

AGREEMENT  
BETWEEN  
THE CITY OF DELRAY BEACH  
AND  
**EDSA, Inc.**  
FOR  
**Beach Master Plan – City of Delray Beach Project No. 2015-008**

This is an Agreement ("Agreement"), made and entered into by and between: Delray Beach, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

and

EDSA, Inc., a Florida corporation, hereinafter referred to as "Second Party," (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or the Director of the Delray Beach Environmental Services Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Second Party and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the

administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

- 1.4 **City Manager** - The administrative head of City appointed by the Board.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Board.
- 1.6 **Project** - The Project consists of the services described in Article 2.

## ARTICLE 2

### SCOPE OF SERVICES

- 2.1 Second Party shall perform all work identified in this Agreement and Exhibit "A". The Scope of Services is a description of Second Party's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Second Party impractical, illogical, or unconscionable.
- 2.2 Second Party acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

## ARTICLE 3

### TERM AND TIME OF PERFORMANCE

- 3.1 This contract is in full force and effect upon full contract execution by the City of Delray Beach. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 All duties, obligations, and responsibilities of Second Party required by this Agreement shall be completed no later than **260 DAYS (Contingent on Permitting)** after full contract execution by the City of Delray Beach. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 3.3 In the event services are scheduled to end due to the expiration of this Agreement, the Second Party agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than three months beyond the term of the Agreement. The Second Party

shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended. The Chief Purchasing Officer shall notify Second Party of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

## ARTICLE 4

### COMPENSATION

- 4.1 City will pay Second Party, in the manner specified in Section 4.3, the total amount **Not to Exceed FOUR HUNDRED TWENTY NINE THOUSAND THREE HUNDRED FIFTY Dollars (\$429,350.00)** for work actually performed and completed pursuant to this Agreement and **Not to Exceed THIRTY FIVE THOUSAND Dollars (\$35,000.00)** for all reimbursables provided for in Section 4.2, which amounts shall be accepted by Second Party as full compensation for all such work and expenses. Second Party acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Second Party for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Second Party's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

### 4.2 REIMBURSABLES

- 4.2.1 In accordance with and pursuant to the City's procurement code and subject to the limitations set forth below, reasonable expenses, which are directly attributable to the Project may be charged at no more than actual cost. The maximum sum which may be charged for expenses shall not exceed **THIRTY FIVE THOUSAND Dollars (\$35,000.00)**, and shall be limited to the following:

- a) Identifiable transportation expenses in connection with the Project, subject to the limitations of Section 112.061, Florida Statutes. Transportation expenses to locations outside the Miami-Dade/Broward/Palm Beach County area or from locations outside the Miami-Dade/Broward/Palm Beach County area will not be reimbursed unless specifically authorized in advance and in writing by the Contract Administrator. Transportation expenses to and from locations within the Miami-Dade/Broward/Palm Beach County area will not be reimbursed.

- b) Cost of printing drawings and specifications which are required by or of Second Party to deliver services set forth in this Agreement.

4.2.2 A detailed statement of expenses must accompany any request for reimbursement. Expenses other than auto travel must be documented by copies of paid receipts, checks, or other evidence of payment.

4.2.3 Second Party acknowledges that the dollar limitation set forth in Section 4.2.1 is a limitation upon, and describes the maximum extent of, City's obligation to reimburse Second Party for expenses, but does not constitute a limitation, of any sort, upon Second Party's obligation to incur such expenses or perform the services identified in Article 2.

#### 4.3 METHOD OF BILLING AND PAYMENT

4.3.1 Second Party may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed. Second Party shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit "B"). The certification shall be accompanied by a copy of the notification sent to each subcontractor and supplier listed in item 2 of the form, explaining the good cause why payment has not been made.

4.3.2 City shall pay Second Party within thirty (30) calendar days of receipt of Second Party's proper invoice, or as required by Florida Law. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Second Party to comply with a term, condition, or requirement of this Agreement.

4.3.3 Second Party shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from City for such subcontracted work or supplies. If Second Party withholds an amount from subcontractors or suppliers as retainage, such retainage shall be released and paid within thirty (30) days following receipt of payment of retained amounts from City.

