ATTACHMENT #4

Laberge Group

1964-2014 50 YEARS OF EXCELLENCE

ENGINEERING • ARCHITECTURE • SURVEYING • PLANNING

September 27, 2016
**VIA EMAIL & MAIL**

Hon. Maura P. Spery, Mayor
Village of Mastic Beach
369 Neighborhood Road
Mastic Beach, New York 11951

Re: Professional Services Agreement
Development of Interim and Final
Dissolution Study
Village of Mastic Beach, New York

Dear Mayor Spery:

Transmitted herewith are two copies of the Professional Services Agreement for Development of an Interim and Final Dissolution Study for the Village of Mastic Beach, for review, comment and approval. Upon review and execution, please return one fully executed copy to our office.

If you have any questions or comments, please contact our office.

Very truly yours,
LABERGE GROUP

By: _____
Richard F. Laberge, P.E.
President

RFL: cjb
Enc.

C: David Eldridge, Village Attorney, w/enc. (via email only)

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4 Computer Drive West • Albany, New York 12205 • (518) 458-7112 • Fax (518) 458-1879
www.labergegroup.com

# Agreement Between

# Village of Mastic Beach

## Suffolk County, New York

## And

## Laberge Group

## For

## Professional Services

## Draft Date: September 27, 2016

Laberge Group

ENGINEERING
ARCHITECTURE

SURVEYING
PLANNING

**AGREEMENT**
**BETWEEN**
**OWNER AND CONSULTANT**
**FOR**
**PROFESSIONAL SERVICES**

**Part I. PARTIES AND PROJECT**

THIS AGREEMENT is made on the 27th Day of September the year 2016 between Village of Mastic Beach the OWNER and LABERGE ENGINEERING & CONSULTING GROUP LTD. with offices at 4 Computer Drive West, Albany, New York 12205, the CONSULTANT, for the following:

Development of a Village Dissolution Study per the workplan in Exhibit A, along with any other services authorized by the OWNER.

**The OWNER and the CONSULTANT agree as follows:**

Part II.

## CONSULTING CHARGES:

A. In accordance with the Terms and Conditions of this Agreement, the CONSULTANT shall provide professional services for which the OWNER shall compensate the CONSULTANT as follows:

A.1 Payment for the services in the Project Work Plan (Exhibit A) shall be a lump sum and shall not exceed $57,500 plus reimbursable expenses as follows:

- The development of the grant and the Interim Dissolution Study - $30,000 plus expenses;
- Should the referendum pass, completion of the Final Dissolution Plan - $27,500 plus expenses; and
- Any additional meetings shall be $2,500 each plus expenses.

A.2 **Initial Payment** - Execution of the Agreement shall be accompanied by an initial payment by the OWNER of: N/A

A.3 Reimbursable Expenses - As defined in Article 4, times a multiplier of one and two tenths ( 1.2 ).

A.4 Payments made after the initial payment shall be made monthly based upon invoices submitted.

**Part III. TERMS AND CONDITIONS**

**Article 1. PROFESSIONAL SERVICES (N/A)**

**Article 2. OWNER'S RESPONSIBILITES**

The OWNER shall:

2.1 Provide to the CONSULTANT all criteria, design and standards and full information as to the OWNER'S requirements for the Project.

2.2 Designate in writing a person authorized to act as the OWNER'S representative. The OWNER or their representative shall receive and examine documents submitted by the CONSULTANT, interpret and define the OWNER'S policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the CONSULTANT'S services.

2.3 Guarantee full and free access for the CONSULTANT to enter upon all property required for the performance of the CONSULTANT'S services under this Agreement.

2.4 Give prompt written notice to the CONSULTANT whenever the OWNER observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the CONSULTANT'S performance of services under this Agreement.

2.5 Compensate the CONSULTANT for services rendered under this Agreement.

2.6 Furnish an overall budget for the project, including all construction and all other costs.

2.7 Furnish the above services at the OWNER'S expense and in such manner that the CONSULTANT may rely upon them in the performance of their services under this Agreement.

2.8 Provide other items described in Exhibit A as applicable.

**Article 3. DIRECT PERSONNEL EXPENSE**

Direct Personnel Expense is defined as the direct labor costs incurred by the CONSULTANT directly attributable to the Project by the payment of the actual salaries and wages plus .45 of said sum to cover all indirect labor expenses (i.e. social security, unemployment, holidays, vacation, retirement, insurance etc.).

**Article 4. REIMBURSABLE EXPENSES**

4.1 Reimbursable Expenses are in addition to compensation to the CONSULTANT for Basic and Additional Services and include expenditures made by the CONSULTANT, their employees or their consultants in the interest of the Project. Reimbursable Expenses include, but are not limited to:

4.1.1 Expense of transportation, subsistence and lodging when traveling in connection with the Project.

4.1.2 Expense of long distance or toll telephone calls, telegrams, messenger service, field office expenses, and fees paid for securing approval of authorities having jurisdiction over the Project.

