



**NOTICE OF A VINEYARD REDEVELOPMENT
AGENCY BOARD MEETING
August 11, 2021 – 6:00 PM**

Public Notice is hereby given that the Vineyard Redevelopment Agency Board will hold a meeting on Wednesday, August 11, 2021, starting at 6:00 PM or as soon thereafter as possible, in the City Council Chambers at 125 South Main Street, Vineyard, Utah. This meeting can also be viewed on our [live stream page](#).

AGENDA

1. CALL TO ORDER/INVOCATION/INSPIRATIONAL THOUGHT/PLEDGE OF ALLEGIANCE – *to be announced*

2. CONSENT AGENDA

2.1 Approval of the July 7, 2021 RDA Meeting Minutes

3. BUSINESS ITEMS

3.1 DISCUSSION AND ACTION – Amendments to the Waterfront Planning and Design Services Consultant Contract

Community Development Director Morgan Brim will present amendments to the Waterfront Planning and Design Services Consultant Contract. The RDA Board will take appropriate action.

4. ADJOURNMENT

RDA meetings are scheduled as necessary.

The Public is invited to participate in all Vineyard Redevelopment Agency meetings. In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify the Deputy Recorder at least 24 hours before the meeting by calling (801) 226-1929.

I the undersigned duly appointed Deputy Recorder for Vineyard, Utah, hereby certify that the foregoing notice and agenda was emailed to the Salt Lake Tribune, posted at the Vineyard City offices, the Vineyard City website, the Utah Public Notice website, delivered electronically to city staff and to each member of the Governing Body.

AGENDA NOTICING COMPLETED ON: August 10, 2021

CERTIFIED (NOTICED) BY: /s/Pamela Spencer

PAMELA SPENCER, CITY RECORDER



**MINUTES OF A VINEYARD REDEVELOPMENT
AGENCY BOARD MEETING
July 7, 2021 – 5:02 PM**

Present

Chair Julie Fullmer
Boardmember Tyce Flake
Boardmember Chris Judd
Boardmember Cristy Welsh

Absent

Boardmember John Earnest

Staff Present: City Manager Jacob McHargue, City Engineer Naseem Ghandour, Community Development Director Morgan Brim, Deputy Recorder Kelly Kloepper

Others speaking: David Robertson with Lewis Young Robertson & Burningham

1. CALL TO ORDER/INVOCATION/INSPIRATIONAL THOUGHT/PLEDGE OF ALLEGIANCE

Chair Fullmer opened the meeting at 5:02 PM. Boardmember Judd offered the invocation.

2. CONSENT AGENDA

2.1 [Approval of the June 23, RDA Meeting Minutes](#)

Chair Fullmer called for a motion.

 Motion: BOARDMEMBER FLAKE MOVED TO APPROVE CONSENT ITEM 2.1. BOARDMEMBER JUDD SECONDED THE MOTION. CHAIR FULLMER, BOARDMEMBERS FLAKE, JUDD, AND WELSH VOTED AYE. BOARDMEMBER EARNEST WAS ABSENT. THE MOTION CARRIED WITH ONE ABSENT.

3. BUSINESS ITEMS

3.1 DISCUSSION AND ACTION – [Waters Edge Subordination Agreement](#)

City Manager Jacob McHargue will present a subordination agreement for the 2021 bonds. The RDA Board will take appropriate action.

Mr. McHargue stated that in 2014 the RDA entered into a reimbursement agreement with Waters Edge and that they had installed most of the infrastructure for their development. He explained the need for the subordination agreement and how it worked.

David Robertson with Lewis Young, Robertson and Burningham commented that this put the city in a good position to move forward and to continue to improve the financial position of the city.

Mr. McHargue added that the RDA Board would sign the agreement today and then it would go on the consent agenda for City Council approval and final signature.

Chair Fullmer called for a motion.

