

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

Subject: Resolution Authorizing the Treasure Island Director to Execute Two Assignment and Assumption Agreements By and Amongst the Treasure Island Development Authority, Langan Engineering and Environmental Services, Inc. (“Assignor”) and Langan CA, Inc., a California Corporation (“Assignee”), to Assign Assignor’s Rights and Obligations Under Two Existing Agreements with The Treasure Island Authority from Assignor to Assignee

Contact: Robert Beck, Treasure Island Director

SUMMARY

The Treasure Island Development Authority (the “Authority”) currently holds two professional services agreements with Assignor is a corporation duly organized and under the laws of the State of New Jersey.

At the July 13, 2022, meeting of the Authority Board, the Board by Resolution No. 22-16-0713 authorized the execution of an Agreement between the Authority and the Assignor to provide As-Needed Multi-Disciplinary Engineering and Technical Services, and at the March 8, 2023, meeting of the Authority Board, the Board authorized by Resolution No. 23-14-0308 the execution of an Agreement between the Authority and the Assignor to provide Environmental Consultation and Oversight of Navy Remediation for the Treasure Island Development Project (together, the “Agreements”).

Assignor has notified the Authority that it has initiated some structural changes that will involve, in part, converting its existing legal entity from a corporation to Langan Engineering and Environmental Services, LLC, which is a Limited Liability Company (“LLC”), formed under the laws of the State of New Jersey. Assignor has further advised the Authority that because California law bars LLCs from providing professional services, it will be forming a new corporate entity, identified in this report as the Assignee, which is a corporation duly organized and existing under the laws of the State of California and has requested the Authority’s consent to the assignment of our existing Agreements with the Assignor to the Assignee.

Authority Staff have worked with the City Attorney’s Office to prepare Assignment and Assumption Agreements, attached to this report as Exhibits A & B, that authorize the assignment of the subject Agreements from the Assignor to the Assignee.

DISCUSSION

The Assignee, will be a wholly-owned subsidiary of the Assignor following Assignor's conversion to an LLC, will have the same capitalization, insurance, and management structure it currently maintains and will remain financially capable of performing its obligations under the Agreements. As conditions of the proposed Assignments, both Assignor and Assignee warrant that the Assignee is able to fully perform all obligations under the Agreements. The Assignor and Assignee also represent and warrant that, to the fullest extent permitted by law, the key personnel performing and overseeing the day-to-day work of the Agreements will remain unchanged.

BUDGET AND TERM

All other terms, conditions, and requirements of the Agreements, including the authorized budget and term of Agreements remain unchanged.

RECOMMENDATION

Staff recommends the Authority to authorize the Director to execute the Assignment and Assumption Agreements, by and amongst the Authority, Assignor and Langan CA, Inc. to assign the Agreements from the Assignor to the Assignee

EXHIBITS

- A Assignment and Assumption Agreement by and among the Authority, Assignor and Langan CA, Inc., for As-Needed Multi-Disciplinary Engineering and Technical Services
- B Assignment and Assumption Agreement by and among the Authority, Assignor and Langan CA, Inc., for Environmental Consultation and Oversight of Navy Remediation for the Treasure Island/Yerba Buena Island Development Project

Prepared by Robert Beck

**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**

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Assignment**”) is made as of [_____, 202_] in San Francisco, California, by and among **Langan Engineering and Environmental Services, Inc.**, a corporation duly organized and existing under the laws of the State of **New Jersey**, with its principal office in Parsippany New Jersey (“**Assignor**”), and **Langan CA, Inc.**, a corporation duly organized and existing under the laws of the State of California with its principal office in San Francisco, California (“**Assignee**”), and consented to by 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, referred to as “**Purchasing**” under the Agreement, and TIDA (“**City**”).

RECITALS

WHEREAS, Assignor is a party to the Agreement (as defined below) for rendering of certain professional services consisting of engineering services, as more particularly described in the Agreement; and

WHEREAS, Assignor is expanding its scope of services in the State of California, and in furtherance thereof will undergo the process of conversion in a manner consistent with the requirements of New Jersey law to covert its form of legal entity from a New Jersey corporation to a New Jersey limited liability company named (Langan Engineering and Environmental Services, LLC, a New Jersey limited liability company (the “**LLC**”) for tax and regulatory reasons, prior to the date hereof; and

WHEREAS, limited liability companies are unable to provide professional services in the State of California, causing the LLC to form Assignee, which is a wholly-owned subsidiary of the LLC and the exclusive contracting entity of the LLC in the State of California; and

WHEREAS, Assignor desires to transfer its right, title and interest in and obligations under the Agreement to Assignee, and Assignee desires to assume the same from Assignor, subject to the terms and conditions set forth herein; and

WHEREAS, Assignor warrants that Assignee is able to fully perform all obligations that may exist under the Agreement, and

WHEREAS, Assignee warrants that it is able to fully perform all obligations that may exist under the Agreement, and

WHEREAS, it is consistent with the City’s interest to recognize the Assignee as the successor party to the Agreement, and

WHEREAS, the City consents to the transfer of the Agreement based on Assignor’s warranties stated herein and subject to the terms and conditions below, and

WHEREAS, the Assignee has registered as a City Vendor and demonstrated compliance with Administrative Code Chapter 12B.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the promises and the mutual covenants of the parties contained in this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

Article 1 Definitions

The following definitions apply to this Assignment:

1.1 **“Agreement”** means that certain Agreement Between the City and County of San Francisco and Langan Engineering and Environmental Services, Inc. TIDA (2022-001), dated August 8, 2023, between Assignor and City and County of San Francisco, a municipal corporation, as may be extended from time to time pursuant to the terms thereof. The Agreement is attached to this Assignment as **Appendix A**.