4.1.3 Expense of all reproduction, postage and handling of reports or other Project-related work product of the CONSULTANT.

4.1.4 Expense of computer time including charges for proprietary programs.

4.1.5 Expense of publications, library, equipment, etc. required for the project.

**Article 5. PAYMENTS TO THE CONSULTANT**

5.1 Progress payments shall be made in proportion to services rendered and as indicated within this Agreement and shall be due and owing within thirty days of the CONSULTANT'S submittal of their statement. Past due amounts owed shall include a charge at a rate of interest from the thirtieth day equal to J P Morgan Chase Bank prime plus two (2) per cent.

5.2 If the OWNER fails to make payments due the CONSULTANT, the CONSULTANT may, after giving seven days written notice to OWNER, suspend services under this Agreement.

5.3 No deductions shall be made from the CONSULTANT'S compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.

5.4 If the Project is delayed or if the CONSULTANT'S services for the Project are delayed or suspended for more than three months for reasons beyond the CONSULTANT'S control, the CONSULTANT may, after giving seven days written notice to the OWNER, terminate this Agreement and the OWNER shall compensate the CONSULTANT in accordance with the termination provision contained hereafter in this Agreement.

**Article 6. GENERAL PROVISIONS**

6.1 **Ownership of Documents**

Drawings, Specifications and other work product of the CONSULTANT for this Project are instruments of service for this Project only and shall remain the property of the CONSULTANT whether the Project is completed or not. Reuse of any of the instruments of service of the CONSULTANT by the OWNER on extensions of this Project or on any other project without the written permission of the CONSULTANT shall be at the OWNER'S risk and the OWNER agrees to defend, indemnify and hold harmless the CONSULTANT from all claims, damages and expenses including attorneys' fees arising out of such unauthorized reuse of the CONSULTANT'S instruments of service by the OWNER or by others acting through the OWNER. Any reuse or adaptation of the CONSULTANT'S instruments of service occurring after the written agreement of the CONSULTANT shall entitle the CONSULTANT to further compensation in amounts to be agreed upon by the OWNER and the CONSULTANT.

6.2 **Delegation of Duties**

Neither the OWNER nor the CONSULTANT shall delegate their duties under this Agreement without the written consent of the other.

6.3 **Termination**

This Agreement may be terminated by either party by seven days written notice in the event of substantial failure to perform, in accordance, with the terms of this Agreement by the other party through no fault of the terminating party. If this Agreement is terminated, the CONSULTANT shall be paid for services performed to the termination notice date including, Reimbursable Expenses due plus Termination Expenses. Termination Expenses are defined as Reimbursable Expenses directly attributable to termination, plus 25% of the total compensation earned to the time of termination to account for CONSULTANT'S rescheduling adjustments, reassignment of personnel and related costs incurred due to termination.

6.4 **Extent of Agreement**

This Agreement represents the entire and integrated agreement between the OWNER and the CONSULTANT and supercedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the CONSULTANT.

6.5 **Governing Law**

Unless otherwise specified with this Agreement, this Agreement shall be governed by the law of the principal place of business of the CONSULTANT.

6.6 **General**

6.6.1 Should litigation or arbitration occur between the two parties relating to the provisions of this Agreement, all litigation or arbitration expenses, collection expenses, witness fees, court costs and attorneys' fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.

6.6.2 Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

6.6.3 In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

6.6.4 The CONSULTANT intends to render their services under this Agreement in accordance with generally accepted professional practices for the intended use of the Project and makes no warranty either express or implied.

6.6.5 Any Opinion of the probable Construction Cost prepared by the CONSULTANT represents their judgment as a design professional and is supplied for the general guidance of the OWNER. Since the CONSULTANT has no control over the cost of labor and material, or over competitive bidding or market conditions, the CONSULTANT does not guarantee the accuracy of such Opinions as compared to Contractor bids or actual cost to the OWNER.

6.6.6 Owner agrees not to hire or solicit for employment, for themselves or others, the CONSULTANT'S employee during the term of this agreement and for a period of two years thereafter.

6.6.7 Owner shall provide CONSULTANT with written notice of any and all claims relating to CONSULTANT'S services within ten (10) days after the event-giving rise to the claim. Said notice shall be deemed to be a condition precedent to any action or lawsuit to recover damages against CONSULTANT.

6.6.8 Any and all claims, actions or lawsuits against CONSULTANT arising out of the project or this Agreement must be brought in the Supreme Court, County of Albany within six (6) months of the last date that CONSULTANT provides services under this Agreement.