 **Motion:** BOARDMEMBER JUDD MOVED TO APPROVE THE SUBORDINATION AGREEMENT FOR THE 2021 BONDS AS PRESENTED. BOARDMEMBER FLAKE SECONDED THE MOTION. CHAIR FULLMER, BOARDMEMBERS FLAKE, JUDD, AND WELSH VOTED AYE. BOARDMEMBER EARNEST WAS ABSENT. THE MOTION CARRIED WITH ONE ABSENT.

4. ADJOURNMENT

Chair Fullmer called for a motion.

 **Motion:** BOARDMEMBER JUDD MOVED TO ADJOURN THE MEETING AT 5:07 PM. BOARDMEMBER WELSH SECONDED THE MOTION. CHAIR FULLMER, BOARDMEMBERS FLAKE, JUDD, AND WELSH VOTED AYE. BOARDMEMBER EARNEST WAS ABSENT. THE MOTION CARRIED WITH ONE ABSENT.

MINUTES APPROVED ON: _____

CERTIFIED CORRECT BY: /s/Kelly Kloepfer
KELLY KLOEPFER, DEPUTY RECORDER



VINEYARD RDA STAFF REPORT

Meeting Date: August 10, 2021

Agenda Item: 3.1 Waterfront Planning and Design Services Consultant

Department: Community Development

Presenter: Morgan Brim, Community Development Director

Background/Discussion:

The city issued an RFP in May, 2021 for a consultant to complete a comprehensive design and plan for Vineyard's 3.4-mile waterfront. During the planning process the consultant will work with the project steering committee to determine high priority projects to be funded through the \$3,000,000 TRCC grant afforded the city earlier this year. The objective of the comprehensive plan of the entire waterfront will be to create a unique vision which represents the community's desires of the waterfront, including Walkara Way to the south and the Vineyard Downtown positioned on the north. This plan will guide the city in applying for grants and in soliciting donations to implement waterfront projects.

The RDA Board approved authorized the mayor to sign a contract with FFKR + EDSA on June 23, 2021. Following the meeting, staff felt it was important to include the surveying of the waterfront in phase one as this will be critical to creating an accurate design that can be implemented proposed projects. Contract items for a virtual reality engagement to showcase the project to the public and receive comment were added. Reimbursable costs for travel have been added and could amount to \$11,000. The new contract amounts to \$284,671 with an additional \$11,000 for travel expenses.

Fiscal Impact:

The total concept plan for the waterfront is \$284,671 with an additional \$11,000 for travel expenses. Creating construction documents for high-priority projects will be determined once high-priority projects have been determined. The consultant's response to the RFP is attached.

Recommendation: Staff recommends the RDA Board authorize Chair Fullmer to sign a contract for planning services with FFKR and EDSA.

Sample Motion: I move to approve Chair Fullmer to sign a contract with FFKR and EDSA for the Vineyard Waterfront planning and design services as presented.

Attachments: FFKR and EDSA RFP proposal



August 9, 2021

Mr. Morgan Brim

Community Development Director, Vineyard City
Vineyard, Utah 84059

Email: morganb@vineyardutah.org

Re: Vineyard City Waterfront Design | Agreement & General Terms and Conditions

Dear Mr. Brim,

FFKR x EDSA is pleased to offer you the following proposal and agreement for Design Services to create the Conceptual Design of the Vineyard City Waterfront. We welcome the opportunity to collaborate with Vineyard City. The estimated fee and proposed scope of work are based on our understanding of the project.

PROJECT UNDERSTANDING

The Vineyard City Waterfront is separated into two planning areas: Waterfront North and Waterfront South. The scope of services will address both areas (See Attachment A: Scope Diagram). Our understanding of the needs for each area are as follows:

Waterfront North Projects

- Reuse of the former Geneva Mill detention pond
- Economic development recommendations for future board walk area and Downtown land abutting waterfront
- Transition considerations from promenade parks into the waterfront
- Concept Design of waterfront park and Vineyard Beach/expansion areas
- Incorporation of lake front elements shown in the Vineyard Downtown Special Use District and Lake Front Improvement grant application.

