

AGREEMENT BETWEEN TOWN OF EAST HAMPTON AND OWNER'S PROGRAM MANAGER

THIS AGREEMENT is made effective this 1st day of February, 2017, by and between the Town of East Hampton, Connecticut ('Town'), and C&E Enterprise, LLC (the 'OPM') for Services in connection with the Project hereinafter defined.

The Town and OPM agree as set forth below:

ARTICLE 1 RELATIONSHIP OF THE PARTIES AND DEFINITIONS

The OPM accepts the fiduciary relationship of trust, loyalty, good faith and fair dealing with the Town and shall endeavor to promote harmony and cooperation among all participants on the Project. The OPM covenants with the Town to furnish professional skill and judgment at all times to provide its Services in furtherance of the Town's overall project goals, including goals for program, design, budget, time and quality. The OPM shall perform its Services, as more particularly defined in Article 2 below, expeditiously in accordance with the expertise, skill and care exercised by professionals serving in a similar capacity that have successfully completed projects of comparable size and complexity and shall at all times advance the orderly progress of the Project and cooperate with the Architect, Construction Manager and other Consultants in furthering the interests of the Town.

1.1 Definitions. Terms capitalized in this Agreement are defined as follows:

- 1.1.1 'Architect'** means the licensed Architect or architectural firm and its Consultants, engaged by the Town to perform design services for the Project.
- 1.1.2 'Construction Manager or CM'** means the entity retained by the Town to perform the construction Work in connection with the Project.
- 1.1.3 'Day'** shall mean calendar day unless otherwise specifically designated.
- 1.1.4 'Consultant'** means an architect, engineer, planner, landscape architect or other consultant, other than the Architect, with whom the Town contracts to perform design or consulting services on the Project.
- 1.1.5 'Final Completion'** occurs on the date that the Construction Manager completes its obligations under its contract with the Town, the Town accepts the Work, and the Town makes final payment.
- 1.1.6 'Post-Referendum Services'** means all Services anticipated to be performed by the OPM during the construction phase of the Project, after a direct vote by the people of the Town of East Hampton approving the Referendum.

- 1.1.7 **'Pre-Referendum Services'** means all Services furnished by the OPM prior to the direct vote by the people of the Town of East Hampton approving or rejecting the Referendum, and includes all services related to the design and procurement of the construction team, and any other services required prior to the commencement of the construction phase of the Project.
- 1.1.8 The **'Project'** means the design and construction of the new East Hampton Town Hall and Police Station to be located on a 5.4 acre parcel of land located off of East High Street, East Hampton, CT, which is part of a larger 59 acre parcel located adjacent to the Edgewater Hill Development.
- 1.1.9 **'Project Budget'** means the budget for the entire Project.
- 1.1.10 **'Project Schedule'** means the overall schedule for the entire Project.
- 1.1.11 **'Referendum'** means a direct vote or votes by the people of the Town of East Hampton on whether to approve or reject (1) the acquisition of land to construct a new Town Hall and Police Station, and (2) the funding to design and construct a new Town Hall and Police Station.
- 1.1.12 **'Subcontractor'** means a person or entity retained by the Construction Manager as an independent contractor to provide labor, materials, equipment and/or services necessary to complete a specific portion of the Work.
- 1.1.13 The **'Work'** means the construction or services necessary or incidental to fulfill the Construction Manager's obligations pursuant to its agreement with the Town.
- 1.1.14 **'Contract Documents'** consist of the agreement between the Town and the Construction Manager, drawings, specifications, and any addenda thereto, other documents listed in the agreement between the Town and the Construction Manager and modifications issued after execution of the agreement between the Town and the Construction Manager.
- 1.2 **The Construction Team.** The OPM, the Town, the Construction Manager (hereinafter "CM"), Subcontractors, and the Architect and Consultants, called the "Construction Team", shall work from the beginning of design of the Project through Final Completion. The OPM shall provide oversight to the Construction Team and advise the Town on all matters relating to design and construction.
- 1.2.1 No key project personnel of the OPM assigned to this Project and included in the Organizational Chart attached hereto as **Exhibit C** shall be replaced without prior consent of the Town, provided that if key personnel leave the OPM's employ, or otherwise become incapacitated, the OPM shall designate replacement personnel with at least the same level of experience, subject to the prior approval of the Town.
- 1.3 **Independent Contractor.** This Agreement shall not create an employee/employer relationship between the Town and the OPM. It is the parties' intention that the OPM will be an independent contractor and not the Town's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime requirements, Federal Insurance Contribution Act, and the Social Security Act,

the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Revenue and Taxation Law, State Workers Compensation Law, and State Unemployment Insurance Law. This Agreement shall not be construed as creating any joint employment relationship between the OPM and Town, and Town will not be liable for any obligation incurred by the OPM, including but not limited to unpaid minimum wage and/or overtime premiums, and insurance.

