

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Streets

BRIEF DESCRIPTION:

Retroactively accepting a gift of goods and services valued at approximately \$13,500 from the Civic Joy Fund, a program of the Civic Space Foundation, a non-profit organization, including several logs and tree stumps, arranged for seating and child exploration to activate Gamble Park, an SFMTA property near Carl Street and the N Judah right-of-way.

SUMMARY:

- Civic Joy Fund is a program of the Civic Space Foundation, a non-profit organization working on activating public spaces to bring joy to the streets.
- Civic Joy Fund offered to provide several logs and tree stumps, along with professional services for their installation at Gamble Park in late May 2026, arranged to provide seating to activate this SFMTA property.
- The equivalent cost of the gift is estimated at \$13,500 and gifts of over \$10,000 require SFMTA Board approval under the SFMTA's Delegation Policy and the Administrative Code.
- The proposed action has been reviewed pursuant to the California Environmental Quality Act (CEQA).
- The proposed action is the Approval Action as defined by S.F. Administrative Code Chapter 31.

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement

APPROVALS:

DIRECTOR  _____

SECRETARY  _____

DATE

June 11, 2026

June 11, 2026

ASSIGNED SFMTAB CALENDAR DATE: June 16, 2026

PURPOSE

Retroactively accepting a gift of goods and services valued at approximately \$13,500 from the Civic Joy Fund, a program of the Civic Space Foundation, a non-profit organization including several logs and tree stumps, arranged for seating and child exploration to activate Gamble Park, an SFMTA property near Carl Street and the N Judah right-of-way.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

The installation of seating to be funded by the contribution supports the following goals and objectives in the SFMTA's Strategic Plan and Transit First Policy Principles:

Strategic Plan Goal 7: Build stronger relationships with stakeholders.

Transit First Policy Principal 5. Pedestrian areas shall be enhanced wherever possible to improve the safety and comfort of pedestrians and to encourage travel by foot.

DESCRIPTION

Civic Joy Fund, a program of the Civic Space Foundation, is a non-profit organization focused on activating public spaces and creating joyful, welcoming environments throughout communities and city streets. Through creative placemaking and community-centered improvements, the organization works to transform underutilized public areas into spaces that encourage gathering, play, interaction, and community connection. At Gamble Park, a SFMTA property near Carl Street and the N Judah right-of-way, the Civic Joy Fund has provided several logs and tree stumps arranged for seating and child exploration to create a more engaging and family-friendly public space experience for park visitors.

As part of the gift, Civic Joy Fund provided several logs and tree stumps that have been cut and ground down to varying lengths and heights, along with professional services for their installation at Gamble Park in late May 2026, where they were arranged to provide seating. The equivalent value of the gift and professional services is estimated at approximately \$13,500. The installation is expected to provide additional seating opportunities while also encouraging informal play and community interaction within the park.

Under the Administrative Code and the SFMTA Board's Delegation Policy, gifts of over \$10,000 must be approved by the SFMTA Board.

The SFMTA entered into an agreement with the Civic Joy Fund to provide insurance and indemnification for the installation services. The SFMTA will assume responsibility for the improvement in the Park going forward, including maintenance and liability.

STAKEHOLDER ENGAGEMENT

No outreach was conducted for this gift.

ALTERNATIVES CONSIDERED

Alternatives to accepting this gift from the Civic Joy Fund, would be for SFMTA staff to perform the work, to hire consultants to complete the work, or to not move forward with the project at this time. SFMTA staff with the expertise necessary to perform this work do not currently have the capacity to undertake the project. Given current budget priorities, hiring consultants to perform the work was not considered a feasible option. Another alternative would have been to not install the logs and tree stumps at the park. However, this would forgo an opportunity to enhance the public space through community-focused improvements that encourage gathering, seating, child exploration, and neighborhood activation.

FUNDING IMPACT

The value of the gift is approximately \$13,500. The SFMTA anticipates a minimal amount of budgeted staff time for ongoing maintenance.

ENVIRONMENTAL REVIEW

On June 2, 2026, the SFMTA, under authority delegated by the Planning Department, determined that acceptance of the gift from the Civic Joy Fund in the form of goods and services to install seating in Gamble Park (Case No. 2026-004749ENV) is categorically exempt from California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15304.

The proposed action is the Approval Action as defined by San Francisco Administrative Code Chapter 31.

