

**AGENDA ITEM 6b**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of January 10, 2024**

**Subject:** Resolution Authorizing the Execution of a Professional Service Agreement with Habitat Potential, a Sole Proprietorship, for Natural Areas Lands Management Services on Yerba Buena Island (*Action Item*)

**Contact:** Peter Summerville, Treasure Island Development Authority

**Phone:** (415) 274-0660

**BACKGROUND**

TIDA is responsible for the long-term preservation, restoration and enhancement of Yerba Buena Island’s natural areas, which serve as an example of California’s abundant variety of biodiversity. To quote the Yerba Buena Island Habitat Management Plan:

*“Situated only a few miles from major metropolitan areas, in between San Francisco and Oakland, Yerba Buena Island is a remarkable ecological resource. Noteworthy ecological features offer a memorable encounter for the interested public. ...an intriguing pygmy grove of native coast live oaks shaped by unrelenting on-shore winds from the Golden Gate; a buckeye grove of large mature specimens that over the past century were incorporated first into a cemetery and then a public park; and a willow ‘mangrove’, accessible from a sandy beach, with tree branches hanging in salt water and covered with barnacles. Intact native habitats such as valley wild rye grassland, northern coastal scrub and tide pools used for haul out by harbor seals galvanize the remarkable conditions described above...”*

The Yerba Buena Island Habitat Management Plan (“HMP”), developed in 2011, designates TIDA’s long-term responsibilities for appropriate care and management of these areas, and prescribes strategies and recommendations for the long-term monitoring, management and maintenance of Yerba Buena Island’s natural areas. Critical to maintaining these key areas are the HMP-designated strategies of protection, restoration and enhancement. The primary tasks critical to then enacting these strategies at specific sites are:

- Site protection via hand removal of invasive species to encourage return of native habitat;
- Site restoration through removal of debris and repair of damage caused by weather or by humans, and continuing site protection work; and
- Site enhancement through natural return of native species and installation of additional native plant stock and continuing site protection and restoration work.

Rubicon Programs currently performs natural areas management work at a variety of designated sites on YBI under the annual TIDA-Rubicon Agreement. However, there are additional sites on Yerba Buena Island requiring a highly technical approach due to challenging conditions at the sites in question including steep slopes, widespread poison oak, dense overgrowth and site sensitivity. As a result, TIDA required an experienced contractor specializing in natural-areas management to perform this work at these more technical and sensitive sites.

Per the Project's Jobs and Equal Opportunity Policy requirements, TIDA engaged Rubicon Programs on a response and proposal for services consistent with One Treasure Island member agencies' Right of First Opportunity, but it was determined that further technical expertise and experience than Rubicon currently provided would be necessary.

On July 14, 2023, the Authority issued a Request for Proposals (RFP) for natural areas lands management services at these selected sites around Yerba Buena Island and received two responses to the RFP by the submittal deadline of August 10, 2023. The responses were reviewed by Authority staff and City and County of San Francisco Contract Monitoring Division (CMD) staff, with both deemed to meet the Minimum Qualifications of the RFP as well as deemed in compliance with City Chapter 14B requirement.

The written responses were then scored by a review panel consisting of representatives from San Francisco Department of Environment ("SFE") and San Francisco Department of Public Works, and the panel also conducted oral interviews with the respondents. The written responses and oral interview responses were scored by the panelists based on key criteria including respondents qualifications, approach and prior experience. Habitat Potential, a San Francisco-based business (the "Contractor"), received the highest score of the responses. On December 4, 2023, TIDA issued a Notice of Intent to Award the contract to Habitat Potential, pending final contract approval by the Board of Directors.

**CONTRACT SCOPE:**

Work will take place weekly, and throughout the year, at 5 separate sites on Yerba Buena Island. Each site has its own profile and set of priorities that are developed, monitored and routinely adjusted by TIDA and SFE. This set of site profiles and priorities is found as Appendix A in the Agreement. Contractor will perform the work in furtherance of these site priorities, and will collaborate regularly with TIDA and SFE in the ongoing assessment and adjustment of site priorities and tactics throughout the term of the contract.