4.4 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself

from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

4.5 Payment shall be made to Second Party at:

EDSA, Inc.  
1512 E. Broward Blvd – Suite 110  
Fort Lauderdale, Florida 33301

## ARTICLE 5

### INDEMNIFICATION

Second Party shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Second Party, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Second Party shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Second Party under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

## ARTICLE 6

### INSURANCE

6.1 Second Party shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit "C" in accordance with the terms and conditions stated in this Article.

- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Second Party shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City of Delray Beach, Florida. This official title shall be used in all insurance documentation.
- 6.3 Within fifteen (15) days of notification of award, Second Party shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. City reserves the right to obtain a certified copy of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the City determines all performance required of Second Party is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit "C." City shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.
- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.
- 6.5 If Second Party uses a subconsultant or subcontractor, Second Party shall ensure that each subconsultant or subcontractor names "City of Delray Beach, Florida" as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

## ARTICLE 7

### TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is

necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Second Party's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Second Party is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Second Party provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Second Party shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Second Party acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Second Party, for City's right to terminate this Agreement for convenience.
- 7.5 In the event this Agreement is terminated for any reason, any amounts due Second Party shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

## ARTICLE 8

### NON-DISCRIMINATION

- 8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Second Party to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this

Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Second Party shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Second Party shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Second Party shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Second Party shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Second Party represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle City to terminate this Agreement and recover from Second Party all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

## ARTICLE 9

### MISCELLANEOUS

#### 9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Second Party grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Second Party, whether finished or unfinished, shall become the property of City and shall be delivered by Second Party to the Contract Administrator within seven (7) days of termination of this Agreement by



either party. Any compensation due to Second Party shall be withheld until all documents are received as provided herein.

## 9.2 PUBLIC RECORDS

City is a public agency subject to Chapter 119, Fla. Stat. Second Party shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Purchaser agrees to:

- 9.2.1 Keep and maintain all records that ordinarily and necessarily would be required by the City.
- 9.2.2 Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- 9.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- 9.2.4 Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Second Party at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. All records shall be transferred to the City prior to final payment being made to the Second Party.
- 9.2.5 If Second Party does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

## 9.3 INSPECTOR GENERAL

Second Party is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Second Party and its sub licensees and lower tier sub licensees. Second Party understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Second Party or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

#### 9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Second Party and its subcontractors that are related to this Project. Second Party and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Second Party and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Second Party and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Second Party shall ensure that the requirements of this Section 9.3 are included in all agreements with its subcontractor(s).

#### 9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Second Party's compensation under this Agreement is based upon representations supplied to City by Second Party, and Second Party certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

#### 9.6 PUBLIC ENTITY CRIME ACT

Second Party represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and 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 City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a

contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Second Party further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Second Party has been placed on the convicted vendor list.

#### 9.7 INDEPENDENT CONTRACTOR

Second Party is an independent contractor under this Agreement. Services provided by Second Party pursuant to this Agreement shall be subject to the supervision of Second Party. In providing such services, neither Second Party nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Second Party or Second Party's agents any authority of any kind to bind City in any respect whatsoever.

#### 9.8 THIRD PARTY BENEFICIARIES

Neither Second Party nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 9.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City Manager  
City Hall  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444

For Second Party:

EDSA, Inc.  
1512 E. Broward Blvd – Suite 110  
Fort Lauderdale, Florida 33301

#### 9.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Second Party shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Second Party of this Agreement or any right or interest herein without City's written consent.

Second Party represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Second Party shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Second Party's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

#### 9.11 CONFLICTS

Neither Second Party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially

antagonistic or incompatible with Second Party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Second Party's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Second Party is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Second Party or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Second Party is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Second Party shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

#### 9.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 9.13 COMPLIANCE WITH LAWS

Second Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### 9.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Second Party elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

#### 9.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

#### 9.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### 9.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

#### 9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SECOND**

**PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

**9.19 AMENDMENTS**

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Second Party or others delegated authority to or otherwise authorized to execute same on their behalf.

**9.20 PRIOR AGREEMENTS**

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

**9.21 PAYABLE INTEREST**

9.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Second Party waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement,

whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All Exhibits are incorporated into and made a part of this Agreement.

9.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.25 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(The remainder of this page is intentionally left blank.)



IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: City through its Board, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and Second Party, signing by and through its \_\_\_\_\_, duly authorized to execute same.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Cary D. Glickstein, Mayor

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

APPROVED AS TO FORM:

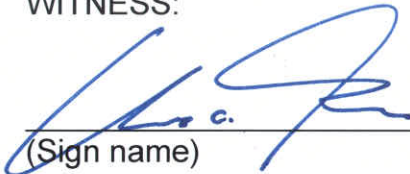
\_\_\_\_\_  
City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA

AND

EDSA, Inc.

WITNESS:

  
(Sign name)

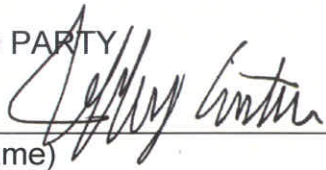
ALEXANDER C. FENECH  
(Print name)

WITNESS:

  
(Sign name)

Rebecca Darom  
(Print name)

SECOND PARTY

By   
(Sign name)

JEFFERY R. SUITER, AP  
(Print name, Title)

20 day of APRIL, 2016





## **EXHIBIT A**

### **SCOPE OF SERVICES**

April 20, 2016

Mr. Isaac Kovner, P.E.  
City of Delray Beach  
Environmental Services Department  
434 S. Swinton Avenue  
Delray Beach, FL 33444

**Re: City of Delray Beach  
Beach Master Plan Project (City Project No. 2015-008)**

Dear Isaac:

We at EDSA appreciate the opportunity to provide this proposal for landscape architectural design for The City of Delray Beach's Beach Master Plan Project (City Project No. 2015-008). This important open space project has many outstanding landscape architectural opportunities based on the Master Plan and conceptual designs produced to date with guidance from the City. Below we have outlined a corresponding Scope of Services and fees that we feel will provide for the best fit of services by EDSA and our team; Moffatt & Nichol (*Environmental Engineers*), Credo Consulting Engineers (*Mechanical, Electrical, Plumbing*), Flynn Engineering (*Civil Engineering*), and Avirom Associates (*Survey*).

#### **THE PROJECT**

The Delray Beach project limits are east of the A1A corridor between Casurina Road to the north end of the public beach (approximately 1.3 miles). Vision Planning for this project was created with the input of stakeholders and City staff in 2009, with a goal to improve and enhance the look and feel of this very important part of the City's fabric. The City has allocated a budget of \$3 million to construct this vision.

The key program items will include the following amenities:

- Improve access points to the beach
- Siting of two (2) architectural gazebos
- Create socializing areas
- Pedestrian scale lighting
- Improvements and expansion to sidewalk areas
- Replacement of site furnishings (benches, waste/recycling receptacles)
- Replacement of showers, overhead shower structures
- Unified Signage package

Our Approach to this project includes preliminary research, investigation and coordination to determine existing conditions and provide information for development of a clear and successful program for the Park. Based on our teams combined experience of implementing substantial oceanfront projects, we will be able to anticipate and resolve many conflicts early in the design process. Understanding the City's procedures, along with the Team's combined experience will ensure a smooth and efficient implementation of the Park.

#### **SCOPE OF SERVICES**

Over the years, the EDSA team has had the opportunity to work on many beach redevelopment projects that have benefited from our team approach to design, along with our understanding of the careful balance between the design, engineering, and local and state permitting. To that end, EDSA has outlined the following Scope of Services which addresses the detailed landscape architectural design efforts for the project.

At this time, we understand the design phases to be as follows:

- Schematic Design
- Construction Documents
- City and State Permitting Support
- Construction Administration, including reviewing submittals, responding to RFI's, etc.

Exclusions: EDSA's Scope of Services excludes parking meter improvements (our plan will coordinate location(s) only), vegetation trimming in the dune area, aesthetic/structural enhancements to the main pavilion, and detailed design for new pavilion (our plan will coordinate location(s) only). The scope includes one (1) round of submittals with the various permitting agencies. Based on the accelerated schedule, we anticipate City staff will participate with all permitting in an effort to achieve the suggested schedule.

#### **A. Schematic Design**

EDSA will lead the Schematic Design and will coordinate with between our consultant team, City staff, and permitting agencies. The Schematic Design package will determine the hardscape, landscape, site lighting, and irrigation design intent and project scope to assist the City in refining the goals and priorities for the design of the project.

