



**NOTICE OF A SPECIAL SESSION OF THE VINEYARD
REDEVELOPMENT AGENCY BOARD
December 27, 2023, at 6:00 PM**

Public Notice is hereby given that the Vineyard Redevelopment Agency Board will hold a special session on Wednesday, December 27, 2023, starting at 6:00 PM or as soon thereafter as possible, following the City Council Special Session, 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

2. CLOSED SESSION

The RDA Board pursuant to Utah Code 52-4-205 may vote to go into a closed session for the purpose of (these are just a few of the items listed, see Utah Code 52-4-205 for the entire list):

- (a) discussion of the character, professional competence, or physical or mental health of an individual
- (b) strategy sessions to discuss collective bargaining
- (c) strategy sessions to discuss pending or reasonably imminent litigation
- (d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares
- (e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares
- (f) discussion regarding deployment of security personnel, devices, or systems;
- (g) the purpose of considering information that is designated as a trade secret, as defined in Section [13-24-2](#), if the public body's consideration of the information is necessary in order to properly conduct a procurement under [Title 63G, Chapter 6a, Utah Procurement Code](#);

3. BUSINESS ITEMS

3.1 DISCUSSION AND ACTION – [Appointment of an RDA Director \(Resolution U2023-12\)](#)

(This item was continued from the December 13, 2023 RDA Board Meeting.)

Chair Fullmer will present a recommendation for the appointment of an RDA Director. The RDA Board will act to adopt (or deny) this request by resolution.

3.2 DISCUSSION AND ACTION – The Forge Tax Increment Participation Agreement (Resolution U2023-11) *(This item was continued from the December 13, 2023 RDA Board Meeting.)*

Dakota Pacific is requesting approval of a Tax Increment Participation Agreement. The RDA Board will act to adopt (or deny) this request by resolution.

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 City Recorder at least 24 hours before the meeting by calling (385) 338.5183.

I, the undersigned duly appointed City 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: December 21, 2023

CERTIFIED (NOTICED) BY: /s/Pamela Spencer
PAMELA SPENCER, CITY RECORDER



VINEYARD RDA BOARD STAFF REPORT

Meeting Date: December 13, 2023

Agenda Item: 3.1 Appointment of an RDA Director

Department: Administration

Presenter: David Mortensen

Background/Discussion:

The Vineyard City Redevelopment Agency needs professional administrative services to effectively operate. The attached resolution allows the city to contract for these administrative services.

Fiscal Impact:

The RDA Consultant is paid a consultancy fee of \$150/hr. for services rendered as well as reimbursements for all pre-approved expenses reasonably incurred in the performance of the Services.

Recommendation:

Approve the RDA Consultancy Agreement

Sample Motion:

“I move to adopt to adopt RDA resolution U2023-12”

Attachments:

Resolution U2023-12

RESOLUTION U2023-13

A RESOLUTION OF THE VINEYARD REDEVELOPMENT AGENCY AUTHORIZING THE BOARD CHAIR TO ENTER INTO A CONSULTANT AGREEMENT FOR THE POSITION OF VINEYARD REDEVELOPMENT AGENCY DIRECTOR

WHEREAS, the Board of Vineyard Redevelopment Agency (RDA) feels that the public interests would be best served through the appointment of a Director; and

WHEREAS, _____ is willing to serve as the Vineyard RDA Director on an annual contract basis not to exceed \$50,000; and

WHEREAS, the RDA desires to enter into contract with _____ to assume the role of Vineyard RDA Director on a part-time contracted term that may be renewed annually.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE VINEYARD REDEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Approval. The Board of Directors of the Vineyard Redevelopment Agency hereby authorizes the Chair of the Board of Directors of the Redevelopment Agency to sign a consultant agreement with _____ in the form substantially similar to that attached hereto as Exhibit A and incorporated herein by reference.

Section 2. Severability. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 3. Effective Date. This Resolution shall become effective immediately upon its approval by the Board of Directors.

Passed and dated this _____ day of _____, 2023.

Chair, Board of Directors

Attest:

Secretary

CONSULTANCY AGREEMENT

This Consultancy Agreement (the “Agreement”) is made and entered into this _____, 2023, (the “Effective Date”) by and between the Vineyard Redevelopment Agency (the “RDA”) and _____ (the “Consultant”) (hereinafter referred to individually as a “Party” and collectively as “the Parties”).

