

MEMORANDUM OF AGREEMENT
between
TREASURE ISLAND DEVELOPMENT AUTHORITY
and
CITY AND COUNTY OF SAN FRANCISCO ARTS COMMISSION
for
Development and Management of a Public Art Program
for the
Treasure Island Development Authority

This MEMORANDUM OF AGREEMENT ("Agreement"), dated as of January 14, 2015, by and between the Treasure Island Development Authority ("TIDA") and the City and County of San Francisco Arts Commission ("SFAC") (each individually a "Party" and, collectively, the "Parties").

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

- A. TIDA is responsible for overseeing the implementation of the development of new public parks, plazas and open spaces in addition to commercial and residential development on Treasure Island (the "Program"). The Program includes the design and construction of multiple public use parcels along the perimeter of Treasure Island, as well as commercial and residential development. The Program is more particularly described in the Disposition and Development Agreement (the "DDA") between TIDA and Treasure Island Community Development, LLC, a California limited liability company ("TICD" or the "Developer") dated as of June 28, 2011 approved by the Board of Supervisors on June 7, 2011 (Board of Supervisors File No. 110291) (the "DDA"). The City and County of San Francisco (the "City") and the Developer also entered into a separate development agreement (the "DA") on the same day, which also describes the Program and authorizes development of Treasure Island consistent with the Program.
- B. The TIDA Public Art Program shall be funded through the 1% for Art Fee imposed on certain vertical developers with projects on Treasure Island (the "Art Fee"), as set forth in the DDA and the DA. TIDA shall deposit all Art Fees that it collects into a separate account for exclusive use on the development and implementation of an art program on Treasure Island.
- C. TIDA acknowledges the importance of art in making public spaces a destination, and improving the quality of life through the use of public art. TIDA also acknowledges the SFAC's expertise in commissioning artworks, developing arts master plans and managing public art projects and its broad knowledge about art policies, best practices and the use of art as an economic driver and in place making.
- D. TIDA and the SFAC are entering into this Agreement for SFAC to manage TIDA's planning, development and implementation of a Public Art Program that will include acquisition of permanent artwork as well as, potentially, displays of temporary art

and art productions and events. Under this Agreement, for so long as it remains in effect, the SFAC shall prepare an Arts Master Plan, and then manage and implement the Arts Master Plan through the selection of artists, the installation of artwork, and, as requested by TIDA, the programming of art spaces to be designed and constructed the Developer. All funding under this Agreement shall come from the Arts Fee, as and when collected by TIDA.

- E. The Arts Master Plan will identify locations where temporary and permanent art installations, art works and art performances may occur. The Arts Master Plan will provide for implementation of the art program to coincide with the phased completion of both public parcels and private development. TIDA shall own all permanent artworks selected and installed on property under the jurisdiction of TIDA and shall maintain and manage the artworks in conformance with applicable laws and TIDA policy.
- F. This Agreement does not exclude or preclude the ability of TIDA to procure artwork or art features for Treasure Island apart from and/or in addition to the artwork selected under this Agreement with funds other than the Art Fees.
- G. The Treasure Island Public Art Program will develop and administer the installation of public art on Treasure Island, consistent with the following goals:
 - (1) Create a public art program of the highest standards that enhances the prestige of Treasure Island, attracts public interest and increases visitors to Treasure Island;
 - (2) Commission artworks that are complementary to TIDA's mission and purpose, and appropriate for Treasure Island, its residents and commercial tenants, and the general public;
 - (3) Commission artworks that are complementary to the landscape and architectural designs of TIDA's public parcels and adjacent private properties;
 - (4) Commission artworks that are vandal resistant, durable, and appropriate to a maritime environment and require only reasonable maintenance and conservation;
 - (5) Restore and display the 16 historical artworks owned by TIDA and incorporate their placement in the Arts Master Plan in consultation with TIDA's designers; and
 - (6) Create a public art program that functions within TIDA's construction and operational requirements.

TERMS AND CONDITIONS

Section 1. SCOPE OF SERVICES

The SFAC shall use its expertise and experience in public art administration to develop an Arts Master Plan in consultation with TIDA, Treasure Island residents, and the private developers and landscape architects working on Treasure Island. The SFAC shall present a final draft of the Arts Master Plan to the Treasure Island Director and the TIDA Board for approval.