Preparation and presentation of the refined design concepts, developed in the final conceptual stage, including all drawings, documentation, color boards, renderings, layouts, narratives and cost analysis support will be included.

Schematic Design will respond to the preliminary programmatic and code requirements for the project. The EDSA team will provide the following:

- Create an overall landscape architectural Site Improvement Plan, based on the plans developed by the previous constant team and community consensus building, addressing open spaces, project programming, new arrival area, outdoor dining / patio areas, outdoor amenity areas, pedestrian circulation, landscape treatment, hardscape elements, and any specialty features.
- Develop schematic site design, in conjunction with presentation packages; participation in meetings and presentation to City.
- Provide a summary Schematic Design Submission package for initial costing and City approval.
- Develop drawings to a level applicable for DEP permitting.
- VE Engineering may be required at this phase in order to comply with the project budget.

#### **Deliverables:**

1. Illustrative Ground Level
2. Schematic Level CAD Site Plan
3. Schematic Landscape Plan
4. Schematic Hardscape Site Plan
5. Schematic Level Layout, Aesthetic Grading and Paving Plans
6. Schematic Lighting Design (fixture selection and layout only)
7. Primary Materials Sample Image Boards

#### **B. Construction Documents**

Based upon City-approved schematic drawings, the EDSA team would prepare full service Construction Documents and Performance Based Specifications for all hardscape and landscape elements within the property. The Construction Documents phase shall consist of the completion of all the landscape, hardscape, site lighting, and irrigation.

Detailed coordination with City Staff, consultant team, and permitting agency will continue throughout this phase. As part of this coordination, an internal review shall be performed relative to all disciplines affecting this scope of work to ensure quality control and minimize conflicts.

These drawings and specifications will fully describe all project component relationships and construction methodology. They will indicate material selections, finishes, permanent furniture, hardware, and product specification, as well as to provide full detailing needed to construct the project.

EDSA will configure Construction Documents that would encourage competitive bidding, and provide scaled, final drawings incorporating all design development revisions for incorporation into project construction drawings.

EDSA will participate in weekly design team meetings during this phase of work. If additional meetings are required, we will setup GoTo meetings to supplement the weekly meetings.

The EDSA team will complete construction drawings and specifications for tender, based on local requirements that include all design details, which can be bid by contractors, but not limited to the following:

- Layout Plans – All pedestrian hardscape configurations including walkways, pathways, crosswalks, steps, socialization areas, beach access points, new gazebo areas, A1A and Atlantic Boulevard improvements, and shower areas
- Grading Plans – All surface grading including paved area drainage direction and inlet location, spot grades for paved surfaces
- Hardscape Plans – Illustrating all paved pedestrian and special vehicular area surfaces including materials, pavement patterns, colors, textures and product selection. EDSA will coordinate with the outdoor furniture selection and layout
- Planting Plans – Illustrating all trees, palms, shrubs and ground covers, indicating size, quality, quantity, colors where applicable, planting techniques and their location in each area
- Site Lighting Plans – The EDSA team will work in conjunction with an Electrical Engineer, to develop the site lighting package. The team's documentation will include fixture selection and location for all pedestrian areas
- Irrigation Plans
- Landscape Construction Details
- Performance based Specifications

**Deliverables:**

1. Key Plan Sheet
2. Layout Plans
3. Layout Enlargement Sheets
4. Layout Detail Sheets
5. Grading Plans
6. Grading Detail Sheets
7. Hardscape Plans
8. Hardscape Plan Enlargements
9. Hardscape Detail Sheets
10. Planting Plans
11. Planting Plan Enlargements
12. Planting Detail Sheets
13. Irrigation Plans
14. Irrigation Detail Sheets
15. Site Lighting Plans

16. Site Lighting Details
17. Other Site Detail Sheets, as needed
18. Performance Based Specifications

The drawings described above will be produced in a sequenced manner in order to best enable other consultants to complete their respective design documents and drive construction in the most effective way.

EDSA shall not be responsible for construction means, methods, techniques, sequences, or procedures, for safety precautions and programs in connection with the work, or for the acts or omissions of the contractor.

