principal place of business at 1137 Main Street, East Hartford CT, acting herein by R. Michael Goman, Its Principal, duly authorized, hereinafter referred to as the "CONSULTANT".

WITNESS THAT:

WHEREAS, TOWN published a Request for Proposal for the purpose of obtaining professional economic development consulting services. The services ("Services") to include implementation of the Bloomfield Center Plan, retention of existing businesses, marketing of the Town, the development and distribution of marketing materials, attendance at monthly Economic Development Commission meeting and assistance in the development and review of economic development policies.

And

WHEREAS, CONSULTANT has been selected through a competitive process to provide such Services; and

WHEREAS, TOWN and CONSULTANT desire to enter into an Agreement in accordance with the Request for Proposals which incorporates the scope, objectives, activities, budget and response, and included herein (attached as Appendix A)

NOW THEREFORE, TOWN and CONSULTANT do mutually covenant and agree as follows:

1. **TERM OF AGREEMENT**

The term of this Agreement shall be from the date of execution through June 30, 2019, with provision for two (2) additional one (1) year renewals upon mutual written consent,
unless terminated by either party in accordance with the terms and provisions of this Agreement as specified in Section 13 Termination of Agreement.

2. SCOPE OF SERVICES

The CONSULTANT agrees to provide prompt professional services to the TOWN. Specifically, the CONSULTANT is required to provide Services as set forth in Request For Proposals (Appendix A) and with the CONSULTANT’S Proposal dated January 5, 2018 (Appendix B) are incorporated herein as if fully set forth. In the event of a conflict between these documents, this Agreement shall prevail, followed by Appendix A and Appendix B.

The CONSULTANT will:

2.1 Commence work on the assigned project as approved, promptly and subsequent to necessary approvals by the Town.

2.2 Perform its duties in a timely and productive manner provided however, that in no event shall the Consultant provide fewer than 40 hours per month to performing its duties under this Agreement.

2.3 Provide monthly status reports for the project in the format as reasonably requested by the TOWN staff.

2.4 Provide Services that are satisfactory and acceptable to the Town.

2.5 Investigating and implementing CivicLift (or the equivalent) at no cost to the Town.

The TOWN will:

2.5 Provide relevant information to assist the CONSULTANT with the performance of the Services.

2.6 Satisfy all of the CONSULTANT’S reasonable requests (as solely determined by the TOWN) for assistance in its performance of the Services.

2.7 Provide such other assistance to the CONSULTANT as the TOWN deems reasonable and appropriate.

2.8 Promptly notify the CONSULTANT of any changes to its procedures affecting the CONSULTANT’S obligations under this Agreement.
Additional Services:

Upon identification of services not otherwise identified in Appendix A, the TOWN will request a proposal covering such services from the CONSULTANT. The CONSULTANT will provide the TOWN with a detailed scope of work and lump sum fee within a mutually agreed upon time frame.

The CONSULTANT shall not be authorized to perform any work covered by any such proposal unless and until TOWN executes and delivers a Letter of Amendment to the CONSULTANT. Upon receipt of any such executed Letter of Amendment, the CONSULTANT shall perform the services contained in said Amendment at the fee and in accordance with the timetable agreed to by the parties as set forth in the Letter of Amendment.

3. COMPENSATION/FEESCHEDULE

The CONSULTANT shall submit billing invoices on a monthly basis for services performed. Such invoices shall be accompanied by related materials and deliverables due to the TOWN. Monthly fee for services shall be $9,000 for per month. Reimbursable special expenses (including courier services, reproduction of drawings or marketing materials, ad placement, hospitality or event costs), shall not be incurred without prior approval of the Town. Costs related to implementing CivicLift (or equivalent) shall be borne by the Consultant and not be reimbursed by the Town.

The CONSULTANT agrees to meet with representatives of TOWN to discuss subject reports and billings as TOWN deems necessary. Approval and acceptance of said reports and billings by TOWN shall constitute an acceptance of the product by TOWN and shall be prerequisite to payment for the rendered services. Payment will be made within thirty (30) days of acceptance and approval.

Payments to the CONSULTANT will be made conditioned upon the completion of all assignments in accordance with the terms and conditions of this Agreement. In the event, that TOWN reasonably determines the CONSULTANT to be in nonconformance with the terms of this Agreement or if in TOWN judgment the CONSULTANT’s provision of services is not satisfactory, TOWN may take corrective action, including but not limited to the following:

(a) Delay of payment, and or
(b) Adjustment of payment, and/or
(c) Suspension or termination of this Agreement

4. MANAGEMENT

This contract will be managed for TOWN by José Giner, its Director of Planning and Economic Development.
The CONSULTANT’s contact person shall be Michael Goman, who will be responsible for directing and coordinating the activities of the firm’s personnel in all aspects of project(s) assigned.