The Arts Master Plan will articulate the vision for the TIDA Public Art Program and will outline the process to be undertaken to develop and implement the plan. The Arts Master Plan will identify locations suitable for various kinds of art activation (consistent with the Program),

including the placement of permanent or temporary artwork, sculpture, art and performance events. The Arts Master Plan will articulate a process for the selection of artists and/or artworks, and recommend policies and requirements regarding insurance and maintenance. Following approval of the Arts Master Plan by the Treasure Island Director and TIDA Board, the SFAC will implement the approved programs in consultation with, and at the direction of, TIDA staff.

The SFAC shall perform its services under this Agreement in accordance with the schedule for the development. The first series of artwork or art programs will be planned to coincide with the completion of the first public sites, or as otherwise specified by TIDA, subject to available Art Fees.

TIDA's budget for its public art program, managed by the SFAC under this Agreement, is directly linked to collection of the Art Fee payable by certain private developers. All fees to be paid to the SFAC for its administrative, curatorial and management services under this Agreement shall be paid from the Art Fee. The specific services to be performed by SFAC under this Agreement shall occur upon TIDA's request, under a notice to proceed (as described below), and may include the services described in **Exhibit A**, "Scope of Services" ("Services"). The Services consist of a series of activities that TIDA may choose to authorize in conformance with phases, as set forth in Exhibit A:

- i) Development and completion of Arts Master Plan ;
- ii) Prioritized implementation of Arts Master Plan Projects along with the qualification and selection of artists and or specific artworks and;
- iii) Contracts with Artists and/or related art service providers for fabrication and/or installation of artworks and implementation of art programs.
- iv) Conservation and maintenance plan; and
- v) Prepare a Cultural Facilities Development Plan (optional)

1.1 Requests for Work Plan. TIDA shall initiate each Work Plan by issuing a written request to SFAC to prepare a Work Plan proposal (each, a "Proposal"). The request will describe the tasks SFAC shall perform, the schedule for performance, and the required deliverables.

1.2 SFAC Proposals. SFAC shall prepare a Proposal and submit it to TIDA. The Proposal shall describe in detail SFAC's approach to performing the requested tasks. At a minimum, the Proposal shall include:

- a. A detailed description of the Services to be performed, by task;
- b. A summary description of the means and methods that will be used to perform the Services;
- c. A schedule (in both electronic and written format) that indicates milestones for completion of each task and deliverable;
- d. A management plan that lists SFAC personnel and consultants assigned to each part of the Services;

- e. A budget that includes a detailed cost estimate for each subtask, including consultant costs, and estimated hours, salaries and overhead, and any other costs; and
 - f. A list of deliverables.
- 1.3 TIDA Review and Negotiation.** TIDA will review the Proposal and promptly negotiate the terms of the Work Plan with SFAC to establish the scope of Services, cost, deliverables, and schedule for that term.
- 1.4 Notice to Proceed.** Following the Parties' agreement on the terms of a Work Plan and any necessary approvals, TIDA will provide a written Notice to Proceed ("NTP") to SFAC to proceed with the Services. SFAC may not commence work without a written NTP.
- 1.5 Tasks Outside Scope of Services.** If SFAC completes tasks that are not reasonably included in the scope of Services under an approved Work Plan without first obtaining TIDA's written approval in accordance with the above procedures, regardless of the amount or value of the work, TIDA shall have no obligation to reimburse SFAC for the work.
- 1.7 TIDA Discretion to Issue NTP.** TIDA shall have sole discretion to issue an NTP authorizing SFAC to proceed with work associated with a Work Plan. Whether TIDA will issue an NTP shall depend on (1) TIDA's evaluation of the quality of SFAC's services and work products previously authorized and completed or in-progress and whether SFAC completed such services and products within the budget and within a reasonable schedule and (2) the availability of funding.
- 1.8 Standard of Performance.** SFAC shall perform all services required under this Agreement in conformance with the standards observed by a competent practitioner of the profession in which SFAC is engaged in the geographical area in which SFAC practices its profession. SFAC's work products under this Agreement shall conform to the standard of quality normally observed by a person practicing in SFAC's profession.
- 1.10 Assignment of Personnel.** SFAC shall assign only competent personnel to perform Services under this Agreement. In the event that TIDA desires the reassignment of any such persons, SFAC shall consider the reassignment of such person or persons.
- 1.11 Time.** SFAC shall devote such time to the performance of Services under this Agreement as may be reasonably necessary to satisfy SFAC's obligations under this Agreement.

