

\_\_\_\_\_ (Municipality)  
\_\_\_\_\_ (type of) BOARD  
THREE PARTY RETAINER AGREEMENT

This Agreement made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the “Agreement”) is made between the \_\_\_\_\_ (Municipality), a municipal corporation established under the laws of the State of New York, located in the County of \_\_\_\_\_ and State of New York, with a principal place of business at \_\_\_\_\_ (hereinafter “\_\_\_\_\_”), \_\_\_\_\_ with an address of \_\_\_\_\_ (hereinafter “the Applicant”), and, Delaware Engineering, D.P.C., with a principal place of business at 28 Madison Avenue Extension, Albany, New York (hereinafter “the Engineer”).

WHEREAS, the Applicant has appeared before the \_\_\_\_\_ Board (“\_\_\_\_\_ Board”) seeking action of the board under the \_\_\_\_\_’s Code (herein after “the Project”); and,

WHEREAS, the \_\_\_\_\_ Board has determined that the assistance of certain professional consultants is required for the Board to carry out its obligations under (check all that apply):

- Zoning Code
- Site Plan Review
- Subdivision Review
- The State Environmental Quality Review Act (SEQR)

WHEREAS, the purpose of this Agreement is to enable the Applicant, its successor or assigns to fund a retainer with the Engineer (hereinafter “the Retainer Funds”) to support the work of the Engineer on behalf of the Planning Board in its review and consideration of the Project; NOW THEREFORE, it is hereby agreed as follows:

1. Funding the Retainer. Within ten (10) days after this Agreement is fully executed, the Applicant shall provide Retainer Funds to Engineer in the total amount of \$\_\_\_\_\_ which will be held by the Engineer subject to the terms and conditions of this Agreement.

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2. Deposit of Retainer. Upon receipt of the full amount of the Retainer Funds by the Engineer, the Engineer shall deposit the full amount of the Retainer Funds in an account of the Engineer that allows for full accounting of the Retainer Funds (hereinafter the “Retainer Account”).

3. Purpose of Expenditures. As authorized by 6 NYCRR Part 617.13 and/or referenced local code, the \_\_\_\_\_ Board may make reasonable expenditures of the Retainer Account in order to engage the services of a professional engineering firm to assist with the review of the Project application materials. Delaware Engineering, DPC (the “Engineer”) has been engaged by the \_\_\_\_\_ Board for the purposes stated herein. Certain professional fees associated with the Project may have been incurred by the \_\_\_\_\_ (municipality) before the effective date of this Agreement which shall be paid for in accordance with this Agreement out of the Escrow Account. The costs paid shall be limited to work for the Project.

4. Notice and Payment of Expenditures. The Engineer shall provide detailed invoices to the Applicant with copy to the \_\_\_\_\_ (municipality) for the work to be funded by the Retainer Account. Invoices shall include a brief description of the work, hours associated with the work and hourly rates and expenses. Engineer shall utilize funds from the Retainer Account within 30 days of the date of the invoice to pay for the work.

5. Resolution of Disputes. Within ten (10) days of receipt of an invoice from the Engineer, the Applicant may submit to the \_\_\_\_\_ (municipality) a written statement setting forth reasons why the charges in the invoice may not be eligible for reimbursement from the Retainer Account. The \_\_\_\_\_ (municipality) will receive and review the written statement from the Applicant and provide a written response within ten (10) days setting forth reasoning as to the validity of the Applicant’s dispute. The project review process shall cease in the event of an invoice dispute until the dispute is resolved to the satisfaction of the \_\_\_\_\_ (municipality) and Applicant.

6. Minimum Balance. The minimum balance of the Retainer Account shall be \$ \_\_\_\_\_. In the event the Retainer Account is drawn down to its minimum balance, the Engineer shall provide the Applicant with copy to the \_\_\_\_\_ (municipality) with notice that additional funds must be deposited for the Retainer Account. The Engineer may require any amount be deposited up to the maximum initial balance of the Retainer Account.

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The review process shall cease until such time as the Retainer Account is replenished as provided in this Agreement.

7. Termination. Upon final approval or withdrawal of all applications submitted to the \_\_\_\_\_ (municipality) by the Applicant, the Retainer Funds remaining in the Retainer Account shall be promptly returned to the Applicant after all professional fees incurred by the \_\_\_\_\_ (municipality) for the purposes stated under paragraph 3 herein have been paid. Otherwise, the Retainer Account shall remain funded until a final decision(s) on the applications has been issued for the Project under the code or law referenced herein. Final decisions shall not be rendered, including Site Plan or Subdivision Approval or SEQR Findings in the case of a Positive Declaration, unless adequate funds are available in the Retainer Account to fund known or reasonably anticipated costs.

8. Disposition of Unexpended Retainer Funds. The Retainer Funds remaining in the Retainer Account upon Termination shall be promptly returned to the Applicant after all professional fees incurred by the \_\_\_\_\_ (municipality) for the purposes stated under paragraph 3 herein have been paid.

9. No Obligation or Relationship. This Agreement does not create any obligation or relationship between the Applicant and the Engineer. The sole purpose of this agreement is to provide a mechanism through which the Applicant funds the work of the Engineer directly related to the Applicant's Project on behalf of the \_\_\_\_\_ (municipality).

10. Choice of Law. In the event of dispute among the parties to this Agreement, the Laws of the State of New York shall govern.

11. Amendments. Any amendment or modification of this Agreement shall be in writing and acknowledged by the parties to this Agreement.

12. Notices. Any notices provided for under this Agreement shall be in writing delivered to the address set forth herein unless a change of address is provided in writing. Notice shall be deemed given within five days of mailing or delivery service receipt or on the day of transmission for electronic communications.

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IN WITNESS WHEREOF, the parties have set their hands hereto as of the date first written above.

_____, MUNICIPALITY	_____, APPLICANT
_____ (signature)	_____ (signature)
_____ (name & title)	_____ (name & title)
_____ (date)	_____ (date)

DELAWARE ENGINEERING, DPC

\_\_\_\_\_ (signature)  
\_\_\_\_\_ (name & title)  
\_\_\_\_\_ (date)