NOW, THEREFORE, the Parties hereby agree as follows:

1. Engagement and Services

a. Engagement. The RDA hereby engages the Consultant to provide and perform the services set forth below (the “Services”), and the Consultant hereby accepts the engagement:

i. Serve Vineyard as the Vineyard RDA director as outlined in the RDA Job announcement attached as Exhibit A.

b. Standard of Services. All Services to be provided by consultant shall be performed with promptness and diligence in a workmanlike manner and at a level of proficiency to be expected of a consultant with the background and experience that Consultant has represented it has. The RDA shall provide such access to its information, property and personnel as may be reasonably required in order to permit the Consultant to perform the Services.

2. Consultancy Period

a. Commencement. This Agreement shall commence on the Effective Date and shall remain in effect until June 30, 2022, or the earlier termination of this Agreement as provided in Article 2.b. (the “Consultancy Period”).

b. Termination. This Agreement may be terminated by the RDA, without cause and without liability, by giving ten days (10) calendar days written notice of such termination to the Consultant. This Agreement may be terminated by either Party by giving ten days (10) calendar days written notice of such termination to the other Party in the event of a material breach by the other Party.

c. Effect of Termination. Upon the effective date of termination of this Agreement, all legal obligations, rights and duties arising out of this Agreement shall terminate except for such legal obligations, rights and duties as shall have accrued prior to the effective date of termination and except as otherwise expressly provided in this Agreement.

3. Consultancy Fee and Expenses

a. Consultancy Fee. In consideration of the Services to be rendered hereunder, the RDA shall pay Consultant a Consultancy fee of one hundred fifty dollars (\$150) for each hour of Services provided to the RDA.

b. Expenses. Consultant shall be entitled to reimbursement for all pre-approved expenses reasonably incurred in the performance of the Services, upon submission and approval of written statements and receipts in accordance with the then regular procedures of the RDA.

c. Payment. The Consultant shall submit to the RDA a monthly invoice detailing the Services performed during the preceding month and the amount due. All such invoices shall be due and payable within thirty (30) calendar days after receipt thereof by the RDA.

4. Work Product and License

a. Defined. In this Agreement the term "Work Product" shall mean all work product generated by consultant solely or jointly with others in the performance of the Services, including, but not limited to, any and all information, notes, material, drawings, records, diagrams, formulae, processes, technology, firmware, software, know-how, designs, ideas, discoveries, inventions, improvements, copyrights, trademarks and trade secrets.

b. Ownership. Consultant agrees to assign and does hereby assign to RDA all right, title and interest in and to the Work Product. All Work Product shall be the sole and exclusive property of the RDA and Consultant will not have any rights of any kind whatsoever in such Work Product. Consultant agrees, at the request and cost of RDA, to promptly sign, execute, make and do all such deeds, documents, acts and things as RDA may reasonably require or desire to perfect RDA's entire right, title, and interest in and to any Work Product. Consultant will not make any use of any of the Work Product in any manner whatsoever without the RDA's prior written consent. All Work Product shall be promptly communicated to RDA.

c. License. In the event that Consultant integrates any work that was previously created by the Consultant into any Work Product, the Consultant shall grant to, and RDA is hereby granted, a worldwide, royalty-free, perpetual, irrevocable license to exploit the incorporated items, including, but not limited to, any and all copyrights, patents, designs, trade secrets, trademarks or other intellectual property rights, in connection with the Work Product in any manner that RDA deems appropriate. Consultant warrants that it shall not knowingly incorporate into any Work Product any material that would infringe any intellectual property rights of any third party.

5. Confidential Information

a. Defined. In this Agreement the term "Confidential Information" shall mean the Work Product and any and all information relating to the RDA's business, including, but not limited to, research, developments, product plans, products, services, diagrams, formulae, processes, techniques, technology, firmware, software, know-how, designs, ideas, discoveries, inventions, improvements, copyrights, trademarks, trade secrets, customers, suppliers, markets, marketing, finances disclosed by RDA either directly or indirectly in writing, orally or visually, to Consultant. Confidential Information does not include information which:

i. is in or comes into the public domain without breach of this Agreement by the Consultant,

ii. was in the possession of the Consultant prior to receipt from the RDA and was not acquired by the Consultant from the RDA under an obligation of confidentiality or non-use,

iii. is acquired by the Consultant from a third party not under an obligation of confidentiality or non-use to the RDA, or

iv. is independently developed by the Consultant without use of any Confidential Information of the RDA.