- 1.3.1** The OPM shall indemnify and hold Town harmless from all losses or damages, and wages or overtime compensation due the OPM's employees in rendering Services pursuant to this Agreement including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other state or federal law.

ARTICLE 2 OPM SERVICES

The OPM will perform the following services (the "Services") under this Agreement:

- 2.1** **Basic Services.** The OPM shall serve as Town's authorized representative on the Project, shall be fully acquainted with the Project, and manage specific aspects of the Project from its conception through Project Close Out within the time frame and budget limitations established by the Town. The Basic Services are generally described in the Exhibit entitled "OPM: Scope of Services," attached hereto as **Exhibit A**.

2.2 **Changes In Services.**

- 2.2.1** **Additional Services.** At the request of the Town and with written agreement from the OPM, the OPM will provide Additional Services including additions in staffing or extension to duration of Services, upon prior written authorization from the Town defining the extent of such Additional Services and the amount and manner in which the OPM will be compensated for such Additional Services. The OPM will invoice for Additional Services pursuant to Article 6, with each invoice setting forth separately and clearly the phase or area of the Project to which the Additional Services were provided.

ARTICLE 3 TOWN'S RESPONSIBILITIES

- 3.1** The Town shall provide any reasonable and necessary information regarding the Town's requirements for the Project, including but not limited to Project scope, programming, phasing, and schedule.
- 3.2** The Town shall designate a representative who has authority to make decisions and approvals, and furnish information as required and upon whom the OPM may rely.

- 3.3** The Town shall retain an Architect to design and to prepare construction documents for the Project. The Architect's services, duties and responsibilities shall be described in the agreement between the Town and the Architect, a copy of which will be furnished without charge to the OPM. The Town may retain other Consultants as required for the Project.
- 3.4** The Town shall retain the CM to provide the construction services and to perform the Work for the Project. The CM will perform its services "at risk," and will enter into subcontracts with all necessary trades. The form of the agreement with the CM, including any general or supplementary conditions, shall be negotiated by the Town and CM, with the assistance of the OPM. The Town will provide a copy of its agreement with the CM to the OPM without charge.
- 3.5** The Town shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.6** The Town shall furnish such legal services as may be necessary for providing the items set forth in Section 3.5 above, and such auditing services as the Town may require.
- 3.7** The OPM will be furnished without charge with copies of all drawings and specifications reasonably necessary for the execution of the OPM's Services.
- 3.8** The Town shall provide its own property and liability insurance for the Project as provided in Section 7.3.
- 3.9** The Town shall use commercially reasonable efforts to require the CM to add OPM as an additional insured on the CM's Commercial General Liability Policy.

<p style="text-align: center;">ARTICLE 4 PROJECT SCHEDULE & DURATION OF SERVICES</p>

- 4.1** The Project Milestone dates are:

Referendum Date: On or about September 25, 2017

Completion of Design: Five (5) months after Referendum approval

Construction Start: TBD

Substantial Completion: TBD

Final Completion: TBD

- 4.2** The OPM's duration of Services shall commence upon the effective date of this Agreement, and shall conclude upon the completion of the Services to be provided by

OPM pursuant to Article 2 of this Agreement. Time is of the essence with respect to the performance of the OPM's Services under this Agreement.

ARTICLE 5 OPM FEE

5.1 In consideration of the performance of the Agreement, the Town agrees to pay the OPM in current funds as compensation for Basic Services as follows:

5.1.1 For Pre-Referendum Services (including those before the date of this Agreement), the OPM shall be paid on an hourly basis at the rates set forth in **Exhibit B** to this Agreement, up to a capped fee not to exceed \$33,000.00 (Thirty Three Thousand Dollars). The OPM's invoices will be accompanied with detailed time breakdowns reflecting the Services performed, and any other supporting back-up reasonably required by the Town. Pre-Referendum Services shall be deemed completed upon the passage of the Referendum for the construction of the Project, the Town's acquisition of the land upon which the Project is to be constructed, and the Town's obtaining of the financing for the same.

