

PROJECT AGREEMENT
between
ROTARY CLUB OF WINDERMERE, INC.
and
THE TOWN OF WINDERMERE

This Project Agreement (“Agreement”) is dated June 22, 2021 (the “Effective Date”), and is between the **Rotary Club of Windermere, Inc.**, a Florida Not-for-Profit Corporation (the “Rotary”) and the **Town of Windermere**, Florida, a municipal corporation of the State of Florida (the “Town”).

WHEREAS, the Rotary has entered into a Grant Agreement with the West Orange Healthcare District (the “District”), a copy of which is attached hereto as **Attachment A**, under which the Rotary will receive \$1,000,000.00 to construct the Healthy West Orange Pavilion in the Town of Windermere (the “Project”).

WHEREAS, the Rotary and the Town now desire to enter into this Agreement to describe the terms and conditions under which the Project will be constructed.

NOW, THEREFORE, the parties agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated into this Agreement by reference.
2. **Description of the Project.** The Project includes a covered stage furnished with a retractable projection screen and appropriate lighting and sound equipment, men’s and women’s restrooms (a minimum of three stalls in each plus a urinal in the men’s restroom), two family restrooms, and concession stand with an equipped kitchen in downtown Windermere at the corner of Forest Street and Fifth Avenue where the existing community building stands. The Project will include the demolition of the existing community building, installation of new septic drainfield and tank, repaving and refurbishing of basketball courts if necessary, appropriate landscaping, and potentially redesigning the parking area. Behind the Pavilion will be additional parking and beside and around the Pavilion will be a pocket park with exercise stations. The new Pavilion will be named the “Healthy West Orange Pavilion” and will support the Town in meeting the goals of Healthy West Orange by providing a central location for health and wellness programs to be offered to residents of West Orange. The Healthy West Orange logo and/or name will be prominently and permanently placed on the Pavilion and pocket park locations and signage will be included recognizing the District as the benefactor and funder for the Pavilion.
3. **Responsibilities of the Rotary.** The Rotary will complete the Project in accordance with the Grant Agreement attached hereto as **Attachment A** and incorporated herein in its entirety, and will:
 - a. Select a project manager/owner’s representative utilizing a procurement process agreed upon by the Town Manager and the Rotary. The project manager/owner’s

representative will be approved by the Town Council of the Town of Windermere (the "Town Council"). The project manager/owner's representative must not be a member of the Town Council or the Rotary.

- b. Hold two public workshops in the Town to be scheduled with the Town Manager for public input on the Project design.
- c. Obtain approval for the Project design by the Town Council when 45% completed and when 100% completed.
- d. Obtain approval from Town Counsel to proceed in the event there is a major change or deviation from the 100% approved design.
- e. Apply for (or cause to be applied for) and obtain all permits and approvals necessary from the Town for the Project.
- f. Require all Project construction to comply with the Town's Code of Ordinances and Florida building construction standards applicable to the Town.
- g. Select a construction contractor approved by the Town Counsel pursuant to a Competitive Bid Process agreed upon by Town Manager and the Rotary.
- h. Require the construction contract(s) to contain the following requirements:
 - i. A performance bond and a payment bond in the amount of the value of the construction contract. The performance bond shall ensure that the construction contractor fully, promptly, and faithfully performs the construction contract and all obligations thereunder. The payment bond shall ensure that the construction contractor shall promptly make payment to all persons supplying services, labor material, or supplies used directly or indirectly by the construction contractor or any subcontractor(s) in the prosecution of the work provided for in the construction contract.
 - ii. The Town is an additional insured in all contracts, bonds, and other related instruments.
- i. Upon Project completion transfer ownership of the Project to the Town.

4. **Use of the Pavilion.**

- a. The Rotary may display its crest or logo on the Pavilion.
- b. The Rotary and Healthy West Orange may display a plaque on the Pavilion which provides that the Pavilion was constructed and paid for by the Rotary and Healthy West Orange.
- c. The Rotary will have exclusive food and beverage concession rights for Healthy West Orange and Rotary events. All such events will be scheduled with the Town Manager and a special event permit must be obtained through the regular Town special event process.
- d. The Rotary and Healthy West Orange may use the Pavilion at no charge.
- e. The provisions of this section shall survive the expiration of this Agreement.

5. **Responsibilities of the Town.** The Town will:

- a. Provide the necessary easements and access to the Project area.
- b. Promptly review and provide Project input or approvals.

6. **Delegation of authority to the Mayor and Town Manager.** The Town Council hereby delegates to the Mayor and the Town Manager all powers and authority necessary to carry out this Agreement, including but not limited to the ability to prepare, receive and approve agreements and to make decisions regarding the Project except as otherwise set forth in paragraph 3 herein.
7. **Term.** This Agreement shall automatically terminate on the date the Rotary conveys the Project to the Town of Windermere.
8. **Notices.**
 - a. For a notice or other communication under this Agreement to be valid, it must be in writing, and signed by the sending party, and sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered or certified mail, in each case return receipt requested and postage prepaid; or (3) nationally recognized overnight carrier, with all fees prepaid. Delivery via facsimile or e-mail is also permitted provided it is followed by delivery via one of the methods (1)-(3) above and any such delivery via facsimile or e-mail shall not be deemed to have been received pursuant to subsection 8.c. until such delivery pursuant to methods (1)-(3) above shall be deemed to have been received pursuant to subsection 8.c.
 - b. For a notice or other communication under this Agreement to be valid, it must be addressed to the receiving party at the addresses listed below for the receiving party or to any other addresses designated by the receiving party in a notice in accordance with this section 8.