b. Obligations of Non-Disclosure and Non-Use. Unless otherwise agreed to in advance and in writing by the RDA, Consultant will not, except as required by law or court order, use the Confidential Information for any purpose whatsoever other than the performance of the Services or disclose the Confidential Information to any third party. Consultant may disclose the Confidential Information only to those of its employees who need to know such information. In addition, prior to any disclosure of such Confidential Information to any such employee, such employee shall be made aware of the confidential nature of the Confidential Information and shall execute, or shall already be bound by, a non-disclosure agreement containing terms and conditions consistent with the terms and conditions of this Agreement. In any event, Consultant shall be responsible for any breach of the terms and conditions of this Agreement by any of its employees. Consultant shall use the same degree of care to avoid disclosure of the Confidential Information as it employs with respect to its own Confidential Information of like importance, but not less than a reasonable degree of care.

c. Return of Confidential Information. Upon the termination or expiration of this Agreement for any reason, or upon RDA's earlier request, Consultant will deliver to RDA all of RDA's property or Confidential Information in tangible form that Consultant may have in its possession or control. The Consultant may retain one copy of the Confidential Information in its legal files.

6. Interference with Business

a. Non-Competition. During the term of this Agreement, Consultant will engage in no business or other activities which are, directly or indirectly, competitive with the business activities of the RDA without obtaining the prior written consent of the RDA.

b. Non-Solicitation. Consultant and RDA agrees that for a period of one (1) year after termination of this Agreement, Consultant and RDA shall not:

i. divert or attempt to divert from the RDA any business of any kind in which it is engaged, including, without limitation, the solicitation of or interference with any of its suppliers or customers, or

ii. employ, solicit for employment, or recommend for employment any person employed by the RDA, during the Consultancy Period and for a period of one (1) year thereafter.

7. Independent Contractor

The Consultant agrees that all Services will be rendered by it as an independent contractor and that this Agreement does not create an employer-employee relationship between the Consultant and the RDA. The Consultant shall have no right to receive any employee benefits provided by the RDA to its employees. Consultant agrees to pay all taxes due in respect of the Consultancy Fee and to indemnify the RDA in respect of any obligation that may be imposed on the RDA to pay any such taxes or resulting from Consultant's being determined not to be an independent contractor. This Agreement does not authorize the Consultant to act for the RDA as its agent or to make commitments on behalf of the RDA.

8. Assignment

The Services to be performed by Consultant hereunder are personal in nature, and RDA has engaged Consultant as a result of Consultant's expertise relating to such Services. Consultant, therefore, agrees that it will not assign, sell, transfer, delegate or otherwise dispose of this Agreement or any right, duty or obligation under this Agreement without the RDA's prior written consent. Nothing in this Agreement shall prevent the assignment by the RDA of this Agreement or any right, duty or obligation hereunder to any third party.

9. Injunctive Relief

Consultant acknowledges that a violation of Article 5 or 6 would cause immediate and irreparable harm to the RDA for which money damages would be inadequate. Therefore, the RDA will be entitled to injunctive relief for Consultant's breach of any of its obligations under the said Articles without proof of actual damages and without the posting of bond or other security. Such remedy shall not be deemed to be the exclusive remedy for such violation, but shall be in addition to all other remedies available at law or in equity.

10. Governing Law and Dispute Resolution

This Agreement shall be governed by and construed in accordance with the laws of Utah, without giving effect to any choice of law or conflict of law provisions. The Parties consent to the exclusive jurisdiction and venue in the courts of the Fourth Judicial District.

11. General

This Agreement constitutes the entire agreement of the Parties on the subject hereof and supersedes all prior understandings and instruments on such subject. This Agreement may not be modified other than by a written instrument executed by duly authorized representatives of the Parties.

No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of such provision or any other provision(s) of this Agreement.

Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law giving effect to the intent of the Parties and enforced as modified. All other terms and conditions of this Agreement shall remain in full force and effect and shall be construed in accordance with the modified provision.

12. Survival of Provisions

The provisions of this Agreement shall survive the termination of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the date first written above.

