

CONSULTING AGREEMENT

THIS AGREEMENT, dated the _____ day of November 2017, between Nan C. Stolzenburg d/b/a Community Planning & Environmental Associates, with offices located at 152 Stolzenburg Road, Berne, NY 12023, (hereinafter, the "Consultant") and the Town of North East, a municipal corporation (hereinafter, the "Town").

WHEREAS, the Town of North East and the Village of Millerton desire to work together to develop a joint updated comprehensive plan; and

WHEREAS, the Village of Millerton and Town of North East have agreed to work cooperatively on this project; and

WHEREAS, the Town agrees to be the administrator for the project for the Town and Village, and desires to engage the services of Consultant as an Independent Contractor to assist in the development and adoption of this comprehensive plan; and

WHEREAS, the Consultant desires to provide certain professional services to the Town and Village as more fully set forth herein.

NOW, THEREFORE, the Town and the Consultant agree as follows:

1. **SERVICES TO BE PROVIDED BY THE CONSULTANT:** The Consultant agrees to assist the Town of North East Town Board and the Village of Millerton Village Board, and any committee they appoint to assist with this planning effort to develop and adopt a comprehensive plan as more fully described and set forth in the "Scope of Work" (hereinafter "proposal"). The proposal is attached hereto and made part hereof as Exhibit "A". This proposal outlines a scope of work that shall be agreed upon between the Consultant and Town/Village. Any agreed upon Scope of Work in addition to the proposal shall also be made part of this consulting agreement.
2. **SERVICES TO BE PROVIDED BY THE TOWN:** The Town/Village agree to provide support to the Consultant to accomplish the development of the comprehensive plan, including; 1) maintaining records of meetings, minutes and all public sessions, 2) providing all available maps, documents, data, and other local information within the possession of the Town or Village to the Consultant when requested, and 3) the Town/Village or Committee shall make all arrangements for provisions of local meeting rooms and undertake the placement of all press releases and legally required notices of meetings. The appointed Planning Committee will serve as coordinator, local contact, and decision-maker for contents of the draft plan subject to review when completed by the Town and Village boards.
3. **CONSULTANT ROLE:** It is recognized that the Town of North East and Village of Millerton have assigned the day to day work of development of this plan to an appointed Planning Committee to coordinate this project. The Planning Committee members have the authority to act on behalf of the Town and Village in the on-going day-to-day process of the project development. It is agreed that the Town Board and Village Board are the entities authorized to undertake final approval of the project. It is further agreed that the neither the Consultant, its agents or employees nor anyone sub-contracted by the consultant shall have the authority pursuant to this agreement to be a Town or Village spokesperson for this project. However, it is

agreed, that upon request of the Town or Village, the Consultant will have the authority to comment and discuss the project with the public or media as deemed necessary.

4. **FEES AND COSTS:** The consultant's total fees for the project pursuant to this agreement shall not exceed \$30,000 as more fully detailed in Exhibit A. This fee does not include additional meetings or work beyond what is included in the attached Scope. Consultant agrees to notify Town and Village if Committee desires additional meeting time or work, and further agrees not to conduct that additional work without Board approval. Any additional meetings beyond that outlined in Exhibit A shall be charged at \$300 per meeting.

5. **BILLING AND PAYMENT:** The Town will act as the lead agency for the purposes of administering this contract, and agrees to accept responsibility for payment of all invoices. Coordination of any payment or reimbursement between the Town and Village shall be between the Town and Village, and shall not be part of this agreement. The Consultant will bill the Town monthly as the project progresses with payment due to the Consultant within 45 days. The monthly bill shall consist of a summary of direct labor hours by Consultant or Consultant's sub-contractors, plus a listing of reimbursable costs incurred, along with any necessary voucher as required by the Town. The Consultant will submit invoices to the Chief Fiscal Officer of the Town. The Town agrees to provide Consultant with any necessary paperwork required for invoicing or other municipal billing procedures.

6. **CHANGES TO THE SCOPE OF WORK, FEES AND COSTS:** The parties herein recognize that during the course of the project, additional studies, surveys, reviews, tasks, or costs may arise that are outside of the scope of the parties' agreement. It is agreed that any additional work beyond the scope of the parties' agreement, as attached herein shall not take place until such work is authorized in a fully executed amendment to this agreement between the Consultant and the Town/Village outlining such additional work.

7. **EMPLOYMENT OF SUBCONTRACTORS:** It is agreed that the Consultant may utilize the services of other professionals to complete the project as outlined in Exhibit A. These professionals will be retained, as sub-contractors to the Consultant and the Consultant will bear all costs, fees and charges for any such work, with no increase to the price the Consultant has agreed to charge the Town/Village, which includes such costs. The consultant agrees to provide proper receipts, vouchers, invoices, or other documentation to the Town as needed to detail these expenses.