For the Town:

Robert Smith, Town Manager
Town of Windermere
614 Main Street
Windermere, Florida 34786
P: 407-876-2563
F: 407-876-0103
rsmith@town.windermere.fl.us

For the Rotary Club of Windermere, Inc.:

George Poelker
405 W 3rd Avenue
Windermere, Florida 34786-8052
Phone: 407-230-8052
gpoelker@gmail.com

- c. A valid notice or other communication under this Agreement is effective when received by the receiving party.

9. **Assignment.** Neither party may assign this Agreement.
10. **Press Releases.** Neither Party shall issue a press release with respect to this Agreement without the prior review and written consent of the other party. Any press release issued shall be mutually agreed to by both parties.
11. **Amendments, Waiver.** No change or modification to this Agreement shall be valid unless the same is in writing and signed by all parties hereto. No amendment shall be binding on the Town or the Rotary unless (i) it is in writing, and (ii) it is formally approved by the Town Council of the Town of Windermere.
12. **Indemnification; Limitation of Remedies and Liability.**
 - a. The Rotary shall defend, indemnify, and hold harmless the Town, its Councilmembers, officers, directors, trustees, agents and employees from and against all claims, damages, losses, liens, and expenses, (including but not limited to reasonable fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) to the extent arising out of or resulting from (i) breach of the terms of this Agreement, (ii) violations of applicable law by the Rotary or its agent relating to the Project and/or Chapter 119, Florida Statutes, and related laws, or (iii) disease or death of third parties (including Town employees and agents and those of the Rotary) relating to the Project. The provisions of this section shall survive the expiration or termination of this Agreement for any reason.
 - b. The Rotary waives all claims against the Town for injury, death, damage, or loss arising from or related to activities conducted under this Agreement. The Town is not liable to the Rotary for indirect, special, or consequential damages, including, but not limited to, loss of revenue, loss of profit, cost of capital, or loss of opportunity regardless of whether such liability arises out of contract, tort (including negligence), strict liability, or otherwise.
 - c. The Rotary acknowledges that the Town does not waive the limitation of tort liability as provided in Section 768.28 of the Florida Statutes, as applicable and amended from time to time, and nothing in this Agreement shall act as a waiver of the Town's entitlement to sovereign immunity as to tort claims as a matter of statutory and common law.
13. **Entire Agreement.** This Agreement sets forth all of the promises, agreements, conditions, understanding, warranties or representations among the parties with respect to the matters set forth herein, and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, among them with respect to such matters except as set forth herein.
14. **Applicable Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of Florida. Any dispute arising out of or relating to this Agreement shall be subject

to the exclusive venue of the United States District Court for the Middle District of Florida or the Ninth Judicial Circuit, in Orange County, Florida.

15. Public Records.

- a. To the extent the Rotary is acting on behalf of the Town as provided under Subsection 119.011(2) of the Florida Statutes, the Rotary shall:
 - i. Keep and maintain public records required by the Town to perform the services under this Agreement.
 - ii. Upon request from the Town's custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Rotary does not transfer the records to the Town.
 - iv. Upon completion of the Agreement, transfer, at no cost, to the Town all public records in possession of the Rotary or keep and maintain public records required by the Town to perform the service. If the Rotary transfers all public records to the Town upon completion of the Agreement, the Rotary shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Rotary keeps and maintains public records upon completion of the Agreement, the Rotary shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- b. If the Rotary fails to provide the public records to the Town within a reasonable time the Rotary may be subject to penalties under Section 119.10 of the Florida Statutes.

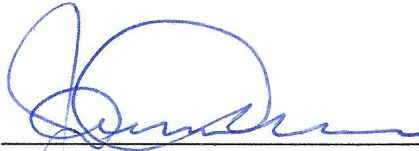
IF THE ROTARY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ROTARY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS AT (407-876-2563 x 5323), dburkhalter@town.windermere.fl.us PO Box 770790, 614 Main Street Windermere, FL 34786.

16. **Compliance with Federal, State and Local Laws.** In the performance of this Agreement, the parties shall comply with all federal, state and local laws, rules and regulations, which may be applicable to this Agreement.

17. **No Partnership or Joint Venture.** Nothing in this Agreement is intended to create a partnership or joint venture among the parties and no party shall be construed to be partners or members of a joint venture for any purpose.
18. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall remain enforceable to the greatest extent permitted by law.

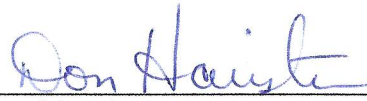
The parties are signing this Agreement as of the Effective Date.

Town of Windermere:



James O'Brien
Mayor, Town of Windermere

Rotary Club of Windermere, Inc.:



Donald Hairston
President, Rotary Club of Windermere, Inc.

ATTACHMENT A
Grant Agreement