Section 2. TERM OF AGREEMENT AND TERMINATION

The term of this Agreement shall be ten (10) years from the Effective Date of this Agreement, unless earlier terminated or otherwise modified. This Agreement may be terminated by either Party, with or without cause, upon thirty (30) days written notice. TIDA has the sole discretion to determine whether any of the Services are satisfactory to TIDA, which determination shall be

made in good faith. If TIDA determines that any of the Services are not satisfactory, TIDA may terminate this Agreement by giving written notice to SFAC or may delete specific services from this Agreement. Upon receipt of notice of termination by either Party, SFAC shall cease performing Services on the termination date specified in the written notice. The compensation payable to SFAC shall cover only the period for which SFAC has performed Services.

Section 3. COMPENSATION

TIDA shall compensate SFAC for the Services as set forth in a NTP. Staff costs will be reimbursed at an hourly rate (unless specified otherwise in a NTP), and SFAC's compensation shall not to exceed 20% of the total amount allocated to the Public Art Trust based on percentage of completion for each task, subject to the following provisions. The SFAC may request reimbursement for administrative overhead costs as long as total costs to the SFAC do not exceed 20% of the total amount allocated to the Public Art Trust. This Agreement is subject to TIDA's budget and fiscal certification process, and amounts payable hereunder shall not exceed the amounts set forth in TIDA's approved budget. SFAC will bill TIDA on a cost reimbursement basis. The maximum amount billable under each NTP will be negotiated by TIDA and the SFAC. Payments to artists and related arts providers and contractors shall be made directly by the SFAC upon verification by the SFAC that the work has been satisfactorily performed and with prior approval from TIDA.

- 3.1 Invoice Format.** Invoices furnished by SFAC under this Agreement must be in a form reasonably acceptable to TIDA. All amounts paid to SFAC shall be subject to audit by TIDA. TIDA shall send all payments to SFAC under this Agreement by work order or by check to SFAC's address set forth below.
- 3.2 Terms of Payment.** SFAC shall submit invoices for approval of Treasure Island Director, or his/her designee, not more frequently than monthly. TIDA shall make a good faith effort to pay all undisputed amounts within forty-five (45) days following receipt of a proper invoice from SFAC. TIDA may dispute any invoice or portion thereof by providing SFAC with a written notice of dispute objecting to the nature and amount of the invoice within thirty (30) days following receipt. Upon SFAC's receipt of a notice of dispute, SFAC and TIDA shall meet and attempt to resolve the dispute at the earliest practicable time. If the dispute cannot be resolved within sixty (60) days, either party may submit the dispute to the City Administrator for resolution. In no event shall TIDA be liable for interest or late charges for any late payments. SFAC acknowledges that the provisions of Public Contract Code Section 7107 do not apply to TIDA's compensation to SFAC under this Agreement (although it may apply to contracts with artists).
- 3.3 Jobs and SBE Requirements.** TIDA adopted a Jobs and Equal Opportunity Program, as well as a Small Business Enterprise (SBE) Policy. The parties shall incorporate these requirements into contacts when applicable. If and when SFAC has any question about the applicability of this Program or Policy, SFAC shall consult with the Treasure Island Director.

Section 4. EFFECTIVE DATE

This Agreement shall become effective (the "Effective Date") when executed and delivered by the parties, following approval of the TIDA Board and the City's Arts Commission.

