

THE TOWN OF
Windermere



MAYOR AND COUNCIL OF THE TOWN OF WINDERMERE

Mayor Jim O'Brien

Council Members

Andy Williams

Tony Davit

Mandy David

Tom Stroup

Brandi Haines

Agenda

Agenda

June 11, 2024

6:00 PM

WINDERMERE TOWN HALL

520 MAIN STREET

WINDERMERE, FL 34786

JOIN ZOOM MEETING (COPY/PASTE INTO BROWSER)

[HTTPS://US06WEB.ZOOM.US/J/88162919171?](https://us06web.zoom.us/j/88162919171?pwd=FDABOYBC6QMDJJOOARQZMQV6UJULJR.1)

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MEETING ID: 881 6291 9171

PASSCODE: 609326

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PLEASE TURN OFF ALL CELL PHONES AND PAGERS

PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.26: Person with disabilities needing assistance to participate in any such proceedings should contact the Office of the Clerk at least 48 hours beforehand at (407) 876-2563.

Pursuant to Resolution No. 2005-12 adopted on December 13, 2005, the following Civility Code shall govern all proceedings before the Town of Windermere Town Council:

1. All electronic devices, including cell phones and pagers, shall be either turned off or otherwise silenced.
2. Prolonged conversation shall be conducted outside Council meeting hall.
3. Whistling, heckling, gesturing, loud conversations, or other disruptive behavior is prohibited.
4. Only those individuals who have signed the speaker list and/or/who have been recognized by the Mayor (or Chair) may address comments to the Council.
5. Comments at public hearings shall be limited to the subject being considered by the Council
6. Comments at Open Forums shall be directed to Town issues.
7. All public comments shall avoid personal attacks and abusive language
8. No person attending a Town Council meeting is to harass, annoy, or otherwise disturb any other person in the room.

Any member of the public whose behavior is disruptive and violates the Town of Windermere Civility Code is subject to removal from the Town Council meeting by an officer and such other actions as may be appropriate. PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.0105: Any person who desires to appeal any decision at this meeting will need a record of this proceeding. For this, such person may need to ensure that a verbatim record of such proceeding is made which includes the

AGENDA

THE MEETING IS CALLED TO ORDER BY THE MAYOR FLAG SALUTE INVOCATION

1. OPEN FORUM / PUBLIC COMMENT (3-Minute Limit)

2. SPECIAL PRESENTATION / PROCLAMATIONS / AWARDS

3. TIMED ITEMS & PUBLIC HEARING

4. OLD BUSINESS

5. NEW BUSINESS

a. MINUTES

i. Town Council Regular Meeting Minutes: May 14, 2024 (Attachments - Staff Recommends Approval)

b. RESOLUTIONS / ORDINANCES FOR APPROVAL / FIRST READING

i. Planning and Zoning Fee Increase

c. APPOINTMENTS

i. Parks & Recreation Committee Member Appointment

d. CONTRACTS & AGREEMENTS

i. Town Manager Contract

e. FINANCIAL

i. Windermere Rd/Main RAB Grant Agreement

f. OTHER ITEMS FOR CONSIDERATION

i. Town Square Planning Charette

ii. Rotary Inc Repayment

6. MAYOR & COUNCIL LIAISON REPORTS

7. STAFF REPORTS

8. ADJOURN

REPORTS OTHER ITEMS

TOWN OF WINDERMERE

Town Council Meeting Minutes

May 14, 2024

CALL TO ORDER:

Present were Mayor Jim O'Brien, Town Council Members Tom Stroup, Andy Williams, Mandy David, Tony Davit, and Brandi Haines. Public Works Director Elliott-Moore, Attorney Heather Ramos, Deputy Chief Jayson Bonk, and Town Clerk Dorothy Burkhalter were also present. Town Manager Robert Smith and Police Chief Dave Ogden were absent.

Mayor O'Brien called the meeting to order at 6:01 pm and stated that a quorum was present. He then led everyone in the Pledge of Allegiance.

1. OPEN FORUM/PUBLIC COMMENT (3 Minute Limit)

Mayor O'Brien opened the floor to the public for comments. First to speak was Ms. Gloria Groome of 416 E 6th Avenue. Ms. Groome stated she was present to advocate for the sidewalk on E 6th Avenue and Lake Street. She commented on safety concerns for pedestrians. Ms. Groome stated that she is advocating to the Town Council to put the project back in motion. Mayor O'Brien thanked Ms. Groome for her concerns. He then requested that Public Works Director Elliott-Moore revisit this item. Ms. Thellie Roper of 610 West 2nd Avenue introduced herself. She then commented on ownership/leases of the boathouses located on Pine Street. Mayor O'Brien thanked Ms. Roper for her comments. Next to speak was Ms. Ann Douglas of 10003 Shortwood Lane. Ms. Douglas explained that she has been a teacher for twenty-five years and is currently running for the Orange County School Board District 4. She also commented on her concerns with teachers leaving the profession and would like to be a part of the solution, not the problem. Mayor O'Brien thanked Ms. Douglas for her comments and wished her well. Mrs. Pam Martini of 627 Ridgewood Drive introduced herself. She then commented on Military Appreciation month. Mrs. Martini also commented on the upcoming Armed Forces Celebration and invited all to attend. She then gave an update regarding the opportunity of receiving "Old Glory" the Patriotic Horse back from the Disney's. Mrs. Martini stated that the Disney family is having the horse restored so it will come back in pristine condition which will honor Evan Fitzgibbon. Mayor O'Brien questioned the location. Mrs. Martini stated it needed to be determined. Mayor O'Brien stated that a celebration will be held when the horse returns. Mr. David Sharpe deferred until the Condition Use item. Ms. Debra Neil of 525 Oakdale Street introduced herself. She then stated that she opposes the Conditional Use request. Ms. Sarah Lopez of 110 Forest Street introduced herself. She stated that she opposes the Conditional Use request. Mayor O'Brien thanked all for their input and comments.

2. SPECIAL PRESENTATION/PROCLAMATIONS/AWARDS:

a. Comprehensive Plan Evaluation and Appraisal Notification Letter to Department of Commerce

Mayor O'Brien turned the floor over to Mr. Brad Cornelius. Mr. Cornelius explained the need for a letter to the Department of Commerce. He commented that letter will address the Towns Comprehensive Plan update to coincide with recent laws/changes, 10/20-year planning, population projections, 10-year water plan and others. He then stated that his item is for information only.

3. TIMED ITEMS & PUBLIC HEARING

NONE

4. OLD BUSINESS

a. Minutes

- i. Town Council Meeting Minutes: March 12, 2024**
- ii. Town Council Meeting Minutes: April 9, 2024**
- iii. Town Council Workshop Projects Update Minutes: April 23, 2024**

Mayor O'Brien introduced this item. Member Davit made a motion to approve all minutes as

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Mayor O'Brien introduced this item. Attorney Ramos stated that this is a quasi-judicial public hearing. She explained that the decision must be based on the evidence that is produced this evening. Attorney Ramos stated that Clerk Burkhalter will swear in Mr. Brad Cornelius. She also stated that each Council member will need to disclose any conversations that have been made regarding this application outside of this public hearing. Clerk Burkhalter swore in Mr. Cornelius. Mayor O'Brien then closed the Town Council meeting and opened the public Hearing at 6:36pm. He then turned the floor over to Mr. Cornelius. Mr. Cornelius introduced himself and presented the Conditional Use request. He then explained that per the Town's Code of Ordinances, there is a one-thousand-foot separation requirement to serve alcohol for consumption on premises. Mr. Cornelius further explained that there is a process that an applicant can go through to waive the one-thousand-foot waiver through the conditional use process, which is what the applicant is doing. He stated that in the Land Development Code – Section 15, there are seven criteria that would need to be met prior to approval. Mr. Cornelius then reviewed the seven criteria. He also reviewed the Developers Agreement which states that businesses must be closed by 10:00pm. Mr. Cornelius commented on the conditions to revoke the license. He then reported on the past Development Review Board meeting regarding this item. Mr. Cornelius explained that three motions were made, which none were approved. He then commented on public notices that had been sent out and what has been received. Mayor O'Brien questioned if this Conditional Use is for consumption not the sale. Mr. Cornelius stated yes. Mayor O'Brien commented that there will not be outdoor seating. Mr. Cornelius agreed that there will not be. Mayor O'Brien and Members Stroup, Williams, David, Davit, and Haines all stated that they have had conversation with the Attorney, Town Manager, residents, emails, and text messages regarding the Conditional Use application. Attorney for the applicant Ms. Kara Ann Groves introduced herself. She then played a brief video from the owners and their proposed concept. Ms. Groves commented on the higher end, international flare wines that will be sold. She then stated that they are seeking approval for "wine by the glass offerings", consumption on premises. Ms. Groves commented that a denial, in their opinion, would be a type of market control. She then commented on sales price points, consumption on premises, consideration of other businesses, voluntarily involving the public, and safety and welfare for the public. Mayor O'Brien questioned what makes this "wine bar" different. Ms. Groves explained that its open to the public, an International educational experience, and there will not be any promotions/events/buy one get one. Member Davit questioned if Mr. Kumar is a Sommelier. Ms. Groves stated that she believed he was. Some discussion followed. Ms. Groves stated that there has been discussion that a Council member owns property within the 500' radius which may need to recuse themselves. Member Williams stated he is a land/building owner and will abstain. He also stated that he does not own a business in town. Member Stroup commented on the contact that he has had with residents. He then stated that public safety/welfare is a priority for him. Ms. Groves responded that neither the Town Council nor anyone has implemented that there are any existing safety/welfare concerns with the five other like businesses. Member Stroup stated that "an ounce of protection is worth the effort". Mayor O'Brien questioned Attorney Ramos as to how one presents objective evidence for something that hasn't occurred yet. Attorney Ramos stated it hasn't occurred yet. She also stated that based on home rule powers, the Town Council must decide based on the criteria. Member Haines stated that the State Statutes exist for a reason. Ms. Groves commented that she believes that this business will attract different types of customers than what currently exists. She also stated that sampling will be allowed whether this is approved or not. Member David commented that the town is small and quaint. Adding more businesses will bring more people into town, which the Town is trying to minimize even with town events. Ms. Groves stated that they are not trying to attract tourists into town. After some discussion was made, Mayor O'Brien turned the floor over to the public. Clerk Burkhalter read comments from Mr. Bob McKinley for the record (attached). Mr. Brian Tomoka of 3420 South Lake Butler Blvd introduced himself. He then stated that Tim's Wine Market does offer a wide variety of wines at a wide range of pricing. Mr. Frank Krens of 727 Forest Street introduced himself. He then stated that with compliance and what the Town has already, it would be difficult to turn this request down. Mr. Trey Vick, V3 Capital Group introduced himself. He then stated that working with the applicant, they have

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proven their knowledge of wine and the business. Mr. Vick stated that the rules and process needed to be adhered to. Mayor O'Brien questioned Mr. Vick as to what else would be going in the 500-block building. Mr. Vick stated an Ace Boutique, jewelry store, real estate office, insurance office, restaurant, and an Italian/gelato take out. Member Haines questioned if the restaurant will be selling wine. Mr. Vick stated he did not know. Ms. CT Allen of 611 W 2nd Avenue introduced herself. She stated that this is not about hindering free enterprise. She then spoke about her displeasure of the condescending nature to the town residents which know the difference between a wine bar and wine store. Ms. Allen also stated that the five consumption businesses in town are enough for the 3,000 residents that live here. She stated that she would like to keep the evenings in the town for families. This concluded the public comments. Member David questioned if all seven criteria needed to be met. Mr. Cornelius stated yes. Member Davit questioned if all seven needed to be met to be considered for approval. Mr. Cornelius stated that all seven would need to apply for approval. Mayor O'Brien thanked all for their comments. Member Haines made a motion to deny the request due to not meeting all seven requirements. Member Stroup seconded the motion. Roll call vote was as follows: Haines – aye, Davit – aye, David – aye, Williams – abstain, and Stroup – aye. Motion carried 4-0-1. Attorney Ramos stated that clarification as to why this item was denied is needed. Member Haines stated that due to criteria number seven not being met. Mayor O'Brien closed the public hearing at 7:46pm and reconvened the Town Council meeting.

ii. 90% Plans Old Dirt Main/10th Avenue

Mayor O'Brien introduced this item. Mr. Fitzgibbon explained that this is for the Old Dirt Main Street and 10th Avenue project. He commented on the review of the 45% plans and comments which have led to the 90%. Mr. Fitzgibbon stated that approval of the 90% is needed. Member Davit made a motion to the 90% plans for dirt Main Street and 10th Avenue. Member Williams seconded the motion. Roll all vote was as follows: Stroup – aye, Williams – aye, David -aye, Davit – aye, and Haines – aye. Motion carried 5-0.

iii. Boathouse Litigation Discussion

Mayor O'Brien turned the floor over to Member Stroup. Member Stroup commented on concerns with the Boathouse litigation, costs, people involved, and possible litigation outcome. He then stated that he would like to make a motion for discussion that both parties involved in the boathouse drop the lawsuit and neither party seeks legal costs/restitution, previous lease agreements are terminated and Town of Windermere sells the boathouses to the previous lessee's, cost of boathouse sales will be determined by Town Council but will not exceed the current cost of legal fees already incurred by said lessee's. Boathouse maintenance and upkeep will fall under the same rules and regulations as all residential property in Windermere, to and (inaudible) independently by parties involved. He then commented on his concerns with the lawsuit, and gains/no gains. Discussion began. Town Attorney for the boathouse case Mr. Nick Dancaescu commented that an offer could be given to the other party. He then stated that he cannot report on past mediation. Mayor O'Brien stated that Member Stroup could speak with the Town Manager and Attorney Dancaescu to see if there could be a reasonable offer and then be brought back to the Town Council. Some discussion followed. Member Stroup thanked Attorney Dancaescu for all his assistance.

6. MAYOR & COUNCIL LIAISON REPORTS:

Mayor O'Brien opened the floor to the Council members. Member Haines commented that the Tree Board has completed their strategic planning. Member Davit reported on the Historical Preservation Board. He stated that they discussed the Town Hall renovations, estimates and the future strategic planning meeting. Member David reported on Parks and Recreation sunshine meeting and strategy planning. Mayor O'Brien reminded all about the upcoming Armed Forces Day event. He also reported that Chief

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Ogden and Manager Smith are in Washington DC for the memorial. Member Stroup reported on the Elders Luncheon.

7. **STAFF REPORTS:**

- a. **TOWN MANAGER ROBERT SMITH** – Manager Smith was absent.
- b. **TOWN ATTORNEY HEATHER RAMOS** – No report.
- c. **DEPUTY CHIEF JAYSON BONK** – Deputy Chief Bonk reported on staff, and the golf cart grant. He then reported that he will be attending FBI National Academy this summer.
- d. **PUBLIC WORKS DIRECTOR ELLIOTT-MOORE** – Director Elliott-Moore reported that Lake Street Park community meeting was held. The next step will be back to the Town Council.
- e. **TOWN CLERK DOROTHY BURKHALTER** – No report.

8. **ADJOURN:**

Mayor O'Brien adjourned the meeting at 8:09pm.

Dorothy Burkhalter, MMC, FCRM
Town Clerk

Jim O'Brien, Mayor

Dorothy Burkhalter

From: Bob McKinley <bobmckinley536@yahoo.com>
Sent: Monday, May 13, 2024 8:26 AM
To: Dorothy Burkhalter
Subject: Correction - Agreement to Conditional Use for Z24-07 527 Main Street

[You don't often get email from bobmckinley536@yahoo.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

I corrected the Council meeting date below. I had entered 24 when it should have read 14. Please correct. Thanks, Bob

Good morning Dorothy,

Unfortunately, I will be unable to attend the Town Council meeting on May 14, 2024. I would like for this information to be read and inserted into the minutes for the meeting.

On page 123 of the agenda is a letter signed by me supporting this effort. At the time I signed the letter I was under the misconception that both the local wine shop and the brewery were in favor of this. I recently found this not to be true.

On page 117, paragraph (2) of the agenda, in the application, a portion of which is hereby quoted, "Applicant believes its Proposed Use further supports the Town of Windermere's focus on the community's cultural experience and its vibrant culinary scene, which includes several elite restaurants, alcohol manufacturers and wine retailers. Applicant will elevate this element of the community by attracting visitors . ."

This statement clearly shows applicant's lack of knowledge of our unique Town of Windermere. We do not have several "elite restaurants , alcohol manufacturers and wine retailers." Apparently they are confusing our Town with the greater West Orange area and the people outside our Town that like to believe they are a part of our unique community.

Finally, the statement by the applicants of "attracting visitors" goes against what most of us desire for our Town. Many conversations have been had to eliminate some of our current events due to the "visitors" creating parking problems and generally disrupting our daily activities.

I am hereby withdrawing my support for and registering my opposition to this conditional use.

Thank you,

Bob McKinley
536 Magnolia Street
Windermere, FL 34786
407-965-6759

Sent from my iPhone

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Williams Loren Robertson</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Town Council</i>
MAILING ADDRESS <i>903 Krosser Rd Orange</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY COUNTY <i>Windsor FL 34786</i>	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED <i>5-14-24</i>	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Lenora "Andy" Williams, hereby disclose that on _____, 20 ____ :

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____ ;
- inured to the special gain or loss of my relative, _____ ;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

The Request for a Special Use Agreement to "Serve on Premises" Alcohol. Case # 224-07 Solvino, Sun Wine Inn.
I currently am landlord to 3 Commercial Properties with 500' of the location of the Request. None of my tenants currently sell Wine or Beer

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

5-14-24-

Date Filed



Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

Resolution 2024-03
of the
Town Council
for the
Town of Windermere, Florida
adopting revisions to the
Planning and Zoning Fees and Deposits

Whereas, with respect to enforcement of the Town’s Land Development Code, the Town has not updated its planning and zoning fees for over ten years.

Whereas, the Town’s Land Development Code requires applicants to fully reimburse the Town for costs incurred by the Town from Town consultants regarding land development projects.

Whereas, costs have risen significantly in the past 10 years and in many instances applicants are being invoiced for payment for additional planning and zoning fees to cover such costs to the Town.

Now Therefore, Be It Resolved by the Town Council of the Town of Windermere, Florida, that the planning and zoning fees and deposits to be charged by the Town for land development projects are hereby adopted to be the amounts set forth in **Attachment A**, effective as of June 1, 2024.

Resolved this 14th day of June, 2024.

TOWN OF WINDERMERE, FLORIDA

By: Town Council

By: _____
Jim O’Brien, Mayor

Attest:

Dorothy Burkhalter, MMC, FCRM
Town Clerk

ATTACHMENT A
Planning & Zoning Fees and Deposits – Effective June 1, 2024

Zoning Fee and Deposit by Group		
Group I	Zoning Fee	Zoning Deposit
Group I	Storage sheds up to 120 square feet	\$200.00
Group I	Decks, residential	\$30.00
Group I	Tents	\$100.00
Group I	Temporary signs	\$100.00
Group I	Above ground swimming pools	\$30.00
Group I	Demolition of structures	\$15.00
Group I	Electrical service up grade, residential	\$50.00
Group I	Electrical repair or alteration, residential	\$50.00
Group I	Air conditioning change out	\$15.00
Group I	HVAC Mechanical replacement, alteration or repair, residential	\$15.00
Group I	Plumbing or gas replacement, alteration or repair, residential	\$50.00
Group I	Solar water heater	\$100.00
Group I	Awnings, residential	\$50.00
Group I	Concrete slabs, non-structural, residential	\$30.00
Group I	Concrete slabs, structural, residential	\$30.00
Group I	Fence, residential	\$15.00
Group I	Driveway, residential	\$15.00
Group I	Grading, residential	\$15.00
Group II	Zoning Fee	Zoning Deposit
Group II	Re-roof, residential	\$15.00
Group II	Signs: wall, pole or monument	\$50.00
Group II	Docks, residential	\$50.00
Group II	Screen enclosure, screen room or sun room, residential	\$15.00
Group II	Temporary construction trailer	\$50.00
Group III	Zoning Fee	Zoning Deposit
Group III	Billboards	\$50.00
Group III	Mobile homes set-up	\$15.00
Group III	Swimming pools, residential	\$30.00
Group III	Moving permits, moving structures of all types and into and through the city	\$30.00
Group III	Storage buildings over 120 square feet	\$30.00
Group IV	Zoning Fee	Zoning Deposit
Group IV	Addition	\$50.00
Group IV	Boathouse - covered boat dock OK but dock must not be enclosed	\$50.00
Group IV	Door(s)	\$50.00
Group IV	Irrigation System	\$50.00
Group IV	Retaining Wall	\$15.00
Group IV	Seawall	\$50.00
Group IV	Window(s)	\$50.00
Group IV	New single family and duplex residential structures, commercial, industrial, multi-family, additions, alterations and any not listed in groups I, II, and III.	n/a
General Planning and Zoning	Zoning Fee	Zoning Deposit
Zoning	Land Use Small Scale (≤ 50.0 ac)	\$3,000.00
Zoning	Land Use Large Scale (> 50 ac)	\$5,000.00
Zoning	Lot Split	\$200.00
Zoning	Rezone/PUJ	\$5,000.00
Zoning	Variance	\$50.00
Zoning	Conditional Use	\$200.00
Zoning	Communication Facilities	\$50.00

Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103



Mayor

JIM O'BRIEN

Town Manager
ROBERT SMITH

Clerk

DOROTHY BURKHALTER

To: Mayor and Town Council

From: Brad Cornelius, AICP, Wade Trim, Inc., Contracted Town Planner

Date: May 29, 2024

RE: Update to Planning and Zoning Fees

As Robert Smith, Town Manager, discussed in his mid-year budget review at the Town Council Workshop on May 28, 2024, the Town has not updated its planning and zoning fees for over 10 years. The current planning and zoning fees were in place when we (Wade Trim, Inc.) started working with the Town in 2014. As you are aware, costs have significantly risen over the past 10-year period, but the Town's planning and zoning fees have stayed the same and were not adjusted to account for changes in costs over the past 10-year period.