Waterfront South Projects

- Improvements to the Walkara Way Beach and associated amenities
- Trailhead and park area west of Clegg Farm
- Improvements to the existing Center Street Trailhead
- Restoration of beach areas and added waterfront access points
- Revisioning of an existing stormwater outfall on the northside of Sunset Beach Park to establish a water feature attraction that is safe and usable.

SCOPE OF WORK

The following section describes in more detail the design process and deliverables to complete the Concept Design stage of the planning and design work.

Stage 1

Concept Design

Future Stages:

<i>Stage 2</i>	<i>Schematic Design</i>
<i>Stage 3</i>	<i>Design Development</i>
<i>Stage 4</i>	<i>Construction Documents</i>
<i>Stage 5</i>	<i>Construction Administration</i>

FFKR x EDSA, along with our consultant team, will provide design services as detailed below including:

Stage 1: Concept Design

During Concept Design, FFKR x EDSA will work with the City and Design Team to create and develop the concept designs for the Waterfront North and Waterfront South projects. This stage will include development of the design aesthetic for each of the project components and open spaces, to establish a cohesive and implementable concept design that will be further developed in each subsequent phase.

Kick-Off Workshop and Site Visit

To initiate the project, the FFKR x EDSA team will participate in a kick-off workshop and site visit to meet with Vineyard City representatives and stakeholders to better understand the site and the parameters to develop the overall project. Following the kick-off meeting, FFKR x EDSA will establish the initial overall design direction for the project through sketch studies and options that consider the features and physical constraints of the project site.

Concept Design Alternatives

In the initial steps of Concept Design, FFKR x EDSA will develop up to two (2) design alternatives showing alternative approaches to the design aesthetic for the overall project areas. These will be in enough depth to evaluate and select a single direction or combination of elements for further development into a complete Concept Design.

Waterfront Specific Design Element and Engineering

The waterfront specific design elements and engineering will be led by Moffatt & Nichol (MN) and will focus on assembling the relevant environmental, climate, and physical data required for the design work. The results will be incorporated into the Concept Plan documents developed in subsequent tasks. MN will work with the City and design team to develop waterfronts concepts (~10% design) that could include elements such as:

- Beaches
- Wetlands
- Marinas
- Piers
- Overlooks
- Floating Structures
- Dredging/Filling/Land Creation
- Channels
- Bridges

Waterfront Grants Research

The FFKR x EDSA team, led by Moffat & Nichol, will assist the City in researching available waterfront-related grants and identify potential opportunities to help bolster the available budget in order to create a bigger splash during the initial phase of projects. This can help create excitement for future phases and generate revenue more quickly to sustain momentum.

Cost Estimation

The FFKR x EDSA team will evaluate quantities and develop concept-level cost estimates for the waterfront elements. These estimates will be provided in a parallel workflow to the final Concept Design effort.

Economic Development Analysis

To gain an informed understanding of the economic development potential of the waterfront concept design, the FFKR x EDSA team, led by Leland Consulting Group, will prepare a memo/report highlighting an assessment of the waterfront nodes within the Waterfront North project area adjacent to Downtown. Identification of model waterfronts, from a real estate perspective, will provide a framework for assessing recommended programs and phasing, as well as the potential interaction between private development and public open spaces.

Community Engagement

The FFKR x EDSA team will engage with Vineyard City, the Advisory Committee, key stakeholders, and the general public to gain a robust understanding of the ideas and issues related to the Vineyard Waterfront project areas in order to develop a Concept Design that is feasible for moving forward into future phases of design documentation and implementation.

The FFKR x EDSA team will work with Vineyard City to develop project-specific outreach to engage the community in a creative way and help them learn more about the waterfront areas and their future potential. We anticipate using a mixture of in-person and online methods and will use the city's communication platforms to help advertise events and generate interest in participation.