Section 5. RELATIONSHIP OF PARTIES

- 5.1 Independent Contractor.** The relationship of SFAC to TIDA is that of an independent contractor and all persons working for or under the direction of SFAC are its agents or employees and are not agents or employees of TIDA. TIDA and SFAC shall, at all times, treat all persons working for SFAC as agents and employees of SFAC, and not as agents or employees of TIDA. TIDA shall have the right to control SFAC only insofar as allowed by this Agreement.
- 5.2 Employees and Subcontractors.** SFAC shall provide the Services through one or more employees of SFAC or subcontractors under contract to SFAC qualified to perform the Services. Any subcontract shall be approved by the Treasure Island Director. The chief executive officer of SFAC will consult with the Treasure Island Director on an as-needed basis to assure that the Services are being provided in a professional manner and meet the objectives of TIDA.
- 5.3 SFAC Discretion to Perform Services.** TIDA shall not have the ability to direct how the Services are to be performed, specify the location where the Services are to be performed, or establish set hours or days for performance of the Services. TIDA shall not have any right to discharge any employee of SFAC from employment with SFAC.
- 5.4 SFAC Employee Benefits.** SFAC shall, at its sole expense, provide for its employees providing the Services to TIDA under this Agreement any and all benefits, such as workers' compensation, disability insurance, vacation pay, sick pay, or retirement benefits; obtain and maintain all licenses and permits usual or necessary for performing the Services; pay any and all taxes incurred as a result of the employee(s) compensation, including estimated taxes, FICA and other employment taxes; and provide TIDA with proof of payment of taxes on demand.

Section 6. INSURANCE REQUIREMENTS

SFAC, as an agency of the City, is self-insured for workers' compensation, employers' liability, commercial general liability, automobile liability, and professional liability. SFAC shall maintain such insurance as may be required by the City's Risk Manager. SFAC shall consult with the City's Risk Manager and the TIDA Director on the insurance requirements for any contract entered into under the Arts Program.

Section 7. LEGAL REQUIREMENTS

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** SFAC and any subcontractors shall comply with all laws applicable to the performance of the Services.

- 7.3 Other Governmental Regulations.** To the extent that the Services may be funded by another governmental entity, SFAC and its subcontractors shall comply with all rules and regulations to which TIDA is bound by its agreement(s) with such governmental entity.
- 7.4 Licenses and Permits.** SFAC represents and warrants to TIDA that SFAC and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals that are legally required to practice their respective professions. SFAC represents and warrants to TIDA that SFAC and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect and in good standing at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.
- 7.5 Nondiscrimination and Equal Opportunity.** In performing the Services, SFAC shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future. In the performance of this Agreement, SFAC agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.
- 7.6 Drug-free Workplace Policy.** SFAC acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on TIDA's premises. SFAC agrees that any violation of this prohibition by SFAC, its employees, agents or assigns will be deemed a material breach of this Agreement.
- 7.7 Conflict of Interest.** Through its execution of this Agreement, SFAC acknowledges that it is familiar with the provisions of the Conflict of Interest Code of TIDA and Section 87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. SFAC must comply with all applicable conflict of interest codes at all times during the term of this Agreement.

Section 8. COMPLIANCE WITH ORDINANCES

SFAC shall comply, and shall require compliance in contracts (each, as applicable), with the provisions set forth in this Section 8.

- 8.1 Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code Chapter 6, Article V, any contractor, subcontractor, or consultant who submits a false claim shall be liable to TIDA for three times the amount of damages which TIDA sustains because of the false claim. A contractor, subcontractor, or consultant who submits a false claim shall also be liable to TIDA for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the TIDA for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor, or consultant will be deemed to have submitted a false claim to TIDA if the contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TIDA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to induce TIDA to approve or pay a false claim; (c) conspires to defraud TIDA by inducing TIDA to approve or pay a false claim; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to TIDA; (e) is a beneficiary of an inadvertent submission of a false claim to TIDA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to TIDA within a reasonable time after discovery of the false claim; or (f) knowingly submits a claim to TIDA for payment or approval from one of its subcontractors, suppliers, etc., which the contractor knows or objectively should reasonably know to be false.
- 8.2 Notification of Limitation on Contributions.** SFAC acknowledges that it is familiar with Section 1.126 of the Campaign and Governmental Conduct Code of the City, which prohibits any person who contracts with the City for the rendition of professional services or for the furnishing of any material, supplies, or equipment to the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.
- 8.3 Prohibition on Political Activity with TIDA Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, SFAC may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. SFAC agrees to comply with San Francisco Administrative Code Chapter 12.G..
- 8.4 Resource Conservation; Liquidated Damages.** Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated in this Agreement.
- 8.5 Tropical Hardwood/Virgin Redwood Ban.** Under Section 804(b) of the San Francisco Environment Code, the TIDA urges SFAC not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