5. **PERFORMANCE STANDARDS**

The CONSULTANT agrees that all of the Services required of the CONSULTANT hereunder shall be performed in accordance with the terms and conditions of this Agreement with professional skill and competence by fully trained and experienced personnel.

6. **EVALUATION**

The CONSULTANT hereby agrees to participate fully with the guidance and assistance of TOWN in the implementation and maintenance of an evaluation system whereby the Services provided under this Agreement may be continuously monitored. TOWN agrees to share such data and reports derived therefrom. The CONSULTANT agrees to submit a report defining how it intends to benchmark progress on the scope of services and any additional tasks by June 1, 2018. Upon agreement and acceptance of the format, the CONSULTANT shall deliver quarterly and annual reports documenting progress and completion of responsibilities.

The CONSULTANT shall have an opportunity to review and comment on all drafts and final reports incorporating recommendations by TOWN regarding future directions or modifications of the Scope of Work. The CONSULTANT agrees to comply with the reasonable evaluation and information requirements issued by the TOWN.

The CONSULTANT shall comply with any and all reasonable recommendations of TOWN in regard to improvements and changes in Services being performed which may result from evaluation, as they pertain to the provision of Services as specified in the Scope of Work of this Agreement. The CONSULTANT shall correct any deficiencies identified by TOWN in a reasonable period of time to be determined by the TOWN.

Failure to comply with the recommendations of TOWN in the provision of Services herein described may be considered a violation of this Agreement and sufficient reason for termination of same.

7. **ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION**

The CONSULTANT agrees to abide Executive Orders Number 3 and 17 of the State of Connecticut; and Presidential Executive Orders Number 11246, 11375 and 11063.
In carrying out this contract, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference.

The CONSULTANT shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training; including apprenticeship.

The CONSULTANT shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government, setting forth the provisions of the non-discrimination clause. The CONSULTANT shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference. The CONSULTANT shall incorporate, or cause to be incorporated, this provision in any and all subcontracts entered into pursuant to this Agreement.

8. **RELATIONSHIP BETWEEN PARTIES**

The CONSULTANT is an independent contractor and not an officer, employee or agent of the TOWN. Therefore, it is mutually agreed that this Agreement is a contract for services and not a contract of employment, and that, as such, the CONSULTANT and any and all subcontractors shall not be entitled to any employment benefits of TOWN such as, but not limited to: vacation, sick leave, insurance, worker's compensation, and pension and retirement benefits.

All personnel matters affecting project team members will be the responsibility of the CONSULTANT. The TOWN shall be notified in writing of any changes to CONSULTANT'S team.

9. **INSURANCE**

The CONSULTANT shall be required to furnish a Certificate of Insurance evidencing the following insurance coverage prior to the execution of this Agreement. Failure to maintain insurance coverage as required and to name the Town of Bloomfield CT as the Additional Insured will be grounds for termination of the contract. In addition:

(a) The insurance requirements shall apply to all subcontractors and/or Contractor s.

(b) All policy forms shall be on the occurrence form. Exceptions must be authorized by TOW's Town Manager unless the coverage is for Professional Liability where the common form is claims made.
(c) Acceptable evidence of coverage will be on the ACORD form or a form with the same format.

(d) All renewal certificates shall be furnished at least 10 days prior to policy expiration.

(e) Each certificate shall contain a 30 day notice of cancellation.

(f) Insurance shall be issued by an insurance company licensed to conduct business in the State of Connecticut which has at least an “A-VIII policy holders rating according to Best Publications latest edition Key Rating Guide.

9.1 **Commercial General Liability**, including Contractual Liability Insurance, with limits not less than $1,000,000 Combined Single Limit Bodily Injury and Property Damage. All, if any, deductibles are the sole responsibility of the selected Consultant to pay and/or indemnify.

9.2 **Automobile Liability Insurance** including non-owned and hired vehicles with limits not less than $1,000,000.

9.3 **Workers' Compensation Insurance** at the Connecticut statutory limit including Employers' Liability with limits of $100,000 each accident, $500,000 for each disease/policy limit, and $100,000 for disease for each employee.

