

## **CIVIC BRIDGE DONOR SERVICES AGREEMENT**

between the City and County of San Francisco's Planning Department  
and U.S. Digital Response

This Civic Bridge Donor Services Agreement (this "Agreement") is entered into as of August 17, 2022 (the "Effective Date") between the City and County of San Francisco ("City") and U.S. Digital Response, a 501(c)(3) public charity ("Donor").

### **RECITALS**

WHEREAS, The Civic Bridge Program, a 12-week program that is an initiative of the San Francisco Mayor's Office of Innovation, matches pro bono private and/or nonprofit sector talent with certain departments of the City to address specific policy or operational challenges facing those departments. Under the Program, private companies, nonprofits, and individuals may donate consulting services free of charge to the City to help City departments develop cutting-edge strategies and solutions to improve public sector service delivery and enhance internal process capability; and

WHEREAS, San Francisco's Planning Department ("Department"), a department of the City, seeks volunteer consulting services to help identify a set of key performance indicators (KPIs) for the City's Tenderloin Community Action Plan (TCAP), and develop an implementation guide for the City to measure the KPIs over time ("the Project"); and

WHEREAS, Donor proposes to donate to the Department consulting services for the Project free of charge as a gift-in-kind ("Donor Services"); and

WHEREAS, the Donor Services will be a team of 5 volunteers providing up to approximately 480 hours of time collectively to assist the Department with this work over the course of 12-weeks;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises set forth herein, the parties hereto agree as follows:

#### **1. Description of Donor Services.**

Donor will provide free consulting services on a volunteer basis to the Department for the Project over an approximately 12-week period expected to run between August 17 – October 28, 2022. The monetary value of the donation is \$93,600.

The Donor Services will be a team of 5 volunteers providing up to approximately 480 hours of time collectively to assist the department with this work over the course of 12-weeks. At the end of the Project, the Donor will provide the Department with a final report featuring: a recommended set of KPIs for the TCAP; a recommended system to measure and evaluate KPIs for the TCAP

(with templates); guidance and suggestions about how to approach similar City initiatives, including design research resources ("Deliverables"). The parties acknowledge and agree that deliverables provided under this Agreement may be subject to applicable public disclosure laws, including the City's Sunshine Ordinance.

All rights relating to copyright, patent, trade secret, trademark and any other intellectual property or proprietary rights ("Intellectual Property Rights") in the Deliverables owned by Donor prior to providing the Services remain solely with Donor ("Donor Pre-Existing Property"). All Intellectual Property Rights owned by City prior to Donor providing the Services remain solely with City ("City Pre-Existing Property").

With respect to any Intellectual Property Rights in the Deliverables or other work product jointly created by Donor and City under or pursuant to this Agreement ("Jointly-Developed Property"), any patent rights and/or trade secrets contained in the Jointly-Developed Property are owned by City. To the extent that City owns any patent rights and/or trade secrets in the Jointly-Developed Property, City hereby assigns all such rights to Donor, excluding City Pre- Existing Property.

Each party retains all right, title and interest in and to all information and data it provides to the other party in furtherance of the Project. The receiving party is authorized to have access to and make use of the other party's data solely to the extent necessary for performance of the Services under this Agreement.

The Department hereby agrees to accept the Donor Services, and will use its discretion in deciding how to deploy or implement the Donor Services, but in any event will comply with the terms of this Agreement. The parties acknowledge and agree that the Donor Services are for the benefit and use of the City.

Donor and Department acknowledge and agree that the Civic Bridge Program will not be used for the Department's general acquisition of goods and services otherwise subject to the requirements of the San Francisco Administrative Code. Nothing in this Agreement shall prohibit Donor from participating in a competitive solicitation or otherwise contracting with City or Department to provide City with goods or services if done in compliance with all applicable City procurement and solicitation rules, regulations, policies, and procedures and all applicable conflict-of-interest laws. If, during the course of the Project, Donor is instrumental in developing the scope of work for a future procurement, then the Donor is prohibited from bidding on that future procurement. The Donor acknowledges and agrees that under certain laws, including California Government Code section 1090, involvement in preparing for a procurement may disqualify a Donor from participating in a later competitive bid process or from having any direct communication with or receiving any compensation or other benefit from a bidder, contractor, or vendor with respect to a resulting procurement.

## **2. No Employment Relationship.**

Donor acknowledges and agrees that providing Donor Services for the City does not create any employment relationship or expectation of a future employment relationship between the Donor and the City or its Department. Donor acknowledges and agrees that the City may, in its sole discretion, provide Donor with access to certain City resources for the purposes of the Project but that the provision of such access shall in no way be construed as creating, or giving rise to, any employment relationship. The City may reject the Donor Services at any time without notice or hearing or cause.

The City or Department will not provide any compensation of any kind to the Donor for the Donor Services provided under this Agreement, and no expenses of any kind will be reimbursed. Donor shall not represent or hold him or herself out to be an employee of the City at any time.

Prior to beginning the Donor Services, Donor shall execute an acknowledgement, in a form acceptable to the City, that he or she is not an employee of the City.

## **3. Proprietary or Confidential Information of City.**

The City will not disclose "Private Information" to Donor within the meaning of San Francisco Administrative Code Chapter 12M, and Donor and Donor's employees and volunteers shall not have access to such information.

During the Project, either party may have access to the other party's proprietary or confidential information, the disclosure of which to third parties may damage the disclosing party. If a party discloses proprietary or confidential information to the other party, such information must be held by the receiving party in confidence and used only in performing the Agreement. The receiving party shall exercise the same standard of care to protect such information as a reasonably prudent business entity would use to protect its own proprietary or confidential information. For the purposes of this section, confidential information means non-public or proprietary information about a disclosing party's business related to technical, commercial, financial, employee, or planning information that is disclosed by the disclosing party to the other party in connection with this Agreement, and (A) is identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (B) is not identified as confidential at the time of disclosure, but is by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential. Any Donor technology will be deemed confidential information of Donor without any marking or further designation. Confidential information does not include information that: (1) has become public knowledge through no fault of the receiving party; (2) was known to the receiving party, free of any confidentiality obligations, before its disclosure by the disclosing party; (3) becomes known to the receiving party, free of any confidentiality obligations, from a source other than the disclosing party; or (4) is independently developed by the receiving

party without use of confidential information.

The City or Department shall not make available to Donor access to City information system networks that are not available to the public without the consultation and approval of the City's Chief Information Security Officer and the Donor.

The City or Department shall not make available to Donor Protected Health Information ("PHI"), which means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of a company; the provision of health care to a company; and (ii) that identifies the company or with respect to where there is a reasonable basis to believe the information can be used to identify the company, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information (45 C.F.R. Sections 160.103, 164.501).

4. **Workers Compensation.** Donor acknowledges and agrees that the City is not obligated to and does not carry any insurance for Donor, and any condition, illness or injury that Donor suffers in the performance of the Donor Services shall be covered by the Donor's insurance.

5. **Use of City and County Property for Business Purposes Only.** All City equipment, devices, materials, supplies, furnishings (e.g., photocopiers, telephones, computers, printers, vehicles, stationary, fax machines) must be used only to conduct City business. Use of City property for personal, political, or other non-City business is strictly prohibited and could lead to the City's rejection of further Donor Services from the Donor.

6. **Indemnity.**

Donor also agrees to defend, indemnify and hold harmless the City, its officers, employees and agents, from any and all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any third party resulting from the use by the City, or any of its boards, commissions, officers, or employees of the Donor Services under this Agreement.

City agrees to defend, indemnify and hold harmless Donor from any and all acts, claims, omissions, liabilities and losses by whomever asserted arising out of acts or omissions of City in its obligations under this Agreement and participation in the Project, except those arising by reason of the sole negligence of Donor.

In the event of concurrent negligence of City, its officers, employees and agents, and Donor, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

7. **No Warranties.** Donor makes no representation or warranty of any kind, express or implied, relating to the Donor Services, including, without limitation, implied warranties of merchantability, fitness for a particular purpose, or non-infringement

of intellectual property rights. Donor also makes no representation or warranty of any kind, express or implied, that any software created through the Donor Services will operate without interruption, meet any performance or reliability standards, or be error-free.

**8. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DONOR, ITS DIRECTORS, OFFICERS, EMPLOYEES OR VOLUNTEERS BE LIABLE TO CITY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS, COSTS OF DELAY, FAILURE OF DELIVERY, OR BUSINESS INTERRUPTION, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL NOT APPLY TO (1) DAMAGES CAUSED BY DONOR'S RECKLESS CONDUCT OR WILLFUL ACTS OR OMISSIONS, (2) DONOR'S OBLIGATIONS TO INDEMNIFY CITY PURSUANT TO THE INDEMNIFICATION CLAUSE, AND (3) WRONGFUL DEATH CAUSED BY DONOR. Donor recognizes that the Project volunteers may enter into specific agreements with City from time to time and nothing in this Agreement shall alter any such agreement with a Project volunteer; provided, however, except as otherwise specifically agreed in such an agreement, the foregoing limitation of liability shall apply to each such agreement that City may enter into with a Project volunteer. City recognizes that Donor is not a party to such agreements and shall not seek to hold Donor liable for any breach of the same by any Project volunteer.

**9. Effective Date; Term; Termination.**

The term of this Agreement shall commence on the Effective Date, and shall end on October 28, 2022, provided that the City can reject all or any part of the Donor Services being provided under this Agreement at any time upon written notice. Either party may terminate this Agreement, at any time during the term hereof, for convenience and without cause, by giving the other party written notice of termination.

**8. Notices.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Department: Mayor's Office San Francisco, CA 94102

To Donor: U.S. Digital Response, 490 43rd Street, Unit #230, Oakland, CA 94609

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice.

**9. Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**10. Governing Law; Venue.** The formation, interpretation and performance of

this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11. **Entire Agreement.** This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.
12. **Policies.** City's participation in the Project shall be subject to the U.S. Digital Response Policies & Guidelines (set forth at: <https://policies.usdigitalresponse.org/>), as the same may be applicable and published from time to time to the extent such Policies & Guidance do not conflict with the terms of this Agreement; should City determine that it cannot comply with such policies, it should terminate its participation in the Project. By default and unless agreed otherwise, all software and design assets produced by Donor team members or volunteers may be published using Open Source Initiative-approved or Creative Commons Zero licenses. Nothing in this Agreement prohibits or restricts City from requiring Project volunteers to comply with City's applicable policies and procedures, provided the same as consistent with applicable law.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

**CITY:** \_\_\_\_\_

**DONOR:** \_\_\_\_\_

By: DocuSigned by:  
Andrea Nelson  
D98A1B95429D458...

By: DocuSigned by:  
Jessica Cole  
190A37078CA7470...

Print Name: Andrea Nelson

Print Name: Jessica cole

Print Title: Senior Community Development specialist

**Approved as to Form:**

David Chiu  
City Attorney

By: DocuSigned by:  
Giulia Gualco-Nelson  
EEF86ECF0262498...

Print Name: Giulia Gualco-Nelson

Deputy City Attorney