

# MUNICIPAL CONSULTING AGREEMENT

*between*

**TOWN OF LYSANDER**

*and*

**CHA**

This AGREEMENT, made this **4th day of January, 2024** by and between the **TOWN OF LYSANDER** acting by and through Mr. Kevin Rode, Supervisor (hereinafter “TOWN”) and **CHA**, (“CHA” shall include CHA Consulting, Inc., a New York corporation, and its affiliate, Clough Harbour & Associates LLP, a New York limited liability partnership), with a principal place of business at 3 Winners Circle, Albany, County of Albany, in the State of New York (hereinafter “CONSULTANT”);

## **WITNESSETH:**

WHEREAS, the CONSULTANT has offered to provide professional consulting services to the TOWN, and,

WHEREAS, the TOWN has accepted the offer of the CONSULTANT for such professional services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

## **ARTICLE I - SERVICES TO BE PERFORMED**

The CONSULTANT shall perform the professional services hereinafter set forth under the Article II entitled “SCOPE OF WORK” during the period commencing on January 1, 2024, and continuing until the termination of this AGREEMENT in accordance with Article V, or until December 31, 2024. However, no work shall be performed under this AGREEMENT except as authorized by the TOWN Supervisor, the TOWN Board or their designee(s).

## **ARTICLE II – SCOPE OF WORK**

During the period of this AGREEMENT, the CONSULTANT, upon authorization from appropriate TOWN officials and employees, agrees to:

1. Advise and consult with TOWN officials on TOWN engineering and planning matters;
2. Render general consulting services including attendance at meetings of any TOWN Boards or other Agencies of the TOWN;



3. Assist the TOWN with the preparation or revision of the TOWN's comprehensive master plan, zoning, ordinance, or subdivision regulations.
4. Assist the TOWN with preparation and administration of grant applications and programs for state and federal programs.
5. Assist the TOWN with economic development and revitalization initiatives including corridor studies, housing rehabilitation programs, generic environmental impact statements or other feasibility plans and studies.
6. Assist the TOWN with developing, updating or implementing a Geographic Information System (GIS).
7. Assist the TOWN with compliance with the State Environmental Quality Review (SEQR) including preparation or review of Environmental Impacts Statements (EIS), and Environmental Assessment Forms (EAF).
8. Assist the TOWN with the expansion or upgrade of its municipal infrastructure, which may include the following:
  - a. The feasibility, design and construction of new wastewater and water supply components.
  - b. Identification of possible funding sources including state and federal grant and loan programs to pay for infrastructure improvements.
  - c. Preparation of Capital Improvement Plans (CIP).
  - d. Preparation of traffic impact and feasibility studies and design and construction of new roads and highways.
  - e. Improvements to the stormwater management systems including CSO and Inflow and Infiltration (I & I) abatement projects.
9. Assist the TOWN with the programming design and construction of new open space areas and recreational amenities including multi-use trails, parks, athletic fields, golf courses and other recreational facilities.
10. Assist the TOWN'S Code Enforcement Officer (CEO) with Building Code Inspection and perform the following functions:
  - a. Assist the TOWN to develop required forms and filing system to comply with State requirements.
  - b. Review certain plans provided by the residents of the TOWN for construction work within the TOWN and make recommendations to the TOWN'S CEO.
  - c. Conduct certain building inspections as required by the TOWN and file reports on all inspections with the CEO.
  - d. Perform yearly inspections of TOWN buildings and places of assembly as required by state law and report findings to TOWN.
  - e. Make recommendations to the CEO on the issuance of Certificates of Occupancy.



**ARTICLE III – AVAILABLE DATA**

Upon reasonable request, all available data in possession of or under the control of the TOWN will be made available to CONSULTANT.

**ARTICLE IV – COOPERATION**

The CONSULTANT shall cooperate with representatives and employees of the TOWN to the end that work may proceed expeditiously and economically.