9.4 **The Town of Bloomfield and Bloomfield Board of Education** are included as Additional Insureds, ATIMA under the Commercial General Liability and Employer's Liability Insurance Policies. THE UNDERLINED WORDING MUST BE SHOWN IN THE SPACE PROVIDED FOR “COMMENTS” ON THE ACORD INSURANCE CERTIFICATE. (Additional Insured requirement is expressly waived for Workers' Compensation coverage.)

10. **HOLD HARMLESS AND INDEMNIFICATION**

In addition to its obligation to provide insurance as specified above, the CONSULTANT, its subcontractors, agents and assigns shall indemnify and hold harmless the Town, including but not limited to, its elected officials, and its agents, public officials and officers, ("the TOWN") from any and all claims made against the TOWN, including but not limited to, damages, awards, costs and reasonable attorney's fees, to the extent any such claim directly and proximately results from the negligent acts, errors, or omissions in performance of services by the CONSULTANT during the CONSULTANT'S performance of this Agreement or any other Agreements of the CONSULTANT entered into by reason thereof. TOWN agrees to give the CONSULTANT prompt notice of any such claim and absent a conflict of interest, an opportunity to control the defense thereof.

11. **CONFLICT OF INTEREST; OTHER ACTIVITIES**

TOWN and the CONSULTANT hereby covenant and agree that no member of the governing body of TOWN, or its designees or agents, and no other public official, either paid or unpaid, who exercises any functions or responsibilities with respect to this program during the individual's tenure or for one (1) year thereafter, shall have any
personal or financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work and/or services to be performed in connection with the program assisted under this Agreement. The CONSULTANT shall cause to be incorporated, in all subcontracts a provision prohibiting such interest pursuant to the provisions of this paragraph.

The CONSULTANT hereby warrants to the Town, to the best of its knowledge, it, nor any of its agents or assigns, is not currently obliged under an existing contract or other duty that conflicts with or is inconsistent with this Agreement. During the term of this Agreement, the CONSULTANT is free to engage in other independent contracting activities; provided however, the CONSULTANT, its agents or assignees, shall not accept work, enter into contracts, or accept obligations inconsistent or incompatible with the CONSULTANT’S obligations or the scope of Services to be rendered to the TOWN pursuant to this Agreement. Inconsistent obligations and activities includes recruitment of the same businesses and recruitment of Bloomfield businesses for other clients or municipalities.

12. EVENTS OF DEFAULT AND REMEDIES

12.1 Events of Default

Any of the following occurrences of acts shall constitute an Event of Default under this Agreement:

12.1.1 If default shall be made by the CONSULTANT, its successors or assigns, in the performance or observance of any of the covenants, conditions or agreements on the part of the CONSULTANT set forth in this Agreement; or

12.1.2 If any determination shall have been made by competent authority such as, but not limited to, any federal, state or local government official, or a certified public accountant, that the CONSULTANT ’s management or any accounting for its funding, from whatever source, is improper, inadequate or illegal; or

12.1.3 If a decree or order by a court having jurisdiction in the matter shall have been entered adjudging the CONSULTANT bankrupt or insolvent or approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition or similar relief for the CONSULTANT under the federal bankruptcy laws, or any other similar applicable federal or state law; or

12.1.4 If any competent authority shall have determined that the CONSULTANT is in default of any federal, state or local tax obligation.
12.1.5 Loss of necessary licenses.

12.2 Election of Remedies

If any Event of Default hereunder shall have occurred and be continuing, TOWN may elect to pursue any one or more of the following remedies, in any combination or sequence:

12.2.1 Take such action as it deems necessary; and/or
12.2.2 Suspend the provision of Services; and/or
12.2.3 Require the CONSULTANT to correct or cure such default to the satisfaction of the TOWN; and/or
12.2.4 Terminate this Agreement for cause in accordance with Section 13 hereof.

The selection of any remedy shall not prevent or stop TOWN from pursuing any other remedy and shall not constitute a waiver by TOWN of any other right or remedy.

13. TERMINATION OF AGREEMENT

13.1 Termination

"Termination", for purposes of this Agreement, shall mean the cessation, upon the effective date of termination, of the following obligations only: the CONSULTANT's obligation to perform the services described in the Scope of Services of this Agreement, and TOWN obligation, as described in Section 2 of this Agreement, to compensate the CONSULTANT for such Services performed.

13.2 Termination for Cause

Upon the occurrence of any Event of Default, as set forth in Section 12 hereof, TOWN may terminate this Agreement by giving five (5) days written notice thereof to the CONSULTANT.