1.2 **“Effective Date”** means the later of the following dates: (a) the date this agreement has been fully executed by the parties hereto, and (b) the date the TIDA Board of Directors has approved this Assignment.

1.3 **“LLC”** has the meaning set forth in the Recitals.

1.4 **“TIDA”** means Treasure Island Development Authority, a California nonprofit public benefit corporation.

1.5 Other terms used and not defined in this Assignment shall have the meanings assigned to such terms in the Agreement.

Article 2 Transfer of Agreement

2.1 **Transfer.** Assignor hereby assigns, transfers and conveys to Assignee all of Assignor’s right, title, and interest in and to the Agreement and all of Assignor’s duties and obligations thereunder that will arise on or after the Effective Date.

2.2 **Acceptance.** Assignee hereby accepts the transfer and conveyance set forth in Article 2.1 above and agrees to perform all of Assignor’s duties and obligations under the Agreement that will arise on or after the Effective Date.

2.3 **Rights to Enforce.** Subject to the terms of the Agreement, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and transferees. Nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors and Assignees) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.

2.4 **Consent of City.** The City consents to the transfer described in this Article 2 based on the evidence provided below, which indicates that Assignee is able to fully perform all obligations that may and will exist under the Agreement. All the evidence is attached to this Assignment as **Appendix B**. Further, each of Assignor and Assignee acknowledges that

the prior written consent of City to this Assignment is required under the terms of the Agreement. City shall have the right to enforce this Assignment.

2.4.1 An authenticated copy of an instrument effecting the transaction converting Assignor to the LLC and the formation of Assignee as a wholly owned subsidiary of the LLC, together with attorney opinion letters with a statement that the transactions were properly affected under the applicable state law.

2.4.2 Additional documents required, depending on the nature of the transfer:

a. A signed and authenticated document or excerpts of a document describing the conversion of Assignor to the LLC in sufficient detail, the formation of the Assignee as a wholly-owned subsidiary of the LLC, and which precisely describe the specifics of the transactional relationship, including, without limitation, the description of all the transfers of the assets used to perform the Agreement, between the Assignor, the LLC and Assignee;

b. The Opinion of legal counsel of the LLC and the Assignee, dated **as of the date hereof**, opining that **[insert type of agreement, i.e. merger, stock purchase]** agreement was properly affected under applicable law and that the LLC controls the Assignee and its employees, and that the Assignee is able to assume all liabilities and obligations of the Agreement as set forth herein;

c. Certified copies of Board Resolutions and Stockholders Meetings Minutes (and comparable documents for the LLC) authorizing and approving the transfer of assets, for the Assignor, LLC and Assignee;

d. Documents evidencing that Assignee has (i) complied with the applicable requirements set forth at San Francisco Administrative Code 12B; (ii) obtained a new City Vendor/Supplier ID and business license to operate within the City and County of San Francisco; and (iii) registered with the San Francisco Treasurer and Tax Collector and complied with any other State and local requirements in order for Assignee to lawfully operate its business within the State of California and the City and County of San Francisco.

2.4.3 An authenticated copy of the LLC's articles of organization and the Assignor's articles of incorporation.

2.4.4 Balance sheets for the LLC and the Assignee with independent auditor report if available to prove that the Assignee has enough assets to perform the Agreement and that the LLC has enough assets to honor the guaranty set forth below in this Assignment.

2.4.5 A statement by the Assignee confirming that the price and, to the fullest extent permitted by law, the key personnel performing and overseeing the day-to-day work of the Agreement as of the date hereof, will, to the extent feasible, remain unchanged following the assignment of the Agreement from Assignor to Assignee.

2.5 **Successor.** The City recognizes the Assignee as the Assignor's successor in interest in and to the Agreement; provided, that Assignee, by this Assignment, becomes liable for all duties and obligations and entitled to all rights, title, and interest of the Assignor in and to the Agreement that will arise on or after the Effective Date. The City will treat the Assignee as if the Assignee were the original party to the Agreement. Following the Effective Date of this Assignment, the term "Contractor," as used in the Agreement, shall refer to the Assignee. The

Agreement shall remain in full force and effect, except as modified by this Assignment. Each party has executed this Assignment as of the day and year first above written.

2.6 **Further Assurances.** From and after the date of this Assignment, Assignor, Assignee and LLC each agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Assignment effectuate the intent of this Assignment or as may be required by City.

