[Date]

VIA FACSIMILE #

and VIA

[Consultant Name and Address]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Re: Engineering Consultant Agreement among Fannie Mae, \_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Lender”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Consultant”)

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This letter shall constitute the entire agreement (“Agreement”) among Fannie Mae, the Lender and Consultant whereby Consultant will provide professional engineering consulting services for Fannie Mae and the Lender. The address and legal description of the property (“Property”) to be inspected is described on Exhibit A attached hereto and incorporated herein. It is acknowledged that the services to be performed by Consultant are, among other purposes, to assist Fannie Mae, the Lender and their respective real estate appraiser(s) in determining the “as is” value of the Property.

All services performed by Consultant pursuant to this Agreement shall be in accordance with the terms and conditions set forth below:

1. PNA Guidelines. Consultant shall perform a Physical Needs Assessment (“PNA”) for the Property in accordance with the guidelines and requirements attached as Attachment “1” hereto.

2. Services. Consultant shall use its best efforts in performing any services in accordance with this Agreement. Consultant shall first provide an electronic draft of the PNA to Fannie Mae and the Lender for Fannie Mae’s and the Lender’s review prior to finalizing the PNA report. The first draft of the PNA shall be due to Fannie Mae and the Lender on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Due Date”). Thereafter, if requested by Fannie Mae and the Lender, Consultant shall furnish either a final electronic report or a total of three (3) final written reports to Fannie Mae and the Lender within a reasonable time following delivery of the first draft of the PNA. Fannie Mae, the Lender and Consultant shall mutually agree, at the time of delivery of the first draft as to the date (the “Final Due Date”) by which the final electronic or written reports shall be delivered to Fannie Mae and the Lender.

3. Delays. If Consultant fails to deliver the draft report on or before the Due Date, or fails to deliver the final report by the Final Due Date, and Consultant fails to notify Fannie Mae and the Lender in a timely manner of delays (as outlined below), then Fannie Mae and the Lender may, in their sole discretion, assessa penalty in the aggregate amount of $\_\_\_\_\_\_\_\_ per calendar day (the “Daily Penalty”) for each day of delay, to be deducted from Consultant’s compensation, until Fannie Mae and the Lender have received the draft PNA or final PNA, as applicable. If Consultant believes there will be a delay in the timely delivery of a draft or final PNA, Consultant shall advise Fannie Mae and the Lender in writing, with an explanation of the reason for the delay. If Consultant advises Fannie Mae and the Lender of an expected delay in delivery of a draft PNA, Fannie Mae and the Lender may, in their sole discretion, either confirm with the Consultant that such delay is acceptable, or provide notice to Consultant the such delay is not acceptable and assess the Daily Penalty for each day of delay, to be deducted from Consultant’s compensation, until the draft or final PNA, as applicable, is delivered.

4. Compensation. Consultant shall receive a fee of $\_\_\_\_\_\_\_\_ as full and entire compensation for its consulting services relating to the furnishing of the draft and final PNA under this Agreement. Notwithstanding any termination of this Agreement, in the event that Additional Services are required, Consultant may charge an additional fee not to exceed $\_\_\_\_\_\_\_\_ per hour for any Additional Services requested by Fannie Mae and the Lender. Such Additional Services may include, but are not limited to, being deposed, testifying in court, or meeting with Fannie Mae and the Lender. The Consultant’s compensation for such Additional Services shall not exceed $\_\_\_\_\_\_\_\_\_\_\_. All invoices for Consultant’s compensation shall be addressed jointly to Fannie Mae and the Lender and delivered to Fannie Mae for payment.

5. Covenants. Consultant covenants that in performing its services hereunder it shall: (i) comply with all federal, state, and local statutes, codes, rules, regulations, and guidelines including, but not limited to, those related to zoning, environmental, fire, safety, and health matters; (ii) comply with all generally accepted engineering and scientific standards, protocols, and guidelines and the attached guidelines and requirements; (iii) perform its services in a professional and good workmanlike manner; and (iv) perform all services generally performed by engineering consultants in conducting the type of services required by this Agreement.