The Town's Land Development Code requires applicants to fully reimburse the Town for effort incurred by Town consultants for permits and zoning/planning cases. With the current planning and zoning fee schedule, often applicants are invoiced for payment of additional planning and zoning fees to cover the Town's cost. To help in reducing the need to invoice applicants for additional planning and zoning fees, the attached table provides a proposed update to the Town's planning and zoning fees.

Below are examples of past zoning and planning costs for common permit types with reference to the current approved planning and zoning fees, based on previous permitting:

- New Single-Family Homes average cost for zoning review through initial plan review to final certificate of occupancy issuance is \$3,222 with a typical effort between 20-24 hours (Range - \$990 to \$10,500). Current Zoning Deposit is \$1,000.
- Additions/Alterations to Single-Family Home average cost for zoning review through initial plan review to final certificate of occupancy issuance is \$1,085 with a typical effort of 8-10 hours (Range - \$438 to \$3,570). Current Zoning Deposit is \$500.
- Swimming Pools average cost for zoning review through initial plan review to final inspection is \$658 with a typical effort of 5 to 8 hours (Range \$196 to \$1,813). Current zoning deposit is \$200.
- Boat Docks average cost for zoning review through initial plan review to final inspection is \$238 with a typical effort between 1 to 2 hours (Range \$146 to \$573). Current zoning deposit is \$200.
- Accessory Structures/Impervious Areas Over 125 square feet average cost for zoning review through initial plan review to final inspection is \$195 with a typical effort between 1 to 2 hours (Range \$113

to \$415). Current zoning deposit is \$200.

- Fences average cost for zoning review through initial plan review to final inspection is \$98 with a typical effort of 1 hour (Range \$23 to \$160). Current zoning fee is \$15.
- HVAC/Generators/AC Change Out average cost for zoning review through final inspection is \$46 with a typical effort between 0.10 to 1 hour (Range \$15 to \$80). Current zoning fee is \$15.

As you will see in the attached table, planning and zoning fees and deposits are updated to better reflect actual past effort.

For permits related to demolition, fences, boathouses, retaining walls, mobile home setup (not used), re-roofs that increase building height, and AC change outs, a zoning deposit is added to the zoning fee. The reason is that all of these permits require final inspections, and the effort could be greater than anticipated if problems are identified during the inspection. Adding the zoning deposit, allows the Town to collect for that additional cost.

Also, for new construction, the current planning and zoning fee schedule did not include a specific zoning deposit for non-residential structures. A new zoning deposit is added for non-residential structures of \$5,000 for new structures and \$2,500 for remodel of existing structures.

Also, consistent with Town LDC cost reimbursement requirements, zoning deposits will still have any un-expended deposit returned to the applicant after a permit is closed out.

It is difficult to provide a comparison of the Town’s planning and zoning fees to other local governments due to the fact that not many local governments fully outsource all of their planning and zoning services. However, the Town of Oakland, Florida does fully outsource their planning and zoning services to us (Wade Trim, Inc.) in the similar manner as the Town. The Town of Oakland has a different general fee structure than the Town, but the similar planning and zoning fees between the Town of Oakland and the proposed new Town of Windermere planning and zoning fees are shown below.

Planning/Zoning Fee	Town of Windermere	Town of Oakland
	Zoning Deposit	Zoning Deposit
Land Use Small Scale (≤ 50.0 ac)	\$3,000.00	\$2,500.00
Land Use Large Scale (> 50 ac)	\$5,000.00	\$5,000.00
Lot Split	\$1,000.00	\$1,500.00
Rezone/PUD	\$5,000.00	Between \$2,500 and \$7,500
Variance	\$1,500.00	\$2,000.00
Conditional Use	\$1,500.00	\$1,000.00
New Single-Family Home	\$3,000 (Every Home is Custom)	\$1,000 (Most New Homes are Pre-Approved Subdivision Designs - Not Custom Homes)
Boat Dock	\$400.00	\$800.00
Fence	\$100.00	\$100.00
Swimming Pool	\$600.00	\$600.00
Accessory Structure	\$200 under 120 sf or \$300 over 120 sf	\$150 (Most Accessory Structures are Pre-Approved Subdivision Designs - Not Custom)

Proposed Update to Planning & Zoning Fees and Deposits - Town of Windermere - May 1, 2024

Zoning Fee and Deposit by Group

Group I		Current Zoning Fee	Proposed New Zoning Fee	Current Zoning Deposit	Proposed New Zoning Deposit	Notes
Group I	Storage sheds up to 120 square feet	\$30.00	\$30.00	n/a	\$200.00	Add zoning deposit to cover zoning expense for setback issues and final inspection.
Group I	Decks, residential	\$30.00	\$30.00	\$200 for 125 sq. ft. or larger	\$300.00 All Decks	Increase from \$200 to \$300 zoning deposit based on previous permitting effort. Deposit applies to all decks.
Group I	Tents	\$30.00	\$100.00	n/a	n/a	Increase zoning fee from \$30 to \$100 for zoning review. Uncommon permit. No zoning inspection needed.
Group I	Temporary signs	\$50.00	\$100.00	n/a	n/a	Increase zoning fee from \$50 to \$100 for zoning review. Uncommon permit. No zoning inspection needed.
Group I	Above ground swimming pools	\$30.00	\$30.00	\$200.00	\$600.00	Increase zoning deposit from \$200 to \$600 based on previous permitted effort for pools. Uncommon permit.
Group I	Demolition of structures	\$15.00	\$15.00	n/a	\$200.00	Add zoning deposit of \$200 to cover inspections as needed and final inspection of demolition to assure compliance with LDC.
Group I	Re-pipe, residential	\$15.00	\$0.00	n/a	n/a	Remove \$15 zoning fee. No need for zoning review.
Group I	Electrical service up grade, residential	\$15.00	\$50.00	n/a	n/a	Increase zoning fee from \$15 to \$100 for zoning review based on previous permitting effort to assure upgrade not part of illegal accessory dwelling unit.
Group I	Electrical repair or alteration, residential	\$15.00	\$50.00	n/a	n/a	Increase zoning fee from \$15 to \$50 for zoning review based on previous permitting effort to assure upgrade not part of illegal accessory dwelling unit.
Group I	Air conditioning change out	\$15.00	\$15.00	n/a	\$100.00	Add zoning deposit to cover zoning expense for setback issues and final inspection.
Group I	HVAC Mechanical replacement, alteration or repair, residential	\$15.00	\$15.00	n/a	\$100.00	Add zoning deposit to cover zoning expense for setback issues and final inspection.
Group I	Plumbing or gas replacement, alteration or repair, residential	\$15.00	\$50.00	n/a	n/a	Increase zoning fee from \$15 to \$50 based on previous permitting effort.
Group I	Solar water heater	\$15.00	\$100.00	n/a	n/a	Increase zoning fee from \$15 to \$100 for zoning review based on previous permitting effort.
Group I	Siding, residential	\$15.00	\$0.00	n/a	n/a	Remove \$15 zoning fee. No need for zoning review.
Group I	Awnings, residential	\$15.00	\$50.00	n/a	n/a	Increase zoning fee from \$15 to \$50 to address potential zoning setback issues.
Group I	Concrete slabs, non-structural, residential	\$30.00	\$30.00	\$200 for 125 sq. ft. or larger	\$300.00 All Slabs	Increase zoning deposit from \$200 to \$300 based on previous permitting effort.
Group I	Concrete slabs, structural, residential	\$30.00	\$30.00	\$200 for 125 sq. ft. or larger	\$300.00 All Slabs	Increase zoning deposit from \$200 to \$300 based on previous permitting effort.
Group I	Fence, residential	\$15.00	\$15.00	n/a	\$100.00	Add \$100 zoning deposit. Fences require zoning review and final inspection. Most fence permits are not compliant when submitted.
Group I	Driveway, residential	\$15.00	\$15.00	\$200.00	\$300.00	Increase zoning deposit from \$200 to \$300 based on previous permitting effort.
Group I	Grading, residential	\$15.00	\$15.00	\$200.00	\$500.00	Increase zoning deposit from \$200 to \$500 based on previous permitting effort.
Group II		Current Zoning Fee	Proposed New Zoning Fee	Current Zoning Deposit	Proposed New Zoning Deposit	Notes
Group II	Re-roof, residential	\$15.00	\$15.00	n/a	\$200.00 if change to roof structure increases building height	Add \$200 zoning deposit if change to roof structure increases building height.
Group II	Signs: wall, pole or monument	\$50.00	\$50.00	\$100.00	\$200.00	Increase zoning deposit from \$100 to \$200 based on previous permitting effort.
Group II	Docks, residential	\$50.00	\$50.00	\$200.00	\$400.00	Increase zoning deposit from \$200 to \$400 based on previous permitting effort.
Group II	Screen enclosure, screen room or sun room, residential	\$15.00	\$15.00	\$0 when covering existing impervious surface \$200.00 if not covering existing impervious surface	\$100.00 when covering existing impervious surface \$300.00 if not covering existing impervious surface	Increase from \$0 to \$100 if covering an existing impervious surface and increase deposit from \$200 to \$300 if not covering an impervious surface. Need to assure meets setbacks for all screen enclosures.
Group II	Temporary construction trailer	\$15.00	\$50.00	n/a	n/a	Increase zoning fee from \$15 to \$50 to address potential zoning setback issues.
Group II	Early start permit, commercial* *Early start permits are for interior build-out or interior alteration with the work progressing only to the first inspection provided that a complete application is submitted prior to issuing the early start permit. All work is completely at the contractor, owner and tenant's risk.	\$15.00	\$0.00	n/a	n/a	Remove \$15 zoning fee. No need for zoning review.
Group III		Current Zoning Fee	Proposed New Zoning Fee	Current Zoning Deposit	Proposed New Zoning Deposit	Notes
Group III	Billboards	\$50.00	\$50.00	\$100.00	\$200.00	Increase deposit consistent with increase in sign permit deposit. Uncommon permit.
Group III	Mobile homes set-up	\$15.00	\$15.00	n/a	\$500.00	Add \$500 zoning deposit to cover zoning review and inspection. Uncommon permit.
Group III	Swimming pools, residential	\$30.00	\$30.00	\$200.00	\$600.00	Increase deposit from \$200 to \$600 based on previous permitting effort.
Group III	Moving permits, moving structures of all types and into and through the city	\$30.00	\$30.00	n/a	n/a	Remove \$30 zoning fee. No need for zoning review.
Group III	Storage buildings over 120 square feet	\$30.00	\$30.00	\$200.00	\$300.00	Increase zoning deposit from \$200 to \$300 based on previous permitting effort.
Group IV		Current Zoning Fee	Proposed New Zoning Fee	Current Zoning Deposit	Proposed New Zoning Deposit	Notes
Group IV	Addition	\$50.00	\$50.00	\$500.00	\$1,000.00	Increase zoning deposit from \$500 to \$1,000 based on previous permitting effort.
Group IV	Boathouse - covered boat dock OK but dock must not be enclosed	\$50.00	\$50.00	n/a	\$400.00	Add \$400 zoning deposit consistent with dock zoning deposit.
Group IV	Door(s)	\$15.00	\$50.00	n/a	n/a	Increase zoning fee from \$15 to \$50 based on previous permitting effort.
Group IV	Irrigation System	\$15.00	\$50.00	n/a	n/a	Increase zoning fee from \$15 to \$50 to check irrigation not being installed in Town right-of-way.
Group IV	Retaining Wall	\$15.00	\$15.00	n/a	\$200.00	Add \$200 zoning deposit. Retaining walls require zoning review, engineering review, and final inspection.
Group IV	Seawall	\$50.00	\$50.00	\$200.00	\$400.00	Increase zoning deposit from \$200 to \$400 consistent with dock zoning deposit.
Group IV	Window(s)	\$15.00	\$50.00	n/a	n/a	Increase zoning fee from \$15 to \$50 based on previous permitting effort.
Group IV	New single family and duplex residential structures, commercial, industrial, multi-family, additions, alterations and any not listed in groups I, II, and III.	n/a	n/a	\$1,000 New* \$500 Remodel*	\$3,000 New Single-Family Residential \$5,000 New Non-Residential \$1,000 Remodel Single-Family Residential \$2,500 Remodel Non-Residential	Increase new single-family home from \$1,000 to \$3,000 and remodel of single-family home from \$500 to \$1,000 based on previous permitting effort. Add new category for non-residential zoning deposits at \$5,000 for new structures and \$2,500 for remodel of structures.
Zoning		Current Zoning Fee	Proposed New Zoning Fee	Current Zoning Deposit	Proposed New Zoning Deposit	Notes
Zoning	Land Use SMALL Scale (≤ 10.0 ac)	\$3,000.00	\$3,000.00	\$2,000.00	\$3,000.00	Increase zoning deposit from \$2,000 to \$3,000 based on previous effort.
Zoning	Land Use LARGE Scale (≥ 10.1 ac)	\$5,000.00	\$5,000.00	\$2,000.00	\$3,000.00	Increase zoning deposit from \$2,000 to \$3,000 based on previous effort.
Zoning	Lot Split	\$0.00	\$0.00	\$500.00	\$1,000.00	Increase zoning deposit from \$500 to \$1,000 based on previous permitting effort.
Zoning	Right-of-way Use Agreement	\$75.00	\$0.00	\$250.00	\$0.00	Remove this fee item. Right-of-Way Use Agreements no longer used. Now permitted through Town Public Works.
Zoning	Rezone/PUD	\$2,500.00	\$5,000.00	\$2,000.00	\$5,000.00	Increase zoning fee from \$2,500 to \$5,000 and zoning deposit from \$2,000 to \$5,000 based on previous effort.
Zoning	Variance	\$50.00	\$50.00	\$1,000 for review and \$300 for Mailings	\$1,500.00	Increase zoning deposit from \$1,000 for review and \$300 for mailing to one deposit of \$1,500 based on previous effort.
Zoning	Conditional Use	\$200.00	\$200.00	\$1,000 for review and \$300 for Mailings	\$1,500.00	Increase zoning deposit from \$1,000 for review and \$300 for mailing to one deposit of \$1,500 based on previous effort.
Zoning	Communication Facilities	\$0.00	\$50.00	\$0.00	\$500.00	New zoning fee of \$50 and zoning deposit of \$500 for communication facilities.



Town of Windermere
 P. O. Drawer 669
 614 Main Street
 Windermere, FL 34786

COMMITTEE APPLICATION FORM

- Name: Christine Samek-Yonge Home Phone: 407-739-5571
- Home Address: 12 Pine Street Windermere
- Business: Equity Pro Business Phone: 800.213.4830
- Business Address: 350 E Crown Point Rd. Suite 1D80, Winter Garden 34787
- Email: csamekyonge@live.com
- Brief Summary of Education and Experience:
Masters Degree in Educational Leadership / Bachelor's Degree in Elem. Ed. K-6
Currently work part-time as a Marketing Coordinator for Equity Pro

- Are you a U.S. Citizen? Yes No
- Are you a registered voter? Yes No
- Resident of the Town for 6 Months or longer? Yes No
- Do you hold public office? Yes No
- Are you employed by the Town? Yes No
- Do you now serve on a Town Board or Committee? Yes No

13. Indicate which Board(s) or Committee(s) you are interested in:

- | | |
|--|--|
| Code Enforcement Board <input type="checkbox"/> | Development Review Board <input type="checkbox"/> |
| Downtown Business Committee <input type="checkbox"/> | Elder's Committee <input type="checkbox"/> |
| Historical Preservation Committee <input type="checkbox"/> | Long Range Planning Committee <input type="checkbox"/> |
| Parks and Recreation Committee <input checked="" type="checkbox"/> | Traffic Committee <input type="checkbox"/> |
| Tree Board Committee <input type="checkbox"/> | |

14. Why do you think you are qualified to serve on this board? I have a proven track record of being successful in leadership roles and I work well with others. I would love to help contribute to our town's growth and improvement.

*FINANCIAL DISCLOSURE FORMS MAY BE REQUIRED FOLLOWING APPOINTMENT

Signature: Christine Samek-Yonge Date: 4/29/24

Note: If you have any questions, please call the Town Clerk at (407) 876-2563 ext. 23.

AMENDMENT FOUR TO THE EMPLOYMENT AGREEMENT
between the
TOWN OF WINDERMERE and ROBERT SMITH

This Amendment Four to the Employment Agreement is entered into as of June 11, 2024 (the “Effective Date”), between the Town of Windermere, Florida, a Florida Municipal Corporation (“the Town”), and Robert Smith (“Smith” or the “Town Manager”), and amends the Employment Agreement entered into between the Town and the Town Manager on November 12, 2013 as amended by Amendment One dated February 9, 2016, Amendment Two dated March 25, 2019, and Amendment Three dated 23, 2021 (collectively the “Employment Agreement”).

NOW, THEREFORE, the Town and the Town Manager agree to amend the Employment Agreement as follows:

1. Subsection 2.a., of Section 2, entitled “Term” is revised and replaced in its entirety to read:

The term of this agreement shall be from October 24, 2013, through March 26, 2031. Thereafter, this agreement shall automatically renew for additional two-year terms unless the Town Council (i) determines it will not renew Smith’s contract, and (ii) provides Smith with a minimum ninety (90) days’ notice of such intent.

2. Section 4 entitled “Compensation” is revised and replaced in its entirety to read:

The annual salary for the Town Manager shall be \$170,958.06 for FY 2024/2025, beginning on April 9, 2024, and payable in bi-weekly installments. For the remainder of the contract, Smith shall be entitled to receive such salary increases as the Town Council may approve from time-to-time based upon performance evaluations. However, Smith shall receive at least a three percent (3%) increase annually if his evaluation is positive unless the Town Council determines that it is not financially feasible to provide a raise of any kind or of three percent (3%).

3. Beginning on the Effective Date the Town Manager is entitled to 40 hours of flex/compensation time in addition to the flex/compensation time provided in the Town’s Personnel Policies and Procedures.
4. All provisions of the Employment Agreement that are not specifically revised or amended by this Amendment Four shall remain in full force and effect.

[signatures on the following page]

Town of Windermere:

Town Manager:

Jim O'Brien, Mayor

Date: _____

Robert Smith

Date: _____

Attest:

Dorothy Burkhalter, MMC, FCRM
Town Clerk

MEMORANDUM

TO: The Town of Windermere Mayor and Town Councilmembers
FROM: GrayRobinson, P.A.
DATE: May 31, 2024
SUBJECT: Amendments to the Town Manager Employment Agreement

At the April 9, 2024, Town Council meeting, the Town Council approved a 5% increase to the Town Manager’s salary and for the negotiation of an amendment to the Town Manager’s Employment Agreement to extend the agreement for up to five years.

The Mayor and the Town Manager negotiated a five-year extension to the current Town Manager Employment Agreement, two-year renewal terms, and 40 hours of additional flex/compensation time above and beyond what is provided in the Town’s Personnel Policies and Procedures.

Included in your agenda package for review and action is Amendment Four to the Town Manager’s Employment Agreement which amends the current Agreement as follows:

- Extends the Term of the Employment Agreement to March 26, 2031 (current expiration date is March 31, 2026).
- Provides for automatic renewals for two-year terms (instead of one-year terms).
- Provides for a new annual salary of \$170,958.06 beginning on April 9, 2024 (current salary is \$162,817.20).
- Adds 40 hours of additional flex/compensation time.



**TOWN OF WINDERMERE
EXECUTIVE SUMMARY**

SUBJECT: Approve State Funded Grant Agreement for project 453211-1-54-01 –
Windermere Road at Main Street Roundabout

REQUESTED ACTION: Approval

Work Session (Report Only)

Regular Meeting

DATE OF MEETING: June 11, 2024

Special Meeting

CONTRACT: N/A

Vendor/Entity: State of Florida
Department of
Transportation

Effective Date: _____

Termination Date: _____

Managing Division / Dept: _____

Public Works

BUDGET IMPACT: _____

Annual

Capital

N/A

FUNDING SOURCE: _____

EXPENDITURE ACCOUNT: _____

HISTORY/FACTS/ISSUES:

The Town was awarded a \$1.5M grant from State Appropriations for the roundabout at Windermere Road and Main Street. The Town Manager worked with the Marina Bay Subdivision to obtain needed right of way for the project. The State has now issued the State Funded Grant agreement, which must be approved and executed by the town. This agreement is between the Town and the Florida Department of Transportation, the state agency assigned to oversee this grant project for the State.

Staff recommends approval so that the next steps of finalizing a design can begin on this project. Design work cannot begin until this agreement has been fully executed.