### **C. Permitting Support (local and state)**

Construction for certain aspects of the project will require permitting from a variety of departments and agencies within the State of Florida and City of Delray Beach. It will be essential to understand and define the requirements in the early stages of design to allow EDSA to develop our plans and details to the best of our understanding of the required parameters.

The EDSA team will format the appropriate Construction Documents and site plan information created in the previous phases to develop the following submittals and will participate in meetings, as related to the site work for this project:

- Building Permit Approvals
- FDEP / FFW Approvals
- CCCL Permit Approvals

This proposal assumes that the City and selected contractor will process and expedite all permits for the project. EDSA will prepare for and participate in meetings for permitting, as requested by the City. Should the City elect to undertake an alternative permit strategy that would require additional drawings beyond the plans as submitted as part of the Construction Documents, EDSA reserves the right to request additional services.

We assume for the purposes of this proposal that EDSA's team and the appropriate City team members will prepare related site plan submittal requirements including legal, architectural, traffic, and environmental studies.

### **D. Schedule**

Based on the schedule provided by the city, the EDSA team will work to coordinate and complete drawing sets, per the following outline:

- May 17, 2016
  - Finalize proposal Contract/Service Authorization and submit for Commission Approval
- June 5, 2016
  - Design/Engineering/Advertise – Submit to FDEP/FDOT with 30% drawings for Permit and Bid Project with 60% drawings
  - Public Bid Advertisement
- June 21, 2016
  - Present to City Commission with 60% drawings
- July 5, 2016
  - Open Bids

- July 21, 2016
  - Award Construction Contract with Commission Meeting
- July 25, 2016
  - Start Construction
- December 1, 2016
  - Substantial Completion Construction
- December 31, 2016
  - Final Completion Construction

#### **E. Meetings**

To support the design and planning efforts outlined above, The EDSA team will prepare for and attend meetings with the City and design team along with state and local approval agencies. In addition, we will participate in weekly project meetings during the design phase.

#### **F. Construction Administration**

The Construction phase will commence with the award of the contract for construction. The EDSA team shall be available for project review, as it directly relates to the Construction Documents described above. These services shall be oriented toward reviewing the progress of site construction, specifically design and aesthetics of the site work, and preparing written documents advising the City of the items which appear to need correction.

The EDSA team will assist the City's team in attending pre-construction meetings and reviewing contractor proposals.

The EDSA team shall assist the City and contractor in the interpretation of the requirements of the Construction Documents and shall render interpretations necessary for the proper execution of the work with reasonable promptness. The EDSA team shall also review and take appropriate action upon the contractor's submittals, such as shop drawings, product data, and samples, but only for conformance with the design concept and with the information given in the Construction Documents.

During this stage of work the EDSA team shall visit the site, and attend onsite construction meetings at key intervals. The EDSA team will report to the Owner as to the status of the implementation of our Scope of Work and outline field sketches, as needed, to ensure the design intent is met.

The EDSA team shall not be responsible for construction means, methods, techniques, sequences, or procedures, for safety precautions and programs in connection with the work, or for the acts or omissions of the contractor.

If EDSA's services under this letter agreement do not include services during the construction phase of the project, then Client assumes all responsibility for the application and interpretation of 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 EDSA that may be connected in any way thereto.

## ADDITIONAL SERVICES

Additional Services shall be considered those services related to making revisions and / or additions to drawings, specifications, or other documents outlined when such revisions are inconsistent with instructions previously given, or those services which are in addition to the Basic Services outlined in this Agreement. These additional services may include, but are not limited to:

- Scope of work changes (project size, area, complexity and budget)
- Team changes (General Contractor, Owner Representative, Consultants)
- Schedule changes (meetings, duration, phasing)
- Process changes
- Preparation of scale models
- Professional perspective renderings
- More documentation, assistance, coordination, on-site visits or on-site representation than outlined
- Performing significant changes as a result of program modifications, reversal of previous direction; or governmental reviews
- The Survey being conducted excludes Dune Transects as typically required by DEP. The EDSA team is collaborating with DEP to waive this process. Should they require this work to be performed, it shall be considered an additional service.