6. Licenses. Consultant represents that it and, where appropriate, each and every employee of Consultant, has the capability, experience, means, and appropriate licenses and permits required to perform the services contemplated by this Agreement. Consultant represents that Consultant is aware of, and in full compliance with, the laws of the state where the Property is located for the licensing and certification of engineering consultants. If requested, Consultant must provide evidence to Fannie Mae and the Lender to document that Consultant is licensed or certified as appropriate under applicable state law. This can be accomplished by noting the Consultant’s license or certification number on the report or by providing a copy of the appropriate license or certification to Fannie Mae and the Lender.

7. Skills; Employees. Consultant shall at all times utilize appropriately qualified and skilled personnel to perform the services required by this Agreement. Consultant’s services hereunder shall be rendered by its own employees unless Consultant receives express written permission from Fannie Mae and the Lender to retain non‑employees to perform specified services, in which case such non-employees shall be bound by and comply with the terms and conditions of this Agreement. Consultant shall take all appropriate steps to ensure that all work by its employees under this Agreement is undertaken in professional and good workmanlike manner and in accordance with established procedures. Consultant shall be responsible for the acts and omissions of its employees and others retained by Consultant who perform work in connection with this Agreement. Notwithstanding the above, Consultant may retain non-employee secretarial or clerical personnel, without obtaining permission from Fannie Mae and the Lender.

8. Liens. Consultant shall be responsible for the satisfaction or payment of any claims or liens by any provider of work, labor, material, or services engaged by Consultant, and Consultant shall hold harmless and indemnify Fannie Mae, the Lender, and their respective officers, directors, employees, agents, and representatives, against any such claim whatsoever, including all costs, expenses, and attorneys’ fees, whether suit be brought or not. Such liens shall be discharged by Consultant within 30 days after notice of filing thereof, by bonding, payment, or otherwise upon request, and, as a condition to Fannie Mae’s obligation to make any payments to Consultant, shall submit such lien waivers, affidavits, and proofs of payment as Fannie Mae and the Lender shall require.

9. Indemnification. Consultant shall hold harmless and indemnify Fannie Mae, the Lender, and their respective directors, officers, employees, agents, and representatives from and against all loss, liability, penalty, damage, expense, cost, including attorneys’ fees, of any kind, to person and property relating in any way to the performance of Consultant’s services under this Agreement, whether or not suit is brought. Consultant assumes all risk of property loss or damage and of personal injury or death which its officers, directors, employees, agents, and representatives may sustain in connection with this Agreement.

10. Termination. Fannie Mae, the Lender and Consultant shall have the right to terminate this Agreement at any time upon one business day written notice to the other parties. In the event of termination by Fannie Mae or the Lender, Fannie Mae shall be liable to Consultant for fees for services rendered to the effective date of such termination. Notwithstanding any termination of this Agreement, Consultant’s obligations under Paragraphs 11 through 14 below shall survive and remain in full force and effect.

11. Limited Access to Information / Joint Communications. Consultant shall use reasonable precautions so that access to information relating to its services for Fannie Mae and the Lender is limited to those persons within its employ for whom it is necessary and appropriate for purposes of performing the services required under this Agreement. All communications with Consultant will be held jointly with Fannie Mae and Lender. The contact information for Fannie Mae, Lender and Consultant are set forth following the respective signatures on this Agreement.

12. Confidential Nature. All communications pursuant to this Agreement, whether oral or written, between Consultant and/or Fannie Mae, the Lender and/or their respective counsel shall be regarded as confidential. Unless Consultant receives express written permission from Fannie Mae and the Lender or is compelled to disclose by administrative or judicial process, Consultant shall not disclose: (i) the nature or content of any communications, information, documents, studies, data, or reports in any way relating to the Property or to the services performed hereunder, including without limitation, those set forth in Paragraph 13 hereof; (ii) the terms of this Agreement; and (iii) the contents of any assessment performed hereunder. The Consultant understands and agrees that all documents and information in connection with this Agreement and the Property are to be kept STRICTLY CONFIDENTIAL.