Baseline Deliverables

1. Draft Concept Design
 - (2) Concept Design alternatives where one will be selected as the preferred Concept Design direction
 - Design and Function Diagrams to illustrate key design principles
 - Design Character and Precedent Image Studies
2. Revised Concept Design
 - Preferred Overall Illustrative Conceptual Site Plan
 - Site Sections of key elements/relationships
 - Design and Function Diagrams to illustrate key design principles
 - Design Character and Precedent Image Studies
 - Landscape diagram and landscape materials palette
 - Hardscape diagram and hardscape materials palette
 - 3D study models of key elements/views
 - Area summary in support of Cost Managers

3. Program and Conceptual Economic Analysis
 - Updated Market Study / Analysis
 - Benchmark analysis of similar project(s)
 - Estimate project costs based upon cost per sf
4. Waterfront Surveying & Bathymetry – extent to be determined in Phase One and Two A
 - Topography – one-foot contours on land and into lake
 - Confirm Compromise Mark/Ordinary High-Water Mark (Sovereign Lands boundary)
 - Confirm Historic lake levels – low and high
 - Ice levels
 - Boundaries/Property Lines
5. Waterfront Engineering
 - CADD figures and presentation materials for workshops, meetings, and presentations
 - Grant strategy workshop
 - Evaluate quantities and develop concept-level cost estimates for the waterfront elements
6. Final Concept Design
 - Commissioning of up to three (3) eye-level/CGI renderings
 - Revised package to address any minor comments from the City presentation
7. Facilitation and Participation in three (3) meetings/workshops in Vineyard City during the Concept Design Phase
 - Kick off Meeting / Visioning Workshop [Vineyard City]
 - Draft Concept Community Engagement Session and Presentation [Vineyard City]
 - Revised Concept Presentation
8. Facilitation and Participation in up to two (2) Virtual Community Engagement Sessions
9. Facilitation and Participation in up to three (3) Pop-up/Mobile Outreach Engagement Sessions
10. Development of Virtual Reality Engagement Platform using renderings for up to three (3) key areas of the Preferred Concept Design. Up to three (3) sets of VR goggles for use at Pop-up/Mobile Outreach Engagement Session(s).

During the delivery of the design products and engagement with the City and residents, there are opportunities to provide deliverables beyond the standard quantity and detail for Concept Design. We have outlined Deliverables as Baseline and Enhanced should the City feel that these additional deliverables would be worthwhile in their efforts for the Waterfront Concept Design process.

Enhanced Deliverables

1. Draft Concept Design
 - (1) additional Concept alternative
 - 3D study models of key elements / views
2. Final Concept Design
 - Concept Grading Plans
 - 3D fly-through animation
3. Participation in additional meetings in Vineyard City (up to two)

Baseline Meetings

- Kick off Meeting / Workshop [in Vineyard City]
- Design Coordination web-based meetings as required
- Virtual Community Engagement Sessions (up to two)
- Draft Concept Presentation and Community Engagement Session [in Vineyard City]
- Revised Concept Presentation [in Vineyard City]

To conclude the Concept Design stage, FFKR x EDSA will present the Concept Design to Vineyard City authorities. Comments from the design presentation will be addressed and resubmitted, ready for the moving forward to the Schematic Design stage. At the conclusion of the Concept Design phase, the City and the Design Team will collaborate to identify the priority projects to continue into Construction Documents. At that point, our team will be able to provide our proposal and fee estimate to continue through the remaining design stages.

SCHEDULING

- a) Upon execution of this agreement, our team will work with you to finalize a project schedule and / or major milestones dates related to the project deliverables. The fee is based upon the assumption that each phase will commence promptly after the approval of the prior phase. In the event of delay between phases, whether due to a failure to receive the city's approvals, governmental approvals or otherwise, the fee may be modified accordingly to account for such delay.
- b) Our team is prepared to commence preparation immediately upon approval of this proposal.
- c) Based on our current understanding of the project, we estimate the following schedule of FFKR x EDSA's involvement within each project phase (excluding review and approval time):

Concept Design Phases	Estimated Schedule
1. Concept Design	
i. Phase One: Project Kick-Off	2 to 4 weeks
ii. Phase Two: Analysis, Visioning, & Engagement	8 to 10 weeks
iii. Phase Three: Preferred Concept Refinement	4 to 6 weeks
iv. Final Concept Design	2 weeks
Total Estimated Schedule	±14 to 20 weeks

- d) All timeframes are subject to the Client's and Consultant's cooperation in accordance with the provisions mentioned above.