This collaboration will take place through regular site visits between TIDA, SFE and the Contractor, and through regular written reports from the Contractor. These entities will monitor and adjust tactics as each site continues to evolve, particularly during seasonal changes to the sites caused by precipitation or extreme heat. Contractor's primary task at each site will consist of the following:

- Thorough invasive plant removal, primarily using, but not limited to, hand-pulling and hand-tool methods and techniques. Perform removal prioritizing root-level removal of individual plants.
- As-needed habitat repair including but not limited to enacting ecologically sensitive erosion control measures and installing native plant stock supplied by TIDA
- On-site monitoring, assessment and written reporting on conditions, trends and changes in the landscape observed at designated sites during the performance of Scope.
- Properly manage and collect all green waste and organic material generated by the work, dispose at TIDA-designated on-Island site.
- Provide all appropriate organizational training, on-site supervision, oversight and quality control to assure proactive native species identification/protection and thorough invasive species removal at all times during the performance of Scope

### **CONTRACT TERMS**

<b>Commencement Date:</b>	January 15, 2023
<b>Original Expiration Date:</b>	January 15, 2026
<b>Expiration Date with Term Extension:</b>	January 15, 2027
<b>Compensation (with Term Extension):</b>	\$800,000 (NTE \$200,000 in a single Fiscal Year). Services will be invoiced monthly by Contractor on a time and materials basis.

Contract Monitoring Division has issued a waiver of the subcontracting requirement for this opportunity, and the contract was approved by the San Francisco Civil Service Commission on October 10, 2023 as PSC # 41676-23/24. All other standard City and County of San Francisco Professional Services Agreement terms apply.

### **RECOMMENDATION**

Project Staff recommends approval of the Professional Services Agreement with Habitat Potential.

#### **Attachments:**

A: P-600 Professional Services Agreement between TIDA and Habitat Potential

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco  
and  
Habitat Potential  
[Insert PeopleSoft Contract ID]**

This Agreement is made this 11th day of January, 2024, in the City and County of San Francisco (“City”), State of California, by and between Habitat Potential, a Sole Proprietorship (“Contractor”) and City.

**Recitals**

WHEREAS, the Treasure Island Development Authority (“Department”) wishes to procure natural areas land management services on Yerba Buena Island from Contractor; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, Contractor was competitively selected pursuant to a Request for Proposals entitled “Natural areas land management services on Yerba Buena Island” issued through Sourcing Event ID 0000008495; and

WHEREAS, this Contract is deemed exempt from Chapter 14B of the San Francisco Administrative Code because of lack of subcontracting opportunities and, as such, there is no Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement; and

WHEREAS, approval for the Agreement was obtained on October 2, 2023 from the Civil Service Commission under PSC number 41676-23/24 in the amount of \$800,000 for the period of 4 years; and

WHEREAS, the City’s Treasure Island Development Authority approved this Agreement by *[insert resolution number]* on January 10, 2024 in the amount of Eight Hundred Thousand Dollars for the period commencing January 15, 2024 and ending January 14, 2028; and

Now, THEREFORE, the parties agree as follows:

**Article 1      Definitions**

The following definitions apply to this Agreement:

1.1      “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and Treasure Island Development Authority.

1.3 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

1.5 “Confidential Information” means confidential City information including, but not limited to, personal identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (“Chapter 12M”). Confidential Information includes, without limitation, City Data.

1.6 “Contractor” means HABITAT POTENTIAL, 1628 LAKE STREET, SAN FRANCISCO, CA 94121.

1.7 “Deliverables” means Contractor’s or its subcontractors’ work product, including any partially-completed work product and related materials, resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.8 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.9 “Party” and “Parties” means City and Contractor either individually or collectively.

1.10 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

## Article 2 Term of the Agreement

2.1 **Term.** The term of this Agreement shall commence on January 15, 2024 and expire on January 14, 2027, unless earlier terminated as otherwise provided herein.

