

**Standard Form of Agreement Between Owner and Engineer for Continuing Engineering Services**

AGREEMENT made as of the [ ] day of [ ] in the year 2024  
(In words, indicate day, month and year.)

BETWEEN the Engineer’s client identified as the Owner:  
(Name, legal status, address and other information)

**Town of Windermere, Florida**, a municipal corporation chartered and operating under the laws of the State of Florida  
614 Main Street  
Windermere, FL 34786

and the Engineer:  
(Name, legal status, address and other information)

tbd

for the following (hereinafter referred to as “the Project”):  
(Insert information related to types of services, location, facilities, or other descriptive information as appropriate.)

*Continuing Engineering Services for various Town of Windermere Projects as assigned and agreed upon by individual Task Authorizations.*

The Owner and Engineer agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.



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### ARTICLE 1 ENGINEER'S RESPONSIBILITIES

§ 1.1 The Engineer shall provide the following professional services:

*(Describe the scope of the Engineer's services or identify an exhibit or scope of services document setting forth the Engineer's services and incorporated into this document in Section 9.2.)*

Owner issued a Request for Qualifications pursuant to Florida Statute Section 287.055 to contract with multiple engineering firms under continuing services contracts as defined therein. Engineer agrees to provide professional services to Owner for engineering projects as determined by and selected by Owner, upon terms and conditions set forth herein and upon mutual agreement and execution of Task Authorizations for each Project using the form attached as Exhibit "A". Each Task Authorization for each Project, upon execution, shall automatically be incorporated fully herein in this Agreement. All the terms and conditions of this Agreement shall fully apply to each Task Authorization. Each Project budget for each Task Authorization will vary and will be stated in each Task Authorization. Engineer recognizes that this Agreement is not exclusive, and that Owner has and/or will contract with more than one engineering firm under the terms of similar continuing contracts and will equitably rotate and divide the Projects based upon Owner's current volume of work assigned, the dollar value of work assigned, the particular specialties of the engineers and their sub-consultants, and the ability of the engineers to perform the services within Owner's needed schedule and other requirements.

The ability to perform a Task Authorization for each Project under this Agreement is limited by F.S. 287.055. If the Task Authorization is related to a Project that exceeds \$4.0 million in estimated construction costs (regardless of the amount of Engineer's fees), or if the Engineer's fee is for a study task that exceeds \$500,000, then that those engineering services will be advertised and procured separately under F.S. 287.055 and not performed under this or any other engineering continuing services contract.

If a Task Authorization includes as an attachment a proposal from Engineer, only the scope of services portions of such proposal shall be part of the Task Authorization and any terms and conditions included in such proposal shall not be part of the Task Authorization or this Agreement and such proposal terms and conditions shall be considered null and void.

Owner retains the right to reduce the scope of any portion of the Scope of Services of any Task Authorization. In such event, Owner shall be entitled to proportionally reduce the Engineer's compensation.

§ 1.1.1 The Engineer represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 1.2 The Engineer shall perform its services consistent with the professional skill and care ordinarily provided by Engineers practicing in the same or similar locality under the same or similar circumstances. The Engineer shall

perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Engineer shall, without additional compensation, correct and revise any errors or deficiencies in its designs, drawings, specifications, and services.

§ 1.3 The Engineer identifies the following representative authorized to act on behalf of the Engineer with respect to the Project.

*(List name, address, and other contact information.)*

*name, email, and phone number of Engineer's representative*

§ 1.4 Except with the Owner's knowledge and consent, the Engineer shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Engineer's professional judgment with respect to this Project.

§ 1.5 The Engineer shall maintain at its own expense, the following insurance until four (4) years after the termination of this Agreement.

§ 1.5.1 Commercial General Liability with policy limits of not less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury and property damage and umbrella excess liability coverage of five million dollars (\$5,000,000).

§ 1.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Engineer with policy limits of not less than one million dollars (\$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 1.5.3 The Engineer may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 1.5.1 and 1.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 1.5.4 Workers' Compensation at statutory limits.