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

Section 9. KEEPING AND STATUS OF RECORDS

- 9.1 Records Created Part of SFAC's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form that SFAC prepares or obtains under this Agreement and that relate to the matters covered under this Agreement shall be the property of TIDA. SFAC agrees to deliver those documents to TIDA upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the TIDA and are not necessarily suitable for any future or other use. Documents will be subject to all Brown Act and Sunshine laws.
- 9.2 SFAC's Books and Records.** SFAC shall maintain copies of any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to TIDA under this Agreement for three (3) years from the date of TIDA's final payment to SFAC under this Agreement. SFAC will provide copies of the documents to TIDA upon request.
- 9.3 Inspection and Audit of Records.** Any records or documents that SFAC maintains under this Agreement shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of TIDA. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of the TIDA or as part of any audit of the TIDA, for a period of three (3) years after final payment under the Agreement.

Section 10. MISCELLANEOUS

This Agreement is not assignable either in whole or in part without the written consent of the Treasure Island Director. This Agreement may be amended or modified only by written agreement signed by both Parties. The invalidity, in whole or in part, of any provisions of this Agreement shall not void or affect the validity of any other provisions of this Agreement. (4) This Agreement, including Exhibit A, comprises the entire Agreement.

Section 11. INDEMNITY

To the extent that SFAC performs services under this Agreement as a "design professional," as that term is defined in Civil Code Section 2782.8, SFAC shall defend, indemnify, and hold TIDA and its officers, directors, employees, and agents harmless from any and all claims and liabilities related to or as a result of SFAC's performance of this Agreement to the extent caused, in whole or in part, by the negligence, recklessness, or willful misconduct, acts, or omissions of SFAC, its employees, or subcontractors.

SFAC shall incorporate an appropriate indemnity of SFAC and TIDA into all contracts, as recommended by the City's Risk Manager.

Section 12. NOTICES

All notices required by this Agreement shall be given to TIDA and SFAC in writing, by email and by (i) interoffice mail or (ii) first-class mail, postage prepaid, addressed as follows:

TIDA: Robert Beck
 Treasure Island Director
 Treasure Island Development Authority
 One Avenue of the Palms, Suite 241
 San Francisco, CA 94130

SFAC: Jill Manton, Director, Public Art Trust and Special Initiatives
 San Francisco Art Commission
 City and County of San Francisco
 25 Van Ness, Suite 345
 San Francisco, CA 94102

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the date first set forth above.

**TREASURE ISLAND DEVELOPMENT
AUTHORITY**

DATED: _____, 2015 By: _____
Robert Beck, Treasure Island Director

SAN FRANCISCO ARTS COMMISSION

DATED: _____, 2015 By: _____
Tom DeCaigny, Director of Cultural Affairs

APPROVED AS TO FORM FOR TIDA

DATED: _____, 2015 By: _____
Charles Sullivan, Deputy City Attorney

APPROVED AS TO FORM FOR SFAC

DATED: _____, 2015 BY: _____
Adine Varah, Deputy City Attorney

EXHIBIT A

SCOPE OF SERVICES

TIDA will issue Notices to Proceed, identifying the specific Services that SFAC is authorized to perform. TIDA reserves the right to change the Services at any time during the term of the Agreement; provided, however, that SFAC shall be paid for any service that meets the requirements of the Agreement and that is performed prior to the date of such change. SFAC will work closely with TIDA's staff and other consultants. SFAC shall coordinate its work with TIDA and inform TIDA of all daily activities. The Services shall be completed on time and within budget.

I. Summary of Roles and Responsibilities

A. SFAC Staff

The tasks to be performed and the general roles and responsibilities of SFAC staff are as follows:

i) Arts Master Plan

- Prepare a budget and timeline for preparation of an Arts Master Plan ("Master Plan");
- Prepare the Arts Master Plan, including revisions as necessary;
- Recommend two members of the Steering Committee (see II(C) below);
- Provide administrative support to the Steering Committee;
- Consult with TIDA staff on administration of the Public Art Program;
- Cooperate with TIDA staff to provide opportunity for the TIDA Citizens Advisory Board ("CAB") and the Developer to comment on the Arts Master Plan;

ii) Qualification and Selection of Artists

- Implement the Arts Master Plan in accordance with TIDA's priorities;
- Develop budgets and timelines for selecting artists and artworks;
- Prepare and issue RFQs seeking proposals from artists;
- Appoint one member to each Artist Selection Panel;
- Provide a venue and opportunity for Treasure Island community to participate in the process for selecting artists and artworks through proper outreach and notification of meeting dates.
- Ensure nondiscrimination in the process for selecting artists and artworks;
- Consult with professional art conservators regarding future maintenance requirements for artwork; and
- Negotiate, along with TIDA staff, and administer on TIDA's behalf, contracts with selected artists for commission, installation and/or purchase of selected artworks.