**ARTICLE V – TERMINATION OF AGREEMENT**

The TOWN shall have the right at any time to terminate the work required of the CONSULTANT by this AGREEMENT by written notice of such termination provided to the CONSULTANT by the TOWN. In the event of such termination of this AGREEMENT, the CONSULTANT shall be entitled to compensation for all work theretofore authorized and performed, pursuant to this AGREEMENT, such compensation to be in accordance with Article VI of this AGREEMENT.

**ARTICLE VI – FEES**

In consideration of the terms and obligations of this AGREEMENT, the TOWN agrees to pay and the CONSULTANT agrees to accept, as full compensation for all services rendered under this AGREEMENT, fees and reimbursements determined according to the following basis:

1. The amount of salary costs including overhead and profit for the time devoted directly to the work by field and office employees of the CONSULTANT plus expenses. The salary cost is defined as cost of salaries (including sick leave, vacation, and holiday applicable thereto) for time directly chargeable to the project and shall include unemployment, excise and payroll taxes, contribution to social security, unemployment compensation insurance, retirement benefits and medical benefits.
2. Subcontract expenses shall be reimbursed to CONSULTANT at direct cost plus a ten percent (10%) administrative fee including such services as borings, special laboratory charges and similar costs along with out-of-pocket expenses at cost, that are not applicable to general overhead.
3. The total fees under No. 1 above, including expenses for professional employees of CONSULTANT, shall not to exceed the following:

<b>EMPLOYEE</b>	<b>MAX HOURLY RATE</b>	<b>EMPLOYEE</b>	<b>MAX HOURLY RATE</b>
Vice President	\$256	Senior GIS Specialist/Project Scientist	\$128
Associate Vice President/Sr. Project Manager	\$235	Web Programmer/GIS Specialist	\$107



Project Manager/Principal Engineer/Principal Planner	\$193	Technical Aid/Administrative Assistant	\$70
Senior Engineer/Senior Landscape Architect/Senior Planner	\$160	Senior Land Surveyor	*
Engineer/Landscape Architect/Planner III/IV	\$134	Land Surveyor	*
Engineer/Landscape Architect/Planner I/II	\$118	Survey Party Chief*	*
Asst. Engineer/Technician	\$96	Survey Instrument Person*	*
Inspector/Code Administrator	\$129		*

\* Based upon New York State Labor Law, maximum hourly rates for survey work are determined by a variety of factors including wage rates, type of work, and location. Prior to undertaking any survey work, CHA will inform the TOWN of the specific hourly rate in effect for said work.

**Note: Rates listed above will remain in effect through December 31, 2024.**

#### **ARTICLE VII – METHOD OF PAYMENT**

Monthly payments on account for services rendered under this AGREEMENT shall be made upon written request of CONSULTANT. The written request by the CONSULTANT for payment shall give a detailed list of the salaries paid, including the hours spent, hourly salaries of each type of professional worker, together with a written report of the findings of the CONSULTANT to the date of the invoice, the original report to accompany the invoice and a copy to be sent by the CONSULTANT to the TOWN. The TOWN shall pay these invoices within thirty (30) days from receipt of same.

#### **ARTICLE VIII – EXTRA WORK**

If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of this AGREEMENT and constitutes Extra Work, the CONSULTANT shall promptly notify the TOWN of the fact. The CONSULTANT shall not perform Extra Work without the TOWN’s Express Authorization.

#### **ARTICLE IX – ACCOUNTING RECORDS**

Proper and full accounting records shall be maintained by the CONSULTANT to cover all payroll costs or other costs incurred. These records shall be available for audit by the TOWN for a period of three years.

#### **ARTICLE X - WORKER’S COMPENSATION**

This AGREEMENT shall be void and of no effect unless the CONSULTANT shall secure worker’s compensation insurance for the benefit of, and keep insured during the life of said AGREEMENT, such employees of CONSULTANT as are necessary to be insured in compliance with provisions of the Worker’s Compensation law.