§ 1.5.5 Employers' Liability with policy limits not less than one million dollars (\$ 1,000,000) each accident, one million dollars (\$ 1,000,000) each employee, and one million dollars (\$ 1,000,000 ) policy limit.

§ 1.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and two million dollars (\$2,000,000) in the aggregate.

§ 1.5.7 **Additional Insured Obligations.** The Engineer shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Engineer's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 1.5.8 The Engineer shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 1.5 at the following times: (1) prior to commencement of the Services; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

§ 1.5.9 Engineer shall require its professional and licensed subconsultants to maintain a minimum of \$1,000,000 per occurrence for General Liability insurance, \$1,000,000 automobile liability insurance, statutory workers'

compensation coverage, and if such subconsultant has a professional license, \$1,000,000 per occurrence for Professional Liability Insurance.

## ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 2.2 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Engineer's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer's services.  
(List name, address, and other contact information.)

Robert Smith, Town Manager  
Town of Windermere  
614 Main Street  
Windermere, Florida 34786  
rsmith@town.windermere.fl.us  
407-876-2563 x 5324

§ 2.3 The Engineer shall coordinate the services of Owner's consultants with those services provided by the Engineer. Upon the Engineer's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Engineer in this Agreement, or authorize the Engineer to furnish them as an Additional Service.

§ 2.4 Electronic mail may be used by the parties for notices using the email addresses in §1.3 and §2.2.

## ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 Drawings, specifications, reports, and all other documents, including those in electronic form, prepared by the Engineer and the Engineer's consultants ("Design Documents") are the sole and exclusive property of the Owner, shall be considered as being specially ordered by Owner as "works made for hire" under 17 U.S.C. §101, and may be used in any manner at the sole discretion of Owner. Owner shall have full and sole ownership rights to the Design Documents, regardless of any payment disputes with Engineer. Engineer shall furnish Owner with such reproductions of any Design Documents as the Owner may request at any time in both electronic and printed form. Any reproductions shall be the sole and exclusive property of the Owner who may use them without Engineer's permission for any purpose determined to be proper by the Owner. Owner shall own all rights, copyrights, or other intellectual property there may be with respect to the Design Documents. In the event that the Design Documents are held not to be "works made for hire", then Engineer agrees that all Design Documents, whether in final form or draft, which result from any Services performed by Engineer under this Agreement, are hereby assigned exclusively to Owner, including any copyright, patent, trademark, and all other intellectual property rights. In all cases, Engineer further hereby expressly assigns all of its present and future rights therein to Owner, and agrees to execute and furnish, and to cause all the Engineer's consultants to execute and furnish, in favor of Owner separate assignment documents from time to time as requested by Owner. This Section shall survive any termination or expiration of this Agreement. The Engineer shall be entitled to retain copies of the Design Documents for the Engineer's use and records. Owner shall be free to use the Design documents for any purpose, including, but not limited to, completion, renovation, additions, and expansion of the Project. The Engineer shall have no liability for the Owner's use of the Design Documents for a use unrelated to the Project. Engineer shall require language in each of its subconsultants' contracts providing for Owner's ownership of all Project documents and the Design Documents.

§ 3.2 The provisions of this Article 3 shall survive the termination of this Agreement.

## ARTICLE 4 CLAIMS AND DISPUTES

### § 4.1 General

§ 4.1.1 The Owner and Engineer shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by Florida law.

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Engineer waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in Owner's revised AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Engineer, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 4.1.3 The Engineer and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement. Redesign and remedial construction costs shall not be considered "consequential damages".

### § 4.2 Mediation

§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation pursuant to Florida Statutes as a condition precedent to binding dispute resolution.

§ 4.2.2 The Owner and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be in accordance with Florida Statutes. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 4.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

Arbitration pursuant to Section 4.3 of this Agreement

Litigation in a court of competent jurisdiction with exclusive venue in Orange County, Florida.

Other *(Specify)*

If the Owner and Engineer do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

### § 4.3 not used.

§ 4.4 The provisions of this Article 4 shall survive the termination of this Agreement.

## ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 If the Owner fails to make payments to the Engineer in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Engineer's option, cause for suspension of performance of services under this Agreement. If the Engineer elects to suspend services, the Engineer shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the

Engineer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Engineer all sums due prior to suspension.

§ 5.2 If the Owner suspends the Project, as its sole remedy, the Engineer shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Engineer's fees for the remaining services and the time schedules shall remain the same as set forth in this Agreement.

§ 5.3 If the Owner suspends the Project for more than 180 cumulative days for reasons other than the fault of the Engineer, the Engineer may terminate this Agreement by giving not less than seven days' written notice.

§ 5.4 Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.5 The Owner may suspend or terminate this Agreement upon not less than seven (7) days' written notice to the Engineer for the Owner's convenience and without cause.

§ 5.6 If the Owner terminates or suspends this Agreement for its convenience pursuant to Section 5.5, the Engineer terminates this Agreement pursuant to Section 5.1, or the Engineer terminates this Agreement pursuant to Section 5.3, the Owner shall compensate the Engineer for services performed prior to termination, together with Reimbursable Expenses incurred, which compensation shall be Engineer's sole and exclusive remedy for any termination or suspension.

§ 5.7 not used.

§ 5.8 Except as otherwise expressly provided herein, this Agreement shall terminate  
(Check the appropriate box.)

One year from the date of commencement of the Engineer's services

One year from the date of Substantial Completion of the Construction of all Projects.

Other  
(Insert another termination date or refer to a termination provision in an attached document or scope of service.)

« »

If the Owner and Engineer do not select a termination date, this Agreement shall terminate one year from the date of commencement of the Engineer's services.

## ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Engineer as set forth below for services described in Section 1.1, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

To be negotiated and set forth in each Task Authorization based upon the hourly rates set forth in Exhibit B. The hourly rates set forth in Exhibit B shall be fixed for the first three years of this Agreement. Thereafter, if this Agreement is renewed or extended, the hourly rates shall be increased each year beginning April 1, 2027, by the CPI Ratio described below or 4%, whichever is less. "CPI Ratio" shall mean the ratio of the Consumer Price Index for the month prior to the applicable beginning month of the new year of the Term divided by the Consumer Price Index for April 2024. "Consumer Price Index" shall mean the index numbers of retail commodity prices designated "REVISED CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS - U.S. CITY AVERAGE - ALL ITEMS" (1967-100) prepared by the Bureau of Labor Statistics of the U.S. Department of Labor. Any publication by either the U.S. Department of Labor or the U.S. Department of Commerce in which such index numbers are published shall be admissible in evidence in any legal or judicial proceeding involving this Lease without further proof of authenticity. In the event the U.S. Department of Labor ceases to prepare and to publish such retail

commodity index numbers, the adjustment of rent thereafter shall be according to the most closely comparable commodity index published by the U.S. Department of Labor; and if such is not determined by that Department, then the most closely comparable commodity index as determined by agreement of the Parties; and in the absence of agreement, then as determined by a Circuit Judge of the Circuit Court of Orange County, Florida.

## § 6.2 Compensation for Reimbursable Expenses

§ 6.2.1 Reimbursable Expenses are in addition to compensation set forth in Section 6.1 and include expenses incurred by the Engineer and the Engineer's consultants directly related to the Project, as follows:

- .1 not used;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets; but only if authorized in writing in advance by the Owner;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project; but only if authorized in writing in advance by the Owner;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, but only if authorized in writing in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project; but only if authorized in writing in advance by the Owner;
- .8 not used; and
- .9 All taxes levied on professional services and on reimbursable expenses;

§ 6.2.2 For Reimbursable Expenses the compensation shall be the actual expenses incurred by the Engineer and the Engineer's consultants without markup. Reasonable back-up documentation such as receipts shall be submitted with any invoices for Reimbursable Expenses. Travel expenses are not reimbursable. Reimbursable Expenses shall not exceed the amount set forth in each Task Authorization without prior approval of Owner.