5.1.2 For all Basic Services performed Post-Referendum, OPM shall be paid a Fee of Four Percent (4%) of the Project costs, to be applied against the Project Budget.

5.2 The OPM's Fee includes but is not limited to the following:

5.2.1 General operating expenses of the OPM, including the costs of purchase or rental of any materials, supplies or equipment and the transportation, storage and maintenance thereof; and the costs of operating and maintaining any vehicles necessary to performance of the Agreement.

5.2.2 All staff, personnel, employees or independent contractors of OPM providing Services to the Project.

5.2.3 All other overhead and profit attributable to the OPM's Services for the Project.

5.3 In addition to the Fee set forth in Sections 5.1.1 and 5.1.2, the Town shall reimburse the OPM for amounts expended by OPM for reasonable and necessary expenses ("Reimbursable Expenses") incurred by OPM in the interests of the Project, provided that any individual expense greater than \$500 (Five Hundred Dollars) must be pre-approved in writing by the Town. As a precondition to payment for Reimbursable Expenses, OPM must provide with its invoices supporting documentation acceptable to the Town. Reimbursable Expenses are to be billed at cost, with no markup or fee. All airline flights will be reimbursed at the cost of a coach class ticket only.

5.4 Any Additional Services will be provided pursuant to an agreed upon written Change in Services at an agreed lump sum amount or at the hourly rates identified in **Exhibit B** to this Agreement. The Change in Services will include the agreed lump sum amount (or hourly rate), and when payment is to be made.

ARTICLE 6 PAYMENTS TO THE OPM

6.1 Invoicing and Payment.

- 6.1.1** On or before the tenth (10th) day of each month, the OPM shall submit written invoices with all supporting paperwork to the Town for the proportion of Services performed in the immediately preceding month, plus any Reimbursable Expenses incurred during the immediately preceding month, segregated by area of work or phase of the Project in which the Services were performed. During Post-Referendum Services, the OPM shall bill on a monthly basis at 4% against the Project Costs incurred during the immediately prior month. The Town shall make payment on all approved amounts no later than thirty (30) days from the date the invoice is submitted. Should any invoice be in dispute, only that portion of the invoice in dispute may be held in abeyance until resolved, and no interest will accrue on any disputed amounts.
- 6.1.2** The OPM is obligated to continue providing Services under the Agreement notwithstanding any pending claims or amounts on its invoice(s) that are in dispute or during the dispute resolution process, provided that the Town shall continue to honor its obligations under the Agreement, including timely payment of undisputed amounts due. The OPM will not stop, suspend or delay its Services in any manner as a result of any such claims or disputes, and will be responsible to Town for all costs, expenses and fees (including attorneys' fees) arising from such stoppage, suspension or delay. In the event of a dispute regarding pending claims or amounts on the invoice(s), the parties shall designate individual representatives who shall meet in good faith within thirty (30) days of any such dispute arising to endeavor to resolve the dispute on their own. If the parties are unable to resolve the dispute on their own, the dispute shall be resolved pursuant to Article 9 of this Agreement.

ARTICLE 7 INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

7.1 Indemnity.

- 7.1.1** The OPM shall indemnify, defend and hold the Town and the Town's officers and employees harmless from and against all damages, losses and judgments arising from any and all claims and/or causes of action, including reasonable attorneys' fees and expenses, caused by any material breach of this Agreement, violation of law, the negligent or reckless acts or omissions or the intentional

misconduct of the OPM with respect to the OPM's performance of of its obligations under this Agreement.

The Town shall indemnify, defend and hold the OPM and its officers and employees harmless from and against all damages, losses and judgments arising from claims and/or causes of action, including reasonable attorneys' fees and expenses, caused by any material breach of this Agreement, violation of law, the negligent or reckless acts or omissions or the intentional misconduct of the Town with respect to the Town's performance of its obligations under this Agreement.

- 7.1.2** The Town shall use commercially reasonable efforts to cause its CM and Architect(s) to agree to indemnify the Town and the OPM and hold them harmless from all claims for design and construction liabilities, bodily injury and property damage (other than property insured under Section 7.3) that may arise from the CM's Work and/or the Architect's design, including OPM being named as an additional insured under the CM's and Architect's Commercial General Liability policies.

