AGREEMENT PURSUANT
- between -
the TOWN OF GREENBURGH
- and -
The Chazen Companies.

THIS AGREEMENT is made this ______ day of April, 2019, by and between the Town of Greenburgh (Town), a municipal corporation organized and existing under the laws of the State of New York, located at 177 Hillside Avenue, Greenburgh, New York 10607 and The Chazen Companies, located at 1 North Broadway, White Plains, New York 10601, hereinafter referred to as the Consultant:

WITNESSETH

WHEREAS, the Town Board of the Town of Greenburgh (the "Board) is the Lead Agency in connection with all processing, procedures, determinations, and findings to be made or conducted with respect to projects including but not limited to Elmwood Preserve.

WHEREAS, the review of environmental impact statements and associated studies requires the Town to retain professional consultants in order to properly insure that the scope, content, and adequacy of the studies submitted are in compliance with accepted methodologies pursuant to SEQRA; and

WHEREAS, on March 27, 2019 the Town Board passed a resolution, authorizing the Supervisor to enter into an Agreement with the Chazen Companies to assist the Town in its review of a proposed Residential Project ("known as Elmwood Preserve"), located at 850 Dobbs Ferry Road (P.O. White Plains).

NOW, THEREFORE, BE IT AGREED by and between the Town, its successors and assigns, and the Consultant, its successors and assigns, for the consideration named herein as follows:
1 SCOPE OF WORK TO BE PERFORMED

1.1 Consultant agrees to provide expert review and analysis of the application known as Elmwood Preserve, TB 18-02, submitted to the Town pursuant to Town Code §§ 46, 47 and 285 and for which the Town deems professional planning review services are necessary to professionally and adequately review the pending application. The decision to engage the Consultant for review of this particular application, project or proposal is wholly discretionary and rests with the board having jurisdiction to review the application, project or proposal and grant any necessary approval(s). It is further agreed and understood that the Town may engage any other and/or additional professionals as each board deems necessary and appropriate.

1.2 The Consultant agrees to perform all services as outlined and set forth on Schedule A, attached, and further agrees to perform such additional services as the Town may reasonably request and deem necessary to properly fulfill the purpose and intent of this Agreement.

2 CONSIDERATION

2.1 The Town agrees to pay Consultant a fee not to exceed SEVENTY FIVE THOUSAND dollars ($75,000.00) as set forth in the attached Schedule A (unless separate authorization is granted by the Town Board) upon receipt of vouchers in the form prescribed by the Town, after audit and approval by the Comptroller and on the terms and conditions set forth herein in exchange for Consultant performing the tasks outlined above as follows:

2.1.1 For all services rendered pursuant to this Agreement, the Consultant shall be entitled to compensation at the hourly rates set forth in Schedule A, attached, to be billed against, and drawn from, an escrow account, administered by the Comptroller specifically established for the purpose of funding the cost of professional review services.

2.2 Consultant agrees to submit written time sheets as directed by the Commissioner of Planning indicating the time worked on the application, project and/or proposal, the specific task(s) performed and the date services were rendered. The Consultant shall be reimbursed for its professional services wholly and entirely from escrow funds established by the Town and funded by the developer, or applicant, seeking review and/or approved.

2.3 Consultant agrees and acknowledges that the Town shall bear no responsibility for payment for services rendered pursuant to this Agreement other than agreeing to act as administrator and bookkeeper of the escrow account established by the Town for the purpose of administering disbursements charged for professional review services. Accordingly, Consultant agrees that his sole recourse for payment for services rendered when engaged as Consultant is against the developer-funded escrow accounts. In the event that the developer funded escrow account has not been sufficiently replenished to cover any past due invoices, the Consultant may suspend his work without being considered to have failed to fulfill its obligation or breaching this agreement.
2.4 Consultant and the Town expressly acknowledge and agree that the Town shall not be responsible to any vendor or subcontractor that the Consultant retains, or who acts on behalf of the Consultant, for the purpose of fulfilling the terms of this Agreement. Consultant acknowledges and agrees to hold the Town harmless for any amount over, above and beyond that specified by this Agreement.

