

CIVIC BRIDGE DONOR SERVICES AGREEMENT

between the City and County of San Francisco acting by and through its San Francisco Human Services Agency, Department of Disability and Aging Services

and

ZS Associates, Inc.

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, the San Francisco Human Services Agency ("Department"), a department of the City, seeks volunteer consulting services to help create an outreach plan to better connect older people and adults with disabilities to City services ("the Project"); and

WHEREAS, ZS Associates, Inc. ("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 3-6 employees giving approximately 20% 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 September of 2021 and January of 2022. The monetary value of the donation is \$99,840.

The Donor Services will be a team of 3-6 employees giving approximately 20% time to assist the department with this work over the course of 16 weeks. At the end of the Project, the Donor will provide the Department with an outreach plan and strategic messaging framework. 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 and delivered to Department by Donor under this Agreement (excluding Donor Intellectual Capital) shall be the property of City. However, Donor may retain and use copies for reference and as documentation of the volunteer experience and capabilities. "Donor Intellectual Capital" shall mean all methodologies, procedures, management tools, workshops, manuals, software, macros, templates, data files, survey ideas, inventions, know-how, and all intellectual property rights therein and other intellectual capital that Donor has used, developed, created or acquired (including the right to license third-party software to its clients) prior to or independent of performing the Donor Services under this Agreement or in the course of providing such Donor Services hereunder unless specifically agreed upon as a deliverable. Upon delivery of any deliverables hereunder, Donor hereby grants to Client a limited non-exclusive, non-transferable (except to affiliates or successors), royalty-free, perpetual, worldwide irrevocable license to use such Donor Intellectual Capital in connection with its use of the deliverables.

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. 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.

In the performance of Donor Services, the City or Department may have access

to Donor's proprietary or confidential information, the disclosure of which to third parties may damage Donor. All confidential information received from Donor should be marked "confidential." If Donor discloses proprietary or confidential information to City or Department, such information must be held by City or Department in confidence and only used in performing the Agreement. City or Department 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 SFMTA's Chief Technology Officer.

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 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 defend, indemnify and hold harmless the City, its officers, employees and agents, from any and all acts, claims, omissions, liabilities and losses by whomever asserted arising out of acts or omissions of Donor in the performance of the Donor Services to be provided under this Agreement, except those arising by reason of the sole negligence of the City, its officers, employees and agents.

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 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.

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, 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. Effective Date; Term; Termination.

The effective date of this Agreement shall be September 20, 2021. The term of this Agreement shall commence on the effective date, and shall end on January 21, 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: Kate Shadoan, kate.shadoan@sfgov.org, 1650 Mission St, San Francisco, CA 94103

To Donor: Judith Kulich, judith.kulich@zs.com, 400 South El Camino Real, Suite 1500, San Mateo, CA 94402 – with copy to ZS Associates, Inc., 1560 Sherman Avenue, Suite 800, Evanston, IL 60201, Attn: Legal

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. If U.S. mail is used, the sender must notify all parties by e-mail that a letter has been sent.

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.

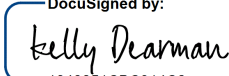
10. **Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
11. **Cooperation.** Donor, City, and Department acknowledge and agree that successful completion of services under the Agreement will require each party's full and mutual good faith cooperation. Any tasks to be performed by City or Department personnel shall be performed by such personnel. In addition, City and Department agree to provide such services, equipment, software and support as are City or Department's responsibility. City and Department are responsible for providing information that is complete, accurate and prompt, and City or Department's reviews of Donor work shall be timely and shall be performed by personnel fully familiar with the City's or Department's business and requirements. The decision to implement any or all of Donor's recommendations shall be the responsibility of the City or Department.
12. **Entire Agreement.** This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.
13. **Limitation of Liability.** The parties' liability under this agreement shall be limited to the monetary value of the donation which is \$99,840.

[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: _____

SAN FRANCISCO HUMAN SERVICES
AGENCY

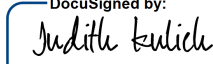
By:  _____
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Name: Kelly Dearman _____

Title: Executive Director _____

DONOR: _____

ZS ASSOCIATES, INC.

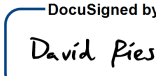
By:  _____
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Name: Judith Kulich _____

Title: Principal _____
ZS Issue ID: 21c-120405

Approved as to Form:

Dennis J. Herrera
City Attorney

By:  _____
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Name: David Ries _____

Deputy City Attorney

October 24, 2016