7.2 OPM's Liability Insurance.

- 7.2.1** The OPM shall purchase from and maintain in a company or companies with an AM Best rating of no less than A VIII, acceptable to the Town and lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the OPM from claims which may arise out of or result from the OPM's Services on the Project. Such insurance shall include, at a minimum, the following:

- 7.2.1.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed:

\$1,000,000 or statutory limits, whichever is greater
Each Occurrence.

- 7.2.1.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of these employees under any applicable employer's liability law.

- 7.2.1.3** Claims for damages because of bodily injury, or death of any person other than employees, and claims for damages because of injury to or destruction of tangible property, including loss of use therefrom:

\$1,000,000 Each Occurrence
\$2,000,000 Aggregate

- 7.2.1.4** Claims for damages because of bodily injury or death of any person or property damage arising out of the OPM, maintenance or use of any motor vehicle:

\$1,000,000 Each Occurrence.

7.2.1.5 All insurance shall be written on an occurrence basis for all liability policies, and shall be maintained without interruption from date of commencement of Services until date of final payment and termination of any coverage required to be maintained after final payment. Certificates of Insurance shall be issued to Town and any other party identified by the Town. Certificates shall list the Town, the Town's officers and employees, and any other entity designated by the Town as additional insureds on a primary noncontributory basis with any insurance maintained by the then listed additional insured's on all liability policies. Certificates shall be delivered prior to commencement of Services by the OPM. Such certificates shall show any special coverage or provisions required by this Agreement and shall provide for thirty (30) days' prior written notice to the Town of cancellation, nonrenewal or material change to any of the insurance coverages. Certificates of Insurance showing such coverage to be in force shall be filed with the Town prior to commencement of the OPM's Services.

7.2.1.6 OPM shall require any Consultant, Sub-consultant of all tiers, or any other party performing work or rendering Services on behalf of OPM in the performance of this Agreement, to maintain and provide evidence of similar coverage as stated herein or as otherwise instructed by Town.

7.2.1.7 In the event OPM maintains limits greater than set forth herein, Town and currently listed additional insureds shall be included therein as an additional insureds to the fullest extent of all such insurance in accordance with all terms and provisions herein.

7.2.1.8 The aforementioned coverage, as well as any other coverage that OPM may consider necessary, are the OPM's sole responsibility. Any deficiency in the coverage or policy limits of the OPM insurance will be the sole responsibility of the OPM.

7.2.2 Comprehensive general liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

7.2.3 Town, and any Town designated entities, shall be a named additional insured on all liability policies.

7.2.4 The OPM's insurance coverage shall be primary insurance as respects the Town's insurance.

7.3 **Property Insurance.** The Town shall purchase and maintain property insurance covering the Project for the full cost of replacement as of the time of any loss including builder's risk, as normally carried on projects of similar size and character as the Project. This insurance shall insure against loss from the perils of fire, extended coverage, and shall include "All Risk" insurance for physical loss or damage including without duplication of coverage theft, vandalism, malicious mischief, transit, collapse, flood, earthquake, testing, and damages resulting from defective design, workmanship or material.

The Town shall purchase and maintain liability insurance in forms and amounts generally carried by towns in Connecticut.

7.4 Waiver of Subrogation.

7.4.1 The Town and OPM waive all rights against each other for damages caused by perils covered by insurance. The Town shall use commercially reasonable efforts to require similar waivers from the Architect, Consultants, CM and the CM's Subcontractors.

7.4.2 If the policies of insurance referred to in this Section 7.4 require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

<p style="text-align: center;">ARTICLE 8 SUSPENSION AND TERMINATION</p>

8.1 Suspension. The Town may, without cause, suspend, delay or disrupt the Project in whole or in part for such period of time as the Town may determine, but in no case for a period of greater than 365 consecutive days. The OPM's fee may be adjusted for increases in cost or time caused by such suspension, delay or disruption to the extent that the OPM can demonstrate that it has incurred the added costs, except to the extent the Services would have been suspended, delayed or disrupted by other cause for which the OPM is responsible.

8.2 Termination for Convenience. Upon at least thirty (30) days' written notice to OPM, this Agreement may be terminated by the Town for the Town's convenience, or in the event that the Project is cancelled for any reason.

8.2.1 In the event this Agreement is terminated for the Town's convenience Pre-Referendum and prior to the acquisition of the land upon which the Project is to be built, the Town will pay for that portion of the OPM's fee due on Services rendered and Reimbursable Expenses incurred by the OPM as of the date of termination. Such payment shall be the total extent of the Town's liability.

