

**Memorandum of Understanding  
Between Town of Cape Elizabeth and Cape Community Arena Group**

This Memorandum of Understanding (“MOU”) is entered into on \_\_\_\_\_ (the “Effective Date”) to memorialize a non-binding agreement between the Town of Cape Elizabeth (the “Town”) and Cape Community Arena Group (“CCAG”), collectively known as the “Parties.” This MOU supersedes the original MOU entered into March 14, 2022.

**I. Goal of the MOU**

This MOU builds upon the momentum developed by CCAG and the Town’s joint ice rink collaboration behind Town Hall, with the goal of delivering Cape residents a more reliable year-round recreation, entertainment, and education facility that does not require capital investment from the Town. The facility has been named Cape Community Arena (“CCA”). Through CCA’s covered, open-air design, the project is meant to further build community, blend in with the beauty of Gull Crest, and integrate seamlessly with the existing playing fields and Public Works complex. CCAG supports the Town’s comprehensive plan commitment to planning for population growth, ensuring Cape Elizabeth will continue to be a desirable place to live, and enhancing our outdoor recreational areas. CCAG believes that CCA aligns well with this commitment.

**II. Term of the MOU**

The term of the MOU (“MOU Period”) will commence on the Effective Date and continue until Cape Elizabeth’s Town Council (the “Council”) authorizes a Notice to Proceed (“NTP”) for CCAG to begin construction of CCA and the Town and CCAG enter into a formal, binding written agreement to define the terms of the construction period and the donation/transfer of CCA at project commissioning. Said agreement will supersede this MOU. If authorization of the NTP and execution of the written agreement are not completed within 36 months of the Effective Date, this MOU shall expire. Amendments to this MOU may be made via mutual written agreement by both Parties. Despite the non-binding nature of this MOU, Sections VIII is binding with respect to the Liability provision contained therein.

**III. Termination**

Either party hereto may terminate this MOU without cause at any time, upon at least one hundred and twenty (120) days written notice.

**IV. Roles & Responsibilities**

During the MOU Period, the Parties will work together to develop the final scope of the CCA project. The Parties are entering into this MOU in good faith, and final project approval is contingent on satisfactory completion of the milestones outlined in **Appendix A**. CCAG is solely responsible for all costs throughout the approval process. As applicable, CCAG shall maintain adequate insurance coverages for any work conducted on the property (“Property”) depicted in **Appendix B** during the MOU Period. Property is defined as the Area of Interest in **Appendix B**.

## **V. Site Access and Land Use Permitting Authorization**

Upon entering into this MOU, the Town grants CCAG site access for the Property depicted in **Appendix B** during the MOU Period for the purpose of conducting on-site surveys necessary for design and permitting of the CCA project. The Town also agrees to provide CCAG with Right, Title or Interest in the Property for the purpose of submitting applications to regulatory agencies. Adding to the Council's (5-2) vote on February 14th that granted CCAG permission to enter the Planning Board queue and meet informally with the Cape Elizabeth Planning Board (and applicable Town staff) to gather requirements for the Planning Board process, this MOU memorializes the Council's full authorization of CCAG to begin the permitting process for CCA (and the Pilot referenced below) with applicable local, state, and federal agencies having jurisdiction over the projects, including, but not limited to the Cape Elizabeth Planning Board and the Maine Department of Environmental Protection.

Approval to begin the permitting process does not convey formal approval of, or commitment to approve the CCA project by the Council. Prior to submitting any applications to regulatory agencies for CCA, CCAG and the Town will work together to organize and meet with key stakeholders and experts needed to ensure a mutually agreed upon project design. Any and all modifications to the Property will require review and approval by the Town.

## **VI. Pilot Project**

Pending all necessary approvals, the CCA project is expected to be in operation by November 2024, at the latest. While CCA is in planning, also pending all necessary approvals, CCAG will deliver a Pilot Project (the "Pilot") on the Property in the form of a temporary 150'x 85' refrigerated ice rink, to be operational by early December 2022, at the latest, and operate through the winter of 2022/2023 ("Year 1"). At the end of the skating season (slated for March 2023), the temporary rink will be removed, and the land will be restored accordingly. The Pilot was granted site plan approval by Cape Elizabeth's Planning Board on August 12, 2022 (select images from the approved site plan can be found in **Appendix C**).