§ 6.2.3 **Additional Services.** Compensation for Additional Services that are not included in the Scope of Services shall be negotiated by the Owner and Engineer at the time of Owner's request for said Additional Services. Engineer shall not perform and shall not be entitled to any payment for such Additional Services unless the Owner and Engineer execute a written document setting forth a description of the Additional Services and the compensation to be paid for same in advance of Engineer performing such Additional Services. Before negotiating Additional Services, Engineer shall provide Owner with a list of personnel, proposed hourly rates, hours for each task, and itemization of proposed reimbursables for Owner's review, and any other additional information Owner may require. Subconsultants shall provide the same information on subconsultant's letterhead for their Additional Services. The costs of any Additional Services performed without prior written authorization are waived by Engineer. The maximum hourly rates for Additional Services are stated in Exhibit "B".

## § 6.3 Payments to the Engineer

§ 6.3.1 Submittal of Invoices. Invoices shall be submitted by electronic mail to Owner, confirmed returned receipt to the Town's Director of Finance, Nora White at [nwhite@town.windermere.fl.us](mailto:nwhite@town.windermere.fl.us) with a copy to the Town Manager, Robert Smith at [rsmith@town.windermere.fl.us](mailto:rsmith@town.windermere.fl.us) and the Project Manager, John Fitzgibbon at [jfitzgibbon@town.windermere.fl.us](mailto:jfitzgibbon@town.windermere.fl.us) Engineer's invoices shall be supported by such data substantiating the Engineer's right to payment as the Owner may require, such as, but not limited to, copies of invoices from subconsultants, receipts for supplies and Reimbursable Expenses, and records of detailed description of services performed, and time and names of personnel performing the services.

### § 6.3.2 Progress Payments

§ 6.3.2.1 Unless otherwise agreed, payments for services shall be made monthly for the completion and delivery to Owner of each deliverable described in each Task Authorization. Payments are due and payable thirty (30) days after the date of Owner's approval of the Engineer's properly prepared and completed invoice. Amounts unpaid after the due date shall bear interest at the rate entered below:

*(Insert rate of monthly or annual interest agreed upon.)*

Per Florida Statute Chapter 218.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 7.2 Except as separately defined herein, terms in this Agreement shall have the same meaning as those in the Owner's revised AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 7.3 The Owner and Engineer, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Engineer shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Engineer by the Owner prior to the assignment.

§ 7.4 n/a.

§ 7.5 If the Owner requests the Engineer to execute certificates, the proposed language of such certificates shall be submitted to the Engineer for review at least 14 days prior to the requested dates of execution. If the Owner requests the Engineer to execute consents reasonably required to facilitate assignment to a lender, the Engineer shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Engineer for review at least 14 days prior to execution. The Engineer shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 7.6 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Engineer.

§ 7.7 Unless otherwise required in this Agreement, the Engineer shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, except in the case of the Engineer specifying the use of such substance. Engineer shall notify the Owner immediately upon Engineer's discovery of any hazardous or toxic substance on the Project site.

§ 7.8 The Engineer shall have the right to include photographic or artistic representations of the design of the Project among the Engineer's promotional and professional materials, subject to the prior written approval of Owner which approval shall not be unreasonably withheld or delayed. The Engineer shall be given reasonable access to the completed Project to make such representations. However, the Engineer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Engineer in writing of the specific information considered by the Owner to be confidential or proprietary. The Engineer shall coordinate all press releases and promotional/industry articles with the Owner and the Owner shall pre-approve all press releases and articles, which approval shall not be unreasonably withheld or delayed. This Section 7.8 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 5.4.

§ 7.9 This is a contract for public Projects. In general all information and documents are public records except confidential information pursuant to Florida Statute Chapter 119. If confidential, Engineer shall keep such information strictly confidential and shall not disclose it to any other person except only as permitted by Florida Statute Chapter 119. This Section 7.9 shall survive the termination of this Agreement.

§ 7.9.1 not used.

§ 7.10 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

## ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:  
(Include other terms and conditions applicable to this Agreement.)



1. Availability of Funds. All activities under or pursuant to this Agreement are subject to the availability of appropriated funds to the Owner, the Town of Windermere. Owner shall immediately notify Engineer should funds become unavailable. In such case, either party shall have the right to stop work and/or terminate this Agreement.