8.2.2 In the event this Agreement is terminated for the Town's convenience Post-Referendum but prior to the acquisition of the land upon which the Project is to be built, the Town will pay for that portion of the OPM's fee due on Services rendered and Reimbursable Expenses incurred by the OPM as of the date of termination. Such payment shall be the total extent of the Town's liability.

8.2.3 In the event that this Agreement is terminated for the Town's convenience or the Project cancelled Post-Referendum and subsequent to the Town's acquisition of the land upon which the Project is to be built, in addition to Fee and Reimbursable Expenses actually incurred by OPM to the date of termination, because the parties wish to quantify the loss (which is difficult to pre-determine) to OPM, the OPM shall be entitled to receive from the Town the balance of the remaining Fee as of the date of termination, representing reimbursement of

demobilization costs, opportunity costs, and anticipated lost profit on Services not performed through the completion of the Project. The balance of the remaining Fee shall be calculated on the basis of the Project Budget as of the date of termination.

- 8.3 Termination for Cause.** Upon Town's written notice of a material default by OPM due to a material breach by OPM or failure of the OPM to perform its obligations under this Agreement to the standard of care set forth in Article 1, OPM will have thirty (30) days to cure the default to the reasonable satisfaction of the Town, provided that if OPM has commenced to cure within said 30 days, and thereafter is prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of the default, it is unable to be completely cured within 30 days. If OPM fails to reasonably cure a default, the Town may terminate this Agreement for cause. If the Town terminates for cause, the OPM shall be responsible for all costs, expenses and fees (including attorneys' fees) incurred by the Town by virtue of said termination. If upon reimbursement to the Town of all costs, expenses and fees incurred by virtue of said termination any balance remains on the OPM's remaining Fee (calculated on the basis of the Project Budget as of the date of termination), the balance shall be paid to the OPM at Final Completion of the Project.

8.3.1 Automatic Conversion. In the event that a termination for cause by the Town is ultimately deemed wrongful by a trier of fact, such termination shall conclusively be deemed a termination for convenience, and the OPM's sole recourse shall be as set forth in Section 8.2 of this Agreement.

- 8.4 OPM Right to Terminate.** The OPM shall not have the right to terminate this Agreement unless payment has not been received for fees for Services properly performed and/or reimbursable expenses properly incurred and not disputed by Town in good faith, for a period of sixty (60) days after the OPM has submitted its invoice or upon written notice of default by the Town or failure of the Town to perform its obligations under this Agreement. Town will have thirty (30) days to cure the default (except that the Town shall not be entitled to any additional time in which to cure payment defaults) to the reasonable satisfaction of the OPM, provided that if the Town has commenced to cure within said 30 days, and thereafter is prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of the default, it is unable to be completely cured within 30 days. If the Town fails to reasonably cure a default, the OPM may terminate this Agreement for cause, in which event the OPM's recourse shall be as set forth in Section 8.2 of this Agreement.

ARTICLE 9
DISPUTE RESOLUTION, GOVERNING
LAW AND VENUE

- 9.1** This Agreement shall be governed by the laws of the State of Connecticut.
- 9.2** All disputes arising under this Agreement shall be subject to litigation. All litigated disputes shall be subject to the exclusive jurisdiction of any state or federal court located in the Judicial District of Middlesex, State of Connecticut, and each party waives any

objection which it may have based upon improper venue or forum non conveniens. **THE PARTIES HEREBY WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL AND AGREE THAT ANY CLAIM FOR A JURY TRIAL SHALL BE STRICKEN BY CONSENT IF EITHER PARTY VIOLATES THIS PROVISION.**

- 9.3** As a condition precedent to any lawsuit, both the Town and OPM agree to pursue mediation. The selection of the mediator will be by mutual agreement and the cost of mediation will be split equally by the parties.