2.5 The parties acknowledge and agree that the Town's obligation to make payments as outlined herein is conditioned upon the Consultant's compliance with all of the terms and conditions contained in this Agreement.

2.6 The Town and the Consultant acknowledge and agree that expenditures will only be made for authorized items of expense actually budgeted as set forth in, attached hereto and made part hereof.

2.7 If and when expenditures for any items other than those specifically authorized herein (e.g., equipment, personnel or subcontractor items not previously budgeted) become necessary, the Consultant may request, in writing, approval for such purchases and/or expenditures from the Town. The Consultant agrees to wait until receiving written authorization by the Town before incurring any such expenditure.

2.8 The Consultant agrees to file claims for all payments on a timely basis in accordance with procedures promulgated by the Town. The Consultant agrees to be solely responsible for any expenditure over or beyond that specifically agreed herein, or any improper expenditure, and the Town will not be responsible for any such expenditure. Any funds forwarded or advanced by the Town and not expended, or committed to be spent, by the Consultant shall, at the expiration of this Agreement, be returned to the Town. Any equipment purchased with funds provided under this Agreement shall be Town property.

3 TIME OF COMPLETION

3.1 Because time is of the essence the Town expects review comments to be submitted in a timely fashion as directed by the Commissioner of Planning.

4 DAMAGES

4.1 The Consultant agrees to pay the Town five hundred ($500) each business day beyond the termination date set forth in ¶ III, above, or in Schedule A, attached, that Consultant’s obligation remains incomplete, unfulfilled or outstanding. Enforcement of this liquidated damages provision may, at the Town’s sole discretion, be waived. Collection of damages under this provision does not limit or preclude the Town seeking any other additional or alternative remedies or damages to the fullest extent provided by law. Damages paid under this provision are not a penalty and represent the mutually agreed estimate of injury likely to flow from Consultant’s failure to perform timely.
5 INSURANCE

5.1 The Consultant agrees not to commence work under this contract until he has obtained all insurance required under this paragraph and such insurance has been approved by the Town.

5.2 Workers' Compensation and Disability Insurance. The Consultant agrees to secure and maintain throughout the term of this contract Workers' Compensation and Disability Benefits coverage for all employees assigned to work or perform services hereunder.

5.2.1 General Liability and Property Damage Insurance. The Consultant agrees to secure and maintain throughout the term of this contract general liability and property damage insurance sufficient to protect Consultant from claims for personal injury, including accidental death, as well as from claims for property damage which may arise from operations, services or activities performed by Consultant under this contract. The amounts of such insurance shall be not less than:

5.2.1.1 General Liability, Automobile and Construction Liability Insurance in an amount not less than $1,000,000 for injuries, including wrongful death, to any one person and, subject to the same limit for each person, in an amount not less than $2,000,000 for any occurrence.

5.2.1.2 Property Damage Insurance in an amount not less than $2,000,000 for damage on account of all occurrences.

5.3 The Consultant agrees to name the Town as an additionally insured party in all policies.

5.4 The general and excess liability insurance, as well as the automobile and construction liability insurance, shall be primary to any other coverage held by the Town with respect to liability coverage arising out of any acts or omissions by the Consultant.

5.5 The Consultant agrees to furnish proof of compliance with the above insurance requirements by providing a complete copy of each policy, along with certificates of insurance to the office of the Town Attorney thirty (30) days prior to commencing work or performing any services.

5.6 The Consultant agrees to report any accident or claim to the offices of the Town Attorney and Commissioner of Planning as soon as possible and not later than twenty-four hours from the time of such accident or claim. A detailed written report must be submitted to the Town as soon thereafter as possible and not later than three (3) days after the date of such accident.

6 INDEMNIFICATION AND SAVE HARMLESS

6.1 The Consultant hereby agrees to defend, indemnify and hold the Town, its officers, agents, employees, and volunteers performing authorized tasks on behalf of the Town,
harmless from and against all liability, including all expenses, reasonable attorney's fees, losses and claims, demands, payments, suits, actions, recoveries and judgments of any nature and description whatsoever resulting from any claim or claims arising out of the award of this contract, or the procedures leading thereto, for any act or omission of the Consultant, its agents or employees representatives, or subcontractors, during or in furtherance of the performance to this agreement.