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and may be found in the records of the Planning Department by Case Number at <https://sfplanninggis.org/pim/> or 49 South Van Ness Avenue, Suite 1400 in San Francisco, and are incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None required. The Administrative Code requires the reporting of gifts to the Controller and to the Board of Supervisors.

The City Attorney has reviewed this report.

RECOMMENDATION

Retroactively accepting a gift of goods and services valued at approximately \$13,500 from the Civic Joy Fund, a program of the Civic Space Foundation, a non-profit organization including several logs and tree stumps, arranged for seating and child exploration to activate Gamble Park, an SFMTA property.

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS**

RESOLUTION No. _____

WHEREAS, That certain real property located at Carl Street and the N Judah right-of-way in San Francisco, California, commonly known as Gamble Park (the Park) is owned by the city and under the jurisdiction of the San Francisco Municipal Transportation Agency (SFMTA); and,

WHEREAS, Civic Joy Fund (Donor), a program of the Civic Space Foundation, a non-profit organization working to activate public spaces to bring joy to the streets; and,

WHEREAS, Civic Joy Fund offered to provide the SFMTA with several logs and or tree stumps that have been cut and ground down to varying lengths and heights, along with installation services at Gamble Park, where they will be arranged to provide seating; and,

WHEREAS, The SFMTA entered into an agreement with the Civic Joy Fund (Agreement), to, among other things, provide insurance to cover the installation but not ongoing maintenance or liability for the seating; and,

WHEREAS, On June 2, 2026, the SFMTA, under authority delegated by the Planning Department, determined that acceptance of the gift from the Civic Joy Fund in the form of goods and services to install seating in Gamble Park (Case No. 2026-004749ENV) is categorically exempt from California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15304; and,

WHEREAS, The proposed action is the Approval Action as defined by San Francisco Administrative Code Chapter 31; and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and may be found in the records of the Planning Department by Case Number at <https://sfplanninggis.org/pim/> or 49 South Van Ness Avenue, Suite 1400 in San Francisco, and are incorporated herein by reference; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors retroactively accepts the gift of goods and services valued at approximately \$13,500 from the Civic Joy Fund, a program of the Civic Space Foundation, a non-profit organization including several logs and tree stumps, arranged for seating and child exploration to activate Gamble Park, an SFMTA property.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 16, 2026.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**CITY AND COUNTY OF SAN FRANCISCO
GIFT ACCEPTANCE AGREEMENT
BY AND BETWEEN
THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
AND
CIVIC JOY FUND**

This Agreement (“**Agreement**”) is entered into by and between Civic Joy Fund, a program of the Civic Space Foundation, a non-profit organization (“**Donor**”), and the City and County of San Francisco (“**City**”) acting through its Municipal Transportation Agency (“**SFMTA**”), collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, That certain real property located at Carl Street and N Judah right of way in San Francisco, California, commonly known as Gamble Park (the “**Park**”) is owned by the City and under the jurisdiction of the SFMTA; and

WHEREAS, Donor is the Civic Joy Fund, a program of the Civic Space Foundation, a non-profit working to activate public spaces to bring joy to the streets; and

WHEREAS, Donor proposes to provide SFMTA a gift of several logs, arranged for seating and child exploration (“**Gift**”); and

WHEREAS, As part of the Gift, Donor agrees to deliver and install the Gift at the Park, at no cost to the City, in accordance with this Agreement and subject to SFMTA review and coordination; and

NOW, THEREFORE, subject to and effective upon the execution of this Agreement by the Parties (**May 18, 2026**), the Parties agree as follows:

1. **Term.** This Agreement shall become effective upon full execution and delivery hereof by the Parties. This Agreement shall expire once the Gift has been installed and the Project is complete.
2. **Project Overview.** The Parties agree to cooperate on the installation of the Project based on the Schedule attached as **Exhibit B**. SFMTA shall not be obligated to make up any funding shortfall associated with the installation of the Project.
3. **Donor’s Funding.** By signing this Agreement, Donor certifies that it has already secured all funds necessary to fund the Gift. Donor’s use of such funds may be subject to audit by the City.
4. **Gift.** Donor shall install the Project consistent with the following requirements:

The Gift shall include the services of contractors retained by Donor to perform work on the Project (“**Contractor**”) and shall be at no cost to the City. Contractor’s scope of work (the “**Scope of Work**”) shall be subject to advance approval by SFMTA. Additionally, Donor shall abide by the terms and conditions listed in **Exhibit D**, and Donor’s agreements with Contractor(s) shall also include these terms and conditions. Contractor shall coordinate with SFMTA on the commencement of construction. Before work may begin, Donor must certify to SFMTA that it has in place all funds necessary to complete the approved Scope of Work, and that it will hold those funds in reserve to complete the work and will not spend the funds for any

other purpose. Upon such certification, SFMTA shall issue Contractor a written notice to proceed, which shall constitute the grant of a revocable, personal, unassignable, non-exclusive and non-possessory privilege to the Contractor to enter the area of the Park that SFMTA has approved for the work (the “**Permit Area**”) for the limited purpose of completing the approved Scope of Work. Without limiting any of its rights hereunder, City may revoke this permission as set forth in this Agreement without any obligation to pay any consideration to Contractor.

5. **Indemnification.** Donor shall defend, indemnify, and hold harmless the City, including its boards, commissions, officers, agents, and employees (collectively, the “**Indemnitees**”) from any and all claims, losses, costs, damages, expenses and liabilities of every kind, nature and description including, without limitation, injury to or death of any person(s) (collectively, “**Damages**”), court costs, attorneys’ fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation (collectively, “**Litigation Expenses**”), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Donor, any contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, “**Liabilities**”). City will reimburse Donor for the proportionate percentage of defense costs exceeding Donor’s proportionate percentage of fault as determined by a Court of competent jurisdiction.

6. **Insurance.** Donor shall maintain at all times during its activities in the Park insurance described in the certificate attached hereto as **Exhibit E**, and to name the City and County of San Francisco, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, Donor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII 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. Failure to maintain insurance shall constitute a material breach of this Agreement. Compliance with the provisions of this section shall in no way relieve or decrease Donor’s indemnification obligations under this Agreement or any of Donor’s other obligations hereunder.

7. **Contacts/Notices**

SFMTA:
1 South Van Ness, Floor 7
San Francisco, CA 94103
Attn: Sean Kennedy, Chief Planning and Delivery Officer
Deputy Director, Streets Division
Tel: 1(571) 334-3623

Donor: Luke Spray 1 (909) 289-3655
Civic Space Foundation
1111 Oak Street
San Francisco, CA 94117

8. **Sunshine Ordinance and Donor Disclosures.** Donor understands and acknowledges that this Agreement, and any document between the Parties, shall be subject to the disclosure requirements of the City’s Sunshine Ordinance and the California Public Records Act. In addition, Donor agrees to disclose information regarding the amounts and sources of funding and donor financial interest information as set forth in Administrative Code Section 67.29-6, to provide a copy of all required reports and disclosures to SFMTA, and to provide all information requested by SFMTA to enable SFMTA to comply with its disclosure obligations.

9. **Termination.** The Parties shall attempt to cooperatively resolve all disputes. Following such efforts, either party may terminate this Agreement if it provides the other party written notice of that party's failure to comply with a material term of this Agreement, including a failure by Donor's agents to comply with terms applicable to them under this Agreement, and if the failure is not cured to the complaining party's reasonable satisfaction within 30 days or such other reasonable timeframe mutually agreed to by the Parties in writing. However, all provisions regarding indemnification and insurance shall survive the expiration or termination of this Agreement.

10. **Conflicts of Interest.** By executing this Agreement, Donor certifies that it is not aware of, and shall promptly inform SFMTA if it becomes aware of a conflict of interest arising out of this Agreement. For example, Donor will notify SFMTA if it becomes aware that any SFMTA employee or officer participates in a decision in which the employee or officer, or a member of their family, has a financial interest. In addition, the Parties agree and acknowledge that Donor's support of SFMTA, or lack thereof, shall have no bearing on and shall not be relevant towards any future contracting, leasing, or permitting decisions by SFMTA.

11. Miscellaneous.

a. **Entire Agreement.** This Agreement (including the exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the Parties as of the date of this Agreement, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

b. **Compliance with Applicable Laws.** All actions described herein are subject to and must be conducted and accomplished in accordance with the City's charter, its municipal code, and all applicable state and federal laws, building codes, and regulations. Donor understands and agrees that SFMTA is entering into this Agreement in its capacity as a property owner, and that nothing herein shall limit Donor's obligations to obtain any required regulatory approvals from City departments, boards, commissions, or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

c. **Approvals.** Except as expressly provided to the contrary, all approvals, consents, and determinations to be made by the City hereunder may be made by the Director of Transportation or her designee in her sole discretion.

