



May 19, 2021

Mr. Marcus Serrano, Interim Village Administrator  
Village of Buchanan  
236 Tate Avenue  
Buchanan, New York 10511

Subject: **Planning Advisory Services for the Village's Fiscal Year 2021-2022**

Dear Mr. Serrano:

We are pleased to submit this proposal for the continued provision of planning advisory services to the Village for its current fiscal year (June 1, 2021 through May 31, 2022).

### **Services Which We Will Provide**

Our work for the Village generally falls into two broad categories:

1. Continuing planning advisory services related to the review and processing of subdivisions, site plans, special permits, variances, rezonings and other applications; and
2. Special planning, zoning, traffic or environmental matters initiated at the request of the Village.

Our continuing planning advisory services to the Village include attendance at Planning Board meetings (as well as Village Board and Zoning Board of Appeals meetings when requested) and field trips with the Planning Board and other Village officials in connection with the review of such proposals when requested.

### **Personnel**

Victor Minerva will be the primary Planner working with the Planning Board and other Boards supplemented by our other planning, environmental and traffic engineering professionals, as needed.

### **Fees**

As I believe you are aware, we use our Standard rate schedule for work where the Village is reimbursed for the cost of our services by applicants, and in recognition of our long-standing relationship with the Village, we use our *discounted* Municipal rate schedule for non-reimbursable services.

This year we propose no increase in hourly rates. Of course, as in the past, the Village will be charged only for the time and materials actually provided. Where the services of other professionals on our staff are required, the charges for their time will be in accordance with their respective hourly rates. Enclosed for your reference is our current schedule of hourly charges.

It is important to recognize that our rates already have built into them the cost of administrative support (such as secretarial and clerical staff time). That is, we do not bill, as some consultants do, for secretarial and clerical staff time; we only bill for our professionals. Our rates also include normal expenses associated with our work, such as telephone calls, incidental mailing and other ordinary overhead expenses.

Each evening meeting is charged as 2-1/2 hours unless the actual time spent at such a meeting is more than that, in which case the actual time spent is charged. Where travel is necessary during normal business hours in order to meet the Village's requirements, it is charged as working time.

Invoices for our services are submitted monthly based upon our actual expenditures of time, and payment by the Village for our services will be expected within 30 days of our rendering of bills. Payment to us is not contingent upon the Village receiving payment from third parties who are not a part of this contract. This agreement is also subject to the enclosed list of Standard Provisions.

### **Miscellaneous**

This proposal does not include any architectural, legal or engineering services, other than traffic engineering. It also does not include participation or testimony in any court cases. However, it is understood that the Village agrees to compensate us for any time and expense involved in connection with a subpoena issued to us on any matter related to the Village's planning and zoning activities occurring during the period of our services to the Village.

If you have any questions with respect to this letter, please let me know. If not, you can authorize us to continue our work for the Village by signing the enclosed copy of this letter in the appropriate space provided below and returning the endorsed letter to me for our files.

We are all looking forward to continuing to work with you and serve the Village of Buchanan.

Kind regards.

Very truly yours,



David Lapping, PTP  
Practice Lead – Traffic and Planning  
Hardesty & Hanover

Enclosures

Accepted: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

## HOURLY RATE SCHEDULE (2021-22)

### PROFESSIONAL SUPPORT

|   | <b>Standard<sup>1</sup></b> | <b>Municipal<sup>2</sup></b> |
|---|-----------------------------|------------------------------|
| Practice Lead – Planning/Engineering                            | \$225                       | \$215                        |
| Director of Planning/Project Manager                            | \$215                       | \$205                        |
| Principal Engineer/ Planner/ Env Scientist/ Landscape Architect | \$205                       | \$195                        |
| Senior Engineer/ Planner/ Env Scientist/ Landscape Architect    | \$190                       | \$180                        |
| Engineer/Env Scientist/Landscape Architect Architect/Planner    | \$145                       | \$135                        |
| Junior Engineer/Env Scientist/Landscape Architect/Planner       | \$125                       | \$115                        |
| Engineering/Planning Aide                                       | \$75                        | \$65                         |
| Senior Drafter  | \$140                       | \$130                        |
| Drafter/CADD Operator   | \$90                        | \$80                         |

<sup>1</sup> For application review reimbursable by applicants

<sup>2</sup> For municipal work not reimbursed by applicants

- Hourly rates provided are inclusive of overhead costs (administrative and clerical time).
- Evening meetings will be billed at a minimum of 2.5 hours.