ARTICLE 10 MISCELLANEOUS PROVISIONS

- 10.1 Extent of Agreement.** This Agreement represents the entire agreement between the Town and the OPM and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Town and OPM.
- 10.2 Severability.** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- 10.3 No Waiver of Performance.** The failure of either party to insist, in any instance, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right.
- 10.4 Assignment.** Neither the Town nor the OPM shall assign its interest in this Agreement without the written consent of the other.
- 10.5 Confidentiality.** All information communicated or disclosed by the Town in connection with the Project shall be deemed confidential and shall not be communicated or disclosed to any third party without the Town's prior written authorization. Excluded from this confidentiality provision is information required to be disclosed in the performance of the Services hereunder, publicly available information not caused by the disclosure of confidential information by the OPM, information obtained from third parties not known to have an obligation of confidentiality or developed independently, and as required by law.
- 10.6 Intellectual Property.** The OPM shall be deemed the author and owner of the intellectual property and work product created by the OPM. Notwithstanding the foregoing, the Town will be deemed the owner of all intellectual property, work product, designs, architectural works and Instruments of Service prepared or created by or on behalf of the OPM, Architect, Construction Manager and their Consultants and Subcontractors (including common law, statutory and other reserved rights, in such designs, architectural works and Instruments of Service), but only to the extent that they

pertain to unique elements of the Project that are: (a) developed exclusively for this Project or (b) developed independently by the Town (the "Limited Copyright").

10.6.1 For all intellectual property or work product not covered by the Limited Copyright, upon execution of this Agreement, the OPM grants to the Town a nonexclusive license to use the OPM's intellectual property or work product solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, or promoting, advertising, altering and adding to the Project and its surroundings. The OPM shall not use any work product that infringes any trademark, service mark, copyright, patent or other proprietary interest held by any third-party for which it has not obtained all necessary permissions and paid all royalties and license fees.

10.7 Financing Cooperation. If the Town finances the construction of the Project, the OPM shall cooperate with the Town and those providing financing for the Project at all times in the course of the performance of its Services hereunder, including, but not limited to, the preparation of any reports within the scope of this Agreement. Any changes or modifications to this Agreement reasonably requested by the Town to accommodate the financing shall be agreed to by the OPM and, subject to the execution of a further written agreement. This Agreement shall be amended at the option of the Town to include such changes or modifications. Notwithstanding the foregoing, nothing herein shall obligate the OPM to agree to any change or modification which materially increases the OPM's obligations, adversely affects OPM's compensation, benefits or rights. Nor shall the OPM's risk materially increase.

<p style="text-align: center;">ARTICLE 11 EXHIBITS</p>
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11.1 Exhibits.

Exhibit A -- OPM: Scope of Services
Exhibit B -- Hourly Rate Schedule
Exhibit C -- Organizational Chart

[The next page is the signature page]

This Agreement was executed the day and year first written above.

TOWN:

BY:

PRINTED NAME:

TITLE:

OPM:

BY:

PRINTED NAME:

TITLE:

**EXHIBIT A
OPM
SCOPE OF SERVICE**

EXHIBIT A

OPM: Scope of Services

The Owner's Project Manager ("OPM") services requested are not intended to duplicate the Construction Manager's ("CM's") services, or the Architect's or the Architect's or Town of East Hampton's ("Town") other Consultants. This OPM shall fully understand the contracted services of the CM and Architect, as well as all other Town held contracts related to this Project. This OPM shall act as the knowledgeable project construction representative for the Town of East Hampton. It is expected that the OPM will provide senior staff that are familiar with both design and construction of similar projects and are capable of questioning design/construction decisions which may otherwise lead to increased cost exposure for the Project. This OPM shall also assist the Town and their various engaged professionals in steering the Project through all the State and Local government required regulations, submissions and approvals. This OPM shall also provide administrative support services for the Project, to the Building Committee to the extent described below.

The Scope of Services:

Core responsibilities, acting as Town's Project Manager / Town of East Hampton's advocate:

- Assist the Town in managing its professionals who provide expertise and knowledge of State and local regulations that will be required for the delivery of the completed Project.
- Assistance in passage of Town referendum and any planning and zoning requirements.
- Supervise and assist the Town and its engaged professionals in obtaining all planning and building approvals required for the Project.
- Assist consultants in the execution of all necessary site investigation and preparation activities. Advise the Town of any unexpected/important results of which OPM has notice that could have a material effect on the Project and assist the Town in implementing appropriate actions based upon the recommendations of the Town's professionals.
- Initiate measures to be taken in preparing the site for construction, especially as related to the results of the site investigation and the on-site logistics for construction.
- In concert with the Town, negotiate with State and local authorities regarding all site-related traffic and transportation issues.
- Facilitate problem solving and communication among all Project team members.
- Provide construction status updates at each regularly scheduled Building Committee meeting.
- Coordinate the Architect's preparation of monthly budget updates for distribution at scheduled Building Committee meetings.

State and Local Government interface

- In conjunction with the Architect, CM and Building Committee, manage the Project costs through to Project completion.
- Manage the maintenance of Project records as required for the Town to archive.