The agreement was reviewed by the Town Attorney prior to being placed on the agenda for Town Council Approval.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STATE-FUNDED GRANT AGREEMENT

525-010-60
PROGRAM MANAGEMENT
12/23

FPN: <u>453211-1-54-01</u>	Fund: <u>GR24</u> Org Code: <u>55054010508</u>	FLAIR Category: <u>088862</u> FLAIR Obj: <u>751000</u>
FPN: <u>453211-1-54-01</u>	Fund: <u>LF</u> Org Code: <u>N/A</u>	FLAIR Category: <u>N/A</u> FLAIR Obj: <u>N/A</u>
FPN: _____	Fund: _____ Org Code: _____	FLAIR Category: _____ FLAIR Obj: _____
County No: <u>75</u>	Contract No: _____	Vendor No: <u>F596020338001</u>

THIS STATE-FUNDED GRANT AGREEMENT ("Agreement") is entered into on _____, (This date to be entered by DOT only)
by and between the State of Florida Department of Transportation, ("Department"), and the Town of Windermere, ("Recipient"). The

Department and the Recipient are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the Parties agree to the following:

- 1. **Authority:** The Department is authorized to enter into this Agreement pursuant to Sections 334.044, 334.044(7), and (*select the applicable statutory authority for the program(s) below*):
 - Section 339.2817 Florida Statutes, County Incentive Grant Program (CIGP), (CSFA 55.008)
 - Section 339.2818 Florida Statutes, Small County Outreach Program (SCOP), (CSFA 55.009)
 - Section 339.2816 Florida Statutes, Small County Road Assistance Program (SCRAP), (CSFA 55.016)
 - Section 339.2819 Florida Statutes, Transportation Regional Incentive Program (TRIP), (CSFA 55.026)
 - Specific Appropriation 2042A of Chapter 2023-239, Laws of Florida , Local Transportation Projects , (CSFA 55.039)

The Recipient by Resolution or other form of official authorization, a copy of which is attached as **Exhibit "D"**, **Recipient Resolution**, and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf.

- 2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in the Windermere Intersection Improvements (Main Street, Chase Road, and Sixth Avenue) project, as further described in **Exhibit "A", Project Description and Responsibilities**, attached to and incorporated into this Agreement ("Project"); to provide Department financial assistance to the Recipient; state the terms and conditions upon which Department funds will be provided; and to set forth the manner in which the Project will be undertaken and completed.
- 3. **Term of the Agreement, Commencement and Completion of the Project:** This Agreement shall commence upon full execution by both Parties and the Recipient shall complete the Project on or before November 30, 2026. If the Recipient does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Recipient and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The Recipient acknowledges that no funding for the Project will be provided by the State under this Agreement for work on the Project that is not timely completed and invoiced in accordance with the terms of this Agreement, or for work performed prior to full execution of the Agreement. Notwithstanding the expiration of the required completion date provided in this Agreement and the consequent potential unavailability of any unexpended portion of State funding to be provided under this Agreement, the

Recipient shall remain obligated to complete all aspects of the Project identified in **Exhibit "A"** in accordance with the remaining terms of this Agreement, unless otherwise agreed by the Parties, in writing.

Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Recipient for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Recipient shall not begin the construction phase of the Project until the Department issues a written Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Recipient shall request a Notice to Proceed from the Department.

4. **Amendments, Extensions and Assignment:** This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be assigned, transferred or otherwise encumbered by the Recipient under any circumstances without the prior written consent of the Department.
5. **Termination or Suspension of Project:** The Department may, by written notice to the Recipient, suspend any or all of the Department's obligations under this Agreement for the Recipient's failure to comply with applicable laws or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected. The Department may also terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.
 - a. If the Department terminates the Agreement, the Department shall notify the Recipient of such termination in writing within thirty (30) days of the Department's determination to terminate the Agreement, with instructions as to the effective date of termination or to specify the stage of work at which the Agreement is to be terminated.
 - b. The Parties to this Agreement may also terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions through mutual written agreement.
 - c. If the Agreement is terminated before performance is completed, the Recipient shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Recipient.
 - d. Upon termination of this Agreement, the Recipient shall, within thirty (30) days, refund to the Department any funds determined by the Department to have been expended in violation of this Agreement.
6. **Project Cost:**
 - a. The estimated cost of the Project is \$3,238,501.00 (Three Million Two Hundred Thirty-Eight Thousand Five Hundred One Dollars and No/100). This amount is based upon the Schedule of Financial Assistance in **Exhibit "B", Schedule of Financial Assistance**, attached and incorporated in this Agreement. The Schedule of Financial Assistance may be modified by execution of an amendment of the Agreement by the Parties.
 - b. The Department agrees to participate in the Project cost up to the maximum amount of \$1,500,000.00 (One Million Five Hundred Thousand Dollars and No/100) and, additionally the Department's participation in the Project shall not exceed N/A% of the total cost of the Project, and as more fully described in **Exhibit "B"**. The Department's participation may be increased or reduced upon a determination of the actual bid amounts of the Project by the execution of an amendment. The Recipient agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits incurred in connection with completion of the Project.
 - c. The Department's participation in eligible Project costs is subject to, but not limited to:
 - i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;

- ii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and
- iii. Department approval of the Project scope and budget at the time appropriation authority becomes available.

7. Compensation and Payment:

- a. The Department shall reimburse the Recipient for costs incurred to perform services described in the Project Description and Responsibilities in **Exhibit "A"**, and as set forth in the Schedule of Financial Assistance in **Exhibit "B"**.
- b. The Recipient shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A"**, Project Description and Responsibilities. Any changes to the deliverables shall require an amendment executed by both parties.
- c. Invoices shall be submitted no more often than monthly and no less than quarterly by the Recipient in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable and verifiable deliverables as established in **Exhibit "A"**. Deliverables and costs incurred must be received and approved by the Department prior to reimbursements. Requests for reimbursement by the Recipient shall include an invoice, progress report and supporting documentation for the period of services being billed that are acceptable to the Department. The Recipient shall use the format for the invoice and progress report that is approved by the Department.
- d. If Recipient is considered a rural community or rural area of opportunity, as these terms are defined by Section 288.0656(2), Florida Statutes, Recipient may submit payment requests for eligible performance completed/costs incurred under this Agreement pursuant to **Exhibit "H", Alternative Advance Payment Financial Provisions**.
- e. Supporting documentation must establish that the deliverables were received and accepted in writing by the Recipient and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A"** has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit "F", Contract Payment Requirements**.
- f. Travel expenses are not compensable under this Agreement.
- g. Payment shall only be made after receipt and approval of deliverables and costs incurred unless the payment is made under **Exhibit "H"** or advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under Section 334.044(29), Florida Statutes.

If the Department determines that the performance of the Recipient is unsatisfactory, the Department shall notify the Recipient of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Recipient shall, within thirty (30) days after notice from the Department, provide the Department with a corrective action plan describing how the Recipient will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Recipient will not be reimbursed or paid under **Exhibit "H"**, to the extent of the non-performance. The Recipient will not be reimbursed or paid until the Recipient resolves the deficiency. If the deficiency is subsequently resolved, the Recipient may bill the Department for any unpaid performance completed by the Recipient during the next billing period or as provided by **Exhibit "H", Alternative Advance Payment Financial Provisions**. If the Recipient is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

Recipients receiving financial assistance from the Department should be aware of the following time frames. Inspection and approval of deliverables and costs incurred shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables and costs incurred are received, inspected, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Recipient. Interest penalties of less than one (1) dollar will not be enforced unless the Recipient requests payment. Invoices that have to be returned to a Recipient because of Recipient preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Recipient who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- h.** The Recipient shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Recipient's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- i. Progress Reports.** Upon request, the Recipient agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.
- j.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Recipient owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- k.** The Recipient must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- l.** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's financial assistance for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Recipient. See **Exhibit "B"** for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Recipient, in writing, when funds are available.
- m.** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other

binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

- n. Any Project funds made available by the Department pursuant to this Agreement which are determined by the Department to have been expended by the Recipient in violation of this Agreement or any other applicable law or regulation, shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Recipient files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.
- o. In determining the amount of the payment, the Department will exclude all Project costs incurred by the Recipient prior to the execution of this Agreement, costs incurred prior to issuance of a Notice to Proceed, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved Schedule of Financial Assistance in **Exhibit "B"** for the Project, costs agreed to be borne by the Recipient or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

8. General Requirements:

The Recipient shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.

- a. The Recipient must obtain written approval from the Department prior to performing itself (through the efforts of its own employees) any aspect of the Project that will be funded under this Agreement.
 - If this box is checked, then the Agency is permitted to utilize its own forces and the following provision applies: **Use of Agency Workforce**. In the event the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).
- b. The Recipient shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.
- c. The Recipient shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.
- d. The Recipient shall have the sole responsibility for resolving claims and requests for additional work for the Project by the Recipient's contractors and consultants. No funds will be provided for payment of claims or additional work on the Project under this Agreement without the prior written approval of the claim or request for additional work by Department.

9. Contracts of the Recipient

- a. The Department has the right to review and approve any and all third party contracts with respect to the Project before the Recipient executes any contract or obligates itself in any manner requiring the disbursement of Department funds under this Agreement, including consultant or construction contracts or amendments thereto. If the Department exercises this right and the Recipient fails to obtain such approval, the Department may deny payment to the Recipient. The Department may review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.

- b. It is understood and agreed by the parties hereto that participation by the Department in a project that involves the purchase of commodities or contractual services or the purchasing of capital equipment or the equipping of facilities, where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Chapter 287.017 Florida Statutes, is contingent on the Recipient complying in full with the provisions of Chapter 287.057 Florida Statutes. The Recipient shall certify to the Department that the purchase of commodities or contractual services has been accomplished in compliance with Chapter 287.057 Florida Statutes. It shall be the sole responsibility of the Recipient to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in **Exhibit "B"**, or that are not consistent with the Project description and scope of services contained in **Exhibit "A"** must be approved by the Department prior to Recipient execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department.
- c. Participation by the Department in a project that involves a consultant contract for engineering, architecture or surveying services, is contingent on the Recipient's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Recipient shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- d. If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and the cost of the Project is to be paid from state-appropriated funds, then the Recipient must comply with the requirements of Section 255.0991, Florida Statutes.

10. Design and Construction Standards and Required Approvals: In the event the Project includes construction the following provisions are incorporated into this Agreement:

- a. The Recipient is responsible for obtaining all permits necessary for the Project.
- b. In the event the Project involves construction on the Department's right-of-way, the Recipient shall provide the Department with written notification of either its intent to:
 - i. Award the construction of the Project to a Department prequalified contractor which is the lowest and best bidder in accordance with applicable state and federal statutes, rules, and regulations. The Recipient shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or
 - ii. Construct the Project utilizing existing Recipient employees, if the Recipient can complete said Project within the time frame set forth in this Agreement. The Recipient's use of this option is subject to approval by the Department.
- c. The Recipient shall hire a qualified contractor using the Recipient's normal bid procedures to perform the construction work for the Project. For projects that are not located on the Department's right-of-way, the Recipient is not required to hire a contractor prequalified by the Department unless the Department notifies the Recipient prior to letting that they are required to hire a contractor prequalified by the Department.
- d. The Recipient is responsible for provision of Construction Engineering Inspection (CEI) services. The Department reserves the right to require the Recipient to hire a Department pre-qualified consultant firm that includes one individual that has completed the Advanced Maintenance of Traffic Level Training. Notwithstanding any provision of law to the contrary, design services and CEI services may not be performed by the same entity. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall have the right to approve the CEI firm. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Subject to the approval of the Department, the Recipient may choose to satisfy the requirements set forth in this paragraph by either hiring a Department prequalified consultant firm or utilizing Recipient staff that meet the requirements of this paragraph, or a combination thereof.

- e. The Recipient is responsible for the preparation of all design plans for the Project. The Department reserves the right to require the Recipient to hire a Department pre-qualified consultant for the design phase of the Project using the Recipient's normal procurement procedures to perform the design services for the Project. Notwithstanding any provision of law to the contrary, design services and CEI services may not be performed by the same entity. All design work on the Project shall be performed in accordance with the requirements of all applicable laws and governmental rules and regulations and federal and state accepted design standards for the type of construction contemplated by the Project, including, as applicable, but not limited to, the applicable provisions of the Manual of Uniform Traffic Control Devices (MUTCD) and the AASHTO Policy on Geometric Design of Streets and Highways. If any portion of the Project will be located on, under, or over any Department-owned right-of-way, the Department shall review the Project's design plans for compliance with all applicable standards of the Department, as provided in **Exhibit "O", Terms and Conditions of Construction**, which is attached to and incorporated into this Agreement.
- f. The Recipient shall adhere to the Department's Conflict of Interest Procedure (FDOT Topic No. 375-030-006).
- g. The Recipient will provide copies of the final design plans and specifications and final bid documents to the Department's Construction Project Manager prior to commencing construction of the Project. The Department will specify the number of copies required and the required format.
- h. The Recipient shall require the Recipient's contractor to post a payment and performance bond in accordance with applicable law.
- i. The Recipient shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable Recipient and Department standards.
- j. Upon completion of the work authorized by this Agreement, the Recipient shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached hereto and incorporated herein as **Exhibit "C", Engineers Certification of Completion**. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.
- k. The Recipient shall provide the Department with as-built plans of any portions of the Project funded through the Agreement prior to final inspection.

11. Maintenance Obligations: In the event the Project includes construction then the following provisions are incorporated into this Agreement:

- a. The Recipient agrees to maintain any portion of the Project not located on the State Highway System constructed under this Agreement for its useful life. If the Recipient constructs any improvement on Department right-of-way, the Recipient

shall

shall not

maintain the improvements located on the Department right-of-way made for their useful life. If the Recipient is required to maintain Project improvements located on the Department right-of-way beyond final acceptance, then Recipient shall, prior to any disbursement of the State funding provided under this Agreement, also execute a Maintenance Memorandum of Agreement in a form that is acceptable to the Department. The Recipient has agreed to the foregoing by resolution, and such resolution is attached and incorporated into this Agreement as **Exhibit "D"**. This provision will survive termination of this Agreement.

- 12. State Single Audit:** The administration of resources awarded through the Department to the Recipient by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency inspector general, the Auditor General, or any other state official. The Recipient shall comply with all audit and audit reporting requirements as specified below.
- a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Recipient's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS) or the Auditor General.
 - b. The Recipient, a nonstate entity as defined by Section 215.97(2)(n), Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement is subject to the following requirements:
 - i. In the event the Recipient meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Recipient must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "J", State Financial Assistance (Florida Single Audit Act)** to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Recipient to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
 - ii. In connection with the audit requirements, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
 - iii. In the event the Recipient does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Recipient is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Recipient must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Recipient's audit period for each applicable audit year. In the event the Recipient does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Recipient's resources (i.e., the cost of such an audit must be paid from the Recipient's resources obtained from other than State entities).
 - iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, FL 32399-0405
Email: FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

- v. Any copies of financial reporting packages, reports or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
 - vi. The Recipient, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Recipient in correspondence accompanying the reporting package.
 - vii. Upon receipt, and within six months, the Department will review the Recipient's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Recipient fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.
 - viii. As a condition of receiving state financial assistance, the Recipient shall permit the Department, or its designee, DFS or the Auditor General access to the Recipient's records including financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.
- c. The Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, DFS or the Auditor General access to such records upon request. The Recipient shall ensure that the audit working papers are made available to the Department, or its designee, DFS or the Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

13. Restrictions, Prohibitions, Controls and Labor Provisions:

- a. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- b. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public

entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.

- c. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Recipient.
- d. No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.
- e. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. The Recipient shall:
 - i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Recipient during the term of the contract; and
 - ii. Expressly require any contractor and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor and subcontractor during the contract term.
- g. The Recipient shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.

14. Indemnification and Insurance:

- a. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third-party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Recipient guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Recipient or any subcontractor, in connection with this Agreement.
- b. To the extent provided by law, Recipient shall indemnify, defend, and hold harmless the Department against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of Recipient, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Recipient hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of the Department's or the Recipient's sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by Recipient to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or for the acts of third parties. Nothing herein shall be construed as consent by Recipient to be sued by third parties in any manner arising out of this Agreement. This indemnification shall survive the termination of this Agreement.
- c. Recipient agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, or subconsultants (each referred to as "Entity" for the purposes of the below indemnification) who perform work in connection with this Agreement:

"To the extent provided by law, [ENTITY] shall indemnify, defend, and hold harmless the [RECIPIENT] and the State of Florida, Department of Transportation, including the Department's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of [ENTITY], or any of its officers, agents, or

employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by [ENTITY].

The foregoing indemnification shall not constitute a waiver of the Department's or [RECIPIENT]'s sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify [RECIPIENT] for the negligent acts or omissions of [RECIPIENT], its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement."

- d. The Recipient shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultants have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
- e. If the Recipient elects to self-perform the Project, and such self-performance is approved by the Department in accordance with the terms of this Agreement, the Recipient may self-insure and proof of self-insurance shall be provided to the Department. If the Recipient elects to hire a contractor or consultant to perform the Project, then the Recipient shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Recipient shall, or cause its contractor to cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Recipient is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.
- f. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Recipient shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein

shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.

- g. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the Commercial General Liability policy/ies procured above.

15. Miscellaneous:

- a. In no event shall any payment to the Recipient constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Recipient and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- b. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- c. The Recipient and the Department agree that the Recipient, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- d. By execution of the Agreement, the Recipient represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- e. Nothing in the Agreement shall require the Recipient to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Recipient will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Recipient to the end that the Recipient may proceed as soon as possible with the Project.
- f. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- g. The Department reserves the right to unilaterally terminate this Agreement for failure by the Recipient to comply with the provisions of Chapter 119, Florida Statutes.
- h. The Recipient agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes
- i. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Recipient agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.
- j. This Agreement does not involve the purchase of Tangible Personal Property, as defined in Chapter 273, Florida Statutes.

16. Exhibits.

- a. **Exhibits A, B, D, F, H, and J** are attached to and incorporated into this Agreement.
- b. The Project will involve construction, therefore, **Exhibit "C"**, Engineer's Certification of Compliance is attached and incorporated into this Agreement.

- c. Alternative Advance Payment Financial Provisions are used on this Project. If an Alternative Pay Method is used on this Project, then **Exhibit “H”**, Alternative Advance Payment Financial Provisions, is attached and incorporated into this Agreement.
- d. This Project utilizes Advance Project Reimbursement. If this Project utilizes Advance Project Reimbursement, then **Exhibit “K”**, Advance Project Reimbursement is attached and incorporated into this Agreement.
- e. A portion or all of the Project will utilize the Department’s right-of-way and, therefore, **Exhibit O, Terms and Conditions of Construction in Department Right-of-Way**, is attached and incorporated into this Agreement.
- f. The following Exhibit(s), in addition to those listed in 16.a. through 16.f., are attached and incorporated into this Agreement: N/A.

g. Exhibit and Attachment List

- Exhibit A: Project Description and Responsibilities
- Exhibit B: Schedule of Financial Assistance
- *Exhibit C: Engineer’s Certification of Compliance
- Exhibit D: Recipient Resolution
- Exhibit F: Contract Payment Requirements
- Exhibit H: Alternative Advance Payment Financial Provisions
- Exhibit J: State Financial Assistance (Florida Single Audit Act)
- *Exhibit K: Advance Project Reimbursement
- *Exhibit O: Terms and Conditions of Construction in Department Right-of-Way

*Additional Exhibit(s): N/A.

*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STATE-FUNDED GRANT AGREEMENT

525-010-60
PROGRAM MANAGEMENT
12/23

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

RECIPIENT CITY OF WINDERMERE

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: _____

Name: C. Jack Adkins

Title: _____

Title: Director of Transportation Development

Legal Review:

By: _____

Name: _____

EXHIBIT A**PROJECT DESCRIPTION AND RESPONSIBILITIES**FPN: 453211-1-54-01

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation and
the Town of Windermere (the Recipient)

PROJECT LOCATION:

- The project is on the National Highway System.
- The project is on the State Highway System.

PROJECT LENGTH AND MILE POST LIMITS: See Project Description Below

PROJECT DESCRIPTION:

The Windermere intersection improvement is with the Town of Windermere (Recipient). The project limits are at the intersection of Main Street / Maguire Road and Windermere Road. Intersection improvements include construction of a roundabout.

Design improvements will include design of continuous lanes and a roundabout at the intersection of Main Street / Maguire Road and Windermere Road. Sidewalk design and striping are also part of the design scope. Design services shall include survey, subsurface utility exploration, and geotechnical work. Permitting with the South Florida Water Management District and utility coordination are anticipated. Right-of-way acquisition is anticipated to be complete prior to initiating the design phase. The Town of Windermere (Recipient) shall design the project within the limits of the right-of way or easements.

Construction improvements will include construction of a roundabout at the intersection of Main Street / Maguire Road and Windermere Road. Ancillary sidewalk construction, signing and pavement markings are also included as part of this project. Drainage improvements will include grading, pipes, and other appropriate structures (to be designed) that will collect and convey stormwater. Other construction elements include mobilization, maintenance of traffic, erosion control, clearing and grubbing, regular and subsoil excavation, embankment, and sod.

The design and construction of all pedestrian facilities shall adhere to current Americans with Disabilities Act (ADA) standards. Utility coordination will be required and is to be coordinated. Roadway lighting will be included with this project and will be completed by Duke Energy with input and coordination from the Design Consultant. The Town of Windermere (Recipient) is coordinating permitting requirements with the South Florida Water Management District. The Town of Windermere (Recipient) shall construct the project within the limits of the existing right-of-way or easements.