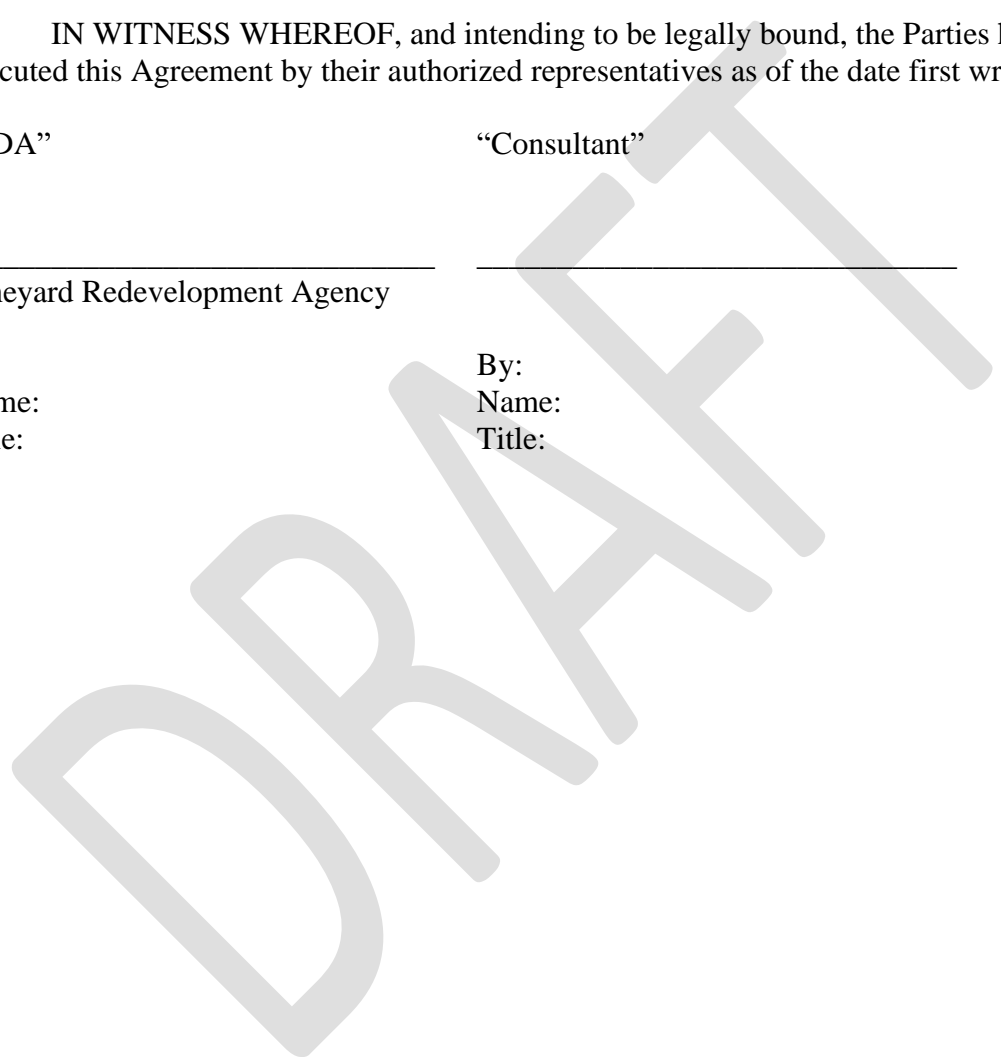
“RDA”

“Consultant”

Vineyard Redevelopment Agency

By:
Name:
Title:

By:
Name:
Title:





VINEYARD REDEVELOPMENT AGENCY STAFF REPORT

Meeting Date: December 27, 2023

Agenda Item: 3.2 The Forge Reimbursement Agreement (Resolution U2023-11)

Department: Administration

Presenter: Eric Ellis

Background/Discussion: Dakota Pacific is requesting approval of a Tax Increment participation agreement

Fiscal Impact:

Recommendation:

Sample Motion: I move to adopt Resolution U2023-11, approving The Forge Tax Increment participation agreement and allowing the chair to sign the agreement as presented.

Or

I move to adopt Resolution U2023-11, approving The Forge Tax Increment participation agreement and allowing the chair to sign the agreement with the noted changes.

Attachments:

Resolution U2023-11

Tax Increment Participation Agreement

RESOLUTION U2023-11

A RESOLUTION OF THE VINEYARD REDEVELOPMENT AGENCY APPROVING A TAX INCREMENT PARTICIPATION AGREEMENT WITH COTTONWOOD GENEVA, LLC

WHEREAS, Cottonwood Geneva, LLC, owns property within the boundaries of Phase IV of the Geneva Urban Renewal Project Area (“Development”); and

WHEREAS, the Development will generate tax increment that is diverted to the Agency pursuant to the provisions of the Limited Purpose Local Government Entities – Community Reinvestment Agency Act, Title 17C, et seq., Utah Code Annotated, as amended (“Act”).

WHEREAS, Agency desires to share a portion of the tax increment funds with Cottonwood Geneva, LLC, to facilitate the Development; and

WHEREAS, the Vineyard Redevelopment Agency desires to approve the Tax Increment Participation Agreement, to allow for the completion of the Development for the benefit of the residents of Vineyard City;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE VINEYARD REDEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Approval. The Board of Directors of the Vineyard Redevelopment Agency hereby approves that certain Tax Increment Participation Agreement, attached hereto as Exhibit A and incorporated herein by reference. The Chair of the Board of Directors of the Redevelopment Agency is hereby authorized to negotiate and sign the Tax Increment Participation Agreement for and in behalf of the Agency.

Section 2. Severability. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 3. Effective Date. This Resolution shall become effective immediately upon its approval by the Board of Directors.

Passed and dated this _____ day of _____, 2023.

Chair, Board of Directors

Attest:

Secretary

TAX INCREMENT PARTICIPATION AGREEMENT

This Tax Increment Participation Agreement (“**Agreement**”) is entered into and effective as of this ____ day of December, 2023 (“**Effective Date**”), by and between COTTONWOOD GENEVA LLC, a Utah limited liability company (“**Participant**”) and the VINEYARD REDEVELOPMENT AGENCY, a political subdivision of the State of Utah (“**Agency**”).

Recitals

A. Agency and the City of Vineyard, Utah (“**City**”), have created the Geneva Urban Renewal Area (“**Project Area**”) through the adoption of the Geneva Urban Renewal Project Area Plan, as amended February 9, 2011 (“**Plan**”) and the Geneva Urban Renewal Project Area Budget (“**Budget**”) pursuant to the Limited Purpose Local Government Entities – Community Reinvestment Agency Act, Title 17C, *et seq.*, Utah Code Annotated, as amended (“**Act**”).

B. Agency and the City have determined that redevelopment of the Project Area constitutes the performance of an essential public purpose, which protects and promotes the public health, safety, and welfare.

C. The Act grants Agency the authority to use Agency funds, as defined in Utah Code Annotated § 17C-1-102(5) (“**Agency Funds**”) to incentivize new businesses to locate within the Project Area.

D. The Participant owns and is developing the real property described on **Exhibit A** attached hereto and depicted on **Exhibit B** attached hereto (“**Property**”). The “Property” shall include any real property of which Participant subsequently obtains ownership and provides written notice thereof to the Agency, and which is contiguous to the real property described on the attached **Exhibit A**. The Property is located within the boundaries of Phase IV of the Project Area (“**Phase IV**”).

E. The Property will generate tax increment that is diverted to the Agency pursuant to the provisions of the Act. The tax increment that generated from the Property and diverted to the Agency pursuant to the provision of the Act is referred to herein as the “**Property Funds**”.

F. Agency desires to share a portion of the Property Funds with Participant to facilitate the development of the Property.

G. The Plan and Budget contemplates the use of Agency Funds to incentivize development within the Project Area.

H. Agency is authorized to enter into this Agreement with Participant and utilize Agency Funds for the purposes set forth herein pursuant to Section 17C-1-202 of the Act.

I. Participant is a “Participant”, and this Agreement qualifies as a “Participation Agreement” as these terms are defined in Section 17C-1-102 (38) and (39) of the Act.

Agreement

NOW THEREFORE, in consideration of the mutual covenants, conditions, and considerations as more fully set forth below, the parties hereby agree as follows:

1. **Tax Increment.** This Agreement refers to “tax increment” which is a term defined by Utah Code Ann. § 17C-1-102(60) (2018). The term tax increment has the same meaning as defined by that statute (as amended, replaced or superseded from time to time). The parties acknowledge that tax increment generally refers to the additional *ad valorem* tax revenues generated by the increase in value of taxable real and personal property resulting from new development and construction. The Agency is entitled to collect a portion of tax increment from the property located within the Project Area boundaries as expressly provided under the Act and the Agency Plan and Budget, respectively.

2. **Participant Reimbursement.**

- a. *Payment of Participant Reimbursement.* So long as Participant is current on its obligations under this Agreement, the Agency will annually reimburse Participant from the Participant Share (defined below) as provided in Sections 2.b and 2.c below, and such annual payment is referred to herein as the “**Annual Increment Payment**”. If the amount of the Participant Share for a given year is greater than the Annual Increment Payment, the Agency shall retain such excess Participant Share in a segregated account and shall use such funds for the payment of a future Annual Increment Payment in accordance with this Agreement.
- b. *Calculation of Participant Reimbursement.* The amount of the Annual Increment Payment shall be limited to the amounts invested by Participant into all costs incurred by Participant in developing, acquiring, or installing structured parking improvements, pedestrian element improvements, open space improvements, public infrastructure, and other costs and expenses described and allowed under the Project Area with respect to the Property (collectively, “**Project Improvements**”). Participant shall be entitled to receive an Annual Increment Payment of up to 75% of the Property Funds actually received by the Agency for Project Improvements constructed within the Property (the “**Participant Share**”). Participant may request the Agency’s approval of an amendment to this Agreement in order to provide for an Annual Increment Payment of up to 85% of the Property Funds actually received by the Agency for Project Improvements constructed within the portion of the Property identified as “Lot 1” on the attached **Exhibit B** in order to incentivize a certain use or feature within such Lot 1, which request will be considered in good faith by the Agency.
- c. *Interest on Unreimbursed Expenses.* In addition to the Participant Share, Participant is entitled to receive interest at a rate of 8.5% per annum on the costs Participant incurred installing the Project Improvements until such time that Participant receives the Annual Increment Payment for the installed Project Improvements.
- d. *Conditions Precedent to Payment of Participant Share.* The Agency shall pay the

Annual Increment Payment to Participant on the date identified in Section 3 below provided that all of the following conditions precedent are satisfied (collectively, “**Conditions Precedent**”):

- i) The Agency has actually received the Property Funds from Utah County for the particular calendar year.
 - ii) Participant has made a request for payment in writing pursuant to Section 2.f for the year for which Participant seeks payment of the Annual Increment Payment.
- e. *Effect of Failure to Meet Conditions Precedent.* If the Conditions Precedent are not met during the term of this Agreement, and Participant is thus not entitled to receive the Annual Increment Payment until the Condition Precedent is met, but Participant is otherwise not in default under this Agreement, such failure of a Condition Precedent shall not constitute a default under this Agreement. If a Condition Precedent has not been met, Agency agrees, subject to the requirements of then existing law, to accrue in segregated accounts the Property Funds and to distribute timely the same to Participant upon satisfaction of the applicable Conditions Precedent.
- f. *Request for Payment.* Participant shall submit in writing a request for payment to the Agency by March 31 of the year following the year for which the Participant Share is being sought (the “**Request for Payment**”). With the Request for Payment, Participant shall include a calculation of the cost of the Project Improvements and provide supporting documentation that is sufficient to establish the details of construction and the actual costs of the Project Improvements. If the Agency determines that a Request for Payment is incomplete or otherwise deficient, the Agency shall notify Participant within thirty (30) days of the Agency’s receipt of the Request for Payment. A deficient Request for Payment that is submitted by the date established in this section shall be treated as timely so long as Participant provides an updated Request for Payment within fifteen (15) days of receiving notice of the deficiency from the Agency.

3. **Timing of Annual Increment Payments.** Subject to Section 2 above, the Agency will make the first Annual Increment Payment on May 1 of the year after construction on the Project Improvements has commenced, and, subject to Section 2 above, the Agency will continue making the Annual Increment Payments on or before the first day of May each successive year through and until the later of (a) twenty-five (25) years after the first Annual Increment Payment, and (b) the end of the Phase IV term (as may be extended from time to time).

4. **General Reimbursement Terms.**

- a. *Reservation of Reimbursement Rights.* Notwithstanding any provision in any present or future laws to the contrary, the Participant reserves unto itself the right to all payments and reimbursements for items constructed within the Property or by the Participant even if the Participant sells any portion of the Property to a third-party. Any assignment of the right to receive payments and reimbursements under this Agreement

must be in writing, signed by the Participant, and approved by the Agency, and must include specific details regarding the right or amount of reimbursement transferred to a third party. In the event of a transfer of any reimbursement or payment right under this Agreement, both assignor and assignee must provide written notice to the Agency in accordance with this Agreement. Notwithstanding the foregoing, the Participant shall not be entitled to retain reimbursements or payments under this Agreement that exceed the actual costs incurred by the Participant. Notwithstanding the foregoing provisions of this Section 4.a, Participant may assign or pledge its right to receive Tax Increment under this Agreement to a lender or other financing person or entity to secure financing for the Project, without the Agency's consent, provided that Participant provides notice to the Agency of such an assignment or pledge

- b. *Reduction or Elimination of Reimbursement.* Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant's cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the Annual Increment Payment to Participant and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Annual Increment Payment to Participant.
- c. *Declaration of Invalidity.* If any legal action is filed in a court of competent jurisdiction that seeks to invalidate the Project Area, this Agreement, or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Annual Increment Payment to Participant, the Agency shall provide written notice of such legal action to Participant. If such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action but agrees not to enter into any settlement, consent, decree, or other resolution without first providing Participant a reasonable opportunity to intervene and defend the rights and privileges provided under this Agreement. If requested by Participant, the Agency may, at its sole discretion, take such actions as may be reasonably required to defend such legal action and to address the grounds for any causes of action that could result in the reduction or elimination of the Annual Increment Payment. Participant specifically reserves and does not waive any right it may have to intervene, at Participant's cost and expense, in any such legal action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Annual Increment Payment to Participant, and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Annual Increment Payment to Participant. In the event that the court declares that the Agency cannot pay the Annual Increment Payment, invalidates the Project Area, or this Agreement, or takes any other action which eliminates or reduces the amount of Annual Increment Payment, the Agency's obligation to pay to Participant the Annual Increment Payment in accordance with this Agreement will be reduced or eliminated to the extent required by law.
- d. *Nature of Participant's Obligations and Limitations.* The failure of Participant to fulfill its obligations under this Agreement may result in a failure to qualify to receive the Annual Increment Payment, trigger withholding of an unpaid portion of the Annual Increment Payment or result in termination of this Agreement but shall not give rise to

any other right or remedy in favor of the Agency. The Agency shall have no right hereunder to compel Participant to install improvements or otherwise develop the Project.

5. **Agency Authority/Powers.** The Participant acknowledges that the Agency is a political subdivision of the State of Utah operating and existing under Title 17C of the Utah Code Ann., separate and distinct from the City, for the purpose of, among other things, promoting the urban renewal, economic development and community development in the City. The Participant acknowledges that the City is not a party to this Agreement and the City will not have any duties, liabilities or obligations under this Agreement. The Participant understands that the Agency has no independent taxing power, and therefore the Agency's sole source of revenue is tax increment financing as provided under Utah law.

6. **Agreement Term/Breach/Termination.** Despite anything else in this Agreement to the contrary, this Agreement will terminate immediately and automatically upon payment of the final Annual Increment Payment as described in Section 3 above. This Agreement may also be terminated earlier as follows: Upon the material breach of this Agreement by either party, the non-breaching party shall provide written notice to the breaching party. The breaching party shall have thirty (30) days to cure the breach, and if the breach is not timely cured, the non-breaching party may then terminate this Agreement by providing final notice to the breaching party; provided, however, if more than thirty (30) days shall be required because of the nature of the breach, so long as the breaching party shall commence to cure such breach within thirty (30) days after receipt of written notice from the non-breaching party specifying the nature of such breach and the breaching party shall thereafter diligently prosecute the cure to completion, then the non-breaching party may not terminate this Agreement.

7. **Notices.** All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be deemed to be delivered, whether actually received or not, three (3) days after deposit in a regularly maintained receptacle for the United States mail, registered or certified (or another commercially acceptable means requiring a return receipt), postage prepaid, addressed as follows:

If to Participant: Cottonwood Geneva LLC
299 S Main Street
Salt Lake City, Utah 84111
Attention: Scott Swallow
Email: sswallow@dakotapacific.com

With a Copy to: Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attn: Craig T. Jenson
Email: cjenson@swlaw.com

If to Agency: Vineyard Redevelopment Agency
125 South Main Street

Vineyard, UT 84059
Attn: Board Chair

With a Copy to:

Hayes Godfrey Bell, P.C.
2118 East 3900 South, Suite 300
Holladay, Utah 84124
Attn: Jayme Blakesley
Email: jblakesley@hgblaw.net

Such communications may also be given by facsimile transmission or electronic mail, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon the receipt, or upon attempted delivery thereof if the delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means of accomplishing delivery.

8. **Successors and Assigns.** This Agreement shall be binding upon the parties and their respective successors and assigns. Neither party may assign its rights or obligations under this Agreement without the advance written consent of the other party.

9. **Amendments.** Except as otherwise provided herein, this Agreement may be modified or amended by, and only by, a written instrument duly authorized and executed by the Participant and the Agency.

10. **Governing Law and Interpretation.** This Agreement shall be governed by the laws of the State of Utah, and any action pertaining hereto shall be brought in the applicable state or federal court having jurisdiction in Utah County, Utah. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

11. **Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never composed a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided, however, that such illegal, invalid or unenforceable provision does not relieve the Participant from any obligation for Project Improvements for which Agency has an obligation to reimburse the Participant under the provisions of this Agreement.

12. **Integrated Agreement.** The Recitals, and all exhibits, schedules and attachments attached hereto, are incorporated and made an integral part of this Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed. There are no other contracts or agreements, written or verbal, between the parties relating in any way to the subject matter of this Agreement. No party is relying on any verbal or written statements of the other than

those expressly set forth in this Agreement.

13. **Further Assurances.** The parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

14. **Indemnification.** The Participant shall indemnify, defend (with counsel of the indemnitee's choosing), and hold the Agency (including their respective officers, directors, agents, employees, contractors, and consultants) harmless from and against all liability, loss, damage, costs or expenses, including attorneys' fees and court costs, arising from or as a result of death, injury, accident, loss or damage of any kind caused to any person or property because of the act(s), error(s), or omission(s) of the Participant (including its officers, directors, agents, employees, contractors, and consultants) upon or in connection with the Property or in connection in any way with this Agreement, except in each case to the extent arising out of the negligence, willful misconduct, illegal acts, bad faith or breach of this Agreement by the Agency or the City (including their respective officers, directors, agents, employees, contractors, and consultants).

15. **Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the Agency and the Participant and there are no intended third-party beneficiaries.

16. **No Liability of Officials or Employees.** No director, officer, agent, employee, or consultant of the Agency or the Participant shall be personally liable to the other party hereto, or any successor in interest, in the event of any default or breach by the Agency or Participant or for any amount which may become due to the Participant or its successors or on any obligations under the terms of this Agreement.

17. **Force Majeure.** No liability or breach of this Agreement shall result from delay in performance or nonperformance caused, directly or indirectly, by circumstances beyond the reasonable control of the Participant, including, but not limited to, strikes, lock-outs, fire or other casualty, inclement weather abnormal for the period of time and not reasonably anticipatable, the elements or acts of God, war, riot, insurrections or shortages of or unusual delays in the delivery of construction materials (which have been ordered in a timely manner) or other causes, other than financial and managerial, beyond the reasonable control of the Participant, or its subcontractors of any tier, agents or employees.

18. **No Legal Relationships.** The parties disclaim any partnership, joint venture, fiduciary, agency or employment status or relationship between them. No party has the authority to make any representation or warranty or incur any obligation or liability on behalf of the other party, nor shall they make any representation to any third party inconsistent with this paragraph.

19. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Property or Project Improvements for the general public or for any public purpose whatsoever.

[End of Terms -Signature Page Follows]

THIS TAX INCREMENT PARTICIPATION AGREEMENT IS EXECUTED effective as of the day and year first above written, by:

PARTICIPANT:

COTTONWOOD GENEVA LLC,
a Utah limited liability company

By: _____

Name: _____

Its: _____

AGENCY:

VINEYARD REDEVELOPMENT AGENCY,
a political subdivision of the State of Utah

Board Chair

ATTEST:

Secretary

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1, 2, 3, 4, 6, 7, AND 10, PLAT A, THE FORGE SUBDIVISION AS SHOWN BY THE OFFICIAL PLAT THEREOF FILED IN THE OFFICE OF THE RECORDER OF UTAH COUNTY, UTAH

EXHIBIT B

DEPICTION OF THE PROPERTY (Outlined in Red)