### EQUIPMENT

|  |              |
|--|--------------|
| Computer Usage/CADD Plotter (Deliverables) | \$12.50/plot |
| Printing Reproduction Processing (8x11)    | \$0.10/page  |

**HARDESTY & HANOVER, LLC**  
**STANDARD PROVISIONS FOR INVESTIGATION AND/OR DESIGN SERVICES**

- (1) H&H's Scope of Services and Additional Services.
  - (a) H&H's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by H&H, H&H will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay H&H for any Additional Services an amount based upon H&H's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
  - (b) If H&H is called upon by Client, or subpoenaed by any other person, to testify or produce records in an action at law, equity, arbitration, or in a pre-trial hearing or conference, as to any work performed by anyone in connection with this project, H&H shall be paid by the Client for all time spent while testifying and preparing therefore and producing such records in accordance with H&H's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- (2) Client's Responsibilities. In addition to other responsibilities described herein or imposed by law, the Client shall:
  - (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
  - (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.
  - (c) Provide to H&H all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in H&H's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which H&H may rely.
  - (d) Arrange for access to the site and other private or public property as required for H&H to provide its services.
  - (e) Review all documents or oral reports presented by H&H and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of H&H.
  - (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of H&H's services.
  - (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.
  - (h) Give prompt written notice to H&H whenever the Client becomes aware of any development that affects the scope, timing, or payment of H&H's services or any defect or noncompliance in any aspect of the project.
  - (i) Bear all costs incidental to the responsibilities of the Client.
- (3) Period of Services. Unless otherwise stated herein, H&H will begin work timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that H&H does not control. If such delay or suspension extends for more than six months (cumulatively), H&H's compensation shall be renegotiated.
- (4) Method of Payment. Compensation shall be paid to H&H in accordance with the following provisions:
  - (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be

held by H&H for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due to H&H under this or any other agreement within 30 days after H&H's transmittal of its invoice, H&H may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full and may commence proceedings, including filing liens, to secure its right to payment under this Agreement.

- (b) If the Client relies on payment or proceeds from a third party to pay H&H and Client does not pay H&H's invoice within 60 days of receipt, H&H may communicate directly with such third party to secure payment.
  - (c) If the Client objects to an invoice, it must advise H&H in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
  - (d) The Client agrees that the payment to H&H is not subject to any contingency or condition. H&H may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of H&H to collect additional amounts from the Client.
- (5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by H&H are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of H&H's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by H&H will be at the Client's sole risk and without liability to H&H, and the Client shall indemnify, defend and hold H&H harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. H&H's electronic files and source code developed in the development of application code remain the property of H&H and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by H&H, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without H&H's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.
- (6) **Opinions of Cost.** Because H&H does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. H&H cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. H&H's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- (7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, H&H shall have the right to immediately terminate this Agreement. In the event of any termination, H&H shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by H&H as a result of such termination. If H&H's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by H&H, to the total amount of services which were to have been performed. If the project is suspended or abandoned in whole or in part for more than three months, H&H shall be compensated for all services performed and expenses incurred prior to receipt of written notice from Client of such suspension or abandonment in an amount as determined in accordance with the provisions set forth in this Agreement, together with all reasonable termination costs and expenses.

- (8) Insurance. H&H carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs H&H to obtain increased insurance coverage, H&H will take out such additional insurance, if obtainable, at the Client's expense.
- (9) Standard of Care. The standard of care applicable to H&H's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by H&H's undertaking herein or its performance of services, and it is agreed that H&H is not a fiduciary with respect to the Client.
- (10) LIMITATION OF LIABILITY. In recognition of the relative risks and benefits of the Project to the Client and H&H, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of H&H and H&H's officers, directors, employees, agents, and subconsultants, to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of H&H or H&H's officers, directors, employees, agents, and subconsultants, shall not exceed the total compensation received by H&H for basic fee under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall H&H be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 shall require the Client to indemnify H&H.
- (11) Mutual Waiver of Consequential Damages. In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- (12) Certifications. H&H shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which H&H does not have actual knowledge, or that would cause H&H to violate applicable rules of professional responsibility.
- (13) Dispute Resolution. All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association as a condition precedent to litigation.
- (14) Hazardous Substances and Conditions. In no event shall H&H be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. H&H shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), bacteria, mold, fungi, or other toxic substances, infectious materials, or contaminants. To the fullest extent permitted by law, Client shall hold harmless, defend and indemnify H&H and its consultants, and each of their owners, directors, employees, heirs, successors and assigns from any and all claims, suits, demands, damages, losses, judgments, payments, awards, and expenses which directly or indirectly arise from or relate to any such hazardous materials. H&H shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which H&H actually becomes aware. Upon such notice by H&H, H&H may stop affected portions of its services until the hazardous substance or condition is eliminated.
- (15) Construction Phase Services.
- (a) If H&H's services include the preparation of documents to be used for construction and H&H is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against H&H in any way connected thereto.
- (b) If H&H provides construction phase services, H&H shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall H&H have any authority or responsibility to stop or direct the work of any contractor. H&H's visits will

be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by H&H. H&H neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