6.6.9 Not withstanding any statutory provision or other law, written notice of any and all claims arising out of this contract shall be served within one (1) year from the date of the alleged breech. Any and all actions arising out of such claims shall be filed within six (6) months from the date of said notice.

6.6.10 N/A

6.6.11 Delivery of Electronic Files

In accepting and utilizing any drawings, reports and data on any form of electronic media generated and provided by the CONSULTANT the OWNER covenants and agrees that all such electronic files are instruments of service of the CONSULTANT who shall be deemed the author, and shall retain all common law, statutory law and other rights including copyrights.

The OWNER agrees not to reuse these electronic files in whole or in part, for any purpose or project other than the project that is the subject of the Agreement. The OWNER agrees not to transfer these electronic files to others without the prior written consent of the CONSULTANT. The OWNER further agrees to waive all claims against the CONSULTANT resulting in any way from any unauthorized changes or reuse of the electronic files for any other project by anyone other than the CONSULTANT.

In addition, the OWNER agrees to the fullest extent permitted by law to indemnify and hold the OWNER harmless from any damage, liability or cost including reasonable attorney's fees and costs of defense, arising from any changes made by anyone other than the CONSULTANT or from any changes made by anyone other than the CONSULTANT or from any reuse of the electronic files without the prior written consent of the CONSULTANT.

6.6.12 Provisions provided in Exhibit A as applicable.

**Article 7. SPECIAL PROVISIONS**

7.1 **Insurance and Indemnity**

7.1.1 **CONSULTANT'S Insurance** - The CONSULTANT shall acquire and maintain statutory worker's compensation insurance coverage, employer's liability, comprehensive general liability insurance coverage and professional liability insurance coverage.

7.2 **Limitation of Liability**

To the fullest extent permitted by law, the OWNER agrees to limit the CONSULTANT'S liability to the OWNER and to all Construction Contractors and Subcontractors on the project for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from, or any way related to this Agreement due to the CONSULTANT'S professional negligent acts, errors or omissions, breach of contract or warranty, express or implied, such that the total aggregate liability of the CONSULTANT to those named shall not exceed twenty thousand ($20,000) dollars or 50% of the CONSULTANT'S total fee for services rendered on this project, whichever is the greater.

7.3 **Miscellaneous**

(These provisions supersede previous Articles or provide additional information not included in previous Articles).

7.3.1 The OWNER'S Authorized Representative shall be the official who executes this Agreement.

This Agreement executed the date and year written at the beginning of the Agreement.

**OWNER:**

Village of Mastic Beach

ADDRESS
369 Neighborhood Drive
Mastic Beach — New York (STATE) — 11951 (ZIP)

BY:

Hon. Maura Spery (PRINTED NAME) — Mayor (TITLE)

ATTEST:

**CONSULTANT:**

LABERGE ENGINEERING & CONSULTING GROUP LTD.

4 COMPUTER DRIVE WEST
ADDRESS

ALBANY (CITY) — NY (STATE) — 12205 (ZIP)

BY:

Richard F. Laberge, P.E. (PRINTED NAME) — President (TITLE)

ATTEST: Paul J. Buonatto

# EXHIBIT A

## PROJECT APPROACH

After consultation with the NYS Department of State, we are pleased to present a three part proposal for professional services related to grant writing and plan development for village dissolution. The services we are proposing include the following:

A. Re-Organization Assistance Grant: Working closely with the Village Board, the Laberge Group will gather all the necessary information, write and submit a Expedited Re-Organization Assistance Grant through the 2016 Local Government Citizens Re-Organization Empowerment Grant for up to $50,000. The award will be divided into two stages, the first for the interim report provided by the expedited re-organization assistance, and the second for the final dissolution plan should the referendum be successful. It is anticipated that the grant application will be prepared and submitted by the next allowed revolving submission date (with expenses reimbursable from April 1 forward). Meeting this proposed grant submission deadline is highly dependent upon the Village registering and obtaining access to the NYS Grants Gateway and providing all requested information to Laberge Group in a timely manner.

B. Development of an Interim Village Dissolution Study: Laberge Group will facilitate a public process and develop an Interim Village Dissolution Study Plan prior to the referendum to educate the public about the Dissolution process. The scope of work will include the elements outlined below.

C. Pending the approval of the referendum, Laberge Group will complete the Dissolution Plan, including all of the required elements of General Municipal Law Article 17-A, Title 3 §775, and following the Citizen-Initiated timeline outlined in General Municipal Law Article 17-A.