2. Public Records.

a. To the extent Engineer is acting on behalf of Owner as provided under Subsection 119.011(2) of the Florida Statutes, Engineer shall:

- i. Keep and maintain public records required by Owner to perform the services under this Agreement.
- ii. Upon request from Owner's custodian of public records, provide Owner 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 costs 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 Engineer does not transfer the records to Owner.
- iv. Upon completion of the Agreement, transfer, at no cost, to Owner all public records in possession of Engineer or keep and maintain public records required by Owner to perform the service. If the Engineer transfers all public records to Owner upon completion of the Agreement, the Engineer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Engineer keeps and maintains public records upon completion of the Agreement, the Engineer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Owner, upon request from Owner's custodian of public records, in a format that is compatible with the information technology systems of Owner.

b. If the Engineer fails to provide the public records to Owner within a reasonable time the Engineer may be subject to penalties under Section 119.10 of the Florida Statutes. Further, Owner may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof.

Engineer shall defend, at its own cost, indemnify, and hold harmless Owner, their officers, directors, and employees from and against all claims, damages, losses, and expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from Engineer's failure to comply with the terms of this Section.

**c. IF THE ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT OWNER'S CUSTODIAN OF PUBLIC RECORDS FOR THIS PROJECT, DOROTHY BURKHALTER AT 407-876-2563 X 5323, DBURKHALTER@TOWN.WINDERMERE.FL.US, 614 MAIN STREET, WINDERMERE, FLORIDA 34786.**

3. Sovereign Immunity. Owner's limits of liability are set forth in Section 768.28 of the Florida Statutes, and nothing herein shall be construed to extend the liabilities of Owner beyond that provided in Section 768.28 of the Florida Statutes. Nothing herein is intended as a waiver of Owner's sovereign immunity under Section 768.28 of the Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, including but not limited to anything which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of Owner's obligations under this Agreement are limited to the payment of no more than the per person amount limitation and the aggregate contained in Section 768.28 of the Florida Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.

In no event shall Owner be liable to Engineer 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. Owner shall not assume any liability for the acts, omissions, or negligence of Engineer, its agents, servants, employees, or subconsultants. In all instances, Engineer shall be responsible for any injury or property damage resulting from any activities conducted by Engineer.

4. No Harassment. Engineer shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. Engineer shall insert a similar provision in accordance with this section, in all subcontracts for this Project.

5. Independent Contractor. Engineer is and shall remain an independent contractor and not an employee or agent of Owner. There are no intended or unintended third party beneficiaries of this Agreement, and no parties other than the Owner and Engineer shall have the right to enforce this Agreement. This Agreement shall not be construed as a teaming, joint venture or other such arrangement. Nothing in this Agreement shall grant to either party the right to make commitments of any kind for or on behalf of the other party without the prior written consent of the other party.

6. Non-Discrimination. Engineer and its subconsultants shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Engineer shall take affirmative action to ensure that qualified applicants are employed if work is available and that employees are treated during employment without regard to their race, religion, color, sex, creed, handicap, marital status, or national origin. Engineer agrees to post in places available to all employees and applicants for employment, notices setting forth the policies of nondiscrimination.

Engineer shall, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, creed, handicap, marital status, or national origin.

7. Public Entity Crime Notice. Engineer affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has Engineer been convicted of a Public Entity Crime. Engineer agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in termination of this Contract by Owner.