Article 3 Obligations and Liabilities; Representations and Warranties

3.1 **Transfer, Waiver, and Assumption.** The Assignor confirms the transfer to the Assignee, and waives any claims and rights against the City that it now has or may have in the future in connection with the Agreement. The Assignee agrees to be bound by and to perform the Agreement in accordance with the conditions contained therein. The LLC and Assignee, jointly and severally, assume all obligations and liabilities of, and all claims against, the Assignor under the Agreement as if the LLC and Assignee were the original party to the Agreement. The Assignee ratifies all previous actions taken by the Assignor with respect to the Agreement, with the same force and effect as if the action has been taken by the Assignee. Except as expressly provided in this Assignment, nothing in it shall be construed as a waiver of any rights of the City against the Assignor, or the LLC following the conversion transaction.

3.2 **Past Payments.** All payments and reimbursements previously made by City to the Assignor, and all other previous actions taken by City under the Agreement, shall be considered to have discharged those parts of City's obligations thereunder. All payments and reimbursements made by City after the date of this Assignment in the name of or to the Assignor shall have the same force and effect as if made to the Assignee, and shall constitute a complete discharge of City's obligations under the Agreement, to the extent of the amounts paid or reimbursed. The Assignor and the Assignee agree and confirm that City is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer contemplated under this Assignment, other than those that City in the absence of this transfer would have been obligated to pay or reimburse under the terms of the Agreement.

3.3 **Future Obligations.** The Assignor and the LLC hereby, jointly and severally, guaranty payment of all liabilities and the performance of all obligations that the Assignee: (i) assumes under this Assignment; or (ii) may undertake in the future should this Assignment be modified pursuant to the Agreement's terms and conditions. The Assignor and the LLC hereby waive notice of, and consent to, any such future modifications. Further transfers of the liabilities under the Agreement done by the Assignee and agreed upon by City do not release the Assignor or the LLC from its guaranty.

3.4 **No Release of Assignor.** Neither this Assignment nor the consent of City shall release Assignor nor the LLC, following the conversion, in whole or in part from any of Assignor's obligations or duties under the Agreement if Assignee fails to perform or observe any such obligation or duty. Assignor, LLC, and Assignee have each entered into this Assignment and obtained such consent of City based solely upon Assignor's and Assignee's representations and warranties concerning Assignee's financial fitness and condition and ability to perform

under the Agreement, and Assignor, and the LLC following conversion, each assume full responsibility for obtaining and sharing with City any further information with respect to Assignee or the conduct of its business after the date of this Assignment. Assignor, and LLC following the conversion, each waive any right to require City to (i) proceed against any person or entity including Assignee, (ii) proceed against or exhaust any security now or hereafter held in connection with the Contract, or (iii) pursue any other remedy in City's power. Assignor, and LLC following conversion, each waive any defense arising by reason of any disability or other defense of Assignee or any other person, or by reason of the cessation from any cause whatsoever of the liability of Assignee or any other person. Neither Assignor nor the LLC, following conversion, shall have, and each hereby waive, any right of subrogation to any of the rights of City against Assignee or any other person, and Assignor waives any right to enforce any remedy of Assignor and LLC, post conversion, against Assignee or against any other person unless and until all obligations to City under the Agreement and this Assignment have been paid and satisfied in full. Assignor and LLC, post conversion, waive any benefit of any right to participate in any collateral or security whatsoever now or hereafter held by City with respect to the obligations under the Agreement.

3.5 Assignor Representations and Warranties.

As a condition of City entering into this Assignment to provide its consent, Assignor hereby represents and warrants to City as follows: (a) that upon the conversion of Assignor to the LLC, the LLC will (i) be deemed to be a continuation of Assignor; (ii) have all rights, privileges, powers, and property of Assignor; (iii) be subject to all debts, liabilities, and duties of the Assignor for purposes of the Agreement and this Assignment as a matter of New Jersey Law and in accordance with this Assignment; (b) that Assignee currently has same capitalization, insurance and management structure that was maintained by Assignor on the date of the Agreement; (c) that Assignee is financially capable of performing Assignor's obligations under the Agreement and any exhibits or any other ancillary agreements or contracts entered into or required thereunder; and (d) that, to the fullest extent permitted by law, the key personnel performing and overseeing the day-to-day work of the Agreement put in place by Assignor as of the date hereof will remain unchanged following the assignment. The representations and warranties Assignor shall survive the conversion of Assignor to the LLC.

3.6 LLC Representations and Warranties.

As a condition of City entering into this Assignment to provide its consent, LLC hereby represents and warrants to City that as of the date of the conversion of Assignor to the LLC, the LLC (i) will be a continuation of Assignor; (ii) will have all rights, privileges, powers, and property of Assignor; (iii) is subject to all debts, liabilities, and duties of Assignor for purposes of the Agreement and this Assignment; and (iv) will ensure that, to the fullest extent permitted by law, the key personnel performing and overseeing the day-to-day work of the Agreement as such day-to-day work is performed and overseen prior to the date of the Assignment will remain unchanged. The representations and warranties the LLC shall survive the assignment of the Agreement to the Assignee.