d. **Independent Relations.** Nothing herein contained shall be construed as creating the relationship of employer and employee between the City and Donor or any of their respective agents or employees or Contractors. Donor shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it performs the duties required of it by the terms of this Agreement. Donor shall exercise full control and supervision of its duties and full control and responsibility as to the employment, direction, compensation, and discharge of all persons assisting it in the performance of this Agreement. Nothing set forth in this Agreement shall be deemed to render the City a partner in Donor's business, or a joint venture or member in any joint enterprise with Donor.

e. **No Third-Party Beneficiaries.** Nothing contained in this Agreement shall create or justify any claim against the City or Donor by any third person with respect to the performance of any duties or other projects being undertaken by Donor or the City. The provisions of this Agreement are not intended to benefit any third party, and no third party may rely hereon.

f. **Amendments.** This Agreement may be amended or modified only in writing by the Parties.

g. **Assignments.** Neither party shall assign, transfer, or encumber its interest in this Agreement or any other right, privilege, or license conferred by this Agreement, either in whole or in part, without obtaining the prior written consent of the other Party, which consent may be given or withheld in such party's sole discretion. Any nonconsensual assignment, transfer, or encumbrance shall be void and of no force and effect.

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

i. **Good Standing.** Donor represents that it is in good standing under the laws of the State where it is incorporated. Upon City's request, Donor shall provide documentation demonstrating its compliance with such legal requirements. Each party shall provide the other party written notice promptly following any and all changes in circumstances that could reasonably be expected to cause the noticing party to become unable to comply with its obligations under this Agreement.

IN WITNESS WHEREOF, the undersigned have indicated their approval effective as of the dates set forth next to their names.

APPROVED:

Luke Spray May 18, 2026
Date
Luke Spray
Civic Space Foundation

Viktoriya Wise
for Julie Kirschbaum
Director of Transportation

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: Susan Cleveland Knowles
Susan Cleveland Knowles
Deputy City Attorney

Attachments:

- Exhibit A:** Project Description
- Exhibit B:** Preliminary Schedule
- Exhibit C:** Intentionally Left Blank
- Exhibit D:** Contractor Terms
- Exhibit E:** Donor Insurance

EXHIBIT A – PROJECT DESCRIPTION

Install several logs and or tree stumps in the Park that have been grinded down at different lengths and heights and arranged in a manner to provide seating.

EXHIBIT B – PROJECT SCHEDULE

1. Plan to start installation no sooner than 5/19/2
2. Plan to complete installation no later than 5/21/26

EXHIBIT C – INTENTIONALLY LEFT BLANK

EXHIBIT D – CONTRACTORS REQUIRED CONTRACT TERMS

1. Exercise of Due Care.

Contractor shall not exceed the approved Scope of Work, and shall use due care at all times to avoid any damage or harm to City's property and to native vegetation and natural attributes of the Permit Area. Contractors shall take such soil and resource conservation and protection measures with the Permit Area as City may request. City shall have the right to approve and supervise any excavation work. Under no circumstances shall Contractors damage, harm or take any rare, threatened or endangered species on or about the Permit Area. Contractors shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Permit Area attributable to its work in the Permit Area. Contractors shall also maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition; upon completion remove all debris and restore the Permit Area to its condition immediately prior to construction, to the satisfaction of City; and immediately at its sole cost repair any and all damage to the Permit Area or property. The City shall be named a third-party beneficiary of the agreement with the Contractor.

2. Acceptance of Work.

SFMTA shall receive written notice when the Contractor deems the Work complete (“**Notice of Substantial Completion**”). SFMTA shall perform an inspection within ten (10) working days after receiving the Notice, and shall have five (5) days after the inspection to inform Contractor whether the Work is approved. Upon receipt of written notice that SFMTA has approved the Work (the “**Acceptance Letter**”), Contractor shall remove all of its materials, tools, equipment, and personal property from the Park, and shall repair any damage to the Park, at its sole cost. Within ten (10) days after the date of the Acceptance Letter, Donor/Contractor shall deliver the Work to SFMTA free and clear of all liens, easements and potential claims arising from the Project; shall provide SFMTA fully executed waivers and releases from all contractors and subcontractors of all claims against the City, its employees and agents; and shall assign to SFMTA all warranties or guaranties related to the Work.