8. Records. Engineer shall preserve all contract records and documents for the entire term of this Agreement and for five (5) years after the later of: (i) the date of submission of Engineer's final services, or (ii) until all claims (if any) regarding the Agreement are resolved. During such period of time, Engineer shall retain and maintain all records and make such records available for an audit as may be requested by Owner. The records shall be subject at all times to inspection, review, or audit by Owner, FEMA Administrator, State personnel of the Office of the Auditor General, Chief Financial Officer, Office of the Chief Inspector General, the Comptroller General of the United States, and the State of Florida, Division of Emergency Management, and any of their duly authorized representatives. Owner and the foregoing may, at any time and for any reason whatsoever, review, audit, copy, examine and investigate in any manner, any records of Engineer which include, but are not limited to, papers, books, documents, vouchers, bills, invoices, requests for payment, accounting records, and other supporting documentation, which according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all costs expended in the performance of this Agreement. Engineer agrees to reimburse Owner for the reasonable costs of investigation incurred by Owner, the Inspector General, State Auditor General or other authorized State or Federal official or agent for investigations of Engineer's compliance with the terms of this Agreement which results in disallowed costs. Such reasonable costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. In compliance with the Disaster Recovery Act of 2018, the Owner and the Engineer acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. Whenever the term "Contractor" is used in the Contract Documents it shall refer to and mean "Construction Manager" or the "Contractor" as the case may be for the specific Project.

10. No Use of Funds for Lobbying or Litigation. Engineer shall not use any funds received pursuant to this Agreement for lobbying the Florida Legislature, the judicial branch, or any state agency. Engineer shall not use any funds received pursuant to this Agreement for any legal action against Owner.

11. Discriminatory Vendor List. Engineer represents that it is not on the State's discriminatory vendor list and that for services related to this Agreement, Engineer shall not transact business with any entity that has been placed on the State's discriminatory vendor list.

12 No Contingency Fees. Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Engineer any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

13. Schedule. Engineer shall perform its services in accordance with the schedule set forth in each Task Authorization.
14. Whenever the term, "AIA Document A201–2007" is used in the Contract Documents, it shall refer to and mean the Town of Windermere’s revised AIA A201-2017, Revised General Conditions of the Contract for Construction.
15. Engineer is familiar with and shall comply with all applicable federal, state and local laws, rules, regulations, and requirements, as applicable.
16. E-Verify. Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired by Engineer during the term of this Agreement; and Engineer shall expressly require any subconsultants to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired by the subconsultants during the contract term. The Department of Homeland Security’s E-Verify system can be found at:  
[http://www.dhs.gov/files/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/files/programs/gc_1185221678150.shtm)

The employment by Engineer or any of its subconsultants of unauthorized aliens, as described by Section 274A(e) of the Immigration and Nationalization Act, shall be cause for termination of this Agreement. **Only those employees determined eligible to work within the United States shall be employed under this Agreement.**

17. No Smoking. Smoking and all tobacco products are prohibited on the Project site, and prohibited anywhere on Owner’s property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.
18. Proposal Terms Not Incorporated. In the event Engineer has presented a proposal to Owner which may contain terms and conditions other than a description of the scope of Services, such terms and conditions shall not be valid, shall not be enforceable, and shall not be considered a part of this Agreement. Only the description of the scope of Services to be performed shall be considered a part of this Agreement.
19. COVID19. Engineer’s Fees include all amounts necessary to comply with all regulations, ordinances, and laws concerning COVID19, including PPE, sanitation, and social distancing requirements.
20. Scrutinized Companies List.
- a. By executing this Agreement, Engineer certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725 of the Florida Statutes, (2) engaged in a boycott of Israel, (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473 of the Florida Statutes, or (4) engaged in business operations in Cuba or Syria. Pursuant to section 287.135(5) of the Florida Statutes, Owner may immediately terminate this Agreement for cause if the Engineer is found to have submitted a false certification as to the above or if the Engineer is placed on the Scrutinized Companies that Boycott Israel List, is engaged in a boycott of Israel, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, during the term of the Agreement. If Owner determines that the Engineer has submitted a false certification, Owner will provide written notice to the Engineer. Unless the Engineer demonstrates in writing, within 90 calendar days of receipt of the notice, that Owner’s determination of false certification was made in error, Owner shall bring a civil action against the Engineer. If Owner’s determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed on the Engineer, and the Engineer will be ineligible to bid on any Agreement with a Florida agency or local governmental entity for three years after the date of Owner’s determination of false certification by the Engineer.
- b. If federal law ceases to authorize the states to adopt and enforce the contracting prohibition in this Section, this Section shall be null and void without further action of the parties.
21. CADD. The Engineer shall provide copies of the Design Documents to Owner prepared in 3D Revit, Sketchup, Autocad, or another CADD format approved by Owner.

