

**THIS AGREEMENT**, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between Hardesty & Hanover, 555 Theodore Fremd Avenue, Rye, NY 10580 hereinafter referred to as “**H&H**” and the Village of Mamaroneck, a Municipal Corporation, located at 123 Mamaroneck Avenue, Mamaroneck, NY 10543, hereinafter referred to as the “**VILLAGE**.”

**WHEREAS**, the Board of Trustees has determined that development in the flood zone is a topic of grave concern to many residents living in the Village for obvious reasons with the only real opportunities left to develop substantial housing in the flood zone being in the C-1 and C2 commercial zones under the “infill” housing provisions of Village Code § 342-50, and

**WHEREAS**, the Board of Trustees has further determined that eliminating infill housing in the flood zones would mitigate flood risk, lessen the burden on Village Emergency services, and ease traffic congestion and strain upon an already stressed infrastructure in the Village’s most densely populated areas; and

**WHEREAS**, the Village of Mamaroneck Board of Trustees will consider Proposal Local Law C – 2022, imposing a moratorium on the acceptance, processing and approval of applications under section 342-50 of this Code amending Chapter 342 of the Code of the Village of Mamaroneck, attached hereto as Exhibit “A”, and

**WHEREAS**, during this moratorium, the Village of Mamaroneck will undertake a study to review redevelopment scenarios and assess the fiscal/socioeconomic impacts of infill housing of properties in the C1 and C2 zoning districts that are located in a federally mapped floodplain, conduct a traffic impact assessment of the Mamaroneck Avenue corridor of intersections located between North Barry Avenue/Andrew Street and Mount Pleasant Avenue/Bishop Avenue/Halstead Avenue; and

**WHEREAS**, the Village intends to enter into a contract with the planning consulting firm of H&H for the perform such a study, and

**WHEREAS**, H&H has represented that they possess sufficient professional skills and experience to perform said services in a complete, timely and professional manner;

**NOW THEREFORE**, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

I. SCOPE OF WORK

Upon adoption of PLL-C 2022 by the Village of Mamaroneck Board of Trustees, H&H shall perform services to the degree of care, and skill ordinarily exercised by consultants performing the same, or similar, services in the same locality, at the time the services are

performed, as identified in the scope of service in their Proposals to Prepare a Moratorium Study, dated May 5, 2022, attached hereto and incorporated herein as Exhibit “B”.

II. TIME OF PERFORMANCE

The services to be performed hereunder shall commence upon receipt by H&H of a written “Notice to Proceed” from the VILLAGE and shall be completed within three (3) months. Upon completion of the work, H&H shall provide thirty (30) color copies (bound) and one (1) digital copy (MS Word and Adobe Acrobat PDF) of the Moratorium Study.

III. COMPENSATION AND PAYMENT

For satisfactory performance of the services described above, the VILLAGE shall pay to H&H professional fees in accordance with the schedule annexed as part of Exhibit B (“Fee Schedule”) but the total fee shall not exceed the sum of \$34,800. H&H shall submit monthly invoices prepared in such form and supported by such documents as the VILLAGE may reasonably require on or before the date of the following month specified by the VILLAGE. The VILLAGE shall release regular payments to H&H within thirty (30) days of completion of each task on the Fee Schedule and receipt and approval of an invoice for such completed work.

IV. COMPLIANCE WITH LAWS

H&H shall observe and abide by all applicable laws, ordinances and regulations of federal, State and local governments, in connection with the Work performed hereunder.

V. SUBCONTRACT AND ASSIGNMENT

This Agreement may not be assigned or subcontracted, in whole or in part, without the prior written consent of the VILLAGE. Approval by the VILLAGE of any subcontractor shall not relieve H&H of any liability or responsibility for the proper performance of the Work under this Agreement.

VI. EXTRA WORK

If H&H is of the opinion that any Work that H&H has been directed to perform is beyond the scope of this AGREEMENT and constitutes Extra Work, H&H shall promptly notify the VILLAGE, in writing, of this fact prior to beginning any of the Extra Work. In the event that the VILLAGE determines that such work does constitute Extra Work, the VILLAGE shall provide additional compensation to H&H in a fair and equitable manner..

VII. TERMINATION FOR CONVENIENCE

The VILLAGE shall have the right at any time to terminate this Agreement in whole, or in part, by written notice to H&H. Upon receipt of this notice H&H shall immediately discontinue performance, will not place any further orders and will promptly cancel all orders to subcontractors.