13. Work Product. All work papers, test results, records, reports, findings, recommendations, data, memoranda, or other documents prepared or received by Consultant pursuant to this Agreement, regardless of their nature and source, are the property of Fannie Mae and the Lender, shall be considered the work product of Fannie Mae and the Lender, and shall be held by Consultant solely for its convenience and subject to Fannie Mae’s and the Lender’s unqualified right to possession, custody, and control. Upon Fannie Mae’s and the Lender’s request, Consultant shall immediately provide all originals and all copies of such work papers, test results, records, reports, findings, recommendations, data, memoranda, or documents to Fannie Mae and the Lender.

Notwithstanding the foregoing, Consultant may maintain a single copy of all such work product, including any summaries, analyses or extracts thereof provided in connection with the services, for the purposes of any compliance guidelines of a licensing or regulatory entity; provided, that (i) all such work product remains the property and work product of Fannie Mae and the Lender and may not be used by Consultant for any purpose whatsoever without the prior written consent of Fannie Mae and the Lender, and (ii) all persons with access to such work product are fully informed of, and agree in writing to observe, the non-disclosure and non-use obligations contained in this Agreement.

14. Unauthorized Release. Consultant shall immediately notify Fannie Mae and the Lender of the occurrence of any of the following events: (i) a request by any person to examine, inspect, or copy any work papers, test results, records, findings, recommendations, data, memoranda, or other documents prepared by Consultant or submitted to Consultant relating in any way to its role as Consultant under this Agreement; and (ii) the exhibition or surrender of any such documents in a manner not expressly authorized by Fannie Mae and the Lender.

15. Insurance Requirements. By acceptance of the terms of this Agreement, Consultant acknowledges it has in place the following insurance coverages in the following amounts and from providers acceptable to Fannie Mae and the Lender:

(a) Comprehensive general liability insurance – per occurrence $1,000,000; umbrella liability $1,000,000;

(b) Automobile liability insurance - $1,000,000;

(c) Professional errors and omissions liability insurance - $1,000,000;

(d) Fidelity bond/crime insurance – not required; and

(e) Worker’s compensation insurance complying with the laws of the state where the work is performed.

Evidence of the above coverages will be made available to Fannie Mae and the Lender by Consultant upon request.

16. Independent Contractor. In the performance of its services under this Agreement, Consultant shall act solely as an independent contractor, and nothing herein contained or implied shall at any time be so construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture partner as between Fannie Mae, the Lender and Consultant.

17. Entire Agreement. This Agreement constitutes the full and complete Agreement of the parties. This Agreement may only be amended in a writing signed by all parties.

18. Execution; Authority. Consultant represents that the person signing below has the authority to do so. Execution of this Agreement by the Consultant’s representative, whose signature appears below, shall constitute Consultant’s acknowledgment of its receipt, understanding, and acceptance of this Agreement. This Agreement shall be effective upon such execution. This Agreement is executed in duplicate originals, and Consultant agrees to return a duplicate original to Fannie Mae and the Lender immediately after Consultant has executed this Agreement.

19. No Assignment. Consultant shall not assign, transfer, or subcontract any of its obligations under this Agreement to any party without the express written consent of Fannie Mae and the Lender.

20. Conflict. In the event of conflict between the terms of this Agreement, including without limitation, Paragraph 9 hereof, and the terms of the report prepared pursuant to the terms hereof, this Agreement shall prevail.

21. Captions. The captions used herein are for convenience of reference only and do not define or limit the scope, content, or meaning of the provisions contained herein.