FEE ESTIMATE

The above-described design work is estimated to total the following fee, broken down by the Concept Design phases as follows:

Baseline Deliverables (estimated costs)

Concept Design Stage	Fee
Phase One: Project Kick-Off/Analysis/Management	\$65,471
Phase Two A: Analysis, Visioning, & Engagement	\$122,202
Phase Two B: Baseline Surveying; Bathymetry*	\$22,000
*fee highly dependent on scope details to be refined during Phase One and Two A	
Phase Three A: Preferred Concept Refinement	\$40,828
Phase Three B: Virtual Reality Engagement Platform for Preferred Concept Refinement (3 wireless headsets; up to three key areas to visualize)	\$10,750
Up to Three (3) CGI/eye-level Renderings for key areas of Preferred Concept	\$ 10,500
Final Concept Design	\$12,920
TOTAL	\$284,671
*Reimbursable Expenses (see below for details)	

Enhanced Deliverables (estimated cost)

Concept Design Stage	Fee
Additional Draft Concept	\$ 12,000
Modeling at Draft Concept Stage	\$ 12,000
3D Flythrough Animation/Multimedia Presentation (per: 30 seconds) – generally used for project marketing/advertising purposes	\$ 10,000
Additional Community Engagement Sessions (each)	\$ 5,000

Note: The above referenced fees are net of any and all taxes.

Reimbursable Expenses:

- a) Travel and lodging expenses in connection with the Project are in addition to the base fee estimate and not included in this proposal.

Estimated expenses for travel and lodging are as follows using a figure of \$1,000 per trip, per person for one, full day on site. The Design Team will only bill for reimbursement of actual costs incurred associated to travel:

Concept Design Stage	EDSA	MN	Leland	Estimated Expenses (per Trip)
Phase One: Kick-off Workshop/Site Visit	2	1	1	\$4000
Phase Two: Visioning & Engagement	3	1		\$4000
Phase Three: Preferred Concept Refinement	2	1		\$3000
				\$11,000

- b) Costs of CGI renderings, photographs and models beyond baseline deliverables
- c) Expense of Professional Liability Insurance dedicated exclusively to the Project, or additional insurance coverage requested by the client.
- d) Costs of printing, reproduction, postage and delivery of drawings required for submission or coordination requested by client or consultants.
- e) Services of professional consultants, including engineers or specialists beyond those outlined in our scope. Any costs for necessary external services to be approved by the client prior to moving forward.
- f) All fees associated with permits and/or plans processors (expeditors).
- g) Other Project-related expenditures approved in advance by the client.
- h) All reimbursable expenses will be billed to the client at cost.

Project Requirements

Vineyard City will be responsible to provide the FFKR x EDSA design team with the required information during the detailed design process. The Design Team will rely on information and input from the City to include the following:

- a) Certified property survey(s) including boundary, topography, aerial photographs and existing conditions, and features. The Design Team will rely on the accuracy of this information.
- b) Site conditions including public utilities, geographic conditions, rights of way, restrictions, easements, deed restrictions, environmental impact reports, etc.
- c) Survey and site conditions data will be provided to the Design Team in electronic file format compatible with AutoCAD.
- d) The Client will provide the Design Team with all zoning and planning requirements and will be responsible for securing planning, zoning, and environmental impact report approvals from all relevant government agencies.
- e) The Client will provide all necessary development program and budget information for the project.