iii) Art Development and Installation Plan

- Manage the contracts with and make payments to Artists upon authorization from TIDA;

Exhibit A – Scope of Services

- Implement selected artworks (e.g., manage implementation of art projects and ensure that the artist's design is coordinated with the architectural, engineering and construction plans and schedule of the Treasure Island Program, ensure review of art work development at appropriate milestones and provide progress report during stages of implementation, coordinate the schedule and logistics for the transportation and installation of artwork with TIDA, its consultants and contractors and recommend whether to accept completed artworks);
- Notify TIDA staff to coordinate all visits to Treasure Island site by SFAC staff, Steering Committee, and artists;
- Prepare Activity and Accounting Reports;
- Maintain files on artists, artworks and the Public Art Program; and
- Report on insurance value of artworks at the completion of art projects.

iv) Conservation and Maintenance Plan

- Prepare Maintenance and Conservation Plan and budget for ongoing maintenance and conservation of artworks;
- Prepare Activity and Accounting Reports;
- Maintain files on artists, artworks, and the Public Art Program;
- Report on insurance value of artworks at the completion of art projects; and
- Make regular reports regarding work under this Agreement to the Arts Commission.

B. TIDA Staff

The general roles and responsibilities of TIDA staff are to:

- Recommend three members of the Steering Committee, at least one of whom shall be a representative of Treasure Island Community Development ("TICD"), the master developer;
- Designate a TIDA staff person as liaison to SFAC staff;
- Consult with SFAC staff on administration of the Public Art Program;
- Consult with SFAC staff on a budget and timeline for preparation of the Arts Master Plan;
- Consult with SFAC staff on preparation of the Arts Master Plan;
- Cooperate with SFAC staff to provide the TIDA CAB and the Developer the opportunity to comment on the Arts Master Plan;
- Develop a standard form of agreement to be used in contracting with artists;
- Provide feedback to SFAC staff in the preparation and issuance of RFQs and RFPs seeking qualifications and proposals from artists;
- Appoint one member to each Artist Selection Panel (TICD, the master developer, will also appoint one member);
- Notify SFAC and Steering Committee of any issues, problems, conflicts or concerns that might necessitate a change in the design of a proposed artwork based on needs of the Treasure Island Program;
- Maintain files on artists, artworks, and Public Art Program based on documents provided by SFAC staff; and

Exhibit A – Scope of Services

- Provide a venue and opportunity for Treasure Island community to participate in the process for selecting artists and artworks through proper outreach and notification of meeting dates.
- **C. Steering Committee**

A Steering Committee will be established to advise TIDA regarding the Public Art Program for the Treasure Island Program, under direction from the TIDA Board. The Steering Committee will be established through consensus of the Treasure Island Director and the Program Director of the SFAC. The Steering Committee shall be composed of the following five voting members, 3 appointed by the TIDA Director and 2 by the SFAC Program Director.

At least one of the three representatives appointed by TIDA shall have experience in the visual arts and at least one will be a representative of TICD. The members of the Steering Committee shall serve as volunteers and shall not be compensated for their time.

The parties intend that the general roles and responsibilities of the Steering Committee will be to:

- Recommend policies, objectives, public art enrichment opportunities, and procedures for administration of the Public Art Program;
- Recommend approval of a planning budget and timeline for preparation of the Arts Master Plan to the TIDA Board;
- Recommend approval of the Arts Master Plan, including any revisions, to the TIDA Board;
- Oversee implementation of the Arts Master Plan;
- Recommend approval of budgets and timelines for selecting artists and artworks to the TIDA Board;
- Appoint two members to each Artist Selection Panel;
- Ensure that the general public and representatives of the Treasure Island community participates in the process for selecting artists and artworks;
- Ensure nondiscrimination in the process for selecting artists and artworks;
- Recommend approval of Artist Selection Panels' recommendations of artists and artworks to the TIDA Board;
- Respond to requests by TIDA for changes to proposed artwork designs based upon specific issues, problems or concerns.
- Recommend acceptance of completed artworks;
- Recommend approval of a Maintenance and Conservation Plan for ongoing maintenance and conservation of artworks to the TIDA Board; and
- Review Activity and Accounting Reports prepared by the SFAC Program Director.