Sincerely,

FANNIE MAE

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title: [Title, Sr. Asset Manager]

Fannie Mae Address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[LENDER NAME]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lender Address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AGREED AND ACCEPTED BY CONSULTANT:

[CONSULTANT NAME]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Consultant Address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

Property Name and Address:

Legal Description:

**ATTACHMENT “1”**

**ENGINEERING CONSULTING SERVICES**

For engineering consulting services, Consultant shall perform a Physical Needs Assessment ("PNA") for the Property and the following requirements shall apply:

#### Purpose of the PNA

The PNA is intended to provide Fannie Mae and the Lender with detailed information regarding the following:

* a thorough assessment of the current condition of the Property;
* a history of the physical asset performance;
* the identification of the Property’s short-term repair needs; and
* a general estimate of expected replacement and major maintenance needs over the remaining term of the Mortgage Loan.

#### Documentation

The PNA may be documented on any form that is appropriate for the size and structure of the Property and addresses the following key areas:

* Introduction – a high level description of the Property and any key issues that must be reviewed immediately.
* History – a discussion of major physical asset issues that impacted the Property financial performance within the last three (3) years or that could impact future performance.
* Schedule of Replacements – a detailed schedule of expected replacements and major maintenance items that are anticipated to be required over the remaining Mortgage Loan term plus two (2) years [if the Mortgage Loan term exceeds ten (10) years, then the schedule of expected replacements and major maintenance needs must be twelve (12) years], together with the evaluator's total estimated cost, adjusted for inflation, to complete such replacements and major maintenance items.
* Immediate Repairs – a listing of any repair issues that should be addressed in order to ensure longevity and proper performance of the Property and addresses all life safety issues. It must include:
  + - * an itemized table (typically referred to as an Immediate Repair Table) that represents the cost to correct any repair or deferred maintenance requiring:

correction within the next two (2) years, and

any life safety issue; and

* + - * a detailed discussion section for any repair item that, due to cost to complete (typically greater than $10,000) or complexity, warrants such detailed discussion in the format below:

| **System Description** | **An abbreviated description of the affected system** |
| --- | --- |
| **Condition** | A thorough description of the observed condition(s), including extent of the condition, specific locations or examples of locations of the condition, and an indication of whether or not the issue is considered life safety |
|  |  |
| **Cause** | A description of the potential cause(s) of the observed condition |
|  |  |
| **Scope/Repair** | A clear direction of the scope of appropriate repairs |
|  |  |
| **Cost** | A detailed cost estimate to complete the recommended scope of work  Special Notes:  Water Infiltration and Moisture Management: Particular attention must be paid to any issue(s) that could cause building water infiltration. All items necessary to prevent the water infiltration must be addressed and if substantial or pervasive moisture infiltration issues are found, a formal plan for managing moisture infiltration may be appropriate.  Additional Assessment: If the cause of an observed issue and/or appropriate repair is unknown and requires further assessment not typically covered in a PNA, the evaluator is responsible for recommending further assessment including qualifications of the specialized evaluator, potential scope for this assessment, and anticipated cost of such additional evaluation. The report must also clearly state if the further assessment is not intended as an estimate of final repairs, but only for assessment if such is the case. |
|  |  |
| **Property Description** | A basic description of the major systems at the Property, unique or unusual features, an assessment of overall condition, and any necessary references to the immediate repairs section of the report. Typically, the report will address housekeeping, site issues, parking areas, building exteriors, roof, foundations, HVAC, plumbing, electrical, fire and life safety, dwelling units and common areas.  Special Note:  If there are known problematic construction materials or conditions identified (such as aluminum wiring, polybutylene piping, galvanized piping, exterior insulation and finish systems (EIFS), fire-retardant treated plywood, inadequate electric service or any other relevant matter), then the description must include:   * Evaluation of the system’s material condition and quality of construction; * Historical and current condition/performance; and * Evaluation of the long-term financial impact of the issue. |
|  |  |
| **Photographs** | A sufficient number of photographs is required. Photographs of deferred maintenance must be representative of the extent and complexity of the damage. |