Approval of Services/ Changes to Approved Services

- a) The Design Team will only proceed with a phase or design package after receiving the Client's written approval of the services and deliverables provided in the previous.
- b) Revisions to drawings or other documents will be considered Additional Services when made necessary due to Client-requested changes to previously approved drawings or due to Client changes to previously established budget and/or Program.
- c) If the Design Team is requested to provide additional submissions outbound of those listed in the provided Scope of Services, the Design Team will need to receive the request in writing. Changes to that portion of the Scope of Services will be billed at an hourly rate.
- d) Quantity and method of deliverables will be the decision of the Design Team provided they are sufficient to describe the design intent.
- e) Client's decisions, approvals, reviews, and responses shall be communicated to the Design Team in a timely manner so as not to delay the performance of the Design Services.
- f) Payments are due upon Submission of the specific task being submitted as outlined above and are not contingent upon Government or Client approvals.
- g) In an effort to meet the project timeframe, the Design Team will require written comments from the Client in advance of proceeding into the next stage of work. Comments must be coordinated and representative of all necessary entities of the Client team and will provide a clear direction for the next steps of design.

- h) The Design Team will revise the design packages if errors are caused by the fault of the Design Team. The efforts associated with these changes will be at no charge to the client. However, if through the fault of others or other program changes, the Design Team has to make changes to the design packages, then these changes would be deemed additional services and the Design Team will seek authorization from the Client, and an appropriate fee before completing the work.

Invoicing/Payment Schedule:

- a) Invoices for work complete will be submitted monthly by FFKR.
- b) Payments are due and payable 30 days from the date of the invoice. Invoiced amounts unpaid 45 days after the invoice date shall be deemed overdue and may result in a suspension of services.
- c) The Design Team will require payment/ payment confirmation in advance of proceeding into the next stage of work.

EXCLUSIONS

During the Concept Design phase FFKR x EDSA will endeavor to provide all necessary information needed to clearly describe the project vision and create a lasting concept that will set the overall project up for long term success. Understanding the importance that the concept design phase plays in the success of the overall project, we don't want to prematurely exclude any work or deliverables that the Design Team or City feels will help achieve the vision. We are happy to provide Vineyard City with a fee estimate for any listed exclusions deemed to be helpful and/or necessary to the Concept Design stage, or additional content beyond that which is described in this proposal.

- a) CAD drawings not typically provided until the Schematic Design phase.
- b) Architecture and design of any buildings or structures
- c) Interior hardscape design & furniture selection (other than domed pool area).
- d) Roofing and waterproofing details.
- e) Engineering related to Swimming pools and water features structural and MEP systems.
- f) Façade and landscape lighting.
- g) Civil Engineering (Final Grading, subsurface drainage and utilities).
- h) MEP Engineering.
- i) Structural Engineering.
- j) Survey plans and surveying services beyond baseline deliverables
- k) Construction and implementation of proposed improvements.
- l) Any revisions to the project scope resulting from changes initiated by client, architect or consultants and that are in excess of the included revisions described in each phase above.
- m) Probable cost of construction or quantity surveying.
- n) Marketing-oriented 3D modeling and animations or fly-throughs.
- o) As-Built Drawings.
- p) Local partners or sponsors.
- q) Commissioning of water features, lighting and irrigation systems.
- r) Permitting and approvals. These will be the responsibility of the Owner and/or Architect of Record.
- s) Preparation and stamping of shop drawings shall be by the contractor's engineer.
- t) Other services not specifically enumerated and identified herein as included in the scope of services.
- u) CGI renderings
- v) Building Information Modeling (BIM) - The primary documentation will remain in AutoCAD and related software.

APPROVAL

If you find the proposal and agreement, along with the attached General Terms and Conditions (Attachment B), to be acceptable, please sign the agreement, initial the General Terms and Conditions, and return to FFKR. Please feel free to reach out if you have any questions.

The FFKR x EDSA Design Team would like to thank you for the opportunity to work with Vineyard City on such an exciting project! Once the agreement is fully executed, we will schedule the design team for the Project Kick-off/Site Visit immediately.