2.2 **Options to Renew.** City has the option to renew the Agreement for a period of one year. City may exercise this option at City’s sole and absolute discretion by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.” Extensions may be for the whole or partial period provided for above.

### **Article 3 Financial Matters**

#### **3.1 Certification of Funds; Budget and Fiscal Provisions.**

3.1.1 **Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.1.2 **Maximum Costs.** City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

3.2 **Authorization to Commence Work.** Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a purchase order, task order or notice to proceed. Such authorization may be for a partial or full scope of work.

#### **3.3 Compensation.**

3.3.1 **Calculation of Charges and Contract Not to Exceed Amount.** The amount of this Agreement shall not exceed Eight Hundred Thousand Dollars (\$800,000), the breakdown of which appears in Appendix B, “Calculation of Charges.” City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.2 **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments until City approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the

unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by City and in such case must be replaced by Contractor without delay at no cost to City.

**3.3.3 Withhold Payments.** If Contractor fails to provide the Services in accordance with Contractor's obligations under this Agreement, City may withhold any and all payments due to Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.3.4 Invoice Format.** Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

**3.3.5 Reserved**

**3.3.6 Getting paid by City for Services.**

(a) City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfgov.org).

(b) At the option of City, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

**3.3.7 Reserved.**

**3.3.8 Payment Terms.**

(a) **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within forty five (45) calendar days, measured from (1) the rendering of the Services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date City issued a check to Contractor or, if Contractor agreed to electronic payment, the date City has posted electronic payment to Contractor.

(b) **Reserved.**

**3.4 Audit and Inspection of Records.** Contractor agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make copies of such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or

until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.5 Submitting False Claims.** The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

**3.6 Payment of Prevailing Wages.**

**3.6.1 Covered Services.** Services to be performed by Contractor under this Agreement will involve the performance of work covered by Section 6.22(e) [Prevailing Wages] of the Administrative Code or Section 21C [Miscellaneous Prevailing Wage Requirements] (collectively, “Covered Services”), which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

**3.6.2 Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations (“DIR”), as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the applicable prevailing wage rates are available from the City’s Office of Labor Standards and Enforcement (“OLSE”). See also <https://sf.gov/resource/2022/citywide-contractor-labor-laws>. Contractor agrees that it shall pay not less than the prevailing wage rates, as determined by the Board of Supervisors and DIR, to all workers employed by Contractor who perform Covered Services under this Agreement.

**3.6.3 Subcontract Requirements.** Contractor shall insert in every subcontract for the performance of Covered Services under this Agreement a provision requiring subcontractor to pay all persons performing labor in connection with Covered Services under the subcontract not less than the highest general prevailing rate of wages as determined by the Board of Supervisors and DIR for such labor and services.

**3.6.4 Posted Notices.** Contractor shall post job site notices at all job sites where Covered Services are to be performed.

**3.6.5 Payroll Records.** Contractor shall keep or cause to be kept complete and accurate payroll records for all workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services, including apprentices, their classification, a general description of the Services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall perform any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives and/or DIR.

**3.6.6 Certified Payrolls.** Contractor shall prepare certified payrolls for the period involved for all employees, including those of subcontractors, who performed Covered Services.



**3.6.7 Compliance Monitoring.** Covered Services performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by DIR and/or OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with DIR and/or OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (ii) Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iii) Contractor shall prominently post at each job-site a sign informing employees that the project is subject to City's prevailing wage requirements and that these requirements are enforced by OLSE; and (iv) OLSE may audit such records of Contractor as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including Section 1776(g), as amended from time to time, San Francisco Administrative Code Section 6.22(e), and Chapter 21C, as applicable.

**3.6.8 Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement or subcontract for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Administrative Code Section 6.22(e) and/or California Labor Code Section 1775. City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

## **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in **Appendix A, "Scope of Services."** Officers and employees of City are not authorized to request and City is not required to compensate for Services beyond those stated.

**4.2 Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule.

**4.3 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

#### 4.4 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, and its agents and employees will not represent or hold themselves out to be employees of City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should City determine that Contractor is not performing in accordance with the requirements of this Section, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 **Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys’ fees, arising from this Section.