22. Subconsultants. All subconsultants utilized by Engineer for the Project are subject to the approval of Owner. After approval from Owner, the Engineer shall not remove or substitute any of the subconsultants without the written consent of Owner which consent shall not be unreasonably withheld.

23. Engineer shall coordinate and conduct with the Owner and Engineer a Project Warranty Inspection at the Project site on a mutually convenient date within the 14 day period before the expiration of the Contractor's one (1) year warranty period.

24. The following documents and agreements are incorporated by reference and Engineer shall comply with all terms, conditions, and requirements of same to the same extent required of Owner:

As stated in each Task Authorization.

25. The provisions of Florida Statute Chapter 558 are waived by both Parties and shall not be applicable to this Agreement.

26. Engineer shall indemnify, defend, save and hold harmless the Owner and its officials, officers and employees to the fullest extent permitted by law from and against all claims, damages, losses, and costs, including but not limited to reasonable attorneys' fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of Engineer and any other persons employed or utilized by Engineer in the performance of this Agreement. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

27. Federal Non-Discrimination Requirements, if applicable:

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

(1) The Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, 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 Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Engineer will, in all solicitations or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Engineer will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Engineer's legal duty to furnish information.

(4) The Engineer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Engineer's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Engineer 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.

(6) The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Engineer's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in

part and the Engineer may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with 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.

(8) The Engineer will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 Engineer will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Engineer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

28. Copeland Anti-Kickback Act. If applicable:

- a. Engineer. The Engineer shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The Engineer shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The Engineer shall be responsible for the compliance by any subconsultant with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as provided in 29 C.F.R. Section 5.12.

29. Clean Air Act and Federal Water Pollution Act.

Clean Air Act, if applicable:

1. The Engineer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Engineer agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Engineer agrees to include these requirements in each subcontract.

Federal Water Pollution Control Act

1. The Engineer agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Engineer agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Engineer agrees to include these requirements in each subcontract.

30. Waiver of Claims. Engineer hereby waives all claims against Owner, and its officials, officers, and employees for injury, death, damage, or loss arising from or related to activities conducted under this Agreement, including, but not limited to, for any injury to, or death of, Engineer's employees or the employees of Engineer's related entities, or for damage to, or loss of, Engineer's property or the property of its related entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of Owner's willful misconduct. Engineer waives all claims against Owner (except for such claims which result from the gross negligence or willful misconduct of the Owner) for any such loss, damage, personal injury or death occurring as a consequence of the conduct of activities or the performance of Engineer's responsibilities under this Agreement.

31. Suspension and Debarment, if applicable:

- (1) This Agreement may be a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Engineer is required to verify that none of the Engineer's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Engineer must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the Engineer did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Engineer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this Agreement is in effect. Engineer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

32. This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of this Agreement. If applicable, Engineer will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Engineer, or any other party pertaining to any matter resulting from this Agreement.

33. Engineer is encouraged to use Florida's minority and service-disabled veteran businesses as subconsultants under this Agreement. The Certified Vendor Directory can be accessed from the website of the Florida Department of Economic Opportunity of Management Services, Office of Supplier Diversity located at: [https://www.dms.myflorida.com/agency\\_administration/office\\_of\\_supplier\\_diversity\\_osd](https://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd)

34. It is the policy of Owner that disadvantaged business enterprises as defined in 49 CFR Part 26, as amended, shall have the maximum opportunity to participate in the performance of contracts under this Agreement. Engineer and its subconsultants agree to ensure that Disadvantaged Business Enterprises as defined in applicable federal and state regulations have the opportunity to participate in the performance of subcontracts under this Agreement. In this regard, Engineer shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform subcontracts.