SPECIAL CONSIDERATIONS BY RECIPIENT:

Exhibit O – Terms and Conditions of Construction in Department Right-of-Way is included in all agreements. This exhibit is only applicable if the Project involves construction on, under, or over the Department's right-of-way.

The Recipient is required to provide a copy of the design plans for the Department's review and approval to coordinate permitting with the Department and notify the Department prior to commencement of any right-of-way activities.

If and when real property rights are to be acquired for a transportation facility, a scaled drawing must be prepared to clearly show the right-of-way to be acquired. It must show sufficient technical data, including land ties, to permit the preparation of legal descriptions for use in acquisition documents, and serve as an aid in appraisal and acquisition. It is supported by a Control Survey Map (certified survey) and does not purport to be a survey. This map provides the certified survey support for the preparation of right-of-way related maps and is a depiction of the right-of-way survey field work performed for a specific transportation project.

In accordance with the SFGA terms and conditions the Department reserves the right to perform inspections, reviews, investigations, or audits as deemed necessary by the Department. When construction is substantially complete and no less than 2 weeks prior to the scheduled final completion, the Recipient shall schedule a joint on site review/final walk-thru with FDOT. The Recipient shall contact the FDOT D5-Construction Special Projects Office via email at D5-ConstructionSpecialProjects@dot.state.fl.us to schedule the joint on site review/final walk-thru. The joint on site review/final walk-thru should not be considered an approval of the work by the Department nor a substitution for the Recipient's obligation to ensure that all work and deliverables comply with the SFGA terms and conditions.

The initial invoice, progress report and other supporting documentation will be submitted within 180 days of the Department's Notice to Proceed and no more than monthly and no less than quarterly thereafter. Required documents should be submitted via email to D5-LocalPrograms@dot.state.fl.us.

The Recipient shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) 30% Plans Submittal to be completed by July 15, 2024.
- b) 60% Plans Submittal to be completed by September 27, 2024.
- c) 90% Plans Submittal to be completed by December 06, 2024.
- d) Final Plans Submittal to be completed by January 17, 2025.
- e) Construction contract to be let (Bid Opening) by March 21, 2025.
- f) Construction Duration of 425 days.
- g) Construction to be completed (Final Acceptance) by July 08, 2026.

If this schedule cannot be met, the Recipient will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

Invoice payments will be made on a pro-rata basis as a percentage of the state funding amount compared to the actual award amount. In the event the Project costs exceed the cost included in Exhibit "B", Schedule of Financial Assistance, the Recipient will be solely responsible for providing the additional funds that are necessary to complete the Project.

The project funding may be reduced to an amount equal to the award amount and/or the actual contract costs.

The remainder of this page intentionally left blank.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STATE-FUNDED GRANT AGREEMENT

EXHIBIT B
SCHEDULE OF FINANCIAL ASSISTANCE

PHASE OF WORK by Fiscal Year:		MAXIMUM PARTICIPATION			Indicate source of Local funds
		(1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	
RECIPIENT NAME & BILLING ADDRESS: Town of Windermere 614 Main Street Post Office Drawer 669 Windermere, Florida 34786-0669		FINANCIAL PROJECT NUMBER: 453211-1-54-01			
Design- Phase 34	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
Total Design Cost		\$ 0.00 %	\$ 0.00 %	\$ 0.00 %	
Right-of-Way- Phase 44		\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
Total Right-of-Way Cost		\$ 0.00 %	\$ 0.00 %	\$ 0.00 %	
Construction- Phase 54		\$3,238,501.00	\$1,738,501.00	\$1,500,000.00	<input type="checkbox"/> In-Kind <input checked="" type="checkbox"/> Cash
FY: 2023-2024	Maximum Department Participation (Local Transportation Projects)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
Total Construction Cost		\$3,238,501.00 %	\$1,738,501.00 %	\$1,500,000.00 %	
Construction Engineering and Inspection - Phase 64		\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
Total Construction Engineering and Inspection Cost		\$ 0.00 %	\$ 0.00 %	\$ 0.00 %	
(Phase :)		\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
Total Cost		\$ 0.00 %	\$ 0.00 %	\$ 0.00 %	
TOTAL COST OF THE PROJECT		\$3,238,501.00	\$1,738,501.00	\$1,500,000.00	

COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:

I certify that the cost for each line item budget category has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, F.S. Documentation is on file evidencing the methodology used and the conclusions reached.

Precious L. Lewis
 District Grant Manager Name

 Signature Date

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STATE-FUNDED GRANT AGREEMENT

EXHIBIT C

ENGINEER'S CERTIFICATION OF COMPLIANCE

Engineer's Certification of Compliance. The Recipient shall complete and submit the following Notice of Completion and, if applicable, Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

NOTICE OF COMPLETION

STATE-FUNDED GRANT AGREEMENT
Between
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and THE TOWN OF WINDERMERE

PROJECT DESCRIPTION: Windermere Intersection Improvements (Main Street, Chase Road, and Sixth Avenue)

FPID#: 453211-1-54-01

In accordance with the Terms and Conditions of the State-Funded Grant Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of _____, 20__.

By: _____
Name: _____
Title: _____

ENGINEER'S CERTIFICATION OF COMPLIANCE

In accordance with the Terms and Conditions of the State-Funded Grant Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification the Recipient shall furnish the Department a set of "as-built" plans certified by the Engineer of Record/CEI.

By: _____, _____ P.E.
Name: _____
Date: _____

SEAL:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STATE-FUNDED GRANT AGREEMENT

EXHIBIT D

RECIPIENT RESOLUTION

The Recipient's Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.

EXHIBIT F**CONTRACT PAYMENT REQUIREMENTS**
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

Salaries: Timesheets that support the hours worked on the project or activity must be kept. A payroll register, or similar documentation should be maintained. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

Fringe benefits: Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee, e.g., insurance premiums paid. If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown. Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

Travel: Reimbursement for travel must be in accordance with s. 112.061, F.S., which includes submission of the claim on the approved state travel voucher along with supporting receipts and invoices.

Other direct costs: Reimbursement will be made based on paid invoices/receipts and proof of payment processing (cancelled/processed checks and bank statements). If nonexpendable property is purchased using state funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with DMS Rule 60A-1.017, F.A.C., regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in s. 273.02, F.S., for subsequent transfer to the State.

Indirect costs: If the contract stipulates that indirect costs will be paid based on a specified rate, then the calculation should be shown. Indirect costs must be in the approved agreement budget and the entity must be able to demonstrate that the costs are not duplicated elsewhere as direct costs. All indirect cost rates must be evaluated for reasonableness and for allowability and must be allocated consistently.

Contracts between state agencies may submit alternative documentation to substantiate the reimbursement request, which may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address

<https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>.

EXHIBIT H**ALTERNATIVE ADVANCE PAYMENT FINANCIAL PROVISIONS**

*Note: When Recipient meets the definition of a rural community or Rural Area of Opportunity, as these terms are defined by **Section 288.0656(2), F.S.**, or is considered a “governmental entity” authorized by the Department’s Comptroller under **Section 334.044(29), F.S.**, as eligible for Alternative Advance Payment. The agreement for these entities must include the following language or exhibit.*

*The process for requesting and obtaining approval for an alternative advance payment for “other governmental entities” is included in the **Disbursement Handbook for Employees and Managers**. The Department’s Comptroller or designee must approve any modifications to the provisions (see **Section 1.1** of this procedure). See **Section 4** of this procedure for alternative advance pay guidelines.*

1. The amount of the invoice submitted to the Department for verified and eligible costs incurred by the Recipient or invoiced by the Recipient’s contractor(s) and/or consultant(s) does not exceed the total amount of the costs incurred by the Recipient or invoice(s) received from the Recipient’s contractor(s) or consultant(s).
2. All invoices received from the Recipient clearly separate any cost(s) incurred by the Recipient or the Recipient’s contractor(s) or consultant(s) for eligible costs and performance under the terms and conditions of this Agreement.
3. All invoices submitted to the Department provide complete documentation, including copies of all contractor or consultant invoices when applicable and the date(s) the authorized work was performed and accepted by the Recipient, in sufficient detail to substantiate the eligibility of the cost(s) and performance covered by the Recipient’s Invoice.
4. The Recipient has certified, on each invoice, that the costs incurred by the Recipient or invoiced by the Recipient’s contractor(s) and/or consultant(s) are valid and have been incurred in performance of eligible work under the terms and conditions of this Agreement.
5. Each invoice subsequent to the first invoice submitted by the Recipient includes the Recipient’s certification that all previously invoiced costs have been paid by the Recipient.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STATE-FUNDED GRANT AGREEMENT

EXHIBIT J

STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)

THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Awarding Agency: Florida Department of Transportation

- State Project Title and CSFA Number:**
- County Incentive Grant Program (CIGP), (CSFA 55.008)
 - Small County Outreach Program (SCOP), (CSFA 55.009)
 - Small County Road Assistance Program (SCRAP), (CSFA 55.016)
 - Transportation Regional Incentive Program (TRIP), (CSFA 55.026)
 - Local Transportation Projects, (CSFA 55.039)

***Award Amount:** \$1,500,000.00

*The state award amount may change with supplemental agreements

Specific project information for CSFA Number is provided at: <https://apps.fldfs.com/fsaa/searchCatalog.aspx>

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number are provided at: <https://apps.fldfs.com/fsaa/searchCompliance.aspx>

The State Projects Compliance Supplement is provided at: <https://apps.fldfs.com/fsaa/compliance.aspx>

EXHIBIT O**TERMS AND CONDITIONS OF CONSTRUCTION IN DEPARTMENT RIGHT OF WAY****Section 10.e. of the Agreement is amended as follows for Construction on the Department's Right of Way.**

1. If the Project involves construction on, under, or over the Department's right-of-way, the design work for all portions of the Project to be constructed on, under, or over the Department's right-of-way shall be submitted to the Department for review prior to any work being commenced, and the following provisions shall apply:

- a. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction and Department Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the Florida Department of Transportation Design Manual ("FDM") and the Department Traffic Engineering Manual.

Designs that do not meet Department standards may be rejected by the Department at its sole discretion. The Department may allocate Department-managed resources to facilitate compliance with applicable design standards. If changes to the Department approved plans are required, the Recipient shall notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Recipient shall maintain the area of the Project, at all times, and coordinate any work needs of the Department during construction of the Project.

- b. The Recipient shall notify the Department a minimum of 48 hours before beginning construction within, under, or over Department right-of-way. The Recipient shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is D5-ConstructionSpecialProjects@dot.state.fl.us.
- c. The Recipient shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Recipient is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Recipient that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- d. The Recipient shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
- e. The Recipient will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
- f. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on, under, or over the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right-of-way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Recipient, except as may otherwise be provided in separate agreements. The Recipient shall not acquire any right, title, interest or estate in Department right-of-way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Recipient's use, occupancy or possession of Department right-of-way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, Florida Statutes.

- g. The Recipient shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.
- h. The Recipient shall perform all required testing associated with the design and construction of the Project. Testing results shall be entered into the department's Materials Testing and Certification database application and the department must provide the final Materials Certification for the Project. The Department shall have the right to perform its own independent testing during the course of the Project.
- i. The Recipient shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Recipient, the Army Corps of Engineers, the United States Coast Guard and local governmental entities.
- j. If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from on, under, or over its right-of-way at the sole cost, expense, and effort of the Recipient. The Recipient shall bear all construction delay costs incurred by the Department.
- k. The Recipient shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.
- l. The Recipient will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
- m. The acceptance procedure will include a final "walk-through" by Recipient and Department personnel. Upon completion of construction, the Recipient will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Recipient shall remove its presence, including, but not limited to, all of the Recipient's property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
- n. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Recipient. The Recipient shall have thirty (30) days from the date of receipt of the Department's written notice, or such other time as the Recipient and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the "Notice of Completion"). If the Recipient fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Recipient with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Recipient's sole cost and expense, without Department liability to the Recipient for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Recipient with an invoice for the costs incurred by the Department and the Recipient shall pay the invoice within thirty (30) days of the date of the invoice.
- o. The Recipient shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Recipient shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.

- p. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Recipient to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.
- q. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.
- r. Restricted hours of operation will be from TO BE DETERMINED PRIOR TO CONSTRUCTION, (DAYS OF THE WEEK FOR RESTRICTED OPERATION TO BE DETERMINED), unless otherwise approved by the Operations Engineer, or designee.
- s. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

D5-PIO@dot.state.fl.us

Note: (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)

LOCAL AGENCY LETTERHEAD

[INSERT DATE OF LETTER]

Engineering Firm: NAME OF CONSULTANT FIRM

Type of Service: CEI

Contract/Task Amount: \$XX,XXX (Estimated; Not-To-Exceed)

Local Agency Contract Number: XXXXX

Project Name: PROJECT DESCRIPTION

FPID: XXXXXX-1-X4-01

[LOCAL AGENCY NAME] has established procedures for the selection of professional services to ensure compliance with Florida Statute 287.055, The Consultant's Competitive Negotiation Act (CCNA).

In accordance with Florida Statutes 287.055, the consultant for the above-named project was procured in compliance with the Consultant Competitive Negotiation Act (CCNA) and is qualified to provide consulting services to [LOCAL AGENCY NAME].

Additionally, [LOCAL AGENCY NAME] certifies that *[select one]*

all required right-of-way necessary for the project has been acquired.

the project falls within existing LOCAL AGENCY NAME right-of-way and that no additional right-of-way was acquired for the project.

Sincerely,

Local Agency Legal Counsel Signature

Legal Staff Name

Legal Staff Title

LOCAL AGENCY LETTERHEAD

[INSERT DATE OF LETTER]

Engineering Firm: NAME OF CONSULTANT FIRM

Type of Service: Design

Contract/Task Amount: \$XX,XXX (Estimated; Not-To-Exceed)

Local Agency Contract Number: XXXXX

Project Name: PROJECT DESCRIPTION

FPID: XXXXXX-1-X4-01

[LOCAL AGENCY NAME] has established procedures for the selection of professional services to ensure compliance with Florida Statute 287.055, The Consultant's Competitive Negotiation Act (CCNA).

In accordance with Florida Statutes 287.055, the consultant for the above-named project was procured in compliance with the Consultant Competitive Negotiation Act (CCNA) and is qualified to provide consulting services to [LOCAL AGENCY NAME].

Sincerely,

Local Agency Legal Counsel Signature

Legal Staff Name

Legal Staff Title



Wade Trim, Inc.
 One Tampa City Center • 201 N. Franklin Street, Suite 1350 • Tampa, FL 33602
 813.882.4373 • www.wadetrim.com

May 23, 2024

Town of Windermere
 614 Main Street
 Windermere, FL 34786

Attention: Mr. Robert Smith
 Town Manager

Re: Town of Windermere - Town Square Park Charette Proposal

Dear Mr. Smith:

We are pleased to submit this letter proposal for the facilitation of a charette process for Town Square Park. This proposal confirms our scope of work, proposed schedule, and budget effort estimate.

We appreciate the opportunity to provide a proposal to help create a vision for this iconic, highly valued, and prominent community resource. Our team of Landscape Architects, Planners, and Engineers are excited to work with residents of the town, business owners, Town staff, and Town Council to discuss potential upgrades and improvements to this historic park in the heart of your community.

Parks are typically viewed as very special places in most communities, and we know that Town Square Park is the quintessential gathering space for the residents of the Town of Windermere. As we assist the Town in facilitating a charette process to lay the framework for improvements, our guiding light will be the needs of the community. Through community input and discussions, we will gather ideas to help forge a plan to create a cohesive space for the residents to enjoy alone, in small groups or in larger events where residents of the Town come together to enjoy the uniqueness that makes the Town of Windermere a special place for its residents.

PROJECT UNDERSTANDING/SUMMARY

We understand that upgrades to the Town Square Park have been the center of discussion for several years, and we believe it is important to take a step back and look at the park in its entirety. It is important to discuss how the park compliments not only the downtown, but how it functions for the many events and uses that occur in the heart of the Town. We will ask questions that promote discussion and compile the input into a useful and meaningful path for moving forward with improvements to the park that benefits the Town of Windermere as a community.

PROJECT SCOPE OF WORK

Wade Trim will provide Park Master Planning services to the Town of Windermere as outlined in the task descriptions that follow.

A total of two (2) services including five (5) tasks are proposed:

- 1.0 DATA GATHERING/SITE ANALYSIS AND CHARETTE PROCESS

- Task 1.1 – Understand and Summarize Existing and Proposed Uses
- Task 1.2 – Evaluate the Park’s Existing Features
- Task 1.3 – Charette Process
- 2.0 CONCEPT PLANNING SERVICES
 - Task 2.1 – Draft Concept Plan
 - Task 2.2 – Final Concept Plan Development

Specific services and deliverables included with each task are described in the sections that follow.

1.0 DATA GATHERING/SITE ANALYSIS AND CHARETTES

1.1 Understand and Summarize Existing and Proposed Uses

- a) Wade Trim will meet with the Town Staff to clarify and define the project requirements and review available data. We will advise the Town if additional project information is needed from others including reports and data relative to previous designs or investigation at/or adjacent to the site. We will assist the Town in obtaining such data and services.

We are aware that Town Square Park is the host to many community events. We will meet with Town Staff to create an event log of existing uses and evaluate what these uses require and how they affect the park. Many uses are regular events such as Friday Farmers Market and Food Truck Night, while some are one-time annual events such as the Windermere Run Among the Lakes. Each of these events impact the Town Square Park in different ways. We want to understand these impacts and document them for discussion. The information compiled during this initial step will be pivotal toward understanding how functionality can be improved for the various events that currently utilize this public space, as well as other events that may use the space in the future.

Deliverables: Kick-off Meeting Minutes including a summary of events and their impact to features in the park (PDF File)

1.2 Evaluate the Park’s Existing Features

- a) Wade Trim will compile existing data provided by the Town such as tree and boundary surveys, known easements, known utilities and other existing features on the park. If available from the Town, we will overlay the inventory and condition assessment of all trees and landscaping within and adjacent to the Town Square Park to reflect the current and anticipated health of the urban canopy. We will also assess the condition of the built surface features in the park such as the pavement, site furnishings, retaining walls, etc. We will also incorporate any information or studies the Town has previously prepared.
- b) We will prepare an inventory and analysis graphic at the conclusion of our assessment to diagrammatically depict the full results of our inventory and analysis of the park which will be used as a basis for discussion during the charette process.

*Deliverables: Inventory and Analysis Graphic
 (Format: One (1) up to 36" x 48" printed color plan + PDF File)*

1.3 Charette Process

- a) Wade Trim will prepare for and facilitate a public charette to engage with the residents of the community. This meeting will outline the purpose of the charette process and gather information from the public about what they like and do not like about the park, as well as what they want to see and do not want to see as part of any improvements to the Town Square Park.

- b) Wade Trim will prepare for and facilitate a charette with the Town's Parks and Recreation Advisory Committee. The meeting will provide a summary of the input received from the public charette and provide an opportunity for the Parks and Recreation Advisory Committee to provide their collective thoughts on what they like and do not like about the park, as well as what they want to see and do not want to see as part of any improvements to the Town Square Park.
- c) Wade Trim will prepare for and attend a Town Council workshop to provide the Town Council with the results of the resident and Park and Recreation Committee charettes. At the Town Council workshop, the Town Council will be asked to provide their preference for the ideas generated at the public and Parks and Recreation charettes.
- d) Wade Trim will summarize this information to document the input received and will use this data as a guide in preparing a concept plan as described in Task 2.1 below.

Deliverables: Public input results (PDF File)

2.0 CONCEPT PLANNING SERVICES

2.1 Concept Plan

- a) Using the information gathered in the tasks outlined in the Data Gathering and Site Analysis Services and Charette Process, Wade Trim will prepare a concept plan showing general layout of the site. The concept plan will graphically illustrate a potential future vision for Town Square Park. In addition, character imagery will be developed that will include recommendations for hardscape materials, site furnishings, landscape palette, signage, etc.
- b) The concept plan and supporting graphics will be shared with the Town Staff for review and comment. Based on Town Staff comments, Wade Trim will revise the concept plan for presentation at a second public charette and Parks and Recreation Advisory Committee charette.
- c) Wade Trim will prepare for and facilitate a second public charette with the public and with the Parks and Recreation Advisory Board to present the concept plan and receive input for support or ideas for changes.
- d) Wade Trim will prepare for and attend a second Town Council workshop to present the concept plan with the recommendations provided by the public and Parks and Recreation Advisory Board for the Town Council's approval or recommendation for changes.

*Deliverables: Up to Two (2) Concept Plan Alternatives with supporting graphics (original proposed concept plan and revised concept plan based on comments received).
 (Format: Two (2) up to 36" x 48" printed color plans + PDF File)*

2.2 Final Concept Plan Development

- a) Upon receiving input from the Town Staff, residents, Parks and Recreation Advisory Committee, and Town Council, the final Concept Plan will be refined and finalized. This will include updates to the site plan rendering and character imagery.
- b) Wade Trim will prepare for and attend a regular Town Council meeting to present the final Concept Plan for Town Council's consideration for approval.

*Deliverables: Final Concept Plan with supporting graphics.
 (Format: One (1) up to 36" x 48" color plan mounted on foamcore + PDF File)*

SCHEDULE

We propose to complete the project in four (4) months from the Notice to Proceed.

Wade Trim's fees are based on the schedule. Changes in the schedule may impact the presented fees. Depending on the actual notice-to-proceed date and desired completion date, Wade Trim reserves the right to renegotiate professional fees to account for additional effort required to accommodate the project schedule. The Wade Trim Project Manager will notify the Town Manager immediately if there is an expected change in schedule that would impact the presented fee.