8. **NON-DISCRIMINATION REQUIREMENTS:** In accordance with Section 220-e of the Labor Law, Sections 291-299 of the Executive Law, and the Civil Rights Law, the Consultant will comply with equal opportunity requirements and not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, sex, disability, genetic predisposition or carrier status, or marital status. The Consultant represents that it is certified by New York State as a woman-owned business.

9. **ACCEPTANCE OF WORK PRODUCT:** For purposes of this contract, the Planning Committee shall determine acceptability of work done by or at the direction of the Consultant unless the Planning Committee has referred such determination to the Town or Village Board or unless such determination is required by law to be made by the Town or Village Board. The Town and Village's approval of the Consultant's work product shall not be unreasonably withheld. Maps, hard copy and disks containing original files of the maps and text, where applicable, shall become the property of the Town/Village. All text shall be in a digital format appropriate to the

Town and Village's future applications.

10. **INSURANCE:** The Consultant agrees to maintain a Public Liability Insurance Policy in an amount no less than \$1,000,000.00. An appropriate automobile insurance policy will be in place for all automobiles used by the consultant, consultant's employees and subcontractors traveling to and from North East/Millerton on business relating to this contract. All employees and subcontractors will be covered by the Consultant's, or their own, Liability Insurance Policies and Worker's Compensation Insurance. Prior to receiving payment under this contract, Consultant will provide the Town with Certificates of Insurance as proof that such insurance coverage has been obtained if requested.

11. **TERMINATION:** The parties may terminate this Agreement only for cause stemming from a material breach of the Agreement. In the event that the Town/Village terminates this agreement for any other reason prior to the completion of the Consultants work, the Consultant shall be entitled to reimbursement for all work performed and expenses incurred within the scope of this agreement, up to the date of the notice of termination, as well as any other damages to which consultant may be entitled by law. The Town shall be entitled to all work products prepared and any written research or work product in progress provided the Town is not in material breach of this Agreement and has paid for all work performed and expenses incurred, up to the date of any notice of termination.

12. **MISCELLANEOUS:**

- a. **Execution by Both Parties.** This Agreement shall not become effective and binding until fully executed by Consultant, and approved and signed by the Town of North East and Village of Millerton.
- b. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.
- c. **Agreement May Not be Assigned.** The Consultant and the Town covenant not to assign this Agreement without the prior written consent of the other party which shall not be unreasonably withheld.
- d. **Entire Agreement.** This Agreement, and any attachments hereto, contain all the terms, promises, covenants, conditions and representations made or entered into by and between Consultant and the Town of North East and Village of Millerton with regard to the transactions contemplated herein, and supersede all prior discussions and agreements, whether written or oral, between Consultant and the Town with respect thereto.
- e. **Modification or Amendment.** This Agreement may not be modified or amended unless such modification or amendment is set forth in writing and executed by both Consultant and the Town of North East/Village of Millerton with the formalities hereof.
- f. **No Waiver.** No waiver of any breach of any condition of this Agreement shall be binding unless in writing and signed by the party waiving such breach and no

such waiver shall in any way affect any term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Nan C. Stolzenburg
Nan C. Stolzenburg d/b/a
Community Planning & Environmental Associates

Dated: 12/8/17

The Town of North East

By: _____

Dated: _____

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Nan C. Stolzenburg d/b/a
Community Planning & Environmental Associates

Dated: _____

The Town of North East

By: _____

Dated: _____

**RIDER TO CONSULTING AGREEMENT
BETWEEN NAN C. STOLZENBURG D/B/A COMMUNITY PLANNING &
ENVIRONMENTAL ASSOCIATES ("CPEA") AND TOWN OF NORTH EAST**

Notwithstanding anything to the contrary contained in the Consulting Agreement between the above parties, of which this Rider is hereby made a part, the parties agree as set forth in this Rider. If there is a conflict between the terms of this Rider and any other part of the Consulting Agreement, the terms of this Rider shall prevail.

1. In addition to the work set forth in the Scope of Work, CPEA will assist the Town in preparation and filing of all reports in conjunction with the Greenway Grant or any other grant received by the Town to fund this project.

2. That all requests for payments shall be submitted to the Town on appropriate vouchers with a description of services rendered and shall be first submitted to, and approved by, the Comprehensive Plan Committee and then submitted to the Town Board for audit, approval and payment in accordance with the requirements of NYS Town Law.