Like with CCA, prior to construction of the Pilot, CCAG must receive a separate NTP following a majority vote of the Council, which this MOU will memorialize if fully executed. It is the intention of both the Town and CCAG to run the Pilot for a second year during the winter of 2023/2024 ("Year 2"). Year 2 will entail a 200'x85' refrigerated ice rink, and the site will be prepped to accommodate both project lengths beginning October 1<sup>st</sup> 2022.

For Year 1, an acceptable statement of financial capability was provided to the Town Manager on July 19, 2022, in accordance with the site plan review submission requirements in Section 19-4-4.C.2.q of the Cape Elizabeth Zoning Ordinance.. Like with CCA, all approvals and construction and removal related expenses for the Pilot will be the responsibility of CCAG. An insured third party(s) will manage operation and maintenance of the Pilot, which will be arranged and funded by CCAG and its funding partner. Pilot electrical expense for Year 1 will also be paid for by CCAG.

At the Town's full discretion, the Town may make contributions to the operation and maintenance of the Pilot e.g., snow removal from inside the rink and its perimeter. However, the Town does agree to remove snow from the Gull Crest parking lot and provide the Pilot with water

during Year 1. The Town also agrees to include the Pilot under its existing insurance policy. CCAG shall maintain adequate insurance coverage for any work conducted on the Property during the Pilot and to cover any gap in the Town's insurance policy during Pilot operation. There will be no revenue plan for Year 1 of the Pilot, yet it is CCAG's intention for such a plan to be executed in Year 2. CCAG and its funding partner will establish the Pilot's daily and weekly skating schedule and coordinate this schedule with the Town and all key users of the project.

Benefits of the Pilot are as follows:

- Much is expected to be learned by CCAG and the Town from such a walk-before-you-run project; namely, operation, programming, and revenue generation for an ice rink and site dynamics on the Property.
- CCAG and the Town will have additional time to plan CCA (e.g., design, permitting, operating model, revenue plan, third-party involvement, etc.), all of which will be done concurrently with planning, installation, and operation of Year 1 and/or Year 2 of the Pilot.

## **VII. Oversight of the partnership and primary participants**

Each party shall appoint a lead person to serve as an official contact during the MOU Period to provide oversight and coordination in carrying out this MOU. Initial project leads are the Town Manager of Cape Elizabeth and the Board Secretary of Cape Community Arena Group; however, they may appoint secondary individuals to lead specific activities described in **Appendix A**.

## **VIII. Liability**

CCAG bears sole responsibility for any willful misconduct, negligent act, error, or omission of CCAG or anyone for whom CCAG is legally responsible that arises out of or is in connection with CCAG's use of the Property. The Town shall not be liable for said willful misconduct, negligent acts, errors, or omissions of CCAG or anyone for whom CCAG is legally responsible.

Town of Cape Elizabeth

Cape Community Arena Group

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Matt Sturgis  
Title: Town Manager  
Date:

Name:  
Title:  
Date:

## **Appendix A**

### **MOU Period Milestones**

Upon formal approval of CCA by majority vote of the Council, NTP to construction will be issued by the Council upon completion of the following milestones:

- a. CCA Business Plan completion by CCAG, which includes:
  - ⇒ Project economics, describing detailed project revenue and operating expenses, inclusive of, but not limited to such elements as electricity, water, sewer, mechanical maintenance, reserves for replacement, insurance, etc., and an operational pro-forma of revenue and expenses with a three-year anticipated forecast.
  - ⇒ A plan describing the operation and maintenance of the facility by a third party (either CCAG or an entity identified by CCAG that is not owned by the Town of Cape Elizabeth) to be provided to the Council. Such a plan will describe the roles and responsibilities of the third party in the operation and maintenance of the facility and all associated improvements.
  - ⇒ In the event the Council pursues formal acceptance of CCA as a Town facility, a transition plan shall be written, outlining the project donation and transfer from CCAG to the Town. The plan details will include CCAG providing funds sufficient for two (2) years of operating and maintenance expense-coverage and to the extent required by the Town, CCAG will provide a plan to remain active and available for the same two (2) year period to support the Town in managing the facility.
- b. CCA Permitting process completion by CCAG, which includes:
  - ⇒ Planning Board Approval
  - ⇒ Maine DEP Approval and any other State and Federally required approvals.
- c. Sufficient funds raised by CCAG to complete CCA construction, demonstrated by providing an acceptable statement of financial capability to the Town Manager, in accordance with the site plan review submission requirements in Section 19-4-4.C.2.q of the Cape Elizabeth Zoning Ordinance.
- d. CCA Construction Period and Asset Transfer Agreement(s) completed by CCAG and Town.

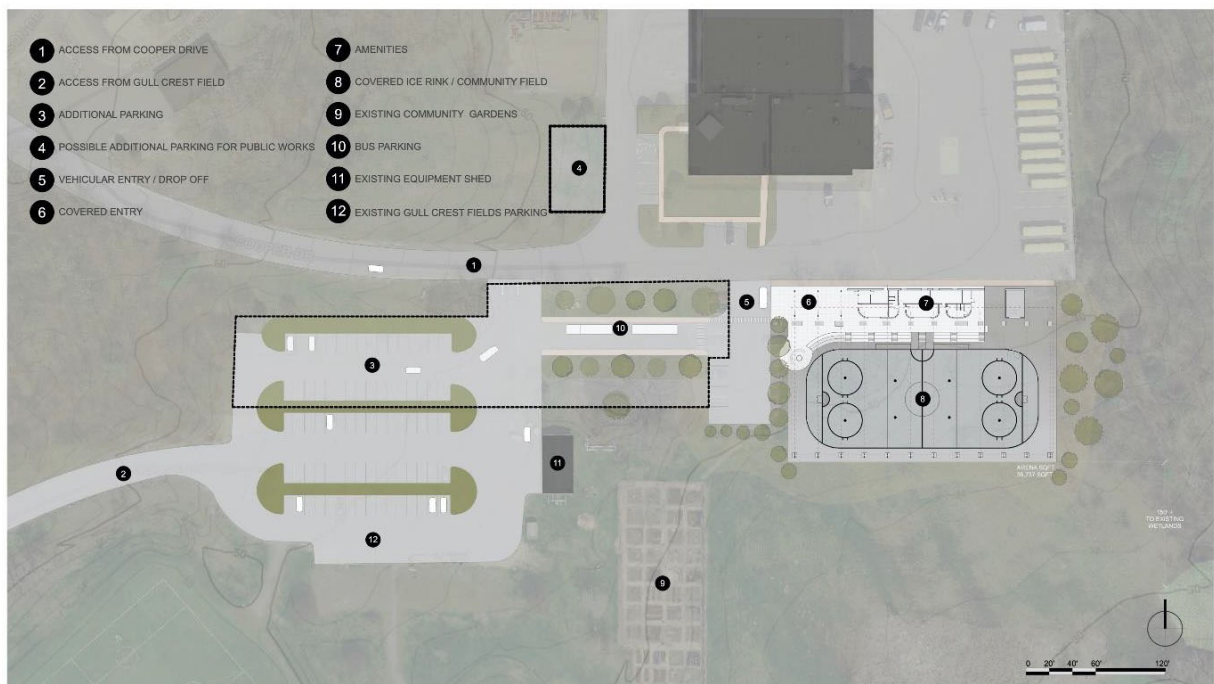
## Appendix B

### CCA Area of Interest & Conceptual Site Plan

CCA Area of Interest in blue (note: general and not exact)



CCA Conceptual Site Plan (note: access from Cooper Dr not currently contemplated)



## Appendix C

### Approved Pilot Site Plan