- (c) H&H is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods. The Client shall cause any Contractor responsible for construction of work designed or specified by H&H or responsible for any other services relating to H&H's services to indemnify H&H to the fullest extent permitted by law against risks which are not normally borne by the design professions in the form of AIA Document A-201 - General Conditions of the Contract for Construction (1987 Edition), Section 3.18. Client shall also cause such Contractor(s) to name H&H as an additional insured on Contractor's Comprehensive General Liability policy.
  - (d) Review of Contractor submittals (for example, shop drawings), if included in H&H's Scope of Services, is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. H&H's review shall not constitute approval of safety precautions or of construction means, methods, techniques, sequences, or procedures. H&H's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, H&H shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
  - (e) Periodic site visits, if included in H&H's Scope of Services, shall mean that H&H shall visit the site at intervals, appropriate to the stage of construction, or as otherwise agreed with Client in writing. The purpose of periodic site visits is to become generally familiar with the progress and quality of the work designed by H&H and to determine in general if such work is proceeding in accordance with the Contract Documents. H&H shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work designed by H&H. On the basis of such on-site observations as an engineer, H&H shall keep Client informed of the progress and quality of the work designed by H&H and shall endeavor to guard the Owner against defects and deficiencies in such work of the Contractor.
  - (f) Full time project representation services, if included in H&H's Scope of Services, shall mean that H&H shall endeavor to provide further protection for the Owner against defects in the work designed by H&H. The furnishing of such full-time project representation services shall not make H&H responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs. H&H shall not have control or charge of and shall not be responsible for the acts or omissions of the Contractor, Subcontractors, or any other persons performing any of the work. H&H shall not be responsible for the failure of the Contractor, Subcontractors or any other persons performing any work to carry out the work in accordance with the Contract Documents.
- (16) If the project is to be designed, bid and/or constructed according to a "fast track" schedule, in consideration of the benefits to the Client of employing the fast track process (in which design services overlap the construction work and are out of sequence with the traditional project delivery method), the receipt and sufficiency of which are hereby acknowledged, and in recognition of the inherent risks of fast tracking to H&H, the Client hereby agrees to waive all claims against H&H, its officers, directors, employees and subconsultants (collectively, Consultant) for design changes and for required modifications by contractor of portions of the Work already constructed due to the Client's decision to employ the fast track process. In addition, the Client hereby agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant, against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the "fast tracking" of this Project, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct by the Consultant. The Client hereby further agrees to

compensate the Consultant for all Additional Services required to modify, correct or adjust the Construction Documents and coordinate them in order to meet the Client's program requirements because of the Client's decision to construct the Project in a fast track manner.

- (17) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and H&H, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and H&H. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by H&H, without the written consent of H&H. H&H reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If H&H exercises this right, H&H will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- (18) Confidentiality. The Client consents to the use and dissemination by H&H of photographs of the project and to the use by H&H of facts, data and information obtained by H&H in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, H&H shall use reasonable care to maintain the confidentiality of that material.
- (19) Miscellaneous Provisions. This Agreement is to be governed by the law of the State in which the project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by H&H. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision.
- (20) To the fullest extent permitted by law, the Client shall hold harmless, defend and indemnify H&H and its consultants, and each of their owners, directors, employees, heirs, successors and assigns from any and all claims, suits, demands, damages, losses, judgments, payments, awards, and expenses arising out of the Client's negligence.
- (21) The foregoing conditions are incorporated into any agreement under which services are to be performed by H&H for the Client. If any of H&H's Standard Conditions or portions thereof shall be adjudged null and void, it is agreed that the remaining Standard Conditions or portions thereof shall remain intact and be given full force and effect. These Standard Conditions shall not be construed to indemnify H&H for its own negligence if not permitted by law, or to provide for any indemnification which would, as a result thereof, make the provisions of these Standard Conditions void, or to eliminate or reduce any other indemnification or right which H&H has by law.