4.5 **Assignment.** The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the

same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 **Reserved.**

4.7 **Reserved.**

4.8 **Reserved.**

4.9 **Reserved**

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

## **Article 5 Insurance and Indemnity**

5.1 Insurance.

5.1.1 **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations..

(b) 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.

(c) Workers' Compensation Liability Insurance, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) **Reserved** (Professional Liability Insurance)

(e) **Reserved** (Technology Errors and Omissions Liability Insurance)

(f) **Reserved** (Cyber and Privacy Liability Insurance)

(g) **Reserved** (Pollution Liability Insurance).

5.1.2 **Additional Insured.**

(a) The Commercial General Liability Insurance policy must include as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must include as Additional Insured the City and County of San Francisco and its Officers, Agents, and Employees.

(c) **Reserved**

5.1.3 **Waiver of Subrogation.** The Workers' Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of City for all work performed by the Contractor, and its employees, agents and subcontractors.

5.1.4 **Primary Insurance.**

(a) The Commercial General Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) **Reserved**

5.1.5 **Other Insurance Requirements.**

(a) Thirty (30) days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to City address set forth in Section 11.1 entitled, "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, be maintained for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) 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.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as required, 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco and its officers, agents, and employees, and the Contractor as additional insureds and waive subrogation in favor of City, where required.

## 5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants, experts, and related costs, and City's costs of investigating any claims against City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

5.2.4 Under no circumstances will City indemnify or hold harmless Contractor.

## Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS,

ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

## Article 8 Termination and Default

### 8.1 Termination for Convenience.

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination ("Notice of Termination"). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective ("Termination Date").

8.1.2 Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to affect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

- (a) Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.
- (b) Halting the performance of all Services on and after the Termination Date.
- (c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (d) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts cancelled. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the cancellation of such orders and subcontracts.
- (e) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the cancelled orders and subcontracts.
- (f) Taking such action as may be necessary, or as City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the Termination Date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- (a) The reasonable cost to Contractor, without profit, for all Services provided prior to the Termination Date, for which City has not already made payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- (c) The reasonable cost to Contractor of handling and returning material or equipment delivered to City or otherwise disposed of as directed by City.
- (d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of such materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the Termination Date, except for those costs specifically listed in Section

8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

**8.2 Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor, or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.



(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor, or with respect to any substantial part of Contractor’s property; (ii) constituting an order for relief or approving a petition for relief, reorganization or arrangement, any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction; or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**8.2.2 Default Remedies.** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with City.

**8.2.3** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

**8.2.4** Any notice of default must be sent in accordance with Article 11.

**8.3 Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

**8.4.1** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	8.2.2	Default Remedies
3.3.7(a)	Grant Funded Contracts – Disallowance	9.1	Ownership of Results
3.4	Audit and Inspection of Records	9.2	Works for Hire
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and	11.10	Compliance with Laws

	Consequential Damages		
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

### **Article 9 Rights in Deliverables**

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors in the Deliverables, any partially-completed Deliverables, and related materials, shall become the property of and will be transmitted to City. Unless expressly authorized in writing by City, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor’s copyrights to such Deliverables to City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon its subcontractors. With City’s prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of this Agreement.

### **Article 10 Additional Requirements Incorporated by Reference**

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/) .

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*); or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in,

support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

**10.4 Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

**10.5 Nondiscrimination Requirements.**

**10.5.1 Nondiscrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

**10.7 Minimum Compensation Ordinance.** Administrative Code Chapter 12P applies to this Agreement. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Administrative Code Chapter 12Q applies to this contract. Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

**10.9 First Source Hiring Program.** Contractor must comply with all of the applicable provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement; and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Reserved (Slavery Era Disclosure)**

**10.13 Working with Minors.** Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Contractor, or any subcontractor, is providing services to City involving the supervision or discipline of minors or where Contractor, or any subcontractor, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Contractor and any subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this Section and Section 10.14, “Consideration of Criminal History in Hiring and Employment Decisions,” of this Agreement, this Section shall control.