In the event of termination for convenience the VILLAGE shall pay H&H for all Work completed to the date of the notice of termination. However, in no event shall the VILLAGE be obligated to pay more than the amounts set forth in the Fee Schedule and any approved Extra Work less any previously paid funds.

#### VIII. DEFAULT

Should H&H breach any provision of this Agreement, the VILLAGE shall have the rights and remedies provided by law or under these terms and conditions.

The VILLAGE shall have the right at any time to terminate this Agreement in whole, or in part, if H&H fails to perform any of its obligations or if H&H fails to give the VILLAGE assurance of adequate performance within ten (10) Working days after written request by the VILLAGE for assurances.

In the event of a breach of the Agreement by H&H, the VILLAGE may:

- (a) declare H&H to be in default;
- (b) cancel this Agreement in whole or in part;
- (c) withhold payment of any further funds which may be due H&H until the default is corrected; and/or
- (d) pursue any and all other remedies afforded by law.

If the termination is brought about as a result of unsatisfactory performance on the part of H&H, the value of the Work performed by H&H prior to terminations shall be established by the amount of such Work completed by H&H in accordance with the Fee Schedule and accepted by the VILLAGE.

#### IX. INDEMNIFICATION

To the maximum extent permitted by law, H&H shall indemnify and save harmless the Village, its officers, agents and employees for any and all damages, claims suits and costs (including but not limited to attorney's fees) resulting from the negligent errors or omissions of H&H, their subcontractors, agents or employees in connection with their service under this Agreement. H&H specifically agrees that their Subcontractors, agents, or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform. .

Nothing in this Article of in this Agreement shall create or give to third parties any claim or right of action against H&H, or the VILLAGE beyond such as may legally exist irrespective of this Article or this Agreement.

#### X. INDEPENDENT CONSULTANT

H&H shall perform services in accordance with the terms and conditions of this Agreement as the VILLAGE'S independent consultant and shall be responsible for the means and methods used in performing said services. In no way does this Agreement or the Work constitute a joint-venture with the VILLAGE. The VILLAGE shall be the general administrator and coordinator of H&H'S services for the Work and Update to the Village of Mamaroneck 2012 Comprehensive Plan project.

XI. RECORDS

Fiscal records of H&H pertinent to H&H'S compensation and payments under this Agreement will be kept in accordance with generally accepted accounting practices.

H&H shall maintain all records (fiscal and other) and design calculations on file in legible form. A copy of these shall be available to the VILLAGE at H&H'S expense and the originals shall not be disposed of by H&H until after sixty (60) days written notice to the VILLAGE.

H&H'S records and design calculations will be available for examination and audit.

All drawings, specifications, reports, information or data prepared by or furnished to H&H in connection with the Work shall be the property of the VILLAGE and shall be immediately forwarded to the VILLAGE upon request.

XII. PARTIAL INVALIDITY

If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

XIII. TRANSFERABILITY OF INTEREST

H&H shall not assign, sublet, or otherwise transfer its interest in this Agreement without the written consent of the VILLAGE. H&H shall not subcontract any portion of this Agreement without the prior written consent of the VILLAGE.

XIV. GOVERNING LAWS

The validity or construction of this Agreement, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of New York. The parties all consent to the jurisdiction of the Supreme Court of the State of New York, County of Westchester for the adjudication of any dispute arising out of this agreement.

XV. SUPPLEMENT TO AGREEMENTS

The following exhibits, supplements or addendums form an integral part of this Agreement.

Exhibit "A" PLL C-2022 A Proposed Local Law to imposing a moratorium on the acceptance, processing and approval of applications under section 342-50 of this Code amending Chapter 342 of the Code of the Village of Mamaroneck (Zoning)

Exhibit "B" REVISED Proposal to Prepare a Moratorium Study – May 5, 2022

XVI. ENTIRE AGREEMENT

This Agreement constitutes the whole agreement between the parties with respect to the subject matter contained herein and there are no terms other than those contained herein. No modification or amendment of this Agreement shall be valid unless in writing and signed by the parties hereto. All the individuals executing this Agreement represent that they have been duly authorized to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

Village of Mamaroneck

Hardesty & Hanover.

\_\_\_\_\_  
Jerry Barberio

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Village Manager

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title