SFAC staff will provide all administrative support to the Steering Committee.

The Steering Committee will meet periodically as needed. SFAC staff will provide copies of all Steering Committee meeting agendas and minutes to TIDA staff.

D. Art Selection Panels

Art Selection Panels will be convened to advise the Steering Committee regarding the selection of artists and artworks for TIDA 's Public Art Program, under direction from the TIDA Board.

Each Art Selection Panel shall consist of the following five voting members:

- one member appointed by the Treasure Island Director;
- one member appointed by the SFAC;
- one member appointed by the TICD; and
- two arts professionals appointed by the Steering Committee.

Members of the Steering Committee may serve on the Art Selection Panels. The members of the Art Selection Panels will be compensated for their time in accordance with SFAC's policies.

The general roles and responsibilities of the Art Selection Panels will be to:

- Solicit, interview, evaluate, and recommend artists and artworks to the Steering Committee; and
- Ensure that artists, regardless of race, color, creed, national origin, sex, or age, are eligible for consideration in the selection of artworks

E. TIDA Board

The TIDA Board, in its sole discretion, may:

- Approve a budget and timeline for preparation of the Arts Master Plan;
- Approve the Arts Master Plan, including any revisions;
- Approve budgets and timelines for selecting artists, artworks and art projects;
- Approve selection of artists, artworks and art projects;
- Approve artists, artworks and art projects outside the scope of this Agreement;
- Approve a Maintenance and Conservation Plan; and
- Ensure that there is coordination and no conflict between site selection for artworks commissioned for TIDA under this Agreement, by the SFAC, those artworks commissioned outside of this Agreement, through other means and the placement of historic artworks owned by TIDA.

II. Arts Master Plan.

- A. SFAC staff, in consultation with TIDA staff, will propose a planning budget and timeline for preparing an Arts Master Plan. The Steering Committee will

Exhibit A – Scope of Services

recommend approval of the planning budget and timeline to the TIDA Board. The TIDA Board, in its sole discretion, may approve a planning budget and timeline.

- B. SFAC staff, in consultation with TIDA staff, will prepare an Arts Master Plan. The Steering Committee will recommend approval of the Arts Master Plan to the TIDA Board. The TIDA Board, in its sole discretion, may approve an Arts Master Plan.

The Arts Master Plan will articulate the vision for the Public Art Program and identify the policies, objectives, and various public art opportunities for the Public Art Program, described in Section I above, to be incorporated in the Treasure Island Program. The Arts Master Plan's implementation will be coordinated with the phasing of the Treasure Island construction and development.

The components of the Arts Master Plan shall include, but not be limited to:

- (1) Budget and timeline for the Public Art Program projecting when funds will be available and outlining processes for managing the budget accordingly;
- (2) General locations and conceptual opportunities for specific artworks, a description of the type and variety of artwork to be included in the Public Art Program, recommendations for the placement of the 16 historic artworks already part of the TIDA collection, art programs and art events and/or cultural facilities that may be complementary to the Treasure Island design and programmatic objectives; and
- (3) Criteria for selecting artworks for acquisition into TIDA's permanent collection, or for temporary artwork installations or other arts programming. The criteria for selecting artists, artworks and art projects shall be consistent with the criteria for the Public Art Program.

- C. SFAC staff will cooperate with TIDA staff to provide the TIDA CAB and the Developer the opportunity to comment on the Arts Master Plan before the Steering Committee recommends approval of the Arts Master Plan to the TIDA Board for approval.

- D. With oversight from the Steering Committee, SFAC staff will implement the Arts Master Plan approved by the TIDA Board.

- E. SFAC staff will prepare and the Steering Committee will recommend approval of revisions to the Arts Master Plan, as necessary, to the TIDA Board. The TIDA Board, in its sole discretion, may approve revisions to the Arts Master Plan.