**10.14 Consideration of Criminal History in Hiring and Employment Decisions.**

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Nonprofit Contractor Requirements.**

10.15.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General’s Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City’s request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General’s Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2 **Public Access to Nonprofit Records and Meetings.** If Contractor is a nonprofit organization; provides Services that do not include services or benefits to City

employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein; and receives a cumulative total per year of at least \$250,000 in City or City-administered funds and as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Distribution of Beverages and Water.**

10.17.1 **Reserved** (Sugar-Sweetened Beverage Prohibition)

10.17.2 **Reserved** (Packaged Water Prohibition)

**10.18 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**Article 11 General Provisions**

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

To City:	Robert Beck, Director Treasure Island Development Authority 1 Avenue of the Palms, Suite 241 San Francisco, CA 94130 <a href="mailto:Bob.Beck@sfgov.org">Bob.Beck@sfgov.org</a> with cc to <a href="mailto:Peter.Summerville@sfgov.org">Peter.Summerville@sfgov.org</a>
To Contractor:	Habitat Potential Attn: Josiah Clark 1628 Lake Street San Francisco, CA 94121 Email: <a href="mailto:Josiah.clark621@gmail.com">Josiah.clark621@gmail.com</a>

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature.

Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

## 11.2 **Compliance with Laws Requiring Access for People with Disabilities.**

11.2.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.2.2 Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), Section 255 of the Communications Act Guidelines, the applicable Revised Section 508 Standards, and Web Content Accessibility Guidelines 2.1, Level AA, as amended from time to time. Contractor shall ensure that all information content and technology provided under this Agreement fully conforms to the applicable Revised 508 Standard, as amended from time to time, prior to delivery and before the City's final acceptance of the Services and/or Deliverables. Contractor shall provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the Services provided under this Agreement.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code § 7920 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

11.5 **Modification of this Agreement.** 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.

## 11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This contract including the appendices, sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of City's Charter, codes, ordinances and duly adopted rules and regulations of City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. If the Appendices to this Agreement include any standard printed terms from Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between City's terms and Contractor's printed terms attached, City's terms in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor's proposal, and Contractor's printed terms, respectively. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

**11.14 Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to any City Data under this Agreement, and in no event later



than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

## **Article 12 Department Specific Terms**

### **12.1 Reserved.**

## **Article 13 Data and Security**

### **13.1 Nondisclosure of Private, Proprietary or Confidential Information.**

**13.1.1 Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor 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 Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

**13.1.2 City Data; Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

### **13.2 Reserved.**

### **13.3 Reserved. Management of City Data.**

**13.3.1 Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the continental United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or

machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

**13.3.2 Disposition of City Data.** Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractor's environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

**13.4 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City.

**13.5 Loss or Unauthorized Access to City's Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

## **Article 14 MacBride And Signature**

**14.1 MacBride Principles – Northern Ireland.** The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

**CONTRACTOR**

Recommended by:

**Habitat Potential, a Sole Proprietorship**

\_\_\_\_\_  
**Robert Beck, Director**  
**Treasure Island Development Authority**

\_\_\_\_\_  
**Josiah Clark**  
**Owner**

City Supplier Number: 0000046401

Approved as to Form:

David Chiu  
City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Deputy City Attorney

Approved:  
Sailaja Kurella  
Director of the Office of Contract Administration,  
and Purchaser

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

**Appendices**

- A: Scope of Services
- B: Calculation of Charges

## **Appendix A-1 Scope of Services**

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

Work will occur on 5 designated sites on Yerba Buena Island. TIDA has established priorities for each of these sites which are to be fulfilled through Task Orders. Site profiles and priorities for each of the 5 sites are included as Appendix A-2-Site Profiles and Priorities.

Contractor's primary task at each site will consist of recurring thorough identification and root-level removal of that site's known invasive plant populations and restoring the existing native habitat underneath.

Contractor perform all work under the Agreement in a manner consistent with the principles of the YBI Habitat Management Plan document which has been provided to the Contractor.