3.7 Assignee Representations and Warranties.

As a condition of City entering into this Assignment to provide its consent, Assignee hereby represents and warrants to City as follows: (i) that Assignee currently has same capitalization, insurance and management structure that was maintained by Assignor on the date

of the Agreement and Assignee covenants to maintain the same through the term of the Agreement; (ii) that Assignee is financially capable of performing Assignor's obligations under the Agreement and any exhibits and any other ancillary agreements or contracts entered into or required thereunder and Assignee covenants to remain financially capable of performing Assignor's obligations for the term of the Agreement, as the Agreement may be extended by the terms thereof; and (iii) that, to the fullest extent permitted by law, the key personnel performing and overseeing the day-to-day work of the Agreement as such day-to-day work is performed and overseen by Assignor prior to this Assignment will remain unchanged. The representations, warranties and covenants of Assignee shall survive the assignment of the Agreement from Assignor to Assignee.

Article 4 Insurance and Indemnification

4.1 **Insurance Certificates.** For this Assignment to be effective, Assignee shall provide to City insurance certificates and endorsements for the identical type and amount of coverage currently required under the Agreement.

4.2 **City.** Assignor, LLC and Assignee shall, each to the fullest extent permitted by law, indemnify, defend and protect City, and hold City harmless from and against any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of Assignor's, LLC's and/or Assignee's failure to comply with any term or obligation of this Assignment or the Agreement. The duties and obligations of this Section 4.2 shall be joint and several. The defense obligations under this Section 4.2 shall be provided immediately following a tender of defense.

4.3 **Assignor.** Assignor and LLC, following the conversion, shall indemnify, defend and protect Assignee, and hold Assignee harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of (i) any failure of Assignor to convey its interest pursuant to Article 2, free and clear of all third-party liens, claims or encumbrances or (ii) any breach by Assignor of the Agreement or any other failure to perform or observe any of the duties or obligations of Assignor thereunder, to the extent such breach or failure arises prior to the Effective Date.

4.4 **Assignee.** Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignee of the Agreement or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Assignment.

Article 5 General Provisions

5.1 **Governing Law; Venue.** This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Any legal suit, action, or proceeding arising out of or relating to this Assignment shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or

proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Assignment has been brought in an inconvenient forum.

5.2 **Headings.** All Section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Assignment.

5.3 **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (i) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (ii) hand delivered or (iii) sent via email with a return receipt. All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor, Assignee or City may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Assignor:

Langan Engineering and Environmental Services, Inc.,
300 Kimball Drive, 4th Fl.,
Parsippany, NJ 07054
Attn: Jared Hand
(973) 560-4967
jhand@langan.com

If to LLC:

Langan Engineering and Environmental Services, LLC,
300 Kimball Drive, 4th Fl.,
Parsippany, NJ 07054
Attn: Jared Hand
(973) 560-4967
jhand@langan.com

If to Assignee:

Langan CA, Inc.
135 Main Street, Suite 1500
San Francisco, CA 94105
Attn: Jared Hand
(973) 560-4967
jhand@langan.com

If to City:

Robert P Beck
Treasure Island Director
Treasure Island Development Authority

One Avenue of the Palms, Suite 241
San Francisco, CA 94127
Bob.Beck@sfgov.org

5.4 **Entire Agreement.** This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Agreement and supersedes all other oral or written provisions.

5.5 **Severability.** Should the application of any word, phrase, clause, sentence, paragraph and/or provision of this Assignment 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 words, phrases, clauses, sentences, paragraphs and/or provisions of this Assignment shall not be affected or impaired thereby and (ii) such words, phrases, clauses, sentences, paragraphs and/or provisions shall be enforced to the maximum extent possible so as to effect the intent of Assignor, Assignee and City.

[Signatures appear on following page.]

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the date first above written.

ASSIGNOR:

LANGAN ENVIRONMENTAL AND
ENGINEERING SERVICES, INC.,
a New Jersey Corporation
[INSERT CITY SUPPLIER NUMBER]

By: _____
Name: _____
Title: _____

ASSIGNEE:

LANGAN CA, INC.,
a California corporation
[INSERT CITY SUPPLIER NUMBER]

By: _____
Name: _____
Title: _____

LLC:

LANGAN ENVIRONMENTAL AND
ENGINEERING SERVICES, LLC
a New Jersey limited liability company
[INSERT CITY SUPPLIER NUMBER]

By: _____
Name: _____
Title: _____

City hereby consents to the assignment and assumption described in Article 2 of this Assignment.

Recommended by:

Approved:

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

By:

Signature for Department
Robert P. Beck
Treasure Island Director
Treasure Island Development Authority

[name of Purchaser or
"Name: _____"]

Approved as to Form:

David Chiu
City Attorney

By: _____
Vincent Brown
Deputy City Attorney

Attached:
Appendix A: Agreement
Appendix B: Documentation of Transfer

APPENDIX A - Agreement

The Agreement, dated **March 15, 2023**, between Contractor and City.

is attached on the following pages.