FEES AND COMPENSATION METHOD

We are prepared to begin work on the Town Square Park Master Plan as authorized by the Town of Windermere as described above for a Lump Sum fee of \$24,800. An approximate breakdown of the hours and fee per task is shown below:

Task	Description	Lump Sum Amount*
1.0	DATA GATHERING/SITE ANALYSIS AND CHARETTE PROCESS	\$10,480
2.0	CONCEPT PLANNING SERVICES	\$13,720
	Reimbursable Expenses (Printing, Mileage, etc.)	\$600
Total Fee		\$24,800

* Scope sections detail assumptions and specific quantities assumed in fee development. Changes to assumptions, scope, or schedule may impact task fee.

OWNER RESPONSIBILITIES

- Provide access to the project site for Wade Trim
- Provide use of suitable space for the Charettes/Workshops/Meetings
- Provide Wade Trim with all current concept plans in an acceptable digital format
- Provide Wade Trim with a current Title Commitment/Boundary Survey/Topographic Survey in compatible digital format
- Provide Wade Trim with as-built drawings and other information regarding the existing utilities, if any
- Provide Wade Trim with architectural background drawings of any proposed structures

EXCLUSIONS/ADDITIONAL SERVICES

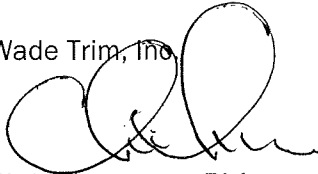
Wade Trim will provide additional services on a time and material basis in accordance with our current schedule of rates and charges (or negotiated fee). Services not identified in this proposal will be discussed as they arise.

INVOICING PROCEDURES

All effort and cost will be invoiced monthly for our effort to date. Payment of invoices is expected within 30 days. Any disputes related to the invoice amount will immediately be brought to the attention of Wade Trim. Wade Trim reserves the right to stop work when accounts receivable exceeds 60 days. All deliverables are the property of Wade Trim until payment obligations are met.

with your approval, please sign, date, and return the Agreement to authorize Wade Trim to proceed. We look forward to working with you on this project and should you have any questions, please do not hesitate to call.

Very truly yours,

Wade Trim, Inc.


Chris Thompson, RLA
Landscape Architect III



Brad Cornelius, AICP, CPM, CFM
Vice President/Senior Project Manager

CST



Agreement

To engage the Services of Wade Trim , Inc. as a Design, Planning, Testing and/or Land Survey Professional.

This Agreement, entitled Town Square Park Charette Process between Robert Smith, Town Manager, of Town of Windermere, Florida, hereinafter called "Owner," and Wade Trim, Inc., hereinafter called "Professional," is as follows:

The Owner and Professional, for mutual consideration hereinafter set forth, agree as follows:

- A. Professional agrees to perform certain professional services for Owner as follows:
See attached Letter Proposal dated May 23, 2024.
- B. Owner agrees to pay Professional as compensation for Professional's services as follows:
See attached Letter Proposal dated May 23, 2024.
- C. Owner agrees to establish an allowance of \$N/A for additional services on this Project (not less than 10% of the compensation amount specified in Item B.)
- D. The Owner and Professional agree to conditions as set forth on the reverse side in the General Provisions of this Agreement.
- E. The Owner and Professional agree to the following schedule:
See attached Letter Proposal dated May 23, 2024.
- F. Professional has the option to render this Agreement null and void, if it is not executed within 60 days.

Owner: _____

Professional:  _____

By: _____
(Print Name)

By: Bradley T. Cornelius, AICP
(Print Name)

Title: _____

Title: Vice President

Date Signed: _____

Date Signed: May 29, 2024

1.01 Basic Agreement

A. Professional shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Professional for such Services as set forth herein.

2.01 Payment Procedures

A. *Preparation of Invoices.* Professional will prepare a monthly invoice in accordance with Professional's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Professional for services and expenses within 30 days after receipt of Professional's invoice, the amounts due Professional will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Professional may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Professional has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Professional shall furnish services in addition to those set forth above.

B. Owner shall pay Professional for such additional services as follows: For additional services of Professional's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Professional's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Professional's consultants' charges with a 15% mark-up, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Professional:

1) upon seven days written notice if Professional believes that Professional is being requested by Owner to furnish or perform services which are outside of the agreed upon scope of services without compensation, which are contrary to Professional's responsibilities as a licensed professional; or

2) upon seven days written notice if the Professional's services for the Project are delayed or suspended for more than 90 days for reasons beyond Professional's control.

3) Professional shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Professional.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Professional to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Professional shall be compensated for Basic Services performed through the date of termination as set forth herein and for work performed per 4.01.B in the manner set forth in 3.01.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Professional each is hereby bound and the partners, successors, executors, administrators, employees and legal representatives of Owner and Professional (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Professional) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Professional may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Professional under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Professional makes no warranties, express or implied, under this Agreement or otherwise, in connection with Professional's services. Professional and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers and Professional shall not be responsible for design services provided by others.

B. Professional shall not at any time supervise, direct, or have control over any contractor's work, nor shall Professional have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Professional neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Professional shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Professional's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Professional.

E. The provisions in this Agreement supersede and render null and void any contrary provisions in the contract documents between Owner and Contractor.

F. All design documents prepared or furnished by Professional are instruments of service, and Professional retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Professional (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Professional's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Professional, whichever is less.

H. The parties acknowledge that Professional's scope of services does not include any services related to a Hazardous Environmental Condition (including but not limited to the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Professional or any other party encounters a Hazardous Environmental Condition, Professional may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Dispute Resolution

Except for debt collection cases for less than \$25,000, and except as otherwise provided herein, all claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction. Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event may the demand for arbitration be made after the expiration of one year from the date the cause of action accrued. The cause of action whether based in tort, contract, indemnity, contribution, or any other form of action, legal or equitable, shall be deemed to have accrued at the time the party asserting the claim either knew or, by the exercise of reasonable diligence, should have known of the existence of the facts underlying such claim, dispute or other matter in question regardless of when damages occur. After the expiration of said one year, any claim between the parties hereto shall be barred. No arbitration arising out of, or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this Agreement.

The award rendered by the arbitrators will be final, not subject to appeal and judgment may be entered upon it in any court having jurisdiction thereof.

9.01 Total Agreement

A. This Agreement (together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Professional, supersedes all prior written or oral understandings, and becomes binding as if fully executed at the time Professional commences work. To the extent that the terms of any appendices or documents referenced in this Agreement conflict with the terms of this Agreement, the terms of this Agreement shall govern. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument

Attachments:

- Foundation Grant Repayment Request Letter to Rotary Club of Windermere Inc.
 - Rotary Club of Windermere Inc. Grant Repayment Request Letter to the Town of Windermere
 - Invoices Paid by Rotary Club of Windermere Inc.
 - Outstanding Unpaid Invoices bill to Rotary Club of Windermere Inc.
 - AIA Contract with McCree and the Rotary Club of Windermere Inc.
-

FOUNDATION

For A Healthier West Orange



February 9, 2024

BY EMAIL (Vijay@gmail.com) and
FEDEX EXPRESS DELIVERY

Rotary Club of Windermere, Inc.
Attention: Vijay Wagh
Secretary of Rotary Club of Windermere, Inc
1455 Glenheather Drive
Windermere, FL 34786

RE: Notice of Cancellation of Grant

Ladies and gentlemen:

This notice ("Notice") concerns the Grant Agreement between the West Orange Healthcare District (the "District") and Rotary Club of Windermere, Inc. (the "Grantee"), dated May 5, 2021 (the "Agreement"). Capitalized terms not defined in this Notice are defined in the Agreement. As you are aware, HWO, Inc. d/b/a Foundation for a Healthier West Orange (the "Foundation") has assumed the rights and obligations of the District under the Agreement pursuant to the Assignment of The Grant Agreement among the District, the Grantee, and the Foundation, dated October 1, 2022, and executed by the three parties thereto.

This Notice constitutes notice from the Foundation to the Grantee, provided in accordance with Section 6 of the Agreement, of the Foundation's immediate cancellation of the entire \$1,000,000 grant that was to be provided to the Grantee pursuant to the Agreement. Also, as discussed between the Foundation and the Grantee's legal counsel, Brad Busbin, the Foundation hereby requires the prompt repayment of the \$600,000 of Grant Funds already disbursed to the Grantee, due to Grantee's failure to comply with the requirements of Section 4.a. of the Agreement (Use of Grant Funds).

Please promptly contact the Foundation to arrange repayment of the funds.

Regards,

Tracy Swanson
CEO, Foundation for a Healthier West Orange

cc: Bradley J. Busbin, Esq.
Jim Schuppert
Jeffery Jonasen, Esq.





**Rotary Club of Windermere, Inc.
P.O. Box 687
Windermere, FL 34786**

February 16, 2024

By Email (rsmith@town.windermere.fl.us) and
Priority Mail

REC'D FEB 21 2024

Town of Windermere
Attention: Robert Smith, Town Manager
614 Main Street
Windermere, FL 34786

RE: Notice of Cancellation of Grant

Mr. Smith:

This letter is to provide notice to the Town of Windermere ("Town") that the Rotary Club of Windermere, Inc. ("Rotary") has received a Notice of Cancellation of Grant ("Notice"), attached hereto, from the Foundation for a Healthier West Orange, the successor to the West Orange Healthcare District ("District"), for the Grant designated for the Healthy West Orange Pavilion ("Grant Project") for the reasons stated in the Notice.

The District requires prompt repayment of all of the Grant Funds. The Rotary shall be returning the remaining funds held for the Grant Project; however, there remains the issue of the Grant Funds that were previously spent and committed in complying with the Agreement between the Town and Rotary for the construction of the Grant Project. This issue will need to be addressed.

Please let me know your earliest availability to discuss the issue before us, so that we may resolve and return the Grant Funds to the District.

Sincerely,

A handwritten signature in black ink, appearing to read 'J Schuppert'.

James Schuppert
President, Rotary Club of Windermere, Inc.
jhschuppert@outlook.com; 510.301.5612

cc: Bradley J. Busbin, Esq.

Attachment: Letter Dated February 9, 2024 from Foundation for A Healthier West Orange



GRANT AGREEMENT
between
THE WEST ORANGE HEALTHCARE DISTRICT
and
ROTARY CLUB OF WINDERMERE, INC.

This Grant Agreement (“Agreement”) is dated **May 5, 2021** (the “Effective Date”), and is between the **West Orange Healthcare District** (the “District”), an independent special district and political subdivision of the State of Florida, and **Rotary Club of Windermere, Inc.**, a Florida Not-for-Profit Corporation (the “Grantee”).

WHEREAS, the District is an independent special district of the State of Florida established by Chapter 2000-450, Laws of Florida (the “Act”) to serve residents of West Orange County through the establishment, purchase, sale, construction, operation and maintenance of hospitals and other healthcare facilities to promote and provide for the health and welfare of the residents of the District.

WHEREAS, the Grantee has applied for a grant from the District and has been awarded grant funding of \$1,000,000.00, which will be used for the construction of the Healthy West Orange Pavilion in the Town of Windermere (the “Project”).

WHEREAS, the Act provides that the Board of Trustees of the District (the “Board”) has all the powers of a body corporate, including the power to contract and be contracted with, as the Board may deem proper or expedient for the preservation of public health and for the public good and for the use of the public of the District.

WHEREAS, the Grantee has represented to the Board that the Project will promote the health and welfare of the residents of the District and West Orange County.

WHEREAS, the Board has determined that providing financial support to the Grantee for the Project is consistent with and furthers the District’s purpose and mission under the Act to promote the health and welfare of the residents of the District and West Orange County.

WHEREAS, the District and the Grantee now desire to enter into this Agreement to describe the terms and conditions under which the District will provide the grant funding to the Grantee for the Project.

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.

- a. The Grantee has been awarded a grant from the District for funding in an amount of One Million Dollars (\$1,000,000.00) (the "Grant Funds"). The Grant Funds will be used to build a Healthy West Orange Pavilion in the Town of Windermere which will include 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 and Fifth Avenue where the existing community building stands.

Additionally, 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 park with exercise stations. The new Pavilion will be named the "Healthy West Orange Pavilion" and will support the District 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 park locations and signage will be included recognizing The West Orange Healthcare District as the benefactor and funder for the Pavilion. Upon Project completion, the entire Project will be dedicated and donated to the Town of Windermere.

A copy of the Grant Application with additional details regarding the Project is attached hereto as **Attachment A**.

- b. The Term of this Agreement begins on the Effective Date and shall continue for three years. Construction of the Project shall begin within 18 months of the Effective Date. The Project shall be completed and donated to the Town of Windermere within three years of the Effective Date.
- c. The Project will be completed in substantial accordance with the Budget included in **Attachment A** and further outlined in section 4, below.

3. The District's Commitment.

- a. **The Grant Funds.** The District agrees to provide grant funding pursuant to the terms of this Agreement for the Project in an amount of \$1,000,000.00. Costs or expenses to complete the Project in excess of the amount of Grant Funds shall be the responsibility of the Grantee. Grant Funds remaining after completion of the Project may be used by Grantee with written approval by the CEO of the District or her designee to improve and expand the outdoor areas in the Town of Windermere with appealing fixtures or landscape for the residents to utilize and promote healthy programming in the Town of Windermere.

- b. **Payment of the Grant Funds.** The Grant Funds shall be paid as follows:
- The first payment of Grant Funds in the amount of \$200,000.00 shall be made by the District to the Grantee within 30 days after the Effective Date to be used for the commencement of and the architectural plans for the Project.
 - The second payment of Grant Funds in the amount of \$400,000.00 shall be made by the District to the Grantee 30 days after the Town Council of the Town of Windermere approves both of the following: (i) the architectural plans for the Project, and (ii) the Owner's Representative selected by the Grantee.
 - The third payment of Grant Funds in the amount of \$400,000.00 shall be made by the District to the Grantee upon the Grantee providing documentation in a form acceptable to the District demonstrating 50% of Project completion.

4. **The Grantee's Commitments.**

- a. **Use of Grant Funds.** The Grantee agrees to use the Grant Funds solely in conformance with the requirements set forth in this Agreement and the Grant Application attached hereto as **Attachment A**. Failure of the Grantee to complete the Project in accordance with the terms of this Agreement or to the satisfaction of the District may be considered a material breach and shall entitle the District to require the Grantee to promptly repay some or all of the Grant Funds.
- b. **COVID-19.** In the event that Grantee is unable to use some or all of the Grant Funds as a result of COVID-19, Grantee shall provide, in writing to the District CEO, a proposal for the revised use of the Grant Funds. The District CEO will respond, in writing, to the Grantee approving in whole or in part, or disapproving the proposal for the revised use of the Grant Funds within 30 calendar days. The writing from the District CEO shall serve as an amendment to this Grant Agreement without further action by the Parties.
- c. **Budget.** The Grant Funds shall be used as follows:

Estimated budget:

Buildout (including park, landscaping, preparation for the parking area and the basketball courts): \$700,000.

Architectural plans, permitting, legal, and preparation: \$150,000.

Project Management: \$100,000.

Demolition of old building, land preparation, septic field, parking and park structures: \$50,000

Total estimated Project cost - \$1,000,000.

- d. **Project Objectives.**

Goals	Methods/Benchmarks	Outcomes
Serve as a location to host health and wellness offerings, such as health screenings, chronic disease support groups, fitness and health education classes.	Reports with event description, health purpose and numbers served provided annually.	Health informed residents Screened services provided.
Provide pavilion naming, park and basketball court branding under “Healthy West Orange” and signage as outlined in the agreement.	Physical and photographed tour of the facility and grounds.	Expanded branding and awareness.
Provide an annual “Healthy West Orange” Signature Event managed by the Foundation for a Healthier West Orange.	Annual space usage at no charge for Healthy West Orange to organize and operate a signature event such as 5K, Festival, performance, etc.	Expanded education and participation opportunities for the Healthy West Orange Movement.
To allow the Town and other organizations to host additional outdoor events, such as orchestras and talent shows.	By building a new facility with a covered stage and additional parking, many more events may be hosted and held frequently.	To draw in more participants from surrounding communities with a better-organized and defined stage.

e. Healthy West Orange.

- i. Grantee shall provide permanent and prominent Healthy West Orange branding on the Pavilion and surrounding exercise areas constructed from the Grant Funds. Grantee will work with the Town of Windermere to have Healthy West Orange information in future Town of Windermere programming and educational materials, all in a form acceptable to and approved by the District CEO or her designee.
- ii. The District is one of the founding champions of the Healthy West Orange movement with the goal to make West Orange the healthiest community in the nation. Grantee will support the efforts by joining the movement, and following Healthy West Orange on social media, such as Facebook, Twitter and Instagram. Grantee shall display the Healthy West Orange logo on Grantee’s website and provide a link to the movement:
<https://healthywestorange.org/>.
- iii. Pending further planning by Healthy West Orange, a kiosk for HUBB may be placed in the Project area by Healthy West Orange. Grantee will provide information to the Town Council of the Town of Windermere about the kiosk,

and the proposed placement area will be included in the conceptual drawings to be approved by the Town Council of the Town of Windermere.

5. Records and Reporting Requirements.

- a. At any time during the term of this Agreement, the District may request and will be provided access to Grantee's plans, documents, contracts, financial books and records, reports and any other information relating to the Project and Grant Funds.
- b. The Grantee shall provide three written reports to the District, the first report, at 50% of Project completion, will include a narrative description of the work completed and construction progress, receipts, budgetary versus actuals accounting for funding and how the Grant Funds were used to fund the Budget outlined above, and any other pertinent documentation as requested by the District. The second report shall include a reconciliation of the Project expenses compared to the Project Budget. The third report shall include a final narrative description of the work completed with Certificate of Occupancy and programming planned to date.
- c. For three years after Project completion, the Grantee will provide to the District, on or before August 15 of each year, annual written reports with a narrative description of the health and wellness programming provided the prior year on the grounds of Pavilion. These reports shall include an outline of services provided and/or made available, the number of attendees, outcomes, and other information outlining and evidencing the Project Objectives described above.

6. 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 6.c. until such delivery pursuant to methods (1)-(3) above shall be deemed to have been received pursuant to subsection 6.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 6.

For the West Orange Healthcare District:

West Orange Healthcare District
Attention: Tracy Swanson, CEO
PO Box 770790

Winter Garden, Florida 34777
Phone: 407-716-7457
tswanson@wohd1949.org

For the Rotary Club of Windermere, Inc.:

Attention: 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.
7. **Assignment.** Neither party may assign this Agreement.
8. **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.
9. **Amendments, Waiver.** With the exception of the provisions in subsection 4.b., above, 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 District or the Grantee unless (i) it is in writing, and (ii) it is formally approved by the District's Board of Trustees.
10. **Indemnification; Limitation of Remedies and Liability.**
 - a. The Grantee shall defend, indemnify, and hold harmless the District, its 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 by the Grantee, (ii) violations of applicable law by the Grantee relating to the project and/or Chapter 119, Florida Statutes, and related laws, or (iii) disease or death of third parties (including District employees and agents and those of the Grantee) relating to the project. The provisions of this section shall survive the expiration or termination of this Agreement for any reason.
 - b. Grantee waives all claims against the District for injury, death, damage, or loss arising from or related to activities conducted under this Agreement. The District is not liable to the Grantee 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 Grantee acknowledges that the District 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 District's entitlement to sovereign immunity as to tort claims as a matter of statutory and common law.
- d. The District acknowledges that the Grantee 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 Grantee's entitlement to sovereign immunity as to tort claims as a matter of statutory and common law.

11. **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.

12. **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.

13. **Public Records.**

- a. To the extent the Grantee is acting on behalf of the District as provided under Subsection 119.011(2) of the Florida Statutes, the Grantee shall:
 - i. Keep and maintain public records required by the District to perform the services under this Agreement.
 - ii. Upon request from the District's custodian of public records, provide the District 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 Grantee does not transfer the records to the District.
 - iv. Upon completion of the Agreement, transfer, at no cost, to the District all public records in possession of the Grantee or keep and maintain public records required by the District to perform the service. If the Grantee transfers all public records to the District upon completion of the Agreement, the Grantee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure

requirements. If the Grantee keeps and maintains public records upon completion of the Agreement, the Grantee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.

- b. If the Grantee fails to provide the public records to the District within a reasonable time the Grantee may be subject to penalties under Section 119.10 of the Florida Statutes.
- c. **IF THE GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DISTRICT'S CUSTODIAN OF PUBLIC RECORDS AT (407) 716-7457, admin@wohd1949.org, PO Box 770790, Winter Garden, FL 34777.**

14. **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.

15. **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.

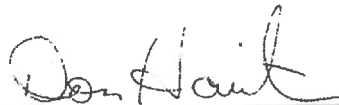
The parties are signing this Agreement as of the Effective Date.

West Orange Healthcare District:



Rod Talbot
Board Chair

Rotary Club of Windermere, Inc.:



Donald Hairston
President, Rotary Club of Windermere, Inc.



ATTACHMENT A

NAME OF ORGANIZATION:	Rotary Club of Windermere, Inc.
PROJECT/PROGRAM NAME:	Healthy West Orange Pavilion in the Town of Windermere
AMOUNT REQUESTED:	\$1,000,000

Grant Description: Narrative including length of the grant program. Is this program/project underway elsewhere or in another format? Is it based on evidence-based research?