Contractor will perform the following Services::

- i. Thorough invasive plant removal, primarily using, but not limited to, hand-pulling and hand-tool methods and techniques. Perform removal prioritizing root-level removal of individual plants. Perform thorough oversight to assure all eligible plants are identified and removed at the work site.
- ii. As-needed habitat repair including but not limited to enacting ecologically sensitive erosion control measures and installing native plant stock supplied by TIDA.
- iii. Perform regular on-site monitoring, assessment and reporting on conditions, trends and changes in the landscape observed at designated sites during the performance of Scope. Write up these observations and include with written progress reports Contractor shall submit to TIDA.
- iv. Contractor shall properly manage and collect all green waste and organic material generated by the work, and shall collect any light debris or trash encountered at the sites. TIDA shall provide a localized area on-Island for contractor to dispose of all green waste and debris collected and generated by the work.
- v. Provide all appropriate organizational training, on-site supervision, oversight and quality control to assure proactive native species identification/protection and thorough invasive species removal at all times during the performance of Scope.

**2. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**3. Reports.** Contractor shall submit written reports as requested by the Treasure Island Development Authority. Format for the content of such reports shall be determined by the Treasure Island Development Authority. The timely submission of all reports is a necessary and material term and condition of this Agreement. All written Deliverables, including any copies, shall be submitted electronically when feasible, otherwise on recycled paper and printed on double-sided pages to the maximum extent possible.

**4. Department Liaison** In performing the Services provided for in this Agreement, Contractor's primary liaison with the Treasure Island Development Authority will be Peter Summerville.

DRAFT

## Appendix A-2 Site Profiles and Priorities

### 1. “Northgate Oak Woodland”

The site harbors a coast live oak grove on its east end adjacent to the Nimitz Slope upper grassland subsite. At least sixteen other native plant species grow on the slopes.

Since the area has notable native plant diversity, including the locally rare fiesta flower, it is possible that other native plants are in the seed bank.

In 2020, a massive blackwood acacia, *Acacia melanoxylon*, infestation was removed, allowing for the next phase of weed management on the site. Poison oak is present. The site is infested with several invasive weeds, including yellow oxalis, ehrharta, Algerian ivy and French broom. Priority weeds will be managed to allow for enhancement and restoration of the existing native plant community.

**Site management goal:** Consistent stewardship, managing priority invasive plants in furtherance of eventual full restoration of an oak, blue elderberry, and hazelnut woodland populated with dozens of species of local native plants.

**Challenging site conditions:** Poison oak; steep slope.

**Past activities on-site:** Non-native tree (incl. acacia) removals; excavation, trenching and utility corridor installation.

**Priority invasive weeds:**

- Yellow oxalis
- Blackwood acacia
- Ehrharta
- Algerian ivy

**Locally rare plants present at site:** Fiesta flower, hazelnut.

### 2. “Central Clipper Cove”

The area below Quarters 62 is largely inaccessible due to steep slopes, poison oak and Himalayan blackberry, but it has great potential to be a biodiverse wildland given proper attention, management, and stewardship.

The area just below Macalla Road and west of Quarters 62 is accessible and harbors oak, blue elderberry, toyon, and California hazelnut as well as wood fern and some other native plants.

**Site management goal:** Consistent stewardship controlling priority invasive plants; manage and prevent further acacia and eucalyptus encroachment; site preparation for intensive future restoration projects.

**Challenging site conditions:** Poison oak; steep slope.

**Past activities on-site:** Non-native tree removal along Macalla Road; ivy removal from oaks surrounding YBI Quarters 62.

**Priority invasive weeds:**

- Acacia
- Eucalyptus
- Himalayan blackberry
- Algerian ivy
- Ehrharta

**Locally rare plants present at site:** Dutchman's pipe, fiesta flower, hazelnut.

**3. "Northwest Bluffs"**

The northwestern bluffs harbor a patchy diversity of native plant communities, owing in part to variable topography. The vegetation includes significant stands of coastal sage, poison oak, osoberry, lizardtail, arroyo willow and wild rye grass.