3. Additional Requirements.

- a. Contractor shall obtain any and all necessary City permits and comply with applicable laws including disability access laws and with required noticing procedures before closing any sidewalks.
- b. Contractor shall comply with SFMTA’s Standard Construction Measures, and shall implement appropriate measures to ensure public safety while working in the Park, including, but not limited to, erecting safety barriers and caution signage and/or tape.
- c. Contractor shall pay its workers the prevailing rate of wage for the craft or classification of work performed, and provide certified payroll records to City on request pursuant to City-standard practices.
- d. Contractor shall adhere to Occupational Safety & Health Administration standards related to the Project.
- e. Contractor shall warrant and guarantee to the City that materials and equipment used for the Project will be first-class in quality and new, that the work will be free from defects

and of the quality specified, and that the work will conform to the requirements of the contract documents.

- f. Contractor shall not construct or place any temporary or permanent structures or improvements on the Permit Area, or alter any existing structures or improvements on the Permit Area, except for the approved Scope of Work.
- g. Contractor shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area.
- h. Contractor shall not cause, nor allow its Agents or Invitees to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area. Contractor shall immediately notify City when it learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. Contractor shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Contractor or its Agents or Invitees causes a release of Hazardous Material, Contractor shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, Contractor shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Area.
- i. Contractor shall not conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public.

4. Insurance

Contractor must maintain all of the insurance as set forth below, during the full term of its Agreement with Donor and at all times during its activities in the Park, naming the City and County of San Francisco, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, Contractor(s) shall furnish to City certificates of insurance and additional insured policy endorsements 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. Failure to maintain insurance shall constitute a material breach of this Agreement. Compliance with the provisions of this section shall in no way relieve or decrease Contractor's indemnification obligations under this Agreement or any of Contractor's other obligations hereunder.

- a. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness. Contractor hereby agrees to waive subrogation which any of its insurers may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City and Donor for all work performed by the Consultant, its employees, agents and subconsultants.
- b. Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
- c. 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.
- d. Professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
- e. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
 - i. 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 insurance applies separately to each insured against whom claim is made or suit is brought.
- f. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.
- g. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- h. 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.

- i. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- j. Before commencing any operations under this Agreement, Consultant shall furnish to City certificates of insurance and additional insured policy endorsements 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. Failure to maintain insurance shall constitute a material breach of this Agreement.
- k. Approval of the insurance by City and/or Donor shall not relieve or decrease the liability of Consultant hereunder.
- l. If a subcontractor will be used to complete any portion of this Agreement, Consultant shall ensure that its subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees, Donor, its officers, agents and employees and the Consultant as additional insureds.

5. Indemnification

- a. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City and County of San Francisco, its boards and commissions, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, including, but not limited to attorneys fees, directly or indirectly arising out of, connected with or resulting from the performance of the Contract. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.
- b. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arises out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.
- c. The City shall provide Contractor with prompt written notice after receipt of any claim, action or demand ("claim") made by a third party against the City and/or other indemnified party, provided, however, that no delay on the part of the City or other indemnified party shall relieve Contractor from any obligation hereunder. Contractor shall obtain the City's and other indemnified parties' consent for Contractor's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings

may be timely filed and in every instance, within thirty (30) days after City or other indemnified party has given notice of the claim, and provided further that City and other indemnified party may retain separate counsel co-counsel at their expense and participate in the defense of the claim. If the interests of Contractor and the City and/or other indemnified party conflict and counsel chosen by Contractor cannot, in City's or other indemnified parties' reasonable opinion, adequately represent Contractor, City and/or other indemnified party, then the cost and expense associated with the City and/or other indemnified party retaining separate counsel shall be borne by Contractor, otherwise, the cost and expense of separate co-counsel retained by City and/or other indemnified party shall be borne by the City or other indemnified party, as applicable. Subject to Contractor's obligation to reimburse City's and other indemnified parties' costs of same, City and other indemnified parties will assist Contractor in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is no material conflict of interest.

- i. So long as Contractor has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) Contractor will not consent to the entry of any judgment or enter any settlement with respect to the claim without the prior written consent of City or other indemnified party, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon the City and/or other indemnified party in connection with such judgment or settlement and Contractor obtains the full and complete release of City and/or other indemnified parties; and (ii) City and/or other indemnified parties will not consent to the entry of judgment or enter into any settlement without the prior written consent of Contractor.
- ii. If Contractor does not assume and conduct the defense of claim as required above, (i) City or other indemnified party may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and City or other indemnified party need not consult with, or obtain any consent from, Contractor, and (ii) Contractor will remain responsible for any losses City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this Section 5 (Indemnification).

EXHIBIT E – DONOR INSURANCE

Attached