The grant will be used to build the Healthy West Orange Pavilion in the Town of Windermere, including a covered stage with a retractable projection screen and appropriate lighting and sound equipment, restrooms, and concession stand with an equipped kitchen in downtown Windermere at the corner of Forest and Fifth Avenue where the existing community building stands. The Project will also include 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, and a park with exercise stations. The Healthy West Orange logo and/or name will be prominently and permanently placed on all exterior building/park locations and signage will be included recognizing The West Orange Healthcare District as its benefactor and funder for the pavilion.

Impact: Brief summary of impact including: target audience, number of individuals served and total program cost per individual/family. **(Max 100 Words)**

The pavilion will allow for updated outdoor facilities for resident's use that can house health and wellness programming such as health screenings, chronic disease support groups, fitness and health education classes, as well as other community events, like orchestras and talent shows. It will also expand the branding and awareness of the Healthy West Orange movement and provide space for an annual Healthy West Orange signature event.

Measurable Outcomes: Summary of anticipated outcomes, e.g. health outcomes, audience reach, program usage, and/or pre/post-survey data. **(Max 150 Words)**

The largest outcome will be increased use of the outdoor space, the added health/recreational assets (ie park and potential HUBB kiosk), increased health and wellness program opportunities. These will be reported by the grantee.

Budget: Total Funding: District Funding Request, Other Committed Funds, Unidentified Funding Needs = Total Program Budget. High level expense breakdown.

District Funding Request	\$1,000,000
Other Committed Funds	\$0
Unidentified Funding Needs	\$0
Total Funding	\$1,000,000
Buildout	\$700,000
Architectural Plans, permits, etc	\$150,000
Project Management	\$100,000
Demolition, land prep, etc	\$50,000
Supplies (Program, Office, etc.)	\$0
Marketing	\$0
Total Program Budget	\$1,000,000

Sustainability: How will the program be funded after the grant period? **(Max 75 Words)**



ATTACHMENT A

The Town of Windermere will be gifted the Pavilion and will maintain it into the future.

Partnerships: Are there other partners involved and how? i.e. volunteers, in-kind, and funders. **(Max 100 Words)**

Rotary Club of Windermere, Inc will be partnering heavily with the Town of Windermere, both on project management, and in the approval process for all architectural plans and compliance.



3D VIEW OPTION 2

WINDERMERE PAVILION | WINDERMERE F...

Application: W-0000000015

Norma Sutton - normasutton@outlook.com
Initiative Grant

Summary

ID: W-0000000015
Last submitted: Mar 24 2021 05:48 PM (EDT)
Labels: Service delivery

Qualifying Questionnaire

Completed - Mar 8 2021

Qualifying Questionnaire

Please complete all required fields.

- | | |
|--|-----|
| 1. Is this a non-profit agency? | Yes |
| 2. Is your agency/office located within the boundaries of the West Orange Healthcare District? | Yes |
| 3. Is your agency a hospital, healthcare facility, healthcare provider or provider of any health related services to residents of the West Orange Healthcare District? | No |
| 4. Is your agency owned by or affiliated with Orlando Health? | No |
| 5. Does your agency provide health services for the indigent, uninsured, underserved population in the West Orange Healthcare District? | No |
| 6. Are you the Executive Director of your organization? | No |

1 / 13

Amount Requested:

1,000,000.00

What is the application for?

Service delivery

Full Name:

First, Last.

Norma Sutton

Please tell us more about yourself:

Retired from GlaxoSmithKline as Managing Director of Clinical Laboratories & Clinical Trials in Europe, Owner & Vice President of World Trade Center Orlando (a 501c3 member of the WTC Association in New York, a service organization assisting companies in international trade), resident of Windermere and Rotarian in Rotary Club of Windermere for over 33 years. Current Board Member and Youth Services Chair. Past President x 2 and have held numerous other positions. Assisted in setting up the 501c3 in 2012. Service Above Self and the 4 Way Test are mantras for Rotary. We have raised over \$2 million over the past 20 years to support children, Veteran's, homeless and others in need. We built the back porch on the Town Hall in 2010 as a gift for the community, which has been well appreciated and used. We assisted in developing the Windermere Library, the Little League Baseball fields, the Butler Bay Park acquisition and other local projects.

Attachments

Incomplete - Hidden from applicant

Logo

Incomplete - Hidden from applicant

Admin only: Upload imported application form

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Incomplete - Hidden from applicant

501 (c)(3) Verification

Completed - Mar 8 2021

Please enter your EIN without any dashes or spaces.

Company: Rotary Club of Windermere Inc.

Country: United States

EIn: 383920890

State: FL

Upload Tax Document

Completed - Mar 10 2021

Once you have uploaded your file, a preview will appear. Once you have previewed your file, please click "back" in the top right corner of your screen to return to your submission. Your file will reflect as attached.

[RCOW INC TAX 2020](#)

Filename: RCOW INC TAX 2020.pdf Size: 8.1 MB

Organization Profile Form

Completed - Mar 24 2021

Application Form

Please complete all fields before submitting your application.

Terms

Terms and Conditions

Upon notice of award, the Grantee must enter into a Grant Agreement with the West Orange Healthcare District; said agreement will stipulate all terms and conditions of the grant and must be adhered to for the duration of the funding period. Failure to comply will result in loss of eligibility for future funding.

Responses Selected:

Yes, I agree with the above terms

Org Profile

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Agency Contact

First Name	Norma
Last Name	Sutton
Email	normasutton@outlook.com
Address	505 W 2nd Avenue
City	Windermere
State	Florida
Postal Code	34786
Phone Number	4077666598

Organization Information

Legal Name	Rotary Club of Windermere, Inc.
Website Address	www.windemererotary.org
Executive Director/President	Frank Krens
Organization Type	501 (c)
Region	Within the West Orange Healthcare District

Please specify your organization's address:

P.O. Box 687 Windermere, Florida 34746

Org Overview

Organizational Overview

In what year was the organization founded? (MM/DD/YYYY)	1969 & 2012 for 501c3
How is the organization classified by the Internal Revenue Service for income tax purposes (501 (c)3)?	501c3
Please list the location(s)and zipcodes where the organization provides services.	34786
What is the organization's fiscal year?	July 1

Please complete the following if applicable an enter N/A if not.

Staffing Information

How many full-time staff does the organization employ?	0
How many part-time staff does the organization employ?	0
How many volunteers does the organization have?	40
Will the project require additional staffing?	Yes

Organization's Mission Statement

MissionStatement - Serving Others to Improve our Community and Our World

Organization's Vision

Vision Statement - Each of us has received gifts from others, each of us should share our gifts with others.

Service Above Self

Project Description

Name of Project

Windermere Pavilion

Project Description

Stage pavilion in downtown Windermere that consists of a covered stage, rest rooms, concession stand with kitchen. In addition, a pocket park type facility around and beside the pavilion with exercise stations and benches. Project requires demolishing existing community building, installing new septic tank, repaving basketball courts and preparing parking area.

Grant Funding Requested

\$1,000,000.00

Provide a complete description of the project, including target demographic, population served, need, reach, community impact and sustainability.

Windermere town committees have organized town events which include Easter parade, July 4th pancake breakfast, fall festivals, Light Up Windermere, Christmas party and monthly food truck nights. These events now attract over 3000 residents and near by citizens. We need a place to host these events outside, a covered stage for bands and orchestras for inclement weather, permanent rest room facilities (now renting portables), new septic tanks because Windermere does not have access to a public sewage system, and organized park and parking areas. This encourages the use of the downtown outdoor area, known nationally for it tree canopy, and walking and exercising more.

How many neighborhoods and zip codes will the project serve?

5

Please specify:

Neighborhood	Keene Point
Zip Code	34786

Please specify:

Neighborhood	Gotha
Zip Code	34734

Please specify:

Neighborhood	Ocoee
Zip Code	34761

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Please specify:

Neighborhood

Windermere

Zip Code

34786

Please specify:

Neighborhood

Dr. Phillips

Zip Code

32819 & 32836

Describe the target population for services.

34786 28,000

34734 1,911

34761 46,000

32819 & 32836 10,488

Provide a brief description of existing and/or proposed collaborations that will support project services, if applicable.

The Rotary Club of Windermere and its Rotary Club 501c3 began planning to build the Windermere Pavilion in 2019 in celebration of its 50th year of service to the community. Previously, for its 40th year anniversary, we built the covered back porch on the Town Hall in order to expand the capacity and use of the hall for its residents. It has been a tremendous success and the Town and the people have benefited. Over the past 5-6 years, the committees of the Town have begun numerous programs and events to encourage activity in the downtown area. While there are only a few businesses, the Town canopy and atmosphere lends itself to enjoying the outdoors. The basketball courts have been well utilized over many years and the youth are very active. Due to the many rain showers, many of the events have suffered as the bands or performers have to leave to avoid the rain. The Rotary Club came up with the idea to build a covered pavilion once the new town and police new buildings are complete and the temporary offices removed. The old community building on that property needs to be demolished as it is unsafe, unsanitary and outdated. The rest rooms (only 1 men's and 1 women's) were refurbished 10 years ago when we build the porch but are inadequate as is the septic system. Rotary solicited an architectural firm to donate concept drawings. We formed a committee including representatives from the Town (engineer, architect, public works) and prepared a recommendation. We presented to the Town Council and have been given permission to proceed with the plan. The Town has agreed to the use of the land and the responsibility of maintenance of the building once completed. The plans includes finalizing the conceptual plans, developing the cost analysis, hiring an independent Project Manager, and contracting with a construction company. The Town administration and Town Council will be involved in the process and approve the action steps as required (permitting, final plans approval, etc). A separate banking account of the Rotary 501c3 will be set up with three signatories (two required to sign a check) and the Rotary treasurer will manage the finance accounting. The independent Project Manager to be hired will be an experience construction professional who will review and approve all documents, contracts, invoices, etc. before proceeding.

Provide a project/program budget, including expenses, in-kind donations and revenues. If there is already a committed funding, or the funding request is not for the full project/program, please provide in detail, in the budget lines, what the grant funding it will specifically cover.

While the conceptual plans have been reviewed and approved, the cost estimates are not completed. It is estimated at this time that the building itself will be between \$600,000 and \$700,000. Architectural plans, permitting, legal, and preparation is estimated at \$150,000. The Project Manager salary is estimated at \$100,000. Old building demolition, land preparation, septic field, parking and park structures are estimated at \$50,000 for a total project estimate of \$900,000 to \$1,000,000. Should the project be less than \$1,000,000, the Rotary Club will commit to use the monies to improve and expand the outdoor areas around Windermere proper with appealing fixtures or landscape for the residents to utilize. Should the project run over \$1,000,000, the organization that sponsors the Taste of Windermere event has agreed to donate monies if necessary up to \$100,000.

Describe the project's outcome measures, including number of individuals were impacted.

The monthly food truck night events typically draw about 3000 participants. By building a new facility with a covered stage and additional parking, these events may host more and may be held more often. The other events previously mentioned draw participants from surrounding communities and will be better organized with a defined stage. This will allow the Town and other organizations to host additional outdoor events, such as orchestras, talent shows, presentations and recognitions, etc. The rest rooms are desperately needed and the concession stand will be an added benefit for the residents who do not want to bring their picnics and for the Rotary Club, who will operate and manage this stand as a means to raise monies for its service projects.

Organizational Contact

Completed - Mar 24 2021

Organizational Contact

Please enter the information of your designated agency contact.

Contact Information

Name	Norma Sutton
E-mail	normasutton@outlook.com
Phone number	407-766-6598
Address	505 W 2nd Avenue Windermere, Florida 34786

Program Description Form

Completed - Mar 24 2021

Program Profile Form

Please describe the intended program.

Covered stage pavilion with men's and women's restrooms (three stalls in each plus urinals in men's) plus two family restrooms) and concession stand with equipped kitchen (refrigeration, grill, drink dispensers, etc) located at the corner of Forest and Fifth Avenue in Windermere where existing old community building stands. This building will be demolished and the pavilion build here. Behind will be additional parking and beside and around will be the pocket park and or fixtures, seating, etc. for resident exercising. Basketball courts may be redesigned and refurbished. Health West Orange will be recognized and signed around the area. While the drawings show Windermere Pavilion signage, this will not be labeled as such.

Upload Letter of Intent

Completed - Mar 24 2021

Once you have uploaded your file, a preview will appear. Once you have previewed your file, please click "back" in the top right corner of your screen to return to your submission.

[Letter of Intent WHOD](#)

Filename: Letter of Intent WHOD.pdf Size: 83.3 kB

Executive Director's Signature

Completed - Mar 24 2021

Executive Director's Signature

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Please be advised that the signature of the organization executive director is required.

Sign here.

A handwritten signature in black ink, appearing to be "RCOW INC", written over a horizontal line.

Upload Board of Directors

Completed - Mar 24 2021

Please upload a list of Board of Directors, including information, including occupation, gender, and ethnicity.

Once you have uploaded your file, a preview will appear. Once you have previewed your file, please click "back" in the top right corner of your screen to return to your submission.

[RCOW INC BOARD 2021-2022](#)

Filename: RCOW INC BOARD 2021-2022.pdf Size: 61.3 kB

Annual Operating Budget

Completed - Mar 24 2021

Please upload an annual operating budget for the current fiscal year.

Once you have uploaded your file, a preview will appear. Once you have previewed your file, please click "back" in the top right corner of your screen to return to your submission.

[Financials Rotary Club of Windermere Service Fund](#)

Filename: Financials Rotary Club of Windermere 501AjCW.pdf Size: 628.7 kB

Upload List of Regions

Completed - Mar 24 2021

Please upload a list of regions that will be served by your project, including neighborhood and zip code.

Once you have uploaded your file, a preview will appear. Once you have previewed your file, please click "back" in the top right corner of your screen to return to your submission.

[Population of Neighborhoods in and around Windermere](#)

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Filename: Population of Neighborhoods in and c4nZc6d.docx **Size:** 16.3 kB

Acknowledgement Form

Completed - Mar 24 2021

Acknowledgement Form

I acknowledge that the information provided is true and accurate to the best of my knowledge.

Responses Selected:

I agree.

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DIVISION OF CONSUMER SERVICES
850-410-3800



THE RHODES BUILDING
2005 APALACHEE PARKWAY
TALLAHASSEE, FLORIDA 32399-6500

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER NICOLE "NIKKI" FRIED

February 26, 2021

Refer To: CH43372

ROTARY CLUB OF WINDERMERE INC
11323 WINSTON WILLOW CT
WINDERMERE, FL 34786-6011

RE: ROTARY CLUB OF WINDERMERE INC
REGISTRATION#: CH43372
EXPIRATION DATE: March 20, 2022

Dear Sir or Madam:

The above-named organization/sponsor has complied with the registration requirements of Chapter 496, Florida Statutes, the Solicitation of Contributions Act. A COPY OF THIS LETTER SHOULD BE RETAINED FOR YOUR RECORDS.

Every charitable organization or sponsor which is required to register under s. 496.405 must conspicuously display the registration number issued by the Department and in capital letters the following statement on every printed solicitation, written confirmation, receipt, or reminder of a contribution:

"A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE (800-435-7352) WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."

The Solicitation of Contributions Act requires an annual renewal statement to be filed on or before the date of expiration of the previous registration. The Department will send a renewal package approximately 30 days prior to the date of expiration as shown above.

Thank you for your cooperation. If we may be of further assistance, please contact the Solicitation of Contributions section.

Sincerely,

Tianna Baity
Regulatory Consultant
850-410-3770
Fax: 850-410-3804
E-mail: tianna.baity@fdaes.gov



Florida Department of Agriculture & Consumer Services
Division of Consumer Services

**RENEWAL REGISTRATION STATEMENT
FOR CHARITABLE ORGANIZATIONS AND
SPONSORS**

SOLICITATION OF CONTRIBUTIONS ACT
Chapter 496, Florida Statutes
Rule 5J-7.004, Florida Administrative Code

NICOLE "NIKKI" FRIED
COMMISSIONER

DTN: 3431367 License #: CH43372

For online payments, visit www.FDACS.gov
Make check payable to FDACS and remit application to:

FDACS
PO BOX 6700
TALLAHASSEE FL 32399

1-800-HELP-FLA (435-7352)
1-850-410-3800
Fax: 1-850-410-3804

Note: All documents and attachments submitted with this application are subject to public review pursuant to Chapter 119, F.S.

ROTARY CLUB OF WINDERMERE INC

Registration Number: CH43372 Expiration Date: March 20, 2021 FEID Number: 38-3920890

In order for this applicant to continue to legally solicit in the state, registration must be renewed prior to the expiration date. Please return the forms with the appropriate registration fee and a copy of the Department's statement of revenue/support and expenses, the Internal Revenue Service Form 990 with all attached schedules, or the Internal Revenue Service Form 990-EZ and schedule O, for the immediately preceding fiscal year, to the above address.

REGISTRATION FEES:

For contributions received the preceding fiscal year:	Fee
a. Less than \$5,000, with or without paid officers	\$ 10
b. \$25,000 or less, no compensated employees, no part of the assets or income inures to the benefit of any officer or member, or no professional solicitors/consultants	10
c. \$5,000 or more, but less than \$100,000	75
d. \$100,000 or more, but less than \$200,000	125
e. \$200,000 or more, but less than \$500,000	200
f. \$500,000 or more, but less than \$1,000,000	300
g. \$1,000,000 or more, but less than \$10,000,000	350
h. \$10,000,000 or more	400

Note: A parent organization filing on behalf of one or more chapters, branches, or affiliates shall total all contributions received by them to determine registration fees.

LATE FEES: A charitable organization or sponsor which fails to renew their registration by the annual due date should submit a late fee of \$25 for each month or part of a month after the expiration date.

1. Enclosed:
Registration fee of \$ 25.00
and late fee of \$ _____
(Include \$25 per month late fee, if applicable)

Solicitation of Contributions	DTN: 3431367
Org Code: 42100625000	
Object Code: 001133	

FDACS - 10100 Rev 01/15



2. Principal Street Address:

Name: ROTARY CLUB OF WINDERMERE INC
Street Address: 11323 WINSTON WILLOW CT
City, State and Zip: WINDERMERE, FL 34786-6011 Phone: 847-917-7990
E-mail phil@medicalmurray.com Web site: Fax:

3. Mailing Address (if different):

Name:
Street Address: 11323 WINSTON WILLOW CT
City, State and Zip: WINDERMERE, FL 34786-6011 Phone:

4. Fictitious (DBA) Name:

5. Other name(s) soliciting as:

6. What is the purpose for which the organization is organized?

TO SOLICIT TAX DEDUCTIBLE DONATIONS TO ACHEIVE OUR MISSION.

What is the purpose for which the contributions will be used?

WINDERMER CLUB OF WINDERMERE IS ORGANIZED TO PROVIDE COMMUNITY SUPPORT AND SCHOLORSHIPS.

7. List or description of major program activities:

YOUTH SCHOLARSHIPS, EDGEWOOD RANCH SUPPORT OF YOUTH, VETERAN'S PROJECTS FOR HOUSING.

8. IRS Tax exempt: 501(C)(3) If changed, enclose copy of IRS notice.

9. If applicant does not maintain an office in Florida, person with custody of financial records:

Name: LEOPOLD, PHILLIP
Street Address: 11323 WINSTON WILLOW CT
City, State, and Zip: WINDERMERE, FL 34786-6011 Contact Phone: 847-917-7990

Name:
Street Address:
City, State, and Zip: Contact Phone:

10. Individuals or officers who have final responsibility for the custody of the contributions and who will be responsible for the final distribution of the contributions:

Name: LEOPOLD, PHILLIP
Street Address: 11323 WINSTON WILLOW CT
City, State, and Zip: WINDERMERE, FL 34786-6011 Contact Phone: 847-917-7990

Name: _____
Street Address: _____
City, State, and Zip: _____ Contact Phone: _____

Name: _____
Street Address: _____
City, State, and Zip: _____ Contact Phone: _____

11. Individual or officer who is in charge of solicitation activities:

Name: KAREN HAIRSTON
Street Address: 1353 GLENHEATHER
City, State, and Zip: WINDERMERE FL 34786 Contact Phone: 4072580443

12. Is this charitable organization or sponsor authorized by another state to solicit contributions?

YES NO

13. Has the charitable organization or sponsor or any of its officers, directors, trustees, or principal executive personnel been enjoined in any jurisdiction from soliciting contributions or been found to have engaged in unlawful practices in the solicitation of contributions or administration of charitable assets?

YES NO

14. Has the charitable organization or sponsor had its registration or authority denied, suspended, or revoked by any governmental agency?

YES NO If yes, the reasons for the denial, suspension, or revocation were:

15. Has the charitable organization or sponsor voluntarily entered into an assurance of voluntary compliance (AVC) or agreement similar to that set forth in s.496.420, Florida Statutes?

YES NO If yes, enclose a copy of the agreement.

16. Has the charitable organization or sponsor or any of its officers, directors, trustees, or employees, regardless of adjudication, been convicted of, found guilty of, pled guilty or nolo contendere to, or been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any felony, or crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor within the last 10 years?

YES NO

If yes, provide the following information for each individual: (Attach a separate sheet if necessary).

Name: _____ Date: _____
Nature of offense: _____
Court having jurisdiction: _____
Disposition of offense: _____ Date: _____

17. Has the charitable organization or sponsor or any of its officers, directors, trustees, or employees been enjoined from violating any law relating to a charitable solicitation?