APPENDIX B – Documentation of Transfer

**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**

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Assignment**”) is made as of [_____, 202_] in San Francisco, California, by and among **Langan Engineering and Environmental Services, Inc.**, a corporation duly organized and existing under the laws of the State of **New Jersey**, with its principal office in **Parsippany New Jersey** (“**Assignor**”), and **Langan CA, Inc.**, a corporation duly organized and existing under the laws of the State of California with its principal office in **San Francisco, California** (“**Assignee**”), and consented to by 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, referred to as “**Purchasing**” under the Agreement, and TIDA (“**City**”).

RECITALS

WHEREAS, Assignor is a party to the Agreement (as defined below) for rendering of certain professional services consisting of engineering services, as more particularly described in the Agreement; and

WHEREAS, Assignor is expanding its scope of services in the State of California, and in furtherance thereof will undergo the process of conversion in a manner consistent with the requirements of New Jersey law to covert its form of legal entity from a New Jersey corporation to a New Jersey limited liability company named (Langan Engineering and Environmental Services, LLC, a New Jersey limited liability company (the “**LLC**”) for tax and regulatory reasons, prior to the date hereof; and

WHEREAS, limited liability companies are unable to provide professional services in the State of California, causing the LLC to form Assignee, which is a wholly-owned subsidiary of the LLC and the exclusive contracting entity of the LLC in the State of California; and

WHEREAS, Assignor desires to transfer its right, title and interest in and obligations under the Agreement to Assignee, and Assignee desires to assume the same from Assignor, subject to the terms and conditions set forth herein; and

WHEREAS, Assignor warrants that Assignee is able to fully perform all obligations that may exist under the Agreement, and

WHEREAS, Assignee warrants that it is able to fully perform all obligations that may exist under the Agreement, and

WHEREAS, it is consistent with the City’s interest to recognize the Assignee as the successor party to the Agreement, and

WHEREAS, the City consents to the transfer of the Agreement based on Assignor’s warranties stated herein and subject to the terms and conditions below, and

WHEREAS, the Assignee has registered as a City Vendor and demonstrated compliance with Administrative Code Chapter 12B.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the promises and the mutual covenants of the parties contained in this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

Article 1 Definitions

The following definitions apply to this Assignment:

1.1 **“Agreement”** means that certain Agreement Between the City and County of San Francisco and Langan Engineering and Environmental Services, Inc. TC10403 (2022-001), dated March 15, 2023, between Assignor and City and County of San Francisco, a municipal corporation, as may be extended from time to time pursuant to the terms thereof. The Agreement is attached to this Assignment as **Appendix A**.

1.2 **“Effective Date”** means the later of the following dates: (a) the date this agreement has been fully executed by the parties hereto, and (b) the date the TIDA Board of Directors has approved this Assignment.

1.3 **“LLC”** has the meaning set forth in the Recitals.

1.4 **“TIDA”** means Treasure Island Development Authority, a California nonprofit public benefit corporation.

1.5 Other terms used and not defined in this Assignment shall have the meanings assigned to such terms in the Agreement.

Article 2 Transfer of Agreement

2.1 **Transfer.** Assignor hereby assigns, transfers and conveys to Assignee all of Assignor’s right, title, and interest in and to the Agreement and all of Assignor’s duties and obligations thereunder that will arise on or after the Effective Date.

2.2 **Acceptance.** Assignee hereby accepts the transfer and conveyance set forth in Article 2.1 above and agrees to perform all of Assignor’s duties and obligations under the Agreement that will arise on or after the Effective Date.

2.3 **Rights to Enforce.** Subject to the terms of the Agreement, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and transferees. Nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors and Assignees) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.

2.4 **Consent of City.** The City consents to the transfer described in this Article 2 based on the evidence provided below, which indicates that Assignee is able to fully perform all obligations that may and will exist under the Agreement. All the evidence is attached to this Assignment as **Appendix B**. Further, each of Assignor and Assignee acknowledges that

the prior written consent of City to this Assignment is required under the terms of the Agreement. City shall have the right to enforce this Assignment.

2.4.1 An authenticated copy of an instrument effecting the transaction converting Assignor to the LLC and the formation of Assignee as a wholly owned subsidiary of the LLC, together with attorney opinion letters with a statement that the transactions were properly affected under the applicable state law.

2.4.2 Additional documents required, depending on the nature of the transfer:

a. A signed and authenticated document or excerpts of a document describing the conversion of Assignor to the LLC in sufficient detail, the formation of the Assignee as a wholly-owned subsidiary of the LLC, and which precisely describe the specifics of the transactional relationship, including, without limitation, the description of all the transfers of the assets used to perform the Agreement, between the Assignor, the LLC and Assignee;

b. The Opinion of legal counsel of the LLC and the Assignee, dated **as of the date hereof**, opining that **[insert type of agreement, i.e. merger, stock purchase]** agreement was properly affected under applicable law and that the LLC controls the Assignee and its employees, and that the Assignee is able to assume all liabilities and obligations of the Agreement as set forth herein;

c. Certified copies of Board Resolutions and Stockholders Meetings Minutes (and comparable documents for the LLC) authorizing and approving the transfer of assets, for the Assignor, LLC and Assignee;

d. Documents evidencing that Assignee has (i) complied with the applicable requirements set forth at San Francisco Administrative Code 12B; (ii) obtained a new City Vendor/Supplier ID and business license to operate within the City and County of San Francisco; and (iii) registered with the San Francisco Treasurer and Tax Collector and complied with any other State and local requirements in order for Assignee to lawfully operate its business within the State of California and the City and County of San Francisco.