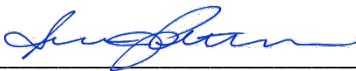
Best Regards,



8/9/21

Dave Giles
Principal in Charge, FFKR

Date



8/9/21

Susan Petheram
Senior Planner | Senior Associate, FFKR

Date

Vineyard City Representative - Name/Title (printed/typed): _____

Vineyard City Signature:

Approval Date

Attachment A: Scope Diagram



Attachment B: General Terms and Conditions

GENERAL TERMS AND CONDITIONS

A. Introduction:

These General Terms and Conditions are part of the attached Agreement and are hereby incorporated by reference. If FFKR x EDSA does not receive a response to the Agreement within ninety (90) days, fees and conditions for design services may be subject to change. Your acceptance of this Agreement constitutes your acceptance of the foregoing General Terms and Conditions.

B. Standard of Care:

The standard of care for all professional services performed or furnished by FFKR x EDSA under this Agreement will be of the skill and care used by planners, designers, and landscape architects practicing under similar circumstances, at the same time, and in the same locality.

C. Requirements of Client Furnished Information:

Client shall provide FFKR x EDSA with a development program and site information regarding the requirements and objectives for the Project. Additionally, FFKR x EDSA shall rely upon the accuracy and completeness of any information, reports, and/or site surveys/base information supplied by Client or others authorized by Client.

Client warrants that it is the copyright owner or has permission from the copyright owner to use and/or transmit the design documents or any other information ("Design Documents") to Consultant for its use on the Project.

Client hereby releases the Consultant and any of Consultant's sub-consultant(s) from all claims and causes of action arising from Consultant's use of the Design Documents. Client, to the extent permitted by law, further agrees to indemnify and hold harmless Consultant and any of its sub-consultants 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 Consultant's use of the Design Documents.

Upon notice by FFKR x EDSA, Client shall defend FFKR x EDSA with counsel chosen by FFKR x EDSA. The parties agree that this duty to defend is separate and distinct from any indemnity obligation, and the duty to defend shall apply regardless of whether the Client is obligated to indemnify FFKR x EDSA.

Client's obligation to indemnify FFKR x EDSA against any attorneys' fees or other costs or expenses incurred by FFKR x EDSA in connection with the defense of any claims or causes of action within the scope of this Paragraph shall be construed as a separate item of indemnification which shall be an absolute obligation of Client even if such claims or causes of action are invalid or groundless.

D. Responsibilities During ConstructionPhase:

If FFKR x EDSA's services under this Agreement do not include construction administration related services for the Project, then Client assumes all responsibility for the application and interpretation of FFKR x EDSA's drawings, specifications, and other instruments of service; the observation and evaluation of Contractor's work and the performance of any other necessary construction phase landscape architectural or professional services; and Client waives any claims against FFKR x EDSA that may be connected in any way thereto.

E. Out-of-Pocket Expenditures:

Unless otherwise stated in the attached Agreement, Client shall pay all out-of-pocket expenses, in addition to professional fees. Out-of-pocket expenses are defined as actual expenditures made by FFKR x EDSA, their employees, and/or sub-consultants in the interest of the Project and include, but are not limited, to the following expenses:

1. Air travel, including departure taxes and related airline/agency fees ((Business Class on flights of three (3) hours or greater);
2. Hotel accommodations;
3. Meals;
4. Ground transportation (i.e., rental cars and taxis);
5. Postage, telephone, express mail, and courier services;
6. Photocopying, reproductions, and printing costs;
7. Photographic supplies and processing;
8. Study model materials;
9. Client authorized consultants engaged to create/complete special renderings, models, and photography.

The above listed items may be billed at actual cost incurred plus a 10% Administrative Fee.

F. Ownership of Documents:

All documents prepared or furnished by FFKR x EDSA pursuant to this Agreement are instruments of FFKR x EDSA's professional service. Upon payment in full for services rendered, FFKR x EDSA shall grant joint ownership of such documents. Reuse, reproduction, or modification of such documents by Client without FFKR x EDSA's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold FFKR x EDSA harmless from all claims, damages, and expenses including attorney's fees arising from such reuse by Client or others acting through Client.