3. That in accordance with the provisions of §109 of the General Municipal Law, CPEA is hereby prohibited from assigning, transferring, conveying or otherwise disposing of this Agreement or of its rights, title or interest in this Agreement, or its power to execute this Agreement, to any other person, corporation or entity without previous consent in writing of the Town (except with regard to subcontractors as identified in the Consulting Agreement).

4. That in the event any subcontractors are retained by CPEA to perform work as required pursuant to this contract, the name, address and scope of work to be performed by the subcontractor shall be provided immediately to the Town and Committee, and final payment shall not be made until such time as proof of payment to the subcontractor(s) has been provided by CPEA.

5. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to have been inserted herein. If any such provision is not inserted physically amended forth with to make such insertion. In particular, CPEA shall, among other things, fully comply with:

- (a) Labor Law §220-e and Executive Law §§291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
- (b) Affirmative action is required by the Labor Law.
- (c) Prevention of dust hazard required by Labor Law §222-a.
- (d) Preference in employment of persons required by Labor Law §222.
- (e) Eight-hour workday as required by Labor Law §220(2).

6. CPEA, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as, nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

7. All documents including, but not limited to, all documents as set forth in the Scope of Work including original drawings, estimates, specifications, field notes, reports and other data shall remain the sole and exclusive property of the Town upon payment for each services by the Town and all such documents and work product shall be deemed to be "work-for-hire."

TOWN OF NORTH EAST

By: _____
GEORGE KAYE, Supervisor

DATED: _____

**COMMUNITY PLANNING & ENVIRONMENTAL
ASSOCIATES**

By: Nan Stolzenburg
NAN C. STOLZENBURG, AICP

DATED: 12/8/17

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TOWN OF NORTH EAST

By: _____ DATED: _____
GEORGE KAYE, Supervisor

**COMMUNITY PLANNING & ENVIRONMENTAL
ASSOCIATES**

By: _____ DATED: _____
NAN C. STOLZENBURG, AICP

10-26-17
Nan Stolzenburg

Town of North East/Village of Millerton Comprehensive Plan

Tentative Schedule of Work

Task/Steps	Task Assignment	Estimated Time Frame
Hold kick off meeting with Committee; make decisions on public input	CP&EA and Committee	October 2017
Review the existing Comprehensive Plan and other documents and plans; identify preliminary strengths, weaknesses, opportunities and threats (SWOT).	CP&EA	November/December 2017
Review existing Comprehensive Plan; identify actions that have been completed, partially completed or not completed	Committee	November/December 2017
Data collection, including demographic and economic data, information on infrastructure, shared services, natural resources, historic resources, etc.	CP&EA & EMPCO	November 2017 to January 2018
Local data collection using list provided from consultants	Committee	November 2017 to January 2018
Review existing maps, identify other maps needed, work with Cornell and Dutchess County Planning and other organizations/agencies to obtain those basic maps	CP&EA; Committee to find/provide maps and/or data	November/December 2017
Develop questions for interviews/focus groups	CP&EA & EMPCO	November 2017
Conduct interviews and focus groups	Committee	November 2017 to January 2018
Public Visioning Workshop	CP&EA with Committee	January 2018
Joint Meeting with Town/Village Boards, Planning Boards, ZBAs, CACs, CEO	CP&EA with Committee	February 2018

Task/Steps	Task Assignment	Estimated Time Frame
Compile data, maps, and public input from above steps into profile and inventory of resources document	CPEA & EMPCO, edits and review by Committee	March 2018
Develop SWOT Matrix (Strengths, Weaknesses, Opportunities and Threats)	CP&EA and Committee, edits and review by Committee	March/April 2018
Update vision and goals from prior plan or develop first draft of new vision and goals	CP&EA & EMPCO to Draft, Committee to review and decide	March/April 2018
Review existing local laws in light of SWOT and new vision/goals and make recommendations for change to those laws	CP&EA	May 2018
Provide new recommendations for strategies and actions for Committee to discuss, edit where needed, and prioritize.	CP&EA & EMPCO to draft and submit to Committee	June to September 2018
Develop draft of updated plan; Committee to review.	CP&EA & EMPCO to draft, Committee to edit and review	October to December 2017
Hold public hearing #1	Committee with assistance from CP&EA	January 2019
Edit draft plan as needed; submit to Town and Village Boards	Committee	February 2019
Hold Public hearing #2	Town and Village Boards with assistance from CP&EA	March 2019
Assist in compliance with NY SEQRA (Full EAF form and appropriate resolutions). County Planning Board review	CP&EA, Town and Village Boards	March - April 2019
Edits and final formatting of Final Plan	CP&EA	April 2019

Task/Steps	Task Assignment	Estimated Time Frame
Adoption of Plan by Town Board and by Village Board (concurrently)	Town and Village Board with assistance from CP&EA	April 2019