III. Selection of Artists and Commissioning Artworks.

- A. SFAC staff will coordinate the process to identify, interview and recommend artists, artworks and art projects for the Public Art Program. The Art Selection

Exhibit A – Scope of Services

Panels will select artists and artworks and forward the Panels' selections to the Steering Committee. The Steering Committee will recommend approval of artists and artworks to the TIDA Board. The TIDA Board, in its sole discretion, may approve artists and artworks.

- B. TIDA shall approve of the SFAC's standard form of agreement to be used in contracting with individual artists for the commissioning and installation of specific artworks. TIDA staff shall participate in SFAC's contract negotiations with artists.
- C. Consistent with the Arts Master Plan approved by the TIDA Board and coordinated with the phasing of the Treasure Island construction and development, SFAC staff will develop budgets and timelines for specific artworks for temporary display and/or permanent acquisition, other arts programming as well as the identification of possible sites for artist studios and cultural facilities. Each permanent art work proposal will include an estimated cost for the future maintenance/conservation and insurance of each artwork. The Steering Committee will recommend approval of budgets and timelines for selecting artists, artworks and arts programming to the TIDA Board. The TIDA Board, in its sole discretion, may approve the budgets and timelines.
- D. SFAC staff, in consultation with TIDA staff, will prepare and issue Requests for Qualifications ("RFQs") for specific artwork and arts programming opportunities identified in the Arts Master Plan. The RFQs will be: (1) based on the budgets and timelines for specific artworks and/or arts programs approved by the TIDA Board; and (2) seek proposals from artists for artworks that meet the policies, goals, and objectives of the Arts Master Plan and satisfy the criteria for the Public Art Program.
- E. Members of the Art Selection Panels will solicit, interview, evaluate, and make recommendations to the Steering Committee regarding selecting/commissioning artists to create artworks or selecting previously produced artworks for temporary display and/or permanent acquisition.
- F. The Art Selection Panels will review and evaluate qualifications from artists based on the policies, goals, and objectives in the Arts Master Plan and the criteria for the Public Art Program, and any additional criteria described in the RFQ.
- G. The Steering Committee and SFAC staff shall work with the TIDA staff to provide a venue and opportunity for Treasure Island community to participate in the process for selecting artists and artworks through proper outreach and notification of meeting dates. Community participation may include supplying information, attending Art Selection Panel meetings, serving as voting members of an Art Selection Panel, or reviewing and commenting on Art Selection Panel proposals through the TIDA's CAB.

Exhibit A – Scope of Services

- H. The Steering Committee, SFAC staff, and the Art Selection Panels shall ensure that artists are eligible for consideration in the selection of artworks regardless of race, color, creed, national origin, sex, or age.
- I. Upon approval by the TIDA Board of an artist or artwork and after the TIDA has identified funds for maintenance/conservation and insurance of such artwork, TIDA staff and SFAC staff shall negotiate a contract between the SFAC and the selected artist(s) for commissioning or purchase and installation of individual artworks. Although the contract will be between SFAC and the artist, SFAC staff shall be responsible for reporting to TIDA about the artist's performance under the terms of the Agreement.
- J. SFAC staff shall implement the approved artworks, including: (1) negotiate, along with TIDA staff, contracts for commission/installation of specific artworks; (2) coordinate the Public Art Program schedule with the Treasure Island Program design and construction schedule; (3) coordinate the review of the design of artwork and any specific structural or architectural requirements with the design and construction plans for Treasure Island; (4) , identify and prepare a detailed scope of work and specifications for any work to be performed by the design and construction teams to enable the proper integration and installation of the artwork in conjunction with TICD and TIDA staff; (5) work with TIDA and TICD to confirm that any design or construction work required for artwork has been successfully performed by design and construction teams (6) review and report to the Steering Committee and TIDA staff on the progress of artwork design; (7) coordinate schedule for artwork installation with the artists, TICD and TIDA; (8) prepare appropriate signage and other interpretive materials regarding artists, artworks and the Art Program, consistent with the Signage Master Plan; (9) develop a maintenance and conservation plan that identifies future maintenance and conservation requirements and (10) review and recommend to the Steering Committee whether to approve completed and/or installed artworks. The Steering Committee shall recommend whether to approve completed and/or installed artworks to the TIDA Board. The TIDA Board, in its sole discretion, may approve and accept individual artworