

## **CIVIC BRIDGE DONOR SERVICES AGREEMENT**

between the City and County of San Francisco acting by and through its Treasure Island Development Authority (“TIDA”)

and

M. Arthur Gensler Jr. & Associates, Inc. (“Gensler” or “Donor”)

### **RECITALS**

WHEREAS, The Civic Bridge Program, a 16 week program that is an initiative of the San Francisco Mayor’s Office of Civic Innovation, matches pro bono private sector talent with certain departments of the City and County of San Francisco (“City”) to address specific policy or operational challenges facing those departments. Under the Program, private companies 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, Treasure Island Development Authority (“TIDA” or “Department”), a department of the City, seeks volunteer consulting services to help address improvements to the Treasure Island Development program (“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 provided by a team of 3-6 employees giving approximately 20% of their work time to assist the department with this work over the course of 16 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 16 week period expected to run between January and June 2020. The value of the services is \$76,800.

Donor will provide consulting services which includes a study of potential location and massing alternatives for Healthright360 (HR360) replacement beds on Treasure Island. The consultant will analyze how the HR360 replacement facility should be programmed and designed on the designated site(s) (Parcels E2.3 and E2.4). See attached figure for the site reference.

The parties acknowledge and agree that deliverables provided under this agreement are subject to applicable public disclosure laws, including the City’s Sunshine Ordinance.

Unless specifically agreed upon in advance by Department, all work product and deliverables prepared in whole or in part by Donor under this Agreement shall be the property of City with the exception of any preexisting intellectual work product

incorporated into such work product and deliverable, all rights which are reserved by Donor. However, Donor may retain and use copies for reference and as documentation of the volunteer experience and capabilities.

If, in connection with consulting services provided under this Agreement, Donor creates artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City other than as provided herein. If it is ever determined that any works created by Donor under this Agreement are not works for hire under U.S. law, Donor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Donor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

The Department hereby agrees to accept the Donor Services, and will use its discretion in deciding how to deploy or implement the Donor Services. The parties acknowledge and agree that the Donor Services are for the benefit and use of the City, without restriction.

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 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 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 Donor's 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.**

If this Agreement requires City to disclose "Private Information" to Donor within the meaning of San Francisco Administrative Code Chapter 12M, Donor and Donor's employees shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Donor Services. Donor is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of Donor Services, Donor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Donor, such information must be held by Donor in confidence and used only in performing the Agreement. Donor 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.

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.

The City or Department shall not make available and Donor shall have no obligations relative 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 an company; the provision of health care to an 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). In the event that PHI is inadvertently produced to Donor, Donor shall immediately return the PHI and shall not use or disclose the PHI in any manner.

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 agrees to indemnify and hold harmless, but not defend pursuant Civil Code section 2782.8, 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 person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Donor's services under this Agreement.

**7. Effective Date; Term; Termination.**

The effective date of this Agreement shall be 9/14/18. The term of this Agreement shall commence on the effective date, and shall end on 1/31/19, 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 TIDA:        Robert Beck  
                    Treasure Island Director  
                    Treasure Island Development Authority  
                    One Avenue of the Palms, Suite 241  
                    San Francisco, CA 94130  
                    Office phone: 415-274-0662  
                    bob.beck@sfgov.org

To Donor:        Zoe Krizner  
                    zoe\_krizner@gensler.com

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. **Standard of Care.** Donor will perform the Donor Services with the reasonable skill and care ordinarily provided by professionals practicing in the same discipline and locality under similar circumstances.
13. **Limitation of Liability.** Except for the indemnification obligations hereunder, the Department agrees that Donor's total liability arising out of or related to the Donor Services or this Agreement will not exceed the total compensation received by Donor pursuant to this Agreement or \$10,000, whichever is greater.
14. **Mutual Waiver of Consequential Damages.** The Parties hereby waive special, exemplary or consequential damages for claims or disputes arising out of or relating to this Agreement. The parties agree that this mutual waiver includes, but is not limited to, waiver of damages incurred by either party for loss of income, lost profit, financing costs, loss of business, or damage to reputation.

*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:** \_\_\_\_\_  
Treasure Island Development Authority

**DONOR:** \_\_\_\_\_  
M. Arthur Gensler Jr. & Associates, Inc.

By: \_\_\_\_\_  
\_\_\_\_\_

By:  \_\_\_\_\_

Print Name:  
Robert P. Beck  
Treasure Island Director

Print Name:  
Barry Bourbon

In Process

**APPROVED AS TO FORM:**

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Eileen Malley  
Deputy City Attorney

# EXHIBIT G (PUBLIC PROPERTY MAP)