2.4.3 An authenticated copy of the LLC's articles of organization and the Assignor's articles of incorporation.

2.4.4 Balance sheets for the LLC and the Assignee with independent auditor report if available to prove that the Assignee has enough assets to perform the Agreement and that the LLC has enough assets to honor the guaranty set forth below in this Assignment.

2.4.5 A statement by the Assignee confirming that the price and, to the fullest extent permitted by law, the key personnel performing and overseeing the day-to-day work of the Agreement as of the date hereof, will, to the extent feasible, remain unchanged following the assignment of the Agreement from Assignor to Assignee.

2.5 **Successor.** The City recognizes the Assignee as the Assignor's successor in interest in and to the Agreement; provided, that Assignee, by this Assignment, becomes liable for all duties and obligations and entitled to all rights, title, and interest of the Assignor in and to the Agreement that will arise on or after the Effective Date. The City will treat the Assignee as if the Assignee were the original party to the Agreement. Following the Effective Date of this Assignment, the term "Contractor," as used in the Agreement, shall refer to the Assignee. The

Agreement shall remain in full force and effect, except as modified by this Assignment. Each party has executed this Assignment as of the day and year first above written.

2.6 **Further Assurances.** From and after the date of this Assignment, Assignor, Assignee and LLC each agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Assignment effectuate the intent of this Assignment or as may be required by City.

Article 3 Obligations and Liabilities; Representations and Warranties

3.1 **Transfer, Waiver, and Assumption.** The Assignor confirms the transfer to the Assignee, and waives any claims and rights against the City that it now has or may have in the future in connection with the Agreement. The Assignee agrees to be bound by and to perform the Agreement in accordance with the conditions contained therein. The LLC and Assignee, jointly and severally, assume all obligations and liabilities of, and all claims against, the Assignor under the Agreement as if the LLC and Assignee were the original party to the Agreement. The Assignee ratifies all previous actions taken by the Assignor with respect to the Agreement, with the same force and effect as if the action has been taken by the Assignee. Except as expressly provided in this Assignment, nothing in it shall be construed as a waiver of any rights of the City against the Assignor, or the LLC following the conversion transaction.

3.2 **Past Payments.** All payments and reimbursements previously made by City to the Assignor, and all other previous actions taken by City under the Agreement, shall be considered to have discharged those parts of City's obligations thereunder. All payments and reimbursements made by City after the date of this Assignment in the name of or to the Assignor shall have the same force and effect as if made to the Assignee, and shall constitute a complete discharge of City's obligations under the Agreement, to the extent of the amounts paid or reimbursed. The Assignor and the Assignee agree and confirm that City is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer contemplated under this Assignment, other than those that City in the absence of this transfer would have been obligated to pay or reimburse under the terms of the Agreement.

3.3 **Future Obligations.** The Assignor and the LLC hereby, jointly and severally, guaranty payment of all liabilities and the performance of all obligations that the Assignee: (i) assumes under this Assignment; or (ii) may undertake in the future should this Assignment be modified pursuant to the Agreement's terms and conditions. The Assignor and the LLC hereby waive notice of, and consent to, any such future modifications. Further transfers of the liabilities under the Agreement done by the Assignee and agreed upon by City do not release the Assignor or the LLC from its guaranty.

3.4 **No Release of Assignor.** Neither this Assignment nor the consent of City shall release Assignor nor the LLC, following the conversion, in whole or in part from any of Assignor's obligations or duties under the Agreement if Assignee fails to perform or observe any such obligation or duty. Assignor, LLC, and Assignee have each entered into this Assignment and obtained such consent of City based solely upon Assignor's and Assignee's representations and warranties concerning Assignee's financial fitness and condition and ability to perform

under the Agreement, and Assignor, and the LLC following conversion, each assume full responsibility for obtaining and sharing with City any further information with respect to Assignee or the conduct of its business after the date of this Assignment. Assignor, and LLC following the conversion, each waive any right to require City to (i) proceed against any person or entity including Assignee, (ii) proceed against or exhaust any security now or hereafter held in connection with the Contract, or (iii) pursue any other remedy in City's power. Assignor, and LLC following conversion, each waive any defense arising by reason of any disability or other defense of Assignee or any other person, or by reason of the cessation from any cause whatsoever of the liability of Assignee or any other person. Neither Assignor nor the LLC, following conversion, shall have, and each hereby waive, any right of subrogation to any of the rights of City against Assignee or any other person, and Assignor waives any right to enforce any remedy of Assignor and LLC, post conversion, against Assignee or against any other person unless and until all obligations to City under the Agreement and this Assignment have been paid and satisfied in full. Assignor and LLC, post conversion, waive any benefit of any right to participate in any collateral or security whatsoever now or hereafter held by City with respect to the obligations under the Agreement.