Client Initials _____

G. Use of Electronic Media:

Copies of documents that may be relied upon by Client are limited to printed copies (also known as hard copies) that are signed or sealed by FFKR x EDSA. Electronic files in text, data, graphic, or other formats furnished by FFKR x EDSA to Client are for convenience only. Any conclusion or information obtained or derived from such electronic files will be at the sole risk of Client. When transferring documents in electronic media format, FFKR x EDSA makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those in use by FFKR x EDSA at the onset of the Project.

H. Additional Services Outside Agreed Upon Scope:

Services requested by Client or Client's Representative that are in addition to the Scope of Work listed in the Agreement will be considered Additional Services and reviewed, at that time for additional fees. Additional services shall be provided if authorized by the Owner. These additional services may include, but are not limited to:

1. Services related to revisions and/or additions to drawings, specifications, or other documents outlined, when such revisions are inconsistent with instructions previously given or are a result of program modifications, change to previous direction, or governmental reviews;
2. Scope of work changes in project size, scope, area, complexity, and budget;
3. Documentation, assistance, and coordination of on-site visits or representation beyond what is outlined;
4. Team changes in General Contractor, Client Representative, Consultants and/or Joint Venture;
5. Schedule changes related to meetings, duration, and phasing;
6. Significant time spent to review Contractor substitutions;
7. Time spent addressing program/design changes or field revisions by the Owner or Operator caused by construction issues of other disciplines;
8. Budgeting or value engineering requiring changes or modifications to complete and approve drawings;
9. Separation of the project construction into phases or other development strategies requiring repackaging of construction documents;
10. Extensions of construction time;
11. Preparation of professional plans, drawings, documents and/or renderings beyond what is detailed in the scope of deliverables;
12. Cost estimating beyond Concept Design;
13. Documentation specific to LEED certification.

Client Initials _____

I. Compensation/Invoicing:

All fees and reimbursable expenses will be invoiced monthly by FFKR and shall be payable in net U.S. Dollars. The Client understands and acknowledges that these fees are net of any taxes and/or tariffs. If a retainer is received by FFKR x EDSA, it will be applied to the final payment due unless otherwise stated in this Agreement.

All invoices are payable upon receipt. In the event payment is not received within thirty (30) days of invoice date, the past due balance may be assessed an interest penalty of one and one-half percent (1 ½%) per month.

J. Termination Rights:

In the event FFKR x EDSA does not receive payment within sixty (60) days, FFKR x EDSA may stop work on the Project until payment is received. Such stoppage of work by FFKR x EDSA will not be deemed as a default under the terms of this Agreement. Under this scenario, an additional fee may be required to restart work due to non-payment.

Client may terminate this Agreement for cause, with seven (7) days prior written notice to FFKR x EDSA. FFKR x EDSA may terminate this Agreement for cause with seven (7) days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or ultimately, termination, unless and until FFKR x EDSA has been paid in full for services rendered, expenses incurred, and other related charges.

In the event that the Project is suspended for more than forty-five (45) days, through no fault of FFKR x EDSA, FFKR x EDSA shall be entitled to payment for services based on a percentage of completion for all completed work. In the event of termination, FFKR x EDSA shall be compensated for all services fully and satisfactorily performed up until such termination date, together with reimbursable expenses incurred.

K. Dispute Resolution:

The Client agrees that this Agreement shall be interpreted according to the laws of the state where the contracting FFKR office is located and agrees to reimburse FFKR x EDSA for reasonable attorney's fees, court costs, and all expenses including without limitation, all such fees, costs, and expenses incidental to arbitration, appeals, and post-judgment proceedings that it may expend in enforcing this Agreement.

L. Execution/Duration:

Signature of the attached Agreement will signify Client's acceptance of all the Terms and Conditions outlined herein. Accordingly, Client warrants that the necessary funds are available to pay FFKR x EDSA for the services and expenses outlined in this Agreement and that these funds are not encumbered nor contingent upon subsequent approvals, permits, or financing commitments. This Agreement will be valid for the duration of the Project.

Client Initials _____