## OWNER RESPONSIBILITIES

Prior to proceeding with project planning and design, the City shall furnish base data or information to include, but not be limited to, the following:

- All available Engineering Plans, reports or studies
- Soils and engineering testing, analysis and recommendations
- Hydrogeological testing, analysis and recommendations
- Environmental studies, reports, mapping, and recommendations
- Local Government design standards or requirements
- Local permitting requirements
- Special Design Standards or requirements of the Owner/Operator

## COMPENSATION

The EDSA team requests the following compensation for the Scope of Services:

Fees		
Schematic Design	lump sum (NTE)	\$ 68,150.00
Construction Documents	lump sum (NTE)	\$181,000.00
Permitting Support	lump sum (NTE)	\$ 60,200.00
Construction Period Services	lump sum (NTE)	\$120,000.00
Reimbursables	lump sum (NTE)	\$ 35,000.00

- The Construction Period Services fee is based on a construction time frame of July 15, 2016 thru December 15, 2016. If the period of construction extends beyond that, the EDSA team will require additional funds.
- EDSA will invoice on a monthly basis within each phase, based on a percentage of completion and monthly construction services rendered.
- All invoices shall contain detailed backup documentation and any other information which may be reasonably required by City before the City can approve the invoice for payment.



- For those phases of work with hourly compensation, EDSA reserves the right to request additional fees should the limits described above be exceeded. EDSA will notify the PM in advance should we approach these limits.
- EDSA fees outlined above are exclusive of reimbursable expenses which include travel, lodging, and printing costs for the required deliverables as outlined in the attached General Terms and Conditions.
- Receipt of a signed copy of this proposal and General Terms and Conditions, together with the initial deposit will serve as our authorization to proceed.
- This proposal is valid for ninety (90) days from date of issuance.
- EDSA requires a \$20,000 payment on commencement of Conceptual Design. Receipt of a signed copy of this proposal, together with the initialed General Terms and Conditions and an advance payment in the amount of \$20,000 will serve as our authorization to proceed.

## **EXHIBIT B**

### **CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS**

RFP/RLI/Bid/Contract No. \_\_\_\_\_

Project Title \_\_\_\_\_

\_\_\_\_\_

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

1. CONTRACTOR has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 4.2.3 of the Agreement, except as provided in paragraph 2 below.
2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor or  
Supplier's name  
and address

Date of disputed  
invoice

Amount in  
dispute

\_\_\_\_\_

\_\_\_\_\_

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3. The undersigned is authorized to execute this Certification on behalf of CONTRACTOR.

Dated \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Contractor

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Name and Title)

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS  
(Continued)

STATE OF                                 )  
  ) SS.  
COUNTY OF                                 )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(NOTARY SEAL)

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name of officer taking acknowledgment)  
**typed, printed, or stamped**

\_\_\_\_\_  
(Title or rank)

My commission expires:

\_\_\_\_\_  
(Serial number, if any)

## EXHIBIT C

### **INSURANCE REQUIREMENTS OF THE CITY OF DELRAY BEACH**

Second Party shall not commence operations under the terms of this Agreement until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Delray Beach Risk Manager. If you have any questions call (561) 243-7150.

The following insurance coverage shall be required.

- A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute 440 and including Employers Liability coverage, regardless of the size of your firm. Second Party further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course and scope of their employment.
- B. General liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually, providing coverage for Premises and Operations, Products and Completed Operations, Fire Legal Liability, and Personal and Advertising Injury Liability. Insurance Policies must be obtained through insurance companies that are authorized to transact business in the State of Florida by the Department of Financial Services, and they must carry a minimum rating of A.M. Best of A- as to management and VII as to financial size.
- C. Motor Vehicle Liability Insurance covering all vehicles associated with Second Party operations to include all owned, non-owned and hired vehicles.  
  
The coverage will be written on an occurrence basis with limits of liability not less than \$1,000,000.00 combined single limit per each occurrence.
- D. The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage, non-renewal or cancellation.

Second Party shall furnish to the City, Certificate(s) of Insurance evidencing insurance required by the provisions set forth above. If any of the above coverages expire during the term of this Agreement, Second Party will provide a renewal certificate at least ten (10) days prior to expiration.

Mail to: City of Delray Beach, Attn. Risk Manager, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida 33444 with a copy to Assistant City Manager, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, FL 33444