13.3 Termination at Will

TOWN may terminate this Agreement at any time and without penalty by giving thirty (30) days written notice thereof to the CONSULTANT.

13.4 Reimbursement upon Termination

In the event this Agreement is terminated by TOWN as herein provided, the CONSULTANT shall receive compensation for services performed prior to the effective date of termination, which conform to the Scope of Services and the Fee Schedule. However, if the CONSULTANT has damaged the TOWN, such payment
may be withheld until TOWN determines whether or by how much such payment should be reduced.

14. **FORCE MAJEURE**

Neither party shall be liable to the other for any loss, damage, failure, delay, or breach in rendering any Services or performing any obligations hereunder to the extent that such failure, delay or breach results from any event beyond the control of the party being released hereby (Force Majeure), including, but not limited to acts of God, fire, earthquake, flood, explosion, strike, riot, war, terrorism or similar event beyond that party’s reasonable control, which would exist for a substantial period of time.

If either party is prevented or delayed in the performance of its obligations hereunder by Force Majeure, that party shall immediately notify the other party in writing of the reason for the delay or failure to perform, describing in as much detail as possible the event of the Force Majeure causing the delay or failure and discussing the likely duration of the Force Majeure and any known prospects for overcoming or ameliorating it. Both parties agree to take any commercially reasonable measures to overcome or ameliorate the Force Majeure and its adverse effect on this Agreement, and to resume performance as completely as is reasonable possible once the Force Majeure is overcome or ameliorated.

15. **AMENDMENTS**

This Agreement may be amended by written instrument executed by the parties hereto, acting therein by their duly authorized representatives. The CONSULTANT’s duly authorized representatives shall be R. Michael Goman, and TOWN’s duly authorized representative shall be Philip K. Schenck, Jr., its Town Manager.

TOWN and the CONSULTANT may require changes in the Scope of Services to be performed hereunder. Such changes which are mutually agreed upon by and between TOWN and the CONSULTANT shall be incorporated in written amendments to this Agreement.

Changes in any regulations or requirements pertaining to the provision of Consultant Services adopted by the State of Connecticut shall be effective upon adoption by the State.

16. **SUBCONTRACTORS**

CONSULTANT may subcontract out portions of this work with prior written consent (which shall include email) from the TOWN provided that all of the terms, covenants, conditions and provisions of this Agreement shall have been incorporated in such subcontract and the subcontractor shall have agreed in writing to assume, perform and be bound by this Agreement and all the terms, covenants, conditions and provisions hereof, and shall have made the representation as to its expertise in the same form as the Consultant; and
In each instance where TOWN consents to any subcontract, the CONSULTANT shall remain liable to the TOWN, as provided for in this Agreement; and

TOWN shall not be liable for payment of any wages, materials, or other expenses of any subcontractors.

17. **DISCLAIMER OF AGENCY OR THIRD PARTY BENEFICIARY RIGHTS**

In no event shall anything in this Agreement be deemed to confer upon any person or entity agency status or third party beneficiary rights against the TOWN.

18. **REPORTS, INFORMATION AND MAINTENANCE OF RECORDS**

The CONSULTANT shall provide a monthly written summary report to the TOWN on its progress. The summary shall capture all key activities and outcomes relative to strategic planning, town center plan implementation and business development (visitations, retention and recruitment, web site upgrades and new marketing materials) and low interest loan program for Town businesses.

The CONSULTANT agrees that all records with respect to all matters covered by this Agreement shall be maintained for a period of three (3) years after expiration or termination of this Contract or any renewal or extension thereof.

19. **AUDITS**

At any time during normal business hours, and as often as may be deemed necessary, the CONSULTANT shall make available to the TOWN, for examination, all records with respect to all matters covered by this Agreement.

20. **COPYRIGHT**

No reports or other documents produced in whole or in part under this Agreement shall be subject to an application for copyright by or on behalf of the CONSULTANT.

21. **ASSIGNABILITY**

The CONSULTANT shall not assign or transfer any interest in this Agreement without prior written consent of the TOWN.

22. **FINDINGS CONFIDENTIAL**

All of the information, reports, and documents prepared or assembled by the CONSULTANT, under this agreement, are the property of the TOWN. The CONSULTANT
agrees that said documents shall not be made available to any individual or organization, other than authorized Federal and State officials, without written approval of the TOWN.