35. Prohibited Interests: No member, officer, or employee of Owner during this tenure or for two years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. Engineer and its subconsultants shall not enter into any contract, subcontract, or arrangement in connection with the Project or any property included or planned to be included in the Project, in which any member, officer, or employee of Owner during the term of this Agreement and for two years thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquires or had acquired prior to the beginning of his or her tenure with Owner, any such interest, and if such interest is immediately disclosed to Owner, Owner may waive the prohibition contained in this subsection, provided, that any such present member, officer or employee shall not participate in any action by Owner relating to such contract, subcontract, or arrangement. Engineer shall insert in each of their subcontracts, the following provision: "No member, officer, or employee of Owner during the term of this Agreement and for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

36. Byrd Anti-Lobbying Certification, if applicable:

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Engineer certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Engineer understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

37. Prohibited Gratuities. Engineer shall not offer or give a gratuity (e.g., an entertainment or gift) to any officer, official, or employee of Owner.

**38. PURSUANT TO FLORIDA STATUTES, SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF ENGINEER MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE IN ANY CLAIM(S) ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES PERFORMED IN THIS AGREEMENT, OR THE PROJECT.**

39. No Individual Liability. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any individual officer, agent, employee, or representative of the Owner, in his or her individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Agreement, whether by virtue of any constitution, statute, or rule of law, or by the enforcement of any assessment or penalty, or otherwise. Further, Engineer waives and releases any and all claims of any kind against the individual officers, agents, employees, and representatives of the Owner.

40. To be eligible for payment, Engineer's costs must be in compliance with all laws, rules and regulations, including, but not limited to, to the extent applicable, the Reference Guide for State Expenditures:  
[http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/)

41. DHS LOGO. Engineer shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

42. With each pay request, Engineer shall provide a written report regarding the status of its performance under this Agreement for each task described in each Task Authorization. Engineer shall also provide a close-out report within 30 days of the final completion of each Project. Engineer shall provide any other reports required by the Funding Agreement.

43. Electronic Signatures. The Parties agree that this Agreement and any amendments may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. For purposes of this Agreement "electronic signature" includes faxed versions of an original signature, electronically scanned and transmitted versions (via pdf) of an original signature, and portable document formats which include, but are not limited to, Abode or DocuSign.

44. Engineer acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Engineer's actions pertaining to this Agreement.

45. Task Authorization Limits: The estimated construction cost for any Task Authorization issued under this Agreement shall not exceed \$4,000,000.00. Each Task Authorization shall specifically indicate the Project's estimated construction cost. Task Authorizations issued under this Agreement for study activities shall not exceed \$500,000.00.

46. The initial term of this Agreement shall be for three (3) years from the date first written above ("Term"). The Term may be extended by mutual agreement for two (2) optional one (1) year additional extensions. In the event the Term of this Agreement expires and is not renewed, or is terminated as provided herein, if Engineer has not completed the services under a Task Authorization, then the Term of this Agreement will remain in effect through the date of completion of the services in the Task Authorization, but no new requests for proposals and no new Task Authorizations shall be issued.

47. Non-Exclusivity. Engineer agrees that this Agreement is not exclusive. This Agreement does not guarantee Engineer any right to enter into with Owner any Task Authorizations and does not guarantee any work, revenue or level of revenue will be provided to Engineer. Only if Owner and Engineer execute a Task Authorization and Engineer properly performs the Services will Engineer be entitled to any compensation. Engineer does not have exclusivity to perform engineering services for Owner. Owner has and may enter into other continuing services contracts and other contracts with other engineering firms to provide professional services to Owner.

**ARTICLE 9 SCOPE OF THE AGREEMENT**

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Engineer.

§ 9.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B102™–2017, Standard Form Agreement Between Owner and Engineer
- .2 not used.

.3 Exhibits:  
*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

[  ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204–2017 incorporated into this Agreement.)*

[  ] Other Exhibits incorporated into this Agreement:  
*(Clearly identify any other exhibits incorporated into this Agreement.)*

Exhibit “A” – Scope of Services  
Exhibit “B” – Hourly Rates

.4 Other documents:  
*(List other documents, hereby incorporated into the Agreement.)*

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**ENGINEER** *(Signature)*

\_\_\_\_\_  
*(Printed name, title, and license number, if required)*