Administration

- Coordinate preparation of, and provide all, invoices for each scheduled Building Committee meeting.
- Assist the Town and its advisors in connection with the Architect, Consultant and CM firms RFQ/RFP process.

Design Phase

- In consultation with Town, assist with the production of a draft program for the Project (hereafter referred to as the "Draft Program") upon conclusion of highest and best use analysis. OPM shall assist with the update or modification of the Draft Program from time-to-time upon the request of Town and

otherwise when OPM deems necessary. All material revisions to the Draft Program shall be subject to Town's approval.

- Coordinate with Architect and other design professionals in the programming of Town's needs for the Project.
- Assist the Architect in (a) evaluating from time-to-time the current status of the Project's concept with regard to its construction/design and financial feasibilities; (b) compiling the relevant information, including, without limitation, area breakdown, budgets for construction, equipment and other Project costs and Project schedule, and incorporate it into the Draft Program; and (c) incorporating subsequent changes to the Project into the Draft Program as and when they occur.
- Assisting the Town in determining the scope of performance of Architect, design professionals and other Consultants;
- In consultation with the Town negotiate commercially reasonable terms for the relevant contracts subject to the Town's approval.
- Organize and conduct regular meetings with the Architect and other design professionals during the design of the Project. Advise and consult with the Town on modifications and improvements, make recommendations on design, construction feasibility, time requirements and factors related to cost. The Town, in its sole discretion, may attend all design meetings.
- Work with Architect and other design professionals to clarify the details of the building systems and equipment affecting the Project, including structural, mechanical, heating, ventilating and air conditioning, electrical, plumbing, energy conservation, environmental conditions and internal traffic flows.
- Coordinate the submission to the Town for its approval at the end of each major stage of the design process all major construction plans and specifications and quality standards.
- Perform an internal review of the plans and specifications and consider practical time and/or money saving alternatives. These reviews generally include:
 - 1) the analysis of systems, system components, assemblies, materials and equipment to take advantage of current and projected construction market conditions; and
 - 2) where appropriate, materials, construction techniques, fabrication and installation methods.
- Review the technical specifications of the Project elements to take advantage of economies of scale, to expedite construction, and to confirm availability and quality of materials.
- Review plans and specifications with respect to adaptability of design to staged construction, and make recommendations for early purchase and fabrication of long-lead items.
- Facilitate the review of the plans and specifications by the various applicable Town engaged professionals to consider new and innovative techniques which may produce savings in time and/or money while maintaining or improving quality.
- Review plans and specifications with respect to construction feasibility and speed.
- Facilitate review of the plans and specifications by the various applicable Town engaged professionals with respect to their compliance with standard practices, codes and new technology or industry trends.
- Examine alternative systems, materials or techniques in connection with the bid review process.
- Provide value engineering and cost analyses.
- When complete, review, together with the Architect, the final plans and specifications for conformance with the Draft Program and the Town's requirements. Submit the final design development plans and specifications to the Town Building Committee for its approval.
- Facilitate the Architect's Incorporation of all relevant changes to the project as a result of these activities into the Draft Program.
- Advise the Town of suggested revisions to the plans and specifications.
- Advise and support Architect and other design professionals in preparing and submitting all required documents for the issuance of necessary building permits.

- Assist the consulting team in obtaining all site approvals, building permits, utility permits and other government approvals, authorizations, licenses and permits necessary for the construction of the project.
- Confirm with CM that all permits and other documentation required to commence construction have been obtained.