6.2 In the event of any action commenced against the Town, or its officers, agents, volunteers performing authorized tasks, or employees, which is within the scope of this indemnification, the Town will promptly notice thereof to the Consultant, and the Consultant at its sole expense shall provide defense for and defend the Town for any and all claims, demands or causes of actions asserted against the Town directly or indirectly arising out of this Agreement and shall bear all costs and expenses related thereto. The Consultant will have the right to select and furnish counsel for the defense of any such action, provided such counsel is acceptable to the Town, which acceptance shall not be unreasonably withheld, at no cost or expense to the Town. The Town agrees to cooperate with the Consultant as reasonably required for the defense of any such action.

7 NO ASSIGNMENT

7.1 In accordance with the provisions of Section 109 of the General Municipal Law, the Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of his right, title or interest in this Agreement, or his power to execute this Agreement, to any other person or corporation without the prior written consent of the Town.

8 REPRESENTATION of the CONSULTANT

8.1 The Consultant represents and warrants as follows:

8.1.1 Consultant is a New York corporation or has filed with the New York State Secretary of State and has been authorized to do business in New York State.

8.1.2 Consultant is financially solvent and is qualified and competent to perform the services professional and technical planning and environmental reviews of complex development applications, projects and proposals, including, but not limited to, reviewing and analyzing site plans, landscape plans, environmental and traffic impacts;

8.1.3 Consultant is financially solvent and is qualified and competent to perform the services referred to in ¶ I, above, and outlined in Schedule A, attached.

8.1.4 Consultant is familiar with all federal, state, and local laws, ordinances and regulations which may in any way affect the work or goods and services to be provided and agrees to abide by all applicable local, state and federal rules, regulation and laws. Consultant guarantees the honest and faithful performance of this contract by any subcontractor or vendor.
8.2 Consultant acknowledges and agrees that this contract does not include any medical, leave or retirement benefits or confer any rights or interest in such benefits.

8.3 Consultant is fully licensed by all governing regulator agencies.

8.4 Consultant is fully insured and has adequate coverage for any possible claims, including but not limited to general and professional liability.

8.5 Consultant agrees to refrain from representing the applicants for any purpose in any capacity for a minimum of one year following the latter of either: (i) adoption of findings; or (ii) entry of a final judgment and Order if any litigation ensues regarding the approvals for this project.

9 STATEMENT of NONDISCRIMINATION


9.2 The Consultant agrees to prominently post on the site where services hereunder are to be provided, a statement regarding non-discrimination, which statement shall be form similar to the following:

In compliance with Section 504 of the Rehabilitation Act of 1975 and title VI of the 1964 Civil Rights Act and New York State Executive Orders, no persons will be denied service or access to service based upon race, marital status, sexual orientation or physical condition.
9.3 No service rendered pursuant to or in connection with this Agreement may be refused to any person because of such person's race, color, creed, marital status, country of origin, disability, sex, sexual orientation or religion. The Consultant agrees to (1) ensure equal access for participation, services, activities, and informational sessions without regard to race, color, religion, sex, national origin or partisan affiliation; (2) ensure that any service provided under this Agreement shall be secular in nature and in no event shall there be any sectarian, partisan, or religious influence undertaken in connection with the provision of any services rendered or delivered and, refrain from using funds to advance any sectarian effort; and (3) refrain from using funds to advance any partisan candidate or effort. The Consultant shall, however, ensure that all candidates for elective office have equal access to information and activities regardless of policy views or party affiliation, prevent any influence or coercion designed to interfere with or affect elections or nominations for political office, and ensure that no employees or persons served under this Agreement are, directly or indirectly, coerced, advised or solicited to contribute anything of value to any political party, committee, organization, agency or person for any political purpose, or engage in any other partisan activities.

10 PERMITS and REGULATIONS

10.1 The Consultant agrees to secure and pay for all licenses and permits necessary to perform and render the services set forth above.