Several species of invasive weeds are present and negatively impacting the area. The steepest areas above the water are heavily invaded by Canary Island Marguerite, which was identified as a principal threat in the Habitat Management Plan.

**Site management goal:** Control priority invasive plants to restore healthy native plant and wildlife habitat.

**Challenging site conditions:** Poison oak; steep slope.

**Past activities on-site:** Original French broom patch removal; fennel removal just above rocky beach; eucalyptus thinning along TI Road.

**Priority invasive weeds:**

- Fennel
- Ehrharta
- French broom
- Canary Island Marguerite
- Yellow oxalis
- Iceplant
- Eupatorium
- Italian thistle

**Locally rare plants present at site:** buckeye (single species adjacent to Treasure Island Road western guardrail).

#### 4. “Western Oak Woodlands”

The site is one of the three most important and extensive remaining native habitat areas on Yerba Buena Island. The oak woodland is prime habitat for the fiesta flower, which no longer occurs elsewhere in San Francisco County. Some other plants associated with the oak woodland include stinging phacelia, osoberry, bee plant, poison oak, elderberry, and Pacific pea. The northern edge of the oak woodland site has an incredible viewpoint at the northwest tip of the oak woodlands peninsula.

In June 2020, a fire occurred along the northern edge of the oak woodland site. Several mature coast live oaks were severely damaged, and nearly the entire blue elderberry scrubland was torched. The fire hit a very large stand of bentgrass, and the Island’s largest stand of osoberry scrub sustained major damage. The site has begun to recover, including notably total recovery of the creeping wild rye stands at the northeast corner of the site.

**Site management goal:** Control priority invasive weeds to preserve and restore the coast live oak and blue elderberry woodlands, the coastal sage scrub and coastal bluff scrub and coast prairie communities; manage for biological diversity following the June 2020 oak woodlands fire.

**Challenging site conditions:** Poison oak; some steep slope.

**Past activities on-site:** 2X ¼% Glyphosate application to Ehrharta, then hand follow-up for several years; fireweed removal in fire area; mulching of oxalis patches and fennel control in the shoulder area.

**Priority invasive weeds:**

- Ehrharta
- Fennel
- Annual grasses
- Yellow oxalis
- Algerian ivy
- Australian fireweed

**Locally rare plants present at site:** fiesta flower, hazelnut

#### 5. “Southgate Oak Grove”

This area is now a remnant from what it was, due to massive recent construction impacts, but there is still an oak grove, and there are deerweed plants emerging on the open, exposed south-facing slope. In 2021, TIDA contractors executed a thorough French broom control project to keep millions of seeds from being produced.

**Site management goal:** Control priority invasives and existing tree deadfall on-site for fire prevention and ultimate habitat restoration.



**Challenging site conditions:** steep slopes

**Past activities on-site:** Slope disturbance for Forest Road Detour and US Coast Guard parking lot construction; associated project hydroseeding.

**Priority invasive weeds:**

- French broom
- Fennel
- Acacia/albizia
- Stinkwort (*Dittrichia graveolens*)

**Locally rare plants present at site:** fiesta flower and pipevine occur around the corner above the YBI EB off-ramp retaining wall; also, one buckeye just above the east portal behind the chain link fence.

DRAFT

## **Appendix B Calculation of Charges**

The annual Contract amount shall not to exceed \$200,000 in any one Fiscal Year beginning on July 1 and ending on June 30 of the next year.

Invoices will be paid monthly upon receipt from Contractor for services performed in the previous month.

Contractor's billable expenses shall be limited to hourly cost of crew members accrued in performing the Scope of Services.