YES NO

Name: _____

Date of Injunction: _____

Court issuing the injunction: _____

18. Does the charitable organization or sponsor employ a Professional Solicitor?

YES NO If yes, complete Attachment A-1, and provide a copy of current contract.

19. Does the charitable or sponsor organization employ a Professional Fundraising Consultant?

YES NO If yes, complete Attachment A-2, and provide a copy of current contract.

20. Does the charitable organization or sponsor utilize a commercial co-venturer? [s. 496.405(2)(e), F.S.]

YES NO If yes, attach a copy of the current contract, and provide the following information for each. (attach additional sheets as necessary using the same format)

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number:
(_____) _____ - _____

Date of Contract:

Beginning Date: ____/____/____ End Date: ____/____/____
Month Day Year Month Day Year

NOTE: Any change to the responses provided to Questions 19 - 24 must be reported to the department within 10 days after the change occurs. (s. 496.405(1)(b), F.S.) The Solicitation of Contributions Material Change Form, FDACS-10118, Rev. 01/15, as incorporated in Rule 5J-7.004(5), F.S., This form can be found online at www.800helpfla.com.

21. Are you filing as a parent organization?

YES NO If yes, complete Attachment C.

22. If sponsor, answer the following:

"Sponsor" means a group or person who is or holds herself or himself out to be soliciting contributions by the use of a name that implies that the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and the group or person is not a charitable organization. The term includes a chapter, branch, or affiliate that has its principal place of business outside the state if such chapter, branch, or affiliate solicits or holds itself out to be soliciting contributions in this state.

a. Does the membership consist of members who are individuals of whom at least 10% or 100 members, whichever is less, are actively employed as law enforcement officers or emergency service employees by an agency of the United States, this state, a municipality, or a political subdivision of this state, and who personally sign written membership agreements with the organization and pay an annual membership of not less than \$10 a member?

YES NO

- b. Total number of sponsor's members: 0
- c. Total number of members actively employed as law enforcement or emergency service employees: 0
- d. Percentage of total net contributions which are dispersed in the state on behalf of its members in the furtherance of its stated purposes or programs (defined as the total amount of all contributions raised minus the total cost of expenses incurred in raising contributions solicited): 100 %

CONTACT PERSON

23. Person Responsible for completing renewal application.

Name: PHILLIP LEOPOLD Telephone Number 847 917 7990 Email PMLEOPOLD@YAHOO.COM

CERTIFICATION

I, PHILLIP LEOPOLD, am the TREASURER

of ROTARY CLUB OF WINDERMERE, INC

And further state as follows: (Please check all that apply)

- I have read the registration application and know the contents thereof; and
The registration application is made for the purpose of complying with the provisions of Chapter 496, Florida Statutes, Solicitation of Contributions Act;

I certify that I am authorized to complete this registration application and that the information provided is true and accurate.

Signature PHILLIP LEOPOLD Date 2/18/2021

Telephone Number (847) 917-7990 Email Address PMLEOPOLD@YAHOO.COM

FINANCIAL STATEMENT

24. Indicate the type of financial statement you are filing for the immediately preceding fiscal year: [s. 496.405(2)(a), FS]

- Budget (newly formed organizations only)
Department's financial statement form.
990 and all attached schedules
990 - EZ and Schedule O
180 Day Extension requested for your financial report only. (Failure to file a financial statement within the 180 days will result in automatic suspension of your registration.) [s. 496.405(1)(d)2, FS]

25. Charitable organizations or sponsors that receive at least \$500,000 in annual contributions must have their financial statement reviewed or audited by an independent certified public accountant. If annual contributions are more than \$1 million, then the financial statement must be audited by an independent certified public accountant. [s. 496.407(1)(d), F.S.]

Attached is a copy of signed CPA review or audit Yes No

26. Month/Day fiscal year ends: [s. 496.405(2)(g)3, F.S.] 06/30

27. I have attached the conflict of interest annual certification to this registration application. [s. 496.4055, F.S.]

CH 43372

DTN ³⁴⁵¹³⁴⁷
~~831062~~

CONFLICT OF INTEREST CERTIFICATION

This will certify that ROTARY CLUB OF WINDERMERE INC has adopted

NAME OF ORGANIZATION

a policy regarding conflict of interest transactions. The policy has been read and is understood by all of the directors, officers and trustees of the organization. (s.496.406, F.S.)

<u>NAME</u>	<u>SIGNATURE</u>
1. <u>PHILIP LEPPOLD</u>	<u>Philip M Leppold</u>
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____
14. _____	_____
15. _____	_____
16. _____	_____

(continue on additional pages if necessary)

SUPPLEMENTAL CONSOLIDATED FINANCIAL STATEMENT

Parent Organization Name _____ CH # _____

This form is required and may be reproduced to accommodate all affiliate locations. Additional pages may be attached if additional space is needed using the same format

1. Name:

Street Address: _____

City: _____

State: _____

Zip Code: _____

Telephone Number: _____

Email: _____

Total contributions received in the name of Chapter, Branch or Affiliate

\$ _____

Total Administrative costs accessed by Parent to Chapter, Branch or Affiliate

\$ _____

Total payments to Chapter, Branch or Affiliate

\$ _____

2. Name:

Street Address: _____

City: _____

State: _____

Zip Code: _____

Telephone Number: _____

Email: _____

Total contributions received in the name of Chapter, Branch or Affiliate

\$ _____

Total Administrative costs accessed by Parent to Chapter, Branch or Affiliate

\$ _____

Total payments to Chapter, Branch or Affiliate

\$ _____

3. Name:

Street Address: _____

City: _____

State: _____

Zip Code: _____

Telephone Number: _____

Email: _____

Total contributions received in the name of Chapter, Branch or Affiliate

\$ _____

Total Administrative costs accessed by Parent to Chapter, Branch or Affiliate

\$ _____

Total payments to Chapter, Branch or Affiliate

\$ _____

ATTACHMENT A-1
List of Professional Solicitors

Please list professional solicitor(s) soliciting on your behalf in Florida:

1. Name: NONE
Street Address: _____
City, State, and Zip: _____ Phone: _____
Registration Number: _____ Contract Beginning Date: _____ Ending Date: _____

2. Name: _____
Street Address: _____
City, State, and Zip: _____ Phone: _____
Registration Number: _____ Contract Beginning Date: _____ Ending Date: _____

ATTACHMENT A-2
List of Professional Fundraising Consultants

Please list professional consultant(s) acting on your behalf in Florida:

1. Name: NONE
Street Address: _____
City, State, and Zip: _____ Phone: _____
Registration Number: _____ Contract Beginning Date: _____ Ending Date: _____

2. Name: _____
Street Address: _____
City, State, and Zip: _____ Phone: _____
Registration Number: _____ Contract Beginning Date: _____ Ending Date: _____

**ATTACHMENT B
Officers, Directors, Trustees, and Principal Executive Personnel**

Please list officers, directors, trustees, and principal executive personnel:

Exemptions from public records apply to certain personal information about current or former law enforcement officers, judges, prosecutors, public defenders, firefighters, code enforcement officers and guardians ad litem and their families. For a complete list of exemptions, see Section 119.071(4), F.S. If you qualify for one of these exemptions, please do not list your home address and phone number below.

1. Last Name, First Name: LEOPOLD, PHILLIP Title: Treasurer
 Street Address: 11323 WINSTON WILLOW CT Phone Number: 847-917-7990
 City, State, and Zip: WINDERMERE, FL 34786-6011 Compensated (Y/N): N
 Criminal History: Yes No
 Exempt from public records [s. 119.071(4), F.S.] Yes No

2. Last Name, First Name: TROVILLION, DOUGLAS P Title: President
 Street Address: _____ Phone Number: 371-229-2586
 City, State, and Zip: DECEASED NOV 2020 Compensated (Y/N): N
 Criminal History: Yes No
 Exempt from public records [s. 119.071(4), F.S.] Yes No

3. Last Name, First Name: HARRISTON, KAREN Title: PRESIDENT
 Street Address: 1353 GLENHEATHER DR Phone Number: 9154438318
 City, State, and Zip: WINDERMERE FL 34786 Compensated (Y/N): NO
 Criminal History: Yes No
 Exempt from public records [s. 119.071(4), F.S.] Yes No

4. Last Name, First Name: KREWS, FRANK Title: VICE PRESIDENT
 Street Address: 107 FOREST ST Phone Number: 407 443 5212
 City, State, and Zip: WINDERMERE FL 34786 Compensated (Y/N): NO
 Criminal History: Yes No
 Exempt from public records [s. 119.071(4), F.S.] Yes No

5. Last Name, First Name: _____ Title: _____
 Street Address: _____ Phone Number: _____
 City, State, and Zip: _____ Compensated (Y/N): _____
 Criminal History: Yes No
 Exempt from public records [s. 119.071(4), F.S.] Yes No

ATTACHMENT C
Florida Chapters, Branches or Affiliates

Please list Florida chapters, branches, or affiliates included in this registration:

1. Name: _____
Address: _____
City, State, and Zip: _____ Phone: _____

2. Name: _____
Address: _____
City, State, and Zip: _____ Phone: _____

DISCLOSURE REQUIREMENTS

This notice serves as a reminder that the Solicitation of Contributions Act requires registered charities to conspicuously display their registration number and the disclosure statement below on every solicitation, confirmation, receipt, or reminder of a contribution, including websites. s. 496.411, F.S.

"A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."

The disclosure statement must include a toll-free number and website for the Division of Consumer Services which can be used to obtain the registration information.

1-800-HELP-FLA (435-7352)
www.FloridaConsumerHelp.com

If the solicitation occurs on a website, the statement must be conspicuously displayed on any webpage that identifies a mailing address where contributions are to be sent, identifies a telephone number to call to process contributions, or provides for online processing of contributions. If you have any concerns about where the registration number should be placed on your website, please call us at the number below.

MAILING ADDRESS

Please note that mail drops, physical addresses of UPS stores or other third party mail recipients are not considered principal addresses for a charity. A physical address of the charitable organization is required. Adherence to this requirement will reduce the number of deficiency letters and expedite the processing of applications.

We appreciate your cooperation. If you have any questions or require assistance, please contact us at 800-435-7352 or via email at charities@FDACS.gov. Failure to comply with these requirements could result in penalties up to \$5,000.

LETTER OF INTENT

Mr. Donald Hairston, President
Rotary Club of Windermere, Inc.
P.O. Box 687
Windermere, Florida 34786

Ms. Tracy Swanson, CEO
West Orange Healthcare District
Healthy West Orange Building
1200 E. Plant Street
Suite 200
Winter Garden, FL 34787

Dear Ms. Swanson

This letter of intent is to provide a written expression of the mutual interest of the following parties:

Grantee: Rotary Club of Windermere, Inc., President: Donald Hairston

Grantor: West Orange Healthcare District, CEO :Tracy Swanson

in which Grantee will obtain a grant from the Grantor, the West Orange Healthcare District. This letter outlines some of the terms and conditions that the future grant agreement between these parties shall contain:

1. Purpose of the Grant: The Rotary Club of Windermere and the Rotary Club of Windermere, Inc., a 501c3 organization, has developed a plan to build a covered stage pavilion for the Town of Windermere. Conceptual plans and drawings of this pavilion have been presented to the Town Council and approval to proceed with the project has been granted. The pavilion will contain a covered stage, restrooms, concession stand, exercise or resting park area, parking and similar amenities and will be located on Town of Windermere property at the corner of Forest and 5th Avenue in the Town of Windermere.

2. Amount of Grant: \$1,000,000.
3. Liabilities of Grantee: Grantee takes full responsibility for the project development, construction and financing. Should the grant amount be in excess of the project cost, the remaining funds will be spent by the Rotary Club of Windermere, Inc. for the benefit and health of the residents of Windermere and surrounding neighborhoods. Should the grant amount be inadequate to cover the full costs, the Rotary Club of Windermere, Inc. shall be responsible for securing the monies to cover the costs of the projects and shall be liable for the expenses associated with this project.
4. Liabilities of Grantor: Grantor will not assume any liabilities or obligations of Grantee.
5. Recognition and Signage: In appreciation for the grant, the signage will be included recognizing Healthy West Orange as its benefactor and funder for the pavilion. In addition, an outdoor exercise or resting area will be added with signage reflecting the Healthy West Orange vision and mission.
6. Due Diligence: Grantor will be entitled to review and analyze Grantee's plans, documents, contracts, financial books and records, reports and any other information relating to the project and project funds.
7. Definitive Agreement: The definitive agreement will be structured as a grant from Grantor to Grantee will develop a grant agreement and will include customary covenants, conditions and warranties.

8. **Non-Binding Agreement:** Except for the paragraph entitled “Public Announcements and Confidentiality Agreement”, this Letter of Intent is a non-binding agreement and the provisions contained herein are for informational purposes only and non-binding on all parties. The parties shall not be contractually bound unless and when parties enter into a formal, written grant agreement.

9. **Public Announcement and Confidentiality Agreement:** All parties agree not to release any information to the public with regards to this letter and its contents. Both parties agree the terms and conditions of this Letter of Intent is to remain confidential between these parties.

10. **Authority to Enter Letter of Intent:** The parties signing this letter affirm they are the authorized representative of their respective companies and have the authority to enter into this Letter of Intent.

Executed by these parties as authorized representatives of their respective organizations:

Rotary Club of Windermere, Inc.
Don Hairston, President

West Orange Healthcare District
Tracy Swanson, CEO

Date: _____

Date: _____

12/15/04
827873
Account Balan

ROTARY CLUB OF WINDERMERE
Profit & Losses By Class
January 20 through February 10, 2021

	Creditable Credits (Classified Income)		Fundraising (Classified Income)		Miscellaneous (Classified Income)		Total Service Fund	
	Jan 20 - Feb 10, 21	Jan 1, 20 - Feb 10, 21	Jan 20 - Feb 10, 21	Jan 1, 20 - Feb 10, 21	Jan 20 - Feb 10, 21	Jan 1, 20 - Feb 10, 21	Jan 20 - Feb 10, 21	Jan 1, 20 - Feb 10, 21
Income								
6500 - Service Income	0.00	0.00	1,800.00	7,100.00	0.00	0.00	1,800.00	3,100.00
4200 - Admission Ticket Sales	0.00	0.00	0.00	2,000.00	0.00	0.00	0.00	2,000.00
4300 - Other Income	0.00	0.00	1,800.00	4,185.75	0.00	0.00	1,800.00	4,185.75
1000 - 4000 - Service Income	0.00	0.00	1,800.00	4,185.75	0.00	0.00	1,800.00	4,185.75
Total Income	0.00	0.00	1,800.00	4,185.75	0.00	0.00	1,800.00	4,185.75
Classified Credits	0.00	0.00	1,800.00	4,185.75	0.00	0.00	1,800.00	4,185.75
Expenses								
4100 - Operations - operations	0.00	0.00	25.00	28.00	0.00	0.00	25.00	28.00
5100 - Other	0.00	0.00	25.00	28.00	0.00	0.00	25.00	28.00
6100 - Meals / Social Club fees	0.00	0.00	25.00	28.00	0.00	0.00	25.00	28.00
7100 - Other	0.00	0.00	25.00	28.00	0.00	0.00	25.00	28.00
Total 4100 - Operations - operations	0.00	0.00	25.00	28.00	0.00	0.00	25.00	28.00
8200 - Publicity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8300 - Members	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8400 - Investments	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8500 - Community Service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8600 - Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total 8200 - Community Service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9100 - Equipment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9200 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9300 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9400 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9500 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9600 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9700 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9800 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9900 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total 9100 - Equipment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1000 - 4000 - Service Income	0.00	0.00	1,800.00	4,185.75	0.00	0.00	1,800.00	4,185.75
4100 - Operations - operations	0.00	0.00	25.00	28.00	0.00	0.00	25.00	28.00
5100 - Other	0.00	0.00	25.00	28.00	0.00	0.00	25.00	28.00
6100 - Meals / Social Club fees	0.00	0.00	25.00	28.00	0.00	0.00	25.00	28.00
7100 - Other	0.00	0.00	25.00	28.00	0.00	0.00	25.00	28.00
8200 - Publicity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8300 - Members	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8400 - Investments	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8500 - Community Service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8600 - Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9100 - Equipment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9200 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9300 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9400 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9500 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9600 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9700 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9800 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9900 - New Building	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Expenses	0.00	0.00	25.00	28.00	0.00	0.00	25.00	28.00
Net Income	0.00	0.00	1,800.00	4,185.75	0.00	0.00	1,800.00	4,185.75
Cash in Service Fund								
Jan 20 - Feb 10, 21	0.00	0.00	1,800.00	4,185.75	0.00	0.00	1,800.00	4,185.75
Jan 1, 20 - Feb 10, 21	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	0.00	0.00	1,800.00	4,185.75	0.00	0.00	1,800.00	4,185.75

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:

Rotary Club of Windermere, Inc.:



James O'Brien
Mayor, Town of Windermere



Donald Hairston
President, Rotary Club of Windermere, Inc.

ATTACHMENT A
Grant Agreement



**CHASTAIN
SKILLMAN**

(863) 646-1402
205 E Orange St.
Lakeland, FL 33801

Payment Due on Receipt

INVOICE

Invoice #: 144813
Invoice Date: 7/12/2022
Invoice Group: **

McCree Contractors and Architects
500 E Princeton Street
Orlando FL 32803
Attention: Stewart Nelson

Project: 1031201
Project Biller: Gordon Lend
Project Name: McCree/Windermere Pavilion

Project Description: Windermere Pavilion
ALTA Boundary and Topographic Survey

For Professional Services Rendered through: 7/9/2022

Phase Code / Name	Pct. of Contract	Phase Fee	Previous Amount	Current Amount	Pct. Comp	Total Fee Earned
310 - Survey	100.00	12,960.00	0.00	12,960.00	100.00	12,960.00
Total:		12,960.00	0.00	12,960.00		
Sub-Total Fee Earned						\$12,960.00
Current Billing Amount						12,960.00
Less Lump Sum Previous Billings						0.00
Amount Due this Invoice						\$12,960.00

#1003
12/5/22

Invoice

**HUNTON BRADY
ARCHITECTS, P.A.
333 S. Garland Ave. Suite 1100
Orlando, Florida 32801**

September 16, 2022
Project No: S-21295
Invoice No: 3031546

Cindy McCree-Bodine
McCree General Contractors & Architects
500 East Princeton Street
Orlando, FL 32803

Healthy West Orange Pavilion
Project Manager: Tom Wannan
Professional Services from August 1, 2022 to August 31, 2022

Scope	000	Pavillion				
Fee						
Billing Phase	Fee	Percent Complete	Earned	Previous Fee Billing	Current Fee Billing	
Schematic Design	12,160.00	100.00	12,160.00	0.00	12,160.00	
Design Development	18,240.00	0.00	0.00	0.00	0.00	
Construction Documents	21,280.00	0.00	0.00	0.00	0.00	
Bidding/Negotiation	3,040.00	0.00	0.00	0.00	0.00	
Construction Administration	6,080.00	0.00	0.00	0.00	0.00	
Total Fee	60,800.00		12,160.00	0.00	12,160.00	
Total Fee						12,160.00
Total this Scope						\$12,160.00

Scope	000	Reimbursable Expenses		
			Total this Scope	0.00
			Total this Invoice	\$12,160.00

Terms: Net 30 days

Authorized By: 

#1002
12/5/22

McCree

GENERAL CONTRACTORS, INC.

McCree General Contractors, Inc.
500 E. Princeton St.
Orlando, FL 32803

Invoice ID 20995
Invoice Date 10/7/2022
Job Number 22-095-30

To: The Rotary Club of Windermere, Inc.
501 Forest Street
Windermere, FL 34789

Job: Windermere Pavilion

<u>Description of Service</u>	<u>This Invoice</u>
Architecture & Engineering - Hunton Brady Services to Date	\$12,160.00
Survey - Chastain Skillman Services to Date	\$12,960.00
Preconstruction - McCree Services to Date	\$4,386.36
Subtotal	<u>\$29,506.36</u>

\$4,690.21
#1004
12/5/22

Amount Due \$29,506.36

J. A.

Please Remit Payment By: 11/6/2022

McCree

GENERAL CONTRACTORS, INC.

McCree General Contractors, Inc.
500 E. Princeton St.
Orlando, FL 32803

Invoice ID 21017
Invoice Date 11/15/2022
Job Number 22-095-30

To: The Rotary Club of Windermere, Inc.
501 Forest Street
Windermere, FL 34789

Job: Windermere Pavilion

Description of Service	This Invoice
Architecture & Engineering - Hunton Brady Services to Date	\$23,280.00
Survey - Chastain Skillman Services to Date	\$12,960.00
Preconstruction - McCree Services to Date	\$4,690.21
Subtotal	\$40,930.21

Check # 12,160 1005 12/1
11,120 1005 12/1

Billed to Date -\$29,506.36

McCree
4690.21
1004
12/5/22

Hunton Brady
\$ 11,160.00
1005
12/5/22

Amount Due \$11,423.85

1/7/22

Please Remit Payment By: 12/15/2022

McCree

GENERAL CONTRACTORS, INC.