## **ARTICLE XI - ASSIGNMENTS**

The CONSULTANT specifically agrees as required by Section 109 of the New York General Municipal Law that CONSULTANT is prohibited by law from assigning, transferring, conveying, subcontracting, or otherwise disposing of this AGREEMENT or of CONSULTANT'S right, title or interest therein without the prior written consent of the TOWN.

## **ARTICLE XII – OWNERSHIP OF MATERIALS**

All rights, title and ownership in and to all material prepared under the provisions of this AGREEMENT shall be in the TOWN, including the right of re-publication.

## **ARTICLE XIII – SCHEDULE**

Where applicable, the CONSULTANT shall complete the work according to a schedule approved by the TOWN.

## **ARTICLE XIV – RELATIONSHIP**

The CONSULTANT is, and will function as, an independent contractor under the terms of this AGREEMENT and shall not be considered an agent or employee of the TOWN for any purpose, and the employees of the CONSULTANT shall not in any manner be, or be held out to be, agents or employees of the TOWN.

## **ARTICLE XV – SERVICES LIMITED**

It is hereby agreed that the CONSULTANT shall not provide engineering services to developers, businesses, or residents of the TOWN, for project(s) within the TOWN during the terms of this AGREEMENT which would result in a conflict of interest.

## **ARTICLE XVI – INSURANCE**

The CONSULTANT agrees to procure and maintain without additional expense to the TOWN, the following insurance:

(a) worker's compensation and employer's liability insurance in accordance with requirements of the state in which the Services are being performed; (b) comprehensive liability insurance (including contractual and contractor's protective liability coverage) with combined single limits of \$1,000,000 per occurrence for bodily injury and property damage; (c) automobile liability coverage including owned and hired vehicles with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage; and (d) professional liability insurance in the amount of \$2,000,000 per claim (\$8 million aggregate).



The CONSULTANT shall furnish to the TOWN, a certificate or certificates, showing that the requirements of this Article have been complied with, which certificate or certificates shall provide that the policy shall not be changed or canceled unless thirty (30) days prior written notice has been given to the TOWN.

#### **ARTICLE XVII - THIRD PARTY BENEFICIARY**

The services to be performed by CONSULTANT are intended solely for the benefit of TOWN and no benefit is conferred on, nor any contractual relationship established with any person or entity not a party to this AGREEMENT. No such person or entity shall be entitled to rely on CONSULTANT'S performance of its services hereunder. No right to assert a claim against CONSULTANT, its officers, employees, agents or consultants shall accrue to any third party as a result of this AGREEMENT or the performance or non-performance of CONSULTANT'S services hereunder.

#### **ARTICLE XVIII – ELECTRONIC MEDIA**

Data, words, graphical representations, and drawings that are stored on electronic media such as computer disks and magnetic tape, or which are transmitted electronically, may be subject to uncontrollable alteration. TOWN agrees it may only justifiably rely upon the final hardcopy materials bearing the consultant's original signature and seal.

#### **ARTICLE XIX – EQUAL EMPLOYMENT OPPORTUNITY**

Except as otherwise provided, the following equal opportunity clause contained in Section 202 of Executive Order 11246 shall be included in each government contract.

During the performance of this contract, the CONSULTANT agrees as follows:

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting office setting forth the provisions of this non-discrimination clause.
2. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The CONSULTANT will send each labor union or representation of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer, advising the labor union or worker's representative of the CONSULTANT'S commitments under Section 202 of Executive Order 11246 of September 24,



1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the CONSULTANT'S non-compliance with the non-discrimination clauses of this AGREEMENT or with any such rules, regulations, or orders, this AGREEMENT may be canceled, terminated or suspended in whole or in part and the CONSULTANT may be declared ineligible for further government contracts in accordance with the procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.
7. The CONSULTANT will include the provisions of paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and date first written above.

**TOWN OF LYSANDER**

*By:*

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**Mr. Kevin Rode**  
**Supervisor**

**CHA**

*By:*

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**Jeffrey G. Belyea**  
**Sr. Vice President**