Contractor's hourly billed rate for each individual crew member shall be as follows:

\$95/per hour/per person – through June 30, 2024

\$99.75/per hour/per person – July 1, 2024 through June 30, 2025

\$104.73/per hour/per person – July 1, 2025 through June 30, 2026

\$109.96/per hour/per person – July 1, 2026 through January 15, 2027

1 [Professional Services Contract with Habitat Potential]

2 **RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES**  
3 **AGREEMENT WITH HABITAT POTENTIAL, A SOLE PROPRIETORSHIP, FOR NATURAL**  
4 **AREAS LANDS MANAGEMENT SERVICES ON YERBA BUENA ISLAND**

5 **WHEREAS**, Naval Station Treasure Island (“NSTI”) was selected for closure and  
6 disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law  
7 101-510, and its subsequent amendments; and

8 **WHEREAS**, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
9 authorizing the Mayor’s Treasure Island Project Office to establish a nonprofit public benefit  
10 corporation known as the Treasure Island Development Authority (the “Authority”) to act as a  
11 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
12 conversion of the Base for the public interest, convenience, welfare and common benefit of the  
13 inhabitants of the City and County of San Francisco; and

14 **WHEREAS**, The Yerba Buena Island Habitat Management Plan (HMP) assigns TIDA  
15 long term responsibility for repair, restoration and improvement of Yerba Buena Island’s  
16 undeveloped and extant natural areas, and

17 **WHEREAS**, On July 14, 2023, the Authority issued a Request for Proposals (RFP) for  
18 natural areas lands management services at selected sites around Yerba Buena Island and  
19 received two responses to the RFP by the submittal deadline of August 10, 2023; and,

20 **WHEREAS**, The responses were reviewed by Authority staff and City and County of  
21 San Francisco Contract Monitoring Division staff, with both responses deemed to meet the  
22 Minimum Qualifications of the RFP as well as all the two respondents deemed in compliance  
23 with City Chapter 14B requirements; and

24

25

1           **WHEREAS**, A review panel consisting of representatives from San Francisco  
2 Department of Environment and San Francisco Department of Public Works reviewed and  
3 scored the two written responses based on key criteria including respondents qualifications,  
4 approach and prior experience; and,

5           **WHEREAS**, The review panel subsequently conducted oral interviews with the two  
6 respondents and scored the interview question responses based on key criteria including  
7 respondents qualifications, approach and prior experience; and,

8           **WHEREAS**, Habitat Potential, a Sole Proprietorship, response received the highest  
9 score of the responses; and,

10           **WHEREAS**, Project Office staff and Habitat Potential have negotiated a Professional  
11 Services Agreement, commencing on January 15, 2024 with a not to exceed Contract Amount  
12 of \$800,000 and a not to exceed Term of four years, and Project Office staff has issued an  
13 Intent to Award Notice on December 4, 2023, subject to Authority Board approval; and,

14           **WHEREAS**, The Contract was approved by the San Francisco Civil Service  
15 Commission on October 10, 2023 as PSC # 41676-23/24; now, therefore, be it

16           **RESOLVED**, That the Board of Directors hereby approves the Professional Services  
17 Agreement with Habitat Potential, a Sole Proprietorship, and authorizes the Treasure Island  
18 Director or their designee to execute said Professional Services Agreement in substantially the  
19 form attached hereto as Exhibit A

20           **FURTHER RESOLVED**, That the Board of Directors hereby authorizes the Treasure  
21 Island Director to enter into any additions, amendments or other modifications to the  
22 amendment that the Treasure Island Director determines in consultation with the City Attorney  
23 are in the best interests of the Authority, that do not materially increase the obligations or  
24 liabilities of the Authority, that do not materially reduce the rights of the Authority, and are  
25

1 necessary or advisable to complete the preparation and approval of the amendment, such  
2 determination to be conclusively evidenced by the execution and delivery by the Treasure  
3 Island Director of the documents and any amendments thereto.

4  
5 **CERTIFICATE OF SECRETARY**  
6

7 **I hereby certify that I am the duly elected and acting Secretary of the Treasure**  
8 **Island Development Authority, a California nonprofit public benefit corporation, and**  
9 **that the above Resolution was duly adopted and approved by the Board of Directors**  
10 **of the Authority at a properly noticed meeting on January 10, 2024.**

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12 \_\_\_\_\_  
13 **Jeanette Howard, Secretary**  
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