11 STOP WORK and TERMINATION

11.1 The Town reserves the right to stop work and terminate this agreement if, in the Town's sole discretion any, or all, of the following events occur:

11.2 The Consultant is adjudged bankrupt or makes an assignment for the benefits of creditors;

11.3 A receiver or liquidator is appointed for the Consultant or for any of his property and is not dismissed within 20 days after such appointment or the proceedings in connection therewith are not stayed on appeal within the said 20 days;

11.4 The Consultant refuses or fails to prosecute the work or any part thereof with due diligence;

11.5 The Consultant fails or refuses, intentionally or negligently, to comply with all applicable laws or ordinances;

11.6 The Consultant is in violation of any provision of this agreement.

11.7 The Town may in any event, and without prejudice to any other rights or remedies it may have, by three (3) days notice to the Consultant, terminate the Consultant's employment and his right to serve as Consultant. In such case, the Consultant shall be entitled to receive payment for services actually rendered to date, subject to the review and approval of the Town Comptroller.
12 INDEPENDENT CONTRACTOR

12.1 It is hereby mutually acknowledged and agreed that the Consultant is engaged and employed as an independent contractor. As an independent contractor, the contractor agrees to be responsible for all damage, loss or injury to persons or property that may arise, directly or indirectly, as a result of the contractor's negligence.

13 REQUIRED PROVISIONS of LAW

13.1 This Agreement shall be governed by the laws of New York State. 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 was not inserted through mistake or otherwise, then upon the application of either party, this contract shall be physically amended forthwith to make such insertion.

14 NOTICES

14.1 Any and all notices and payments required hereunder shall be addressed as follows, or to such other address as may hereafter be designated in writing by either party hereto:

14.1.1 To the Town:

        Town of Greenburgh
        177 Hillside Avenue
        Greenburgh, NY 10607
        ATTN: Garrett Duquesne, Commissioner/CD&C

14.1.2 To Consultant:

        The Chazen Companies
        1 North Broadway
        White Plains, NY 10601
        ATTN: Stuart Mesinger, AICP

14.2 All notices, communications, payments and demands given or made under this Agreement will be deemed effective and complete upon receipt. Where notice is given by personal service, notice shall be deemed effective and complete upon receipt of delivery. Where notice is given by U.S. Mail, notice will be deemed effective and complete upon either actual receipt or five days after mailing, whichever occurs first.

15 WAIVER

15.1 No waiver of any breach or of any condition of this Agreement shall be binding unless executed in writing and signed by the party waiving such breach. No such waiver shall in any way affect any other 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
MODIFICATION

16.1 This Agreement constitutes the complete understanding of the parties. No prior, contemporaneous or subsequent understandings or agreements, oral or written, are valid and no modification of any provisions of the Agreement will be valid unless in writing and signed by both parties. Both parties hereby acknowledge and agree that any conflict or ambiguity between the offer to provide services (Schedule A) and this Agreement is to be resolved by reference to the language and terms of this Agreement.

ETHICAL DISCLOSURE

17.1 The Consultant acknowledges the necessity for the highest ethical standards in all public contracts and agrees to abide by the provisions of Greenburgh Ethics Code, Town Code, Chapter 570.

17.2 Consultant agrees not to accept any employment from the applicant, or represent any other private interest before any board, commission or agency for a period of one year from the date final approval on the subject of this agreement is granted.

AUDIT and INSPECTION

18.1 The Consultant shall permit the Town, or any of its authorized representatives, to visit and inspect the program, project or services operated pursuant to this Agreement and permit an audit and/or inspection of all books, records, and accounts of the Consultant relating thereto.

REQUIRED TESTIMONY

19.1 Pursuant to the provisions of General Municipal Law § 103-a, if any person called to testify before a Grand Jury concerning any transaction or contract with the State of New York, or a political subdivision thereof, or a public authority or a public department, agency or official of any of the foregoing, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answers any relevant question concerning such transaction or contract then, any such person, or any firm, partnership or corporation of which he is a member, partner, director or official shall be disqualified for a period of five (5) years after such refusal from submitting bids to, receiving awards, or entering into any contract with any municipal corporation or department or agency or official thereo. If such person refuses to sign a waiver of immunity or to answer any relevant questions as aforesaid, then the contract may be canceled or terminated by the Town without the Town incurring any penalty or damages by virtue of such cancellation or termination.