## SCOPE OF SERVICES

**1) Project Initiation/Coordination Meeting:**

a. *Project Initiation Meeting:* Laberge Group will work closely with the Village Mayor, Village Board, and Village Clerk during the month of October 2016 to gather all the necessary information for the Re-Organization Assistance Grant.

b. *Project Coordination:* Laberge Group will work closely with the Dissolution Study Committee to fine-tune the tasks related to the necessary research efforts of the Interim Village Dissolution Study. The meetings will serve as work sessions providing the committee with an opportunity to discuss the project schedule, identify data and information resources, the use of the Village website or other resources for public dissemination of information, and provide other valuable input to shepherd the process. Meetings and coordination efforts will likely be in the form of telephone, conference calls and email correspondence, and one (1) on site kick-off coordination meeting.

c. *Project Website:* Laberge Group will create a project specific website for the Mastic Beach Dissolution Plan and process. This website will be linked to the Town and Village of Mastic Beach websites. This site will include information about the dissolution process, timelines, meeting dates, committee meeting summaries, PowerPoint presentations, opportunities for public input, and both draft and final reports. Please note this information will be reviewed by the Dissolution Committee, the Village and/or the Town prior dissemination to the public.

# EXHIBIT A

2) **Public Meetings:**

   a. *Public Kick-Off Meeting:* Laberge Group will facilitate an initial public kick off meeting in early October with a representative of the NYS Department of State to discuss the dissolution process and the development of the upcoming Interim Dissolution Plan.

   b. *Interim Report Public Presentations*: An interim public meeting (should be scheduled within one weeks of the scheduled referendum) to inform the public of the Dissolution Plan process, and present the Interim Village Dissolution Study. Laberge Group will develop a PowerPoint presentation highlighting key aspects of the Services Inventory Report, and present at a public informational meeting.

   c. *Final Plan Presentation:* Pending the approval of the referendum, and the completion of the Final Dissolution Plan, a second public meeting should be scheduled to provide the public with details about the Dissolution Plan process and how it will affect village services and taxes.

3) **Interim Village Dissolution Study:** As soon as practical after the project initiation meeting, Laberge Group will undertake primary data collection to develop a Preliminary Services Inventory Report that will summarize current operations, organization, workload and service levels provided by the Village, as well as the staffing and related costs to perform such services. It is anticipated that a 2-day workshop session will be required after the kick-off meeting to interview key operations staff and stakeholders; tour operational sites; review budget, personnel and other operating records; and collect electronic or hard paper copies of key documents may be necessary develop a comprehensive understanding of current operations in the Village and Town. Village staff will be expected to provide the consultant with all of the information called for in a format and level of detail agreed to. Village staff may be asked to provide the consultant with a written description of the all services, duties, responsibilities provided by each board and/or staff member, and all available information that identifies the level of services provided by the Village, organizational structure, and the annual operating figures prior to the meetings. The information provided must be sufficient to provide the basis for consultant's assessment of existing services in order to evaluate the restructuring options that are in the best interest of Village residents, and to develop an organizational plan for transferring or eliminating Village employees. Components of the Preliminary Services Inventory Report will include the following:

   a. Summary of the existing government services delivered by the Village;

   b. Summary of existing Village personnel involved in government and public service delivery, budget information, as well as any potential plan for the transfer or elimination of public employees;

   c. List of existing Village-owned equipment and other fixed assets including but not limited to real and personal property;

   d. Summary of Village financial assets, liabilities and indebtedness as well as capital investments and needs;

   e. Summary of Village laws and land use regulations;

   f. Potential post-dissolution conditions for delivery of Village services, and

   g. A fiscal estimate of the cost of dissolution.

# EXHIBIT A

4) **Dissolution Plan:** Pending the approval of the referendum, Laberge Group will complete the development of the Dissolution Plan, including the required elements of General Municipal Law Article 17-A, Title 3 §775 as outlined below, and following the Citizen-Initiated timeline outlined in General Municipal Law Article 17-A. The Dissolution Plan will include the following:

   a. the name of the Village to be dissolved;

   b. the territorial boundaries of the Village;

   c. the type and/or class of the Village;

   d. a fiscal estimate of the cost of dissolution;

   e a plan for the transfer or elimination of public employees;

   g. the Village 's assets, including but not limited to real and personal property, and the fair value thereof in current money of the United States;

   h. the Village 's liabilities and indebtedness, bonded and otherwise, and the fair value;

   i. the manner and means by which the residents of the Village will continue to be furnished municipal services following the entity's dissolution;

   j. terms for the disposition of the Village 's assets and the disposition of its liabilities and indebtedness, including the levy and collection of the necessary taxes and assessments;

   k. findings as to whether any local laws, ordinances, rules or regulations of the Village shall remain in effect after the effective date of the dissolution or shall remain in effect for a period of time;

   l. the effective date of the proposed dissolution;

   m. the time and place or places for a public hearing or hearings on the proposed dissolution plan.

**Please note that the Village and Town attorneys will be required to develop agreements in order to carry out the dissolution, and legal services are not a part of Laberge Group's proposal.