Construction Phase

- Review the CM's preparation of the site logistics plan for construction which will designate routes and procedures for material delivery, hoists, cranes, fences and sidewalk bridges, protection (netting, cables, etc.), location of equipment, storage area, field offices, shanties, parking, and any other information required by any federal, state or city authorities.
- Review CM's bid format and instructions for each package to provide for proper response to bids; assist the Town in confirming compliance with Town procurement laws; assist the Town and its legal counsel in determining where alternate bids are acceptable and the identification of where special time frames or deadlines apply.
- Review list of CM's bid packages for all materials and work and coordinate between each bid package and review for clear definitions of and responsibilities for the work.
- Determine which subcontractors and suppliers are to be included on the list of bidders, and discuss with Town the acceptability of such list of bidders proposed by CM.
- Respond to questions raised during the bidding period. Conduct pre-bid conferences with the CM to devise strategy for bids and awards, and assist the Town in confirming compliance with Town procurement requirements.
- Authorize CM to conclude contracts with the subcontractors and suppliers selected to execute the work only after appropriate negotiations. All awards will be subject to the approval of Town.
- Provide Town with a summary of each bid award, including the rationale for specific awards.
- Obtain evidence of insurance coverage for the Project as required under the Architect's agreement, the CM's agreement, and other agreements with Consultants.
- Management / oversight of the construction mobilization, shop drawing/submittal review process, RFI's, ASI's, fabrication, installation, and all associated construction activities.
- Management of all Town held contracts, including the Architect, CM, commissioning agent, civil engineer and any other Town held contracts.
- Review and advise the Town on all invoicing and payment requisitions.
- Review of all professional service change in services and construction change orders.
- Review and input regarding any claims. (Does not include legal representation).
- Attendance and participation at subcontractor meetings on an as needed basis.
- Provide the Building Committee with written quarterly reports, which also include an updated budget on a Building Committee approved form.
- Assist in the coordination and smooth transition of the Town Hall and Police Station moves both out of and into each phase of the completed Project.
- Assist with the Certificate of Occupancy process.
- Conduct site tours during construction. This includes a face-to-face communication with the Town Manager, and if requested by the Town Manager, with the Chief of Police and Facilities Director.

Project Meetings

- Participate in construction meetings as Town's advocate.
- Facilitate problem solving and communication among the Project team.
- Attend additional meetings in which the Town's attendance is advisable (as notified by the CM or Architect or Building Committee).

Request for Information (RFI's)

- Track and facilitate the timely resolution of CM RFIs to avoid construction delays or unnecessary expenditures.

Submittals

- Provide oversight, implementation and expediting of the construction submittal process on the Town's behalf to facilitate compliance with project requirements.
- Identify and facilitate the resolution of required information or selections such as colors, sizes and finishes.

Schedule Control

- Review, provide comment and make recommendations to the CM baseline and progress schedule submittals.

CM and Architect Change Order Review

- Provide detailed review of CM and Architect requests for change orders as well as recommendations for their disposition.

CM and Architect Progress Payment Review

- Review and approve monthly CM and Architect applications for progress payments.

CM Contract Compliance

- Provide ongoing overview of CM's reporting process and technical execution of the work.

Construction Quality Control

- Oversee CM compliance with Project quality control program.
- Participate in the Certificate of Occupancy process.

Town's Vendors

- Assist Town with the procurement, coordination and management of all Town-supplied vendors such as materials testing, building signage, furniture, fixtures and equipment.
- Oversee / manage FF&E procurement and installation process.
- Assist with FF&E invoicing review and processing (with Architect assistance/verification).
- Oversee/manage closeout process for all Town held contracts.

Move Management

- Assist the Town with the relocation, storage, and disposition of FF&E, existing and new as directed.
- Assist with FF&E invoicing review and processing (in collaboration with Architect).

Punch list through each Phase of Construction and Project Closeout

- Cost tracking and management.
- Oversee/manage all punch list activities towards a successful completion.
- Assist Architect and the Town in the preparation of final project punch lists and facilitate timely completion.
- Facilitate Building Commissioning and verify that turnover is completed.
- Assist in the receipt, transfer and storage of attic stock materials.
- Assist the Town and the Town's engaged professionals in the review of warranty documentation, as-built documents and operations and maintenance manuals to ensure compliance with project specifications.
- Within 60 days of Closeout Phase completion, provide all project records to the Town.

The aforesaid scope is limited as follows: Except in cases of emergency, OPM shall not be obligated to meet with the Town, Town Officials, Building Committee and other Town-related agencies, boards and commissions more than 8 times per month on a non-cumulative basis.

End Scope

EXHIBIT B
OPM
HOURLY RATE SCHEDULE

Individual

Rate

\$___ per hour

\$___ per hour

\$___ per hour

\$___ per hour

\$___ per hour

\$___ per hour

\$___ per hour

EXHIBIT B

Hourly Rates - C&E Enterprise, LLC.

6/1/2017

Hourly Rates:

Principal - Stephen Motto	\$110 per hour
Associate Principal - Lisa Motto	\$90 per hour
Project Manager	\$85.00 per hour
Site Superintendent	\$75.00 per hour
Construction Administrator	\$75.00 per hour

EXHIBIT C
ORGANIZATIONAL CHART

EXHIBIT C

C&E Enterprise, LLC. ORG CHART