McCree General Contractors, Inc.
500 E. Princeton St.
Orlando, FL 32803

Invoice ID 21041
Invoice Date 12/31/2022
Job Number 22-095-30

To: The Rotary Club of Windermere, Inc.
501 Forest Street
Windermere, FL 34789

Job: Windermere Pavilion

<u>Description of Service</u>	<u>This Invoice</u>
Architecture & Engineering - Hunton Brady Services to Date	\$35,900.00
Survey - Chastain Skillman Services to Date	\$12,960.00
Preconstruction - McCree Services to Date	\$7,038.82
Subtotal	<u>\$55,898.82</u>

Payments to Date -\$40,930.21

Amount Due \$14,968.61

1007
2/21/23

W. B.

BS
2/21/23

Please Remit Payment By: 1/30/2023

McCree

GENERAL CONTRACTORS, INC.

McCree General Contractors, Inc.
500 E. Princeton St.
Orlando, FL 32803

Invoice ID 21060
Invoice Date 1/31/2023
Job Number 22-095-30

To: The Rotary Club of Windermere, Inc.
501 Forest Street
Windermere, FL 34789

Job: Windermere Pavilion

<u>Description of Service</u>	<u>This Invoice</u>
Architecture & Engineering - Hunton Brady Services to Date	\$38,100.00
Survey - Chastain Skillman Services to Date	\$12,960.00
Preconstruction - McCree Services to Date	\$8,531.28
Subtotal	<u>\$59,591.28</u>

Payments to Date -\$40,930.21
Open INV #21041 -\$14,968.61

Amount Due \$3,692.46

#1008
2/21/23


2/21/23

Please Remit Payment By: 3/2/2023



1575 ABER ROAD
ORLANDO, FL 32807

Phone: (407) 568-3456

Invoice #	001903
Inv Date	11/18/2022
Order#	
Date Due	12/18/2022
Customer	000495
PO #	

PECE OF MIND ENVIRONMENTAL, INC.

ROTARY CLUB OF WINDERMERE INC

PO BOX 687

WINDERMERE FL 34786

Comments: 614 MAIN ST, WINDERMERE, FL 34786

Description: BUILDING DEMOLITION

Qty	Description	Unit Cost	Net Price
1.00	GENERAL CONDITIONS/MOBILIZATION	\$1,500.00	\$1,500.00
1.00	DEMOLITION	\$8,400.00	\$8,400.00

apparel
By

Paid
1009
2/24/23

SUBTOTAL:	\$9,900.00
State Tax:	\$0.00
County Tax	\$0.00
City Tax	\$0.00
AMOUNT DUE	\$9,900.00



ORLANDO ENV DEPT
Orlando, FL 32839
(407) 304-5560

Federal ID 37-0962090

Professional Service Industries, Inc.
www.psiusa.com

ATTN: MR. BYRON SUTTON
ROTARY CLUB OF WINDERMERE
505 W. 2ND STREET
WINDERMERE FL 34786
USA

ZHA
601 N. MAGNOLIA AVE.
SUITE 100
ORLANDO FL 32801

Customer #	Purchase Order	Project Number	Date	Invoice #	Pa
1195236		06635759	04/19/22	00815918	00

Project: WINDERMERE COMMUNITY BLDG -- 614 MAIN ST - LTD NESHAP SURVEY

Date	Work Order Nbr	Description	Quantity	Unit Cost	Amount
03/28/22	06635759-1	ASBESTOS SURVEY (EA)	1.00	1,650.00	1,650.00
03/28/22	06635759-1	PLM BULK (EA) Thank you for selecting PSI.	20.00	15.00	300.00

*Paid
5/5/22*

Invoice Total: \$1,950.00
Balance Due: \$1,950.00

TERMS: NET 30 DAYS. A SERVICE CHARGE OF 1.5% PER MONTH, WHICH IS AN ANNUAL PERCENTAGE RATE OF 18% WILL BE DUE ACCOUNTS. FOR QUESTIONS REGARDING THIS INVOICE, PLEASE CALL THE PHONE NUMBER ABOVE.

To assure proper credit to your account, please return with your check made payable to PSI.

Please mail remittance to:

Customer #	Invoice #	Project Number	Amount Enclosed
1195236	00815918	06635759	

Professional Service Industries, Inc.
PO Box 74008418
Chicago, IL 60674-8418



501 N. MAGNOLIA AVE. SUITE 110
 ORLANDO, FL 32801
 (407) 422-7497
 FAX: (407) 422-7437

DATE: 02/11/02
 INVOICE NO.: 020002

ATTN: ACCOUNTING
 THE ROTARY CLUB OF WINDSORVILLE, INC.
 1100 WINDSOR VILLAGE CT.
 WINDSORVALE, FL 32786

PROJECT: ROTARY CLUB OF WINDSORVILLE
 PROJECT NO.: 46770

SERVICES

PROJECT #	DATE	DESCRIPTION	AMOUNT
-----------	------	-------------	--------

SEE ATTACHED FOR MEMORANDUM

ZHA FEE	2,750.00
SALES TAX	175.00
INVOICE TOTAL	2,925.00



601 N. Magnolia Ave., Suite 100
 Orlando, FL 32801
 PHONE: (407) 422-7487
 FAX: (407) 422-7413

DATE: **3/1/2022**

INVOICE NO.: **20237**

ATTN: ACCOUNTING
 THE ROTARY CLUB OF WINDERMERE, INC
 11323 WINSTON WILLOW CT.
 WINDERMERE, FL 34786

PROJECT: **ROTARY CLUB OF WINDERMERE-PAVILION**
 PROJECT NO.: **469.00**

SERVICES FROM:	2/1/2022	THRU	2/28/2022	FEES	TOTAL
SEE ATTACHED FOR MANHOUR RECAP					
ZHA FEE				3,600.00	
SUBCONSULTANT FEE				0.00	
INVOICE TOTAL					\$ 3,600.00

*Paid
 5/5/22
 CML*



601 N. Magnolia Ave., Suite 100
 Orlando, FL 32801
 PHONE: (407) 422-7487
 FAX: (407) 422-7413

DATE: **4/1/2022**

INVOICE NO.: **20279**

ATTN: ACCOUNTING
 THE ROTARY CLUB OF WINDERMERE, INC
 11323 WINSTON WILLOW CT.
 WINDERMERE, FL 34786

PROJECT: **ROTARY CLUB OF WINDERMERE-PAVILION**
 PROJECT NO.: **469.00**

SERVICES FROM:	3/1/2022	THRU	3/31/2022	FEES	TOTAL
SEE ATTACHED FOR MANHOUR RECAP					
ZHA FEE				3,780.00	
SUBCONSULTANT FEE				0.00	
INVOICE TOTAL				\$	3,780.00

*Paid
5/5/22
CML*



601 N. Magnolia Ave., Suite 100
 Orlando, FL 32801
 PHONE: (407) 422-7487
 FAX: (407) 422-7413

DATE: **1/4/2022**

INVOICE NO.: **20178**

ATTN: ACCOUNTING
 THE ROTARY CLUB OF WINDERMERE, INC
 11323 WINSTON WILLOW CT.
 WINDERMERE, FL 34786

PROJECT: **ROTARY CLUB OF WINDERMERE-PAVILION**
 PROJECT NO.: **469.00**

SERVICES FROM:	12/1/2021	THRU	12/31/2021	FEES	TOTAL
SEE ATTACHED FOR MANHOUR RECAP					
ZHA FEE				2,160.00	
SUBCONSULTANT FEE				0.00	
INVOICE TOTAL					\$ 2,160.00

*Paid
7/7/22*



601 N. Magnolia Ave., Suite 100
Orlando, FL 32801
PHONE: (407) 422-7487
FAX: (407) 422-7413

DATE: **5/2/2022**

INVOICE NO.: **20317**

ATTN: ACCOUNTING
THE ROTARY CLUB OF WINDERMERE, INC
11323 WINSTON WILLOW CT.
WINDERMERE, FL 34786

PROJECT: **ROTARY CLUB OF WINDERMERE-PAVILION**
PROJECT NO.: **469.00**

SERVICES
FROM: **4/1/2022** THRU **4/30/2022** FEES TOTAL

SEE ATTACHED FOR MANHOUR RECAP

ZHA FEE 1,620.00

SUBCONSULTANT FEE 0.00

INVOICE TOTAL \$ **1,620.00**

*Paid
7/7/22*



601 N. Magnolia Ave., Suite 100
Orlando, FL 32801
PHONE: (407) 422-7487
FAX: (407) 422-7413

DATE: **6/1/2022**

INVOICE NO.: **20367**

ATTN: ACCOUNTING
THE ROTARY CLUB OF WINDERMERE, INC
11323 WINSTON WILLOW CT.
WINDERMERE, FL 34786

PROJECT: **ROTARY CLUB OF WINDERMERE-PAVILION**
PROJECT NO.: **469.00**

SERVICES
FROM: **5/1/2022** THRU **5/31/2022** FEES TOTAL

SEE ATTACHED FOR MANHOUR RECAP

ZHA FEE	3,960.00
SUBCONSULTANT FEE	0.00
INVOICE TOTAL	\$ 3,960.00

*paid
7/7/22
Credit #10 -
for Invoice
20207*



601 N. Magnolia Ave., Suite 100
 Orlando, FL 32801
 PHONE: (407) 422-7487
 FAX: (407) 422-7413

DATE: **7/1/2022**

INVOICE NO.: **20402**

ATTN: ACCOUNTING
 THE ROTARY CLUB OF WINDERMERE, INC
 11323 WINSTON WILLOW CT.
 WINDERMERE, FL 34786

PROJECT: **ROTARY CLUB OF WINDERMERE-PAVILION**
 PROJECT NO.: **469.00**

SERVICES FROM:	6/1/2022	THRU	6/30/2022	FEES	TOTAL
----------------	-----------------	------	------------------	------	-------

SEE ATTACHED FOR MANHOUR RECAP

ZHA FEE				1,980.00	
SUBCONSULTANT FEE				0.00	
INVOICE TOTAL					\$ 1,980.00

*paid
7/7/22*



INVOICE

Number 95266-
Date 07/05/2022
Client ID 160847
Rep Jason Mage

INVOICE TO
 Rotary Club of Windermere
 Norma Sutton
 P.O. Box 687
 Windermere FL 34786

SHIP TO
 Rotary Club of Windermere
 Norma Sutton
 505 West 2nd Avenue
 Windermere FL 34786

Ship Via	Origin	Customer Order No	Terms	Order Number
Our Discretion	Factory		Net 30 days	85-8016655992C-6
Qty Shipped	Description	Unit Price	Total Price	Net Total
	T-Shirts, Pavilion Groundbreaking & Ribbon Cutting Sport-Tek PosiCharge Competitor Tee. Color : True Navy			
20	Size : S	\$12.75		\$255.00
25	Size : M	\$12.75		\$318.75
30	Size : L	\$12.75		\$382.50
20	Size : XL	\$12.75		\$255.00
15	Size : 2XL	\$14.75		\$221.25
5	Size : 3XL	\$16.75		\$83.75
	Decorating Method : Screen Printing			
	Decorating Location : Front			
115	Run Charge :	\$0.00		\$0.00
2	Setup Charge :	\$0.00		\$0.00
	Design Name : Rotary of Windermere Logo			
	Decorating Size : 10" x 3.83"			
	PMS : White + PMS 130 (Yellow)			
	Decorating Location : Back			
115	Run Charge :	\$0.00		\$0.00
1	Setup Charge :	\$0.00		\$0.00
	Design Name : Groundbreaking			
	Decorating Size : 9.93" x 12"			
	PMS : White			
Terms & Conditions				
2% service charge per month (24% per annum) on overdue accounts. All claims for shortages or damaged goods must be made in writing within seven days of receipt of goods or invoice. Thank you for your business!				\$0.00
			Subtotal	\$78.98
			Subtotal	\$1,595.23
			Tax	\$0.00
			TOTAL	\$1,595.23
			Shipping	\$0.00
			Grand Total	\$1,595.23

Paid
 7/21/22
 CML

Match-Up, 1855 W. State Rd 434, Longwood, FL, United States 32750
 Tel : (800) 815-3093 Fax : (407) 998-4232
 Website : www.shopmatchup.com Email : sales@gomatchup.com

McCree

GENERAL CONTRACTORS, INC.

McCree General Contractors, Inc.
500 E. Princeton St.
Orlando, FL 32803

Invoice ID 21204
Invoice Date 9/28/2023
Job Number 22-095-30

To: The Rotary Club of Windermere, Inc.
501 Forest Street
Windermere, FL 34789

Job: Windermere Pavilion

Description of Service	This Invoice	
Hunton Brady	\$45,660.00	
Chastain Skillman	\$12,960.00	
Plan Reproduction	\$45.05	
Richard Pruitt - 16 hours - Chief Estimator	\$2,480.00	
Heather Hollants-Parker - 85 hours - Estimator	\$13,175.00	
Donna Brunkala - 13.5 hours - Clerical	\$2,092.50	
Jonathan Kephart - 7.5 hours - Project Manager	\$1,162.50	
Stewart Neilson - 8 hours - Arch. Job Captain	\$1,240.00	
Victor Phan - 8 hours - Permit Coordinator	\$880.00	
Beverly Moffit - 10 hours - Project Expeditor	\$950.00	
Joe Robertson - 7 hours - Quality Control	\$1,330.00	
Richard McCree, Jr. - 42 hours - Principal	\$12,390.00	
Cindy McCree-Bodine - 80 hours - Project Coordinator	\$14,800.00	
Subtotal	\$109,165.05	
Insurance - 1.47%	\$1,604.73	
Subtotal	\$110,769.78	
Contractor's Fee - 10%	\$11,076.98	
Profit on work not executed	\$86,738.49	
TOTAL DUE	\$208,585.24	
Payments to Date	-\$59,591.28	
OPEN INV 21171	-\$3,105.90	PAST DUE
This Invoice Amount	<u>\$145,888.06</u>	
TOTAL DUE	\$148,993.96	

Please Remit Payment By: 10/28/2023

AIA® Document A141™ – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the THIRTEENTH day of APRIL in the year 2022
(In words, indicate day, month and year.)

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

THE ROTARY CLUB OF WINDERMERE, INC.
501 FOREST ST.
WINDERMERE, FL 34789

and the Design-Builder:
(Name, legal status, address and other information)

McCREE GENERAL CONTRACTORS, INC.
500 E. PRINCETON ST.
ORLANDO, FL 32803

for the following Project:
(Name, location and detailed description)

HEALTHY WEST ORANGE PAVILION LOCATED AT THE TOWN OF WINDERMERE WITH PROPERTY LEGAL DESCRIPTION AS PLAT OF WINDERMERE G/36 LOTS 231 THROUGH 240 & A 40 BY 200 FT STRIP OF LAND LYING ELY OF LOTS 237 238 & 239

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

The Owner and Design-Builder agree as follows.

Init.

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User Notes: (1290066380)

1

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	COMPENSATION AND PROGRESS PAYMENTS
3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
6	CHANGES IN THE WORK
7	OWNER'S RESPONSIBILITIES
8	TIME
9	PAYMENT APPLICATIONS AND PROJECT COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	UNCOVERING AND CORRECTION OF WORK
12	COPYRIGHTS AND LICENSES
13	TERMINATION OR SUSPENSION
14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

A	DESIGN-BUILD AMENDMENT
B	INSURANCE AND BONDS
C	SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

PER RFQ 2022-01 DESIGN-BUILD SERVICES FOR HEALTHY WEST ORANGE PAVILION AND McCREE'S
RFQ RESPONSE DATED 02/28/22

Init.

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User Notes:

(1280066380)

§ 1.1.2 The Owner's design requirements for the Project and related documentation:
(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

PER RFQ 2022-01 DESIGN-BUILD SERVICES FOR HEALTHY WEST ORANGE PAVILION

§ 1.1.3 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

PER RFQ 2022-01 DESIGN-BUILD SERVICES FOR HEALTHY WEST ORANGE PAVILION

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:
(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

PER RFQ 2022-01 DESIGN-BUILD SERVICES FOR HEALTHY WEST ORANGE PAVILION

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:
(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

PER RFQ 2022-01 DESIGN-BUILD SERVICES FOR HEALTHY WEST ORANGE PAVILION

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

PER RFQ 2022-01 DESIGN-BUILD SERVICES FOR HEALTHY WEST ORANGE PAVILION; THE TENTATIVE PROJECT BUDGET IS \$800,00.00, WHICH INCLUDED THE ROTARY'S ALLOWANCES OF \$100,000.00 FOR KITCHEN EQUIPMENT AND AUDIO VISUAL EQUIPMENT. THEREFORE, THE INTENT FOR THE DESIGN/BUILD BUDGET FOR THE PROJECT IS \$700,000.00.

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

PER RFQ 2022-01 DESIGN-BUILD SERVICES FOR HEALTHY WEST ORANGE PAVILION

.2 Submission of Design-Builder Proposal:

PER RFQ 2022-01 DESIGN-BUILD SERVICES FOR HEALTHY WEST ORANGE PAVILION

.3 Phased completion dates:

PER RFQ 2022-01 DESIGN-BUILD SERVICES FOR HEALTHY WEST ORANGE PAVILION

.4 Substantial Completion date:

PER RFQ 2022-01 DESIGN-BUILD SERVICES FOR HEALTHY WEST ORANGE PAVILION

.5 Other milestone dates:

N/A

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:
(List name, legal status, address and other information.)

.1 Architect

HUNTONBRADY ARCHITECTS
333 S. GARLAND AVE., SUITE 1100
ORLANDO, FL 32801

.2 Consultants

RGD CONSULTING ENGINEERS
4901 VINELAND ROAD, SUITE 335
ORLANDO, FL 32811

BBM STRUCTURAL ENGINEERS, INC.
2300 MAITLAND CENTER PARKWAY, SUITE 201
MAITLAND, FL 32751

CATALYST DESIGN GROUP
941 WEST MORSE BLVD., SUITE 100
WINTER PARK, FL 32789

.3 Contractors

McCREE GENERAL CONTRACTORS, INC.
500 E. PRINCETON ST.
ORLANDO, FL 32803

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

N/A

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

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ANDY BROOKS
ZHA INCORPORATION
601 N. MAGNOLIA AVE., SUITE 100
ORLANDO, FL 32801

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

TO BE DETERMINED

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

N/A

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Richard T. McCree Jr.

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: (Specify)

MEDIATION HELD IN WINDERMERE, FL

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

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§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

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ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

TO BE DETERMINED

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

EXHIBIT A, 2022 McCREE PROFESSIONAL SERVICES/CONSTRUCTION SERVICES FEE SCHEDULE
AN AMENDMENT WILL BE ISSUED FOR FINAL CONSTRUCTION COSTS.

Individual or Position	Rate
N/A	

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder’s Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors incurred, plus an administrative fee of percent (%) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder’s invoice. Amounts unpaid TEN (10) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

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

**Two percent (2%) over the current Wall Street Journal Prime Rate
(www.wsj.com/market-data/bonds/moneyrates**

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of ONE year following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder’s performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

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ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

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§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The

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Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other

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entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance. The Design-Builder shall purchase and maintain insurance as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

N/A

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

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The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

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§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

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- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

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§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

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§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

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§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's

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lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

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§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

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ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be

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conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each

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Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

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§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If

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such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable,

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and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

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§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of

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this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven 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.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

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- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings 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. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 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.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

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§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance
- .4

(Paragraphs deleted)

Exhibit C - McCree 2022 Professional Services/Construction Services Fee Schedule

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

OWNER (Signature)

The Rotary Club of Windermere, Inc.

DESIGN-BUILDER (Signature)

McCree General Contractors

Int.

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| Karen Hairston, President
(Printed name and title)

Richard T. McCree, Jr., CEO
(Printed name and title)

Init.

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(1280066380)

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EXHIBIT "C"

2022

**PROFESSIONAL SERVICES / CONSTRUCTION SERVICES
FEE SCHEDULE**

The following rates will apply for the services provided by McCree.

<u>ITEM</u>	<u>RATE PER HOUR</u>
PRINCIPAL	\$ 295.00
PROFESSIONAL ENGINEER	\$ 190.00
REGISTERED ARCHITECT	\$ 190.00
PERMIT COORDINATOR	\$ 110.00
ARCH. JOB CAPTAIN	\$ 155.00
DRAFTING / CADD OPERATOR	\$ 110.00
ESTIMATOR	\$ 155.00
PROJECT MANAGER	\$ 185.00
PROJECT SUPERINTENDENT	\$ 155.00
PROJECT ENGINEER	\$ 125.00
SAFETY/QC INSPECTOR	\$ 110.00
PROJECT EXPEDITOR	\$ 95.00
CLERICAL	\$ 75.00
TRIALS	\$ 10,000.00 PER DAY

REIMBURSABLE EXPENSES

Reimbursable expenses such as Communications, Courier Service, Federal Express, UPS, United States Postal Service, CD/DVDs, CADD Plotting, In-House Blueprints and Outside Vendor Blueprint Reproduction at Cost multiplied by 1.10.

- Mileage is to be reimbursed at **\$0.56** (IRS Standard) per mile
- In-House prints are to be reimbursed at **\$2.00** per print
- PDF files are to be reimbursed at **\$2.50** per file
- CD/DVDs are to be reimbursed at **\$4.50** per CD/DVD

Airfare and other non-vehicular travel, accommodations, etc. will be arranged and paid for in advance by the Client. McCree will not be responsible for incurring these costs as a reimbursable expense.

Revised 12.02.21

500 E. PRINCETON STREET
ORLANDO, FL 32803

TEL: 407-898-4821
FAX: 407-896-8763
WWW.MCCREE.COM

https://mccreeinc-my.sharepoint.com/personal/tammy_willow_mccree_com/Documents/Desktop/2022 - Hourly Rate Schedule.docx

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

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