

TERMS AND CONDITIONS OF AGREEMENT

1. Agreement: By signing the preliminary fee proposal dated 12/5/2017 ("Proposal") which describes the scope of the landscape architectural services to be provided for Esprit Park ("Project") and initialing each page of this document, the Green Benefit District ("GBD") agrees to the terms and conditions ("Terms and Conditions") set forth in the Proposal and these Terms and Conditions conditioned on 1) approval of the GBD's Grant Acceptance Agreement by the Board of Supervisors and 2) funding secured by GBD from University of California San Francisco ("UCSF"). A copy of the Proposal is attached as Exhibit A. Together, the Proposal and the Conditions of Agreement form a binding agreement ("Agreement") between the GBD and Fletcher Studio ("Fletcher Studio"). Collectively, Fletcher Studio and GBD are referenced as "the Parties". To the extent a conflict exists between the provisions set forth in the Proposal and the provisions set forth in these Terms and Conditions, the Terms and Conditions shall govern.
2. Intent of Phases: In addition to the scope of services set forth in the Proposal, Fletcher Studio agrees to the following for each phase:
 - a. Conceptual Design. Refine the Public Realm Plan-generated Esprit Renovation Plan to San Francisco Recreation & Parks Department ("RPD") standard Conceptual Design level, including integration of RPD-supplied data including but not limited to, hazardous material reports, geotechnical reports, storm water management guidelines, RPD Operations reviews and budgetary guidelines and GBD Esprit Community Advisory Group input;
 - b. Design Development. Create Design Development Documents that shall illustrate and describe the development of the approved Concept Plan Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of the landscape to fix and describe the size and character of the Project as to landscape architectural components and such other aesthetic design elements as may be appropriate, including Illustrative Master Plans at 50% and 100% completion milestones;
 - c. Construction Documentation. Create Construction Documents that shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of landscape architectural materials and systems and other requirements for the construction of the Work, including 30%, 60% and 100% completion milestone documents and reviews with RPD and other relevant City departments; No less than 60 calendar days prior to planned advertisement for bids, GBD shall deliver to RPD detailed construction drawings and technical specifications for the Project, including five (5) full size sets, five (5) half size sets, and one electronic file-copy, all bearing the stamp and signature of the licensed design professional ("Plans").
 - d. Bidding and Negotiation Support. Coordinate with the RPD PM to review Contractor Bid Proposals, answer Contractor questions and clarify Construction Documents; Participate in construction coordination meetings, calls and site walkthroughs; Prepare punch lists and final walkthroughs with RPD staff.
3. Fletcher Studio's Standard of Care: Fletcher Studio shall perform its services under this Agreement in accordance with the professional standard of care applicable to the design and construction of projects of similar size and complexity in the San Francisco Bay Area.

Fletcher Studio shall comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during Fletcher Studio's services. Where there is an irreconcilable discrepancy between any of the above-mentioned codes and regulations, Fletcher Studio shall identify to RPD the irreconcilable discrepancy, exercise a professional standard of care in determining which code or regulation governs, and provide RPD with the basis for its determination. In the event of changes in codes, regulations or interpretations during the course of the Project that were not

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and could not have been reasonably anticipated by the Architect and which result in a substantive change to the plans, the Architect shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of complying with the changes. Fletcher Studio shall be responsible to identify, analyze and report to the City on pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including changes to the California building codes and San Francisco Building Code and other amendments.

4. Independent Contractor: Fletcher Studio is an independent contractor, and nothing contained in this Agreement shall create or be deemed to create any partnership, joint venture, agency, employment, or fiduciary relationship between the parties. Nothing in this Agreement grants to either party the authority to bind, commit or obligate the other party in any manner.
5. Consultant Contracting: All consultant services as required by the Project scope, excluding those that may form a part of this Agreement, shall be discussed between GBD and Fletcher Studio prior to engaging such consultants, and shall, except as otherwise agreed by the parties, be retained and contracted separately by GBD. Fletcher Studio may retain consultant services on behalf of GBD. Any hiring and administration of contracts with consultants by Fletcher Studio on behalf of GBD, including those that form a part of this Agreement, will be invoiced to GBD at the consultant's fees and reimbursable expenses incurred plus an administration surcharge of 1.25 times the direct consultant fees and reimbursable expenses.
6. Consultant Coordination: GBD shall coordinate the services of its own consultants with those services provided by Fletcher Studio. GBD is responsible for ensuring that the Agreement(s) between GBD and its consultant(s), contractor(s), UCSF, and RPD, are in conformance with the conditions of this Agreement. To the extent a conflict exists between the provisions set forth in the GBD/UCSF agreement and/or the provisions set forth in the GBD/RPD agreement, this Agreement shall govern the rights and responsibilities between GBD and Fletcher Studio.