3.5 Assignor Representations and Warranties.

As a condition of City entering into this Assignment to provide its consent, Assignor hereby represents and warrants to City as follows: (a) that upon the conversion of Assignor to the LLC, the LLC will (i) be deemed to be a continuation of Assignor; (ii) have all rights, privileges, powers, and property of Assignor; (iii) be subject to all debts, liabilities, and duties of the Assignor for purposes of the Agreement and this Assignment as a matter of New Jersey Law and in accordance with this Assignment; (b) that Assignee currently has same capitalization, insurance and management structure that was maintained by Assignor on the date of the Agreement; (c) that Assignee is financially capable of performing Assignor's obligations under the Agreement and any exhibits or any other ancillary agreements or contracts entered into or required thereunder; and (d) that, to the fullest extent permitted by law, the key personnel performing and overseeing the day-to-day work of the Agreement put in place by Assignor as of the date hereof will remain unchanged following the assignment. The representations and warranties Assignor shall survive the conversion of Assignor to the LLC.

3.6 LLC Representations and Warranties.

As a condition of City entering into this Assignment to provide its consent, LLC hereby represents and warrants to City that as of the date of the conversion of Assignor to the LLC, the LLC (i) will be a continuation of Assignor; (ii) will have all rights, privileges, powers, and property of Assignor; (iii) is subject to all debts, liabilities, and duties of Assignor for purposes of the Agreement and this Assignment; and (iv) will ensure that, to the fullest extent permitted by law, the key personnel performing and overseeing the day-to-day work of the Agreement as such day-to-day work is performed and overseen prior to the date of the Assignment will remain unchanged. The representations and warranties the LLC shall survive the assignment of the Agreement to the Assignee.

3.7 Assignee Representations and Warranties.

As a condition of City entering into this Assignment to provide its consent, Assignee hereby represents and warrants to City as follows: (i) that Assignee currently has same capitalization, insurance and management structure that was maintained by Assignor on the date

of the Agreement and Assignee covenants to maintain the same through the term of the Agreement; (ii) that Assignee is financially capable of performing Assignor's obligations under the Agreement and any exhibits and any other ancillary agreements or contracts entered into or required thereunder and Assignee covenants to remain financially capable of performing Assignor's obligations for the term of the Agreement, as the Agreement may be extended by the terms thereof; and (iii) that, to the fullest extent permitted by law, the key personnel performing and overseeing the day-to-day work of the Agreement as such day-to-day work is performed and overseen by Assignor prior to this Assignment will remain unchanged. The representations, warranties and covenants of Assignee shall survive the assignment of the Agreement from Assignor to Assignee.

Article 4 Insurance and Indemnification

4.1 **Insurance Certificates.** For this Assignment to be effective, Assignee shall provide to City insurance certificates and endorsements for the identical type and amount of coverage currently required under the Agreement.

4.2 **City.** Assignor, LLC and Assignee shall, each to the fullest extent permitted by law, indemnify, defend and protect City, and hold City harmless from and against any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of Assignor's, LLC's and/or Assignee's failure to comply with any term or obligation of this Assignment or the Agreement. The duties and obligations of this Section 4.2 shall be joint and several. The defense obligations under this Section 4.2 shall be provided immediately following a tender of defense.

4.3 **Assignor.** Assignor and LLC, following the conversion, shall indemnify, defend and protect Assignee, and hold Assignee harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of (i) any failure of Assignor to convey its interest pursuant to Article 2, free and clear of all third-party liens, claims or encumbrances or (ii) any breach by Assignor of the Agreement or any other failure to perform or observe any of the duties or obligations of Assignor thereunder, to the extent such breach or failure arises prior to the Effective Date.

4.4 **Assignee.** Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignee of the Agreement or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Assignment.

Article 5 General Provisions

5.1 **Governing Law; Venue.** This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Any legal suit, action, or proceeding arising out of or relating to this Assignment shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or

proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Assignment has been brought in an inconvenient forum.

5.2 **Headings.** All Section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Assignment.

5.3 **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (i) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (ii) hand delivered or (iii) sent via email with a return receipt. All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor, Assignee or City may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Assignor:

**Langan Engineering and Environmental Services, Inc.,
300 Kimball Drive, 4th Fl.,
Parsippany, NJ 07054
Attn: Jared Hand
(973) 560-4967
jhand@langan.com**

If to LLC:

**Langan Engineering and Environmental Services, LLC,
300 Kimball Drive, 4th Fl.,
Parsippany, NJ 07054
Attn: Jared Hand
(973) 560-4967
jhand@langan.com**

If to Assignee:

**Langan CA, Inc.
135 Main Street, Suite 1500
San Francisco, CA 94105
Attn: Jared Hand
(973) 560-4967
jhand@langan.com**

If to City:

Robert P Beck
Treasure Island Director
Treasure Island Development Authority

One Avenue of the Palms, Suite 241
San Francisco, CA 94127
Bob.Beck@sfgov.org

5.4 **Entire Agreement.** This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Agreement and supersedes all other oral or written provisions.