PROPERTY RIGHTS and DISCLOSURE/CONFIDENTIALITY
18.1 Consultant acknowledges and agrees that any and all physical property, including, but not limited to, all reports, galley proofs, documents, tests and analysis, generated or produced, directly or indirectly, under this Agreement, regardless of form, is the property of the Town and remains Town property in perpetuity.

18.2 The Town agrees that Consultant may have temporary custody and possession of all work product generated under this Agreement and retain such work product on behalf of the Town unless and until permission to retain temporary possession and custody is revoked. The Town reserves the right to revoke permission to retain work product and recall all documents, papers, reports, tests and all other work product anytime and without notice.

18.3 The Consultant agrees not to release any information regarding the services performed under this Agreement to any third parties without the prior written consent of the Town.

19 ARBITRATION

19.1 Should any dispute arise between the Town and the Consultant regarding the manner or sufficiency of the performance of the work, the disputed matter shall be settled by arbitration in accordance with the laws of the State of New York. CPLR Article 75. There shall be three arbitrators so selected. If the selection of any arbitrator is not made with fifteen days of the time that either party has notified the other of the name of the arbitrator it has selected, then the arbitrator or arbitrators not selected shall be appointed in the manner provided by the laws of the State of New York. The work shall not be interrupted or delayed pending such decision.
IN WITNESS WHEREOF, the Town of Greenburgh, by Paul J. Feiner, its Supervisor, and the Consultant, by Stuart Mesinger, Senior Principal Vice President, have each agreed to the terms and conditions set forth herein.

TOWN of GREENBURGH

BY: PAUL J. FEINER, Supervisor

THE CHAZEN COMPANIES

BY: Stuart Mesinger, Senior Principal Vice President
MUNICIPAL ACKNOWLEDGMENT

STATE OF NEW YORK )
COUNTY OF WESTCHESTER ) ss.

On this ______ day of ____________________, 2015, before me personally came 
PAUL J. FEINER, to me known, and known to be the Supervisor of the Town of Greenburgh, 
the municipal corporation on whose behalf he executed the attached agreement and who, being 
duly sworn, did aver and state that he is the Supervisor of the Town of Greenburgh; that his place 
of business is located at 177 Hillside Avenue, Greenburgh, New York, and that he signed his 
name hereto under authorization of the Greenburgh Town Council.

__________________________________________

Notary Public, Westchester County
CONSULTANT/CONSULTANT CERTIFICATE OF AUTHORITY

I, ________________________________ [principal of signatory company above, other than above principal], certify that I am the __________________________ [office/position held] of ________________________________ [name of business entity], a __________________________ [type of business entity, e.g., corporation, partnership, etc.] registered to do business in the State of __________________________, and named in the foregoing agreement; that ________________________________ [name of above signatory], who signed the foregoing agreement on behalf of __________________________ [name of business entity], was, at the time of such execution, the __________________________ [office held by above signatory] of that company; I further certify that the foregoing agreement was duly signed for and on behalf of such company by consent and with the approval of its Board of Directors, and that such consent and approval is in full force and effect at the date hereof.

Name:
Title:

STATE OF NEW YORK
) ss.
COUNTY OF
) ss.

On this ___________ day of ___________, 2015, before me personally came ________________________________ [name of signor of above certificate], to me known, who by me being duly sworn, did depose and say that he resides at ________________________________; that he is the __________________________ [office/position held by above signatory] of ________________________________ [name of company], the business entity described in and which executed the above instrument; and that he signed his name thereto by consent and with the approval of the Board of Directors of such corporation.

Notary Public, Westchester County
## ATTACHMENT A – HOURLY RATE SCHEDULE

<table>
<thead>
<tr>
<th>FERRANDINO &amp; ASSOCIATES INC.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal</td>
<td>$220</td>
</tr>
<tr>
<td>Traffic Engineer (PE)</td>
<td>$220</td>
</tr>
<tr>
<td>Senior Planner(s)</td>
<td>$140</td>
</tr>
<tr>
<td>Planner</td>
<td>$110</td>
</tr>
<tr>
<td>Engineer(s)</td>
<td>$185</td>
</tr>
</tbody>
</table>

Electronic documents and correspondence will be primarily used and calculated within the hourly rates.