Fletcher Studio shall coordinate its services with those services provided by GBD and GBD's consultants. Fletcher Studio shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by GBD and GBD's consultants.

7. Copyrights and Licenses: All documents, including drawings and other data on electronic media, prepared by Fletcher Studio and any consultants hired by Fletcher Studio under this Agreement, are the Instruments of Service of their respective authors. Fletcher Studio and consultants retained by Fletcher Studio shall retain all common law, statutory and other reserved rights, including copyrights in their respective Instruments of Service. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes relating to the Project is not to be construed as publication in derogation of the reserved rights of Fletcher Studio and/or consultants hired by Fletcher Studio.

Upon execution of this Agreement, Fletcher Studio grants to GBD, RPD, and UCSF a nonexclusive license to use Fletcher Studio's Instruments of Service solely and exclusively for the Project, provided that GBD substantially performs its obligations, including prompt payment of all undisputed sums when due, under this Agreement. Fletcher Studio shall obtain similar nonexclusive licenses from its consultants consistent with this Agreement. The license granted under this Section permits GBD to authorize the GC, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as consultants hired by GBD and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project.

Fletcher Studio shall indemnify and hold harmless all Indemnitees (defined below) from all suits or claims for infringement of the patent right, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City and County of San Francisco ("City"), or any of its boards, commissions, officers or employees of articles or services to be supplied in the performance of Fletcher Studio's services under this Agreement.

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In the event GBD uses the Instruments of Service without retaining the author of the Instruments of Service or uses the same on another project, GBD releases Fletcher Studio and consultants hired by Fletcher Studio from all claims and causes of action arising from such uses. GBD, to the extent permitted by law, further agrees to indemnify, and hold harmless Fletcher Studio and its 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 GBD's use of the Instruments of Service under this Section.

Except for the licenses granted under this Section, no other license or right shall be deemed granted or implied under this Agreement. Except as otherwise permitted by Section 26(d) of this Agreement, GBD shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of Fletcher Studio, which agreement shall not be unreasonably withheld, delayed or conditioned. Any unauthorized use of the Instruments of Service shall be at GBD's sole risk and without liability to Fletcher Studio and its consultants.

8. Electronic Media: Unless otherwise stated in this Agreement, CAD documents prepared by Fletcher Studio will be in those file formats created by and associated with Autodesk AutoCAD for Windows Operating System on PC. CAD drawings and other electronic media documents prepared by Fletcher Studio are included as a part of Fletcher Studio's Instruments of Service of Fletcher Studio and may not be used by any other party without the express consent of Fletcher Studio. In the case of any discrepancy (including errors in transmission, conversion, or reformatting), the hard copy documents shall take precedence over the electronic media.

Accepted electronic file formats for communication purposes and deliverables may include Portable Document Format (PDF), Microsoft Word Document (DOCX), Microsoft Excel (XLS), online formats and features associated with Microsoft Office Online, and other formats that may be discussed and agreed upon by Fletcher Studio and GBD. All accepted electronic file formats will be created under Windows Operating System on PC.

9. Hazardous Materials: Fletcher Studio shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials in any form at the Project site, including, but not limited to, serpentine, asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic or harmful substances.
10. Unforeseen Conditions: Costs associated with any structural or geotechnical modifications, redesign beyond 1 round per phase, or repairs required because of unforeseen conditions discovered during the course of the Project shall not be the responsibility of Fletcher Studio.
11. Project Information and Testing: GBD will provide Fletcher Studio with copies of all available surveys of the Project, and other pertinent Project information, if available, as necessary, including tests, inspections and reports required by law or by the contractor(s) work on the Project. Such tests, inspections and reports include, but are not limited to, storm water analysis, structural and geotechnical testing, tests for water pollution, and tests for hazardous materials. Fletcher Studio will proceed with reliance on the accuracy and completeness of any such Project documents and/or information provided by GBD.
12. Contractor(s) Work: Fletcher Studio shall have no control or charge of, or responsibility for, the construction means, methods, techniques, sequences, scheduling, procedures, or safety precautions and programs relating to the contractor(s) work. Fletcher Studio shall have no responsibility for jobsite safety or security.
13. Change in Initial Information: If during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to Fletcher Studio are revealed, to the extent that they substantially affect the services, compensation, schedule, allocation of risks or other materials terms of this Agreement, Fletcher Studio may call for renegotiation of appropriate portions of this Agreement. Fletcher Studio shall notify GBD of the changed conditions necessitating renegotiation, and Fletcher Studio and GBD shall promptly and in good faith enter into renegotiation of this Agreement to address the

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changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with Section 26(a) hereof.

In the event of errors or omissions in site or other information supplied by RPD or GBD to Fletcher Studio or changes to Project requirements or site conditions that occur after the onset of the Project and which result in a change to the Plans, Fletcher Studio shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes

14. Schedule: The proposed schedule, timeline, or duration of phases for the Project will commence at the start of the first Project phase, to be scheduled as soon as practicable following receipt of the executed Agreement. This schedule ends following the final payment to the general contractor or sixty (60) days after the date of Substantial Completion (when the Project is able to be utilized by GBD for its intended use, including final permit and certificates of occupancy approvals by applicable building agencies), whichever occurs first.

Fletcher Studio shall not be held accountable for delays to the Project schedule due to unforeseen conditions, regulatory review and approvals by any building authority or government agency unrelated to errors or omissions by Fletcher Studio, revisions requested by GBD beyond the scope of this Agreement, or other circumstances that are beyond Fletcher Studio's control.

15. Cost Estimates: GBD shall establish and periodically update its Budget for the Work (the "Working Budget"), including hard costs and soft costs, and reasonable contingencies related to all of these costs. GBD acknowledges that neither Fletcher Studio nor GBD has control of the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, market or negotiating conditions. Accordingly, Fletcher Studio cannot and does not warrant or represent that bids or negotiated prices will not vary from GBD's Project Budget or from any estimate of Construction Cost or evaluation prepared or agreed to by Fletcher Studio. Fletcher Studio, therefore, cannot fix or guarantee any limit of Construction Cost. GBD agrees that no fixed limit of Construction Cost is established as a condition of this Agreement by the furnishing, proposal or establishment of a Project Budget.

16. Redesign Services: As a Basic Service, Fletcher Studio shall engage in one round of redesign per phase for value engineering if and when the cost estimate for that phase has exceeded the GBD's fixed fee funding for that phase.

17. Changes to Budget or Schedule: GBD agrees to promptly notify Fletcher Studio if GBD's schedule or budget changes. GBD acknowledges that significant changes to the Project or construction schedule or budget, or to the Project's scope, may require Additional Services of Fletcher Studio.

18. Compensation and Payment: GBD agrees to pay Fletcher Studio for Basic and Additional Services on the following hourly rate schedule.

Principal:	\$225.00 per hour
Licensed Senior Landscape Architect:	\$150.00 per hour
Project Manager:	\$110.00 per hour
Project Designer:	\$90.00 per hour
Drafting Staff:	\$85.00 per hour
Administrative Staff:	\$75.00 per hour

Upon execution of this Agreement, Fletcher Studio shall commence services as provided for under this Agreement. As services are performed, invoices will be submitted monthly by Fletcher Studio to GBD and are payable 30 days from date of receipt.

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19. Permits and Fees: Fletcher Studio shall not be responsible for paying for building permit or any other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Project.
20. Insurance: Without in any way limiting GBD and Fletcher Studio's liability pursuant to the "Indemnification" section of this Agreement, Fletcher Studio shall maintain in force, during the term of the Agreement, insurance in the following amounts and coverages:
- a. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
 - b. Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - c. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
 - d. Professional liability insurance, if applicable, to Fletcher Studio's profession with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
 - e. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
 - i. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees and the GBD, its Officers, Agents, and Employees.
 - ii. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
 - f. Regarding Workers' Compensation, Fletcher Studio hereby agrees to waive subrogation which any insurer of Fletcher Studio may acquire from Fletcher Studio by virtue of the payment of any loss. Fletcher Studio agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City and GBD for all work performed by Fletcher Studio, its employees, agents and subconsultants.
 - g. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.
 - h. Should any of the required insurance be provided under a claims-made form, Fletcher Studio shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement.
 - i. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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- j. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
 - k. Before commencing any operations under this Agreement, Fletcher Studio shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
 - l. If a subcontractor is used to complete any portion of this Agreement, Fletcher Studio shall ensure that its subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees, the GBD, its officers, agents and employees and Fletcher Studio listed as additional insureds.
21. Reimbursable Expenses: Reimbursable Expenses are in addition to fees for professional services. Reimbursable expenses shall be billed at cost and include, but are not limited to: reproduction, postage, and handling of documents, long distance and fax charges, travel costs outside the City of San Francisco, GBD-requested renderings and models, and additional insurance coverage required by GBD beyond that which Fletcher Studio already carries.
22. Additional Services: Additional Services beyond Fletcher Studio's Basic Services as set forth in the Proposal may be provided if confirmed in writing. The services described below are not included in Basic Services and shall be paid for by GBD as provided in this Agreement, in addition to the compensation for Basic Services. If services described under Additional Services are required due to circumstances beyond Fletcher Studio's control, Fletcher Studio shall notify GBD prior to commencing such services. If GBD deems that such Additional Services are not required, GBD shall give prompt written notice to Fletcher Studio. If GBD indicates in writing that all or part of such Additional Services are not required, Fletcher Studio shall have no obligation to provide those services.
- a. Making revisions in Drawings, Specifications or other documents when such revisions are:
 - i. inconsistent with approvals or instruction previously given by GBD, including revisions made necessary by adjustments in GBD's program or Project budget;
 - ii. required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or due to changes required as a result of GBD's failure to render decisions in a timely manner.
 - b. Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity, GBD's schedule, or the method of bidding or negotiating and contracting for construction.
 - c. Intentionally deleted.
 - d. Intentionally deleted.
 - e. Providing consultation concerning replacement of the contractor's work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work.

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- f. Providing services made necessary by the termination or default of the contractor, by major defects or deficiencies in the contractor's work, or by failure of performance of either GBD or a contractor.
- g. Providing services in evaluating an extensive number of claims submitted by the contractor or others in connection with the contractor's work.
- h. Providing services in connection with a public hearing, dispute resolution proceeding, or legal proceeding except where Fletcher Studio is party thereto.
- i. Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.
- j. Providing services after issuance to GBD of the final payment, or in the absence of a final payment, more than 60 days after the date of Substantial Completion of the contractor's work.
- k. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted practices governing those providing similar services under like circumstances.

23. Termination of Project and Agreement:

- a. Either GBD or Fletcher Studio may terminate this Agreement upon ten days' written notice.
- b. If terminated for a reason other than "for cause" due to Fletcher Studio's default, GBD agrees to pay Fletcher Studio for all Basic and Additional Services rendered and Reimbursable Expenses incurred up to the date of termination plus costs related to the termination.
- c. Upon not less than seven days' written notice, Fletcher Studio may suspend the performance of its services if GBD fails to pay Fletcher Studio in full for services rendered or expenses incurred. Fletcher Studio shall have no liability because of such suspension of services or termination due to GBD's nonpayment.

24. Indemnity: To the fullest extent permitted by law, Fletcher Studio shall assume the defense of (with legal counsel subject to approval by City) indemnify and save harmless GBD and the City, its boards, commissions, officers, and employees (collectively, "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including injury to or death of an employee of Fletcher Studio or its sub-consultants), expense and liability of every kind, nature and description (including court costs, attorney's fees, litigations expenses, fees of expert consultants or witnesses in litigation and costs of investigating ("Liabilities") that arise out of, pertain to or relate to, directly or indirectly, in whole or in part, the negligence, recklessness or intentional or willful misconduct of Fletcher Studio, any sub-consultant, or anyone directly or indirectly employed by then, or anyone that they control. It is agreed and understood that this contract is subject to CA Civil Code §2782.8 as amended and effective 1/1/18.

No insurance policy covering Fletcher Studio's performance under this Agreement shall operate to limit Fletcher Studio's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. Fletcher Studio assumes no liability whatsoever for the sole negligence, active negligence or intentional or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

25. Claims and Disputes: GBD and Fletcher Studio agree to mediate claims or disputes arising out of or relating to this Agreement before initiating litigation. The mediation shall be conducted by a mediation service acceptable to the parties. A party shall make a demand for mediation within a reasonable time after a claim or dispute arises, and the parties agree to mediate in good faith. In no event shall any

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demand for mediation be made after such claim or dispute would be barred by applicable law. Mediation fees shall be shared equally.

26. Miscellaneous:

- a. California law governs this Agreement which represents the entire integrated agreement between GBD and Fletcher Studio. This Agreement, which supersedes all prior negotiations, representations, or agreements, either written or oral, may be amended only by written instrument signed by both GBD and Fletcher Studio.
- b. Fletcher Studio reserves the right to use any drawings and photographs created or taken by Fletcher Studio before, during, and after construction for marketing and promotional purposes.
- c. In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.
- d. This Agreement shall be binding upon, and shall inure to, the benefit of the parties hereto, and their respective partners, successors, assigns, heirs, estates, and legal representatives. Neither GBD nor Fletcher Studio shall assign this Agreement without the written consent of the other, except that GBD may assign this Agreement if the assignee agrees to assume GBD's rights and obligations under this Agreement, including any payments due to Fletcher Studio by GBD prior to the assignment. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either GBD or Fletcher Studio.
- e. Neither GBD nor Fletcher Studio shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, lockouts, governmental delays, accidents, or other events or conditions beyond the other party's reasonable control.
- f. Notwithstanding anything in this Agreement to the contrary, City (including but not limited to RPD) is an intended third party beneficiary of this Agreement.

END OF TERMS AND CONDITIONS OF AGREEMENT

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