5.5 **Severability.** Should the application of any word, phrase, clause, sentence, paragraph and/or provision of this Assignment 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 words, phrases, clauses, sentences, paragraphs and/or provisions of this Assignment shall not be affected or impaired thereby and (ii) such words, phrases, clauses, sentences, paragraphs and/or provisions shall be enforced to the maximum extent possible so as to effect the intent of Assignor, Assignee and City.

[Signatures appear on following page.]

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the date first above written.

ASSIGNOR:

LANGAN ENVIRONMENTAL AND
ENGINEERING SERVICES, INC.,
a New Jersey Corporation
[INSERT CITY SUPPLIER NUMBER]

By: _____
Name: _____
Title: _____

ASSIGNEE:

LANGAN CA, INC.,
a California corporation
[INSERT CITY SUPPLIER NUMBER]

By: _____
Name: _____
Title: _____

LLC:

LANGAN ENVIRONMENTAL AND
ENGINEERING SERVICES, LLC,
a New Jersey limited liability company
[INSERT CITY SUPPLIER NUMBER]

By: _____
Name: _____
Title: _____

City hereby consents to the assignment and assumption described in Article 2 of this Assignment.

Recommended by:

Approved:

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

By:

Signature for Department
Robert P. Beck
Treasure Island Director
Treasure Island Development Authority

[name of Purchaser or
"Name: _____"]

Approved as to Form:

David Chiu
City Attorney

By: _____
Vincent Brown
Deputy City Attorney

Attached:
Appendix A: Agreement
Appendix B: Documentation of Transfer

APPENDIX A - Agreement

The Agreement, dated **March 15, 2023**, between Contractor and City.

is attached on the following pages.

APPENDIX B – Documentation of Transfer

1 **RESOLUTION AUTHORIZING THE TREASURE ISLAND DIRECTOR TO EXECUTE TWO**
2 **ASSIGNMENT AND ASSUMPTION AGREEMENTS TO ASSIGN TWO AGREEMENTS**
3 **BETWEEN THE TREASURE ISLAND DEVELOPMENT AUTHORITY AND LANGAN**
4 **ENGINEERING AND ENVIRONMENTAL SERVICES, INC. TO LANGAN CA, INC., A**
5 **CALIFORNIA CORPORATION**

6 WHEREAS, Following a Request for Qualifications (“RFQ”), the Treasure Island
7 Development Authority (the “Authority”) Board of Directors (the “Authority Board”) authorized
8 by Resolution No. 22-16-0713 the execution of an Agreement between the Authority and
9 Langan Engineering and Environmental Services, Inc. (the “Assignor”), dated as of August 8,
10 2022 (“Agreement 1”), to provide As-Needed Multi-Disciplinary Engineering and Technical
11 Services; and

12 WHEREAS, Subsequently, the Authority Board authorized by Resolution No. 23-14-
13 0308 the execution of an Agreement between the Authority and the Assignor, dated as of
14 March 15, 2023 (“Agreement 2”), to provide Environmental Consultation and Oversight of
15 Navy Remediation for the Treasure Island Development Project. Agreement 1 and Agreement
16 2, are together referred to as, the “Agreements”); and

17 WHEREAS, Assignor is a corporation duly organized and existing under the laws of the
18 State of New Jersey; and

19 WHEREAS, Assignor intends to convert its form of legal entity from a New Jersey
20 corporation to a New Jersey limited liability company, Langan Engineering and Environmental
21 Services, LLC (the “LLC”); and

22 WHEREAS, Because limited liability companies are unable to provide
23 professional services in the State of California, the LLC proposes to form Langan CA, Inc. (the
24 “Assignee”), a corporation duly organized and existing under the laws of the State of
25

1 California as a wholly-owned subsidiary of the LLC and the exclusive contracting entity of the
2 LLC in the State of California; and

3 WHEREAS, the Assignor wishes to assign its right, title and interest in and obligations
4 under the Agreements to the Assignee, and the Assignee desires to assume the same from
5 the Assignor; and,

6 WHEREAS, it is consistent with the City’s interest to recognize the Assignee as the
7 successor party to the Agreement, and

8 WHEREAS, Staff, working with the City Attorney’s Office, has prepared Assignment
9 and Assumption Agreements for each of the Agreements which are on file with the Secretary
10 of the Authority Board; now therefore be it

11 RESOLVED, That the Authority Board hereby approves the prepared Assignment and
12 Assumption Agreements as to form and authorizes the Director to take such actions
13 necessary to finalize, execute, and effectuate the assignment of the Agreements from the
14 Assignor to the Assignee; and, FURTHER RESOLVED, That the Board of Directors hereby
15 authorizes the Treasure Island Director to enter into any additions, amendments or other
16 modifications to the Agreement(s) that the Treasure Island Director determines in consultation
17 with the City Attorney are in the best interests of the Authority, that do not materially increase
18 the obligations or liabilities of the Authority, that do not materially reduce the rights of the
19 Authority, and are necessary or advisable to complete the assignment of the Agreements from
20 the Assignor to the Assignee, such determination to be conclusively evidenced by the
21 execution and delivery by the Treasure Island Director of the documents and any
22 amendments thereto.

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CERTIFICATE OF SECRETARY

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

Jeanette Howard, Secretary