23. **SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

24. **CUMULATIVE REMEDIES**

All rights exercisable by and remedies of TOWN hereunder shall be cumulative and the exercise or beginning of the exercise by TOWN of any of its rights or remedies hereunder shall not preclude TOWN from exercising any other right or remedy granted hereunder or permitted by law.

25. **NOTICES**

All notices, approvals, demands, requests, or other documents required or permitted under this Agreement, other than routine communications necessary for the day-to-day operation of this project, shall be deemed properly given if hand delivered or sent by overnight express, or United States registered or certified mail, postage prepaid, at the following address:

**As to the TOWN:**

Philip K. Schenck, Jr.
Town Manager
Town of Bloomfield
800 Bloomfield Ave.
Bloomfield, CT 06002

**As to the CONSULTANT:**

R. Michael Goman
Goman + York Property Advisors, LLC
1137 Main Street
East Hartford CT 06108

Neither party hereto shall be relieved of such obligation by reason of the failure of the other to comply with or otherwise enforce any of the provisions of this Agreement.

26. **SUCCESSORS**

This Agreement, to the extent permitted herein, shall inure to the benefit of and be binding upon the parties hereto and any and all successors.
27. **NON-WAIVER**

Any failure by TOWN or CONSULTANT to insist upon the strict performance by the other of any of the terms and provisions hereof shall not be a waiver, and each party hereto, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other, of any and all of the terms and provisions of the Agreement and neither party hereto shall be relieved of such obligation by reason of the failure of the other to comply with or otherwise enforce any of the provisions of this Agreement.

28. **CONDITIONS**

The CONSULTANT agrees to conform to all applicable laws and ordinances and statutes of the Federal Government, State of Connecticut and Town, including but not limited to the following:

28.1 Civil Rights Act of 1964, as amended
28.2 Civil Rights Act of 1991, as amended
28.3 Executive Orders Numbers 3 & 17 of the State of Connecticut
28.4 Davis Bacon Act
28.5 Copeland “Anti-Kickback” Act
28.6 Hatch Act (Title 5 USC Chapter 15)
28.7 Section 504 of the Rehabilitation Act of 1973
28.8 Architectural Barriers Act of 1969
28.9 Fair Labor Standards

29. **AMERICANS WITH DISABILITIES ACT**

The CONSULTANT shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a the CONSULTANT, or be subjected to discrimination by the CONSULTANT. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations provided by the CONSULTANT.

Any television public service announcement that is produced or funded in whole or in part under this Contract shall include closed captioning of the verbal content of such announcement. The CONSULTANT shall not discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.
The CONSULTANT shall not permit coercion, intimidation, threatening, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

30. **TAXPAYER IDENTIFICATION NUMBER**

The Internal Revenue Service Form W-9, *Request for Taxpayer Identification Number and Certification* as submitted by the CONSULTANT to the TOWN, is hereby made a part of this Contract and is incorporated herein by reference. It is understood and agreed that TOWN shall use the number as listed on the IRS Form W-9 to report any and all compensation paid to the CONSULTANT under this agreement. It is further understood and agreed that TOWN shall not be liable for inaccurate information contained on said IRS Form W-9.

31. **GENDER/NUMBER/TITLE**

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, unless the Agreement requires otherwise. In the event of any discrepancy or conflict between the name and title of any person referred to in this Agreement, the title shall prevail.

32. **ARBITRATION**

Any controversy, dispute or claim arising out of or related to this Agreement or breach of this Agreement shall be settled solely by confidential binding arbitration by a single arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association (AAA) in effect at the time the arbitration commences. The award of the arbitrator shall be final and binding. The prevailing party shall be entitled to recover, as part of its judgment, reasonable legal fees and costs from the other party. The arbitration shall be in Hartford County, Connecticut.

33. **GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut and the ordinances, policies and procedures of the Town. The parties agree that the venue for any legal proceeding with respect to this Agreement shall be Connecticut Superior Court, Judicial District of Hartford at Hartford. In the event of legal action to enforce its rights under this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs.
34. **COUNTERPARTS/ELECTRONIC SIGNATURES**

This agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

35. **HEADINGS**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

36. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties hereto and supersedes any and all prior understandings, negotiations, and agreements whether written or oral, between them respecting the written subject matter.
IN WITNESS THEREOF, TOWN and CONSULTANT have executed this Agreement on this 11th day of May 2018.

WITNESS

TOWN OF BLOOMFIELD

By

Philip K. Schenck, Jr.
Town Manager

WITNESS

GOMAN + YORK PROPERTY ADVISORS LLC

By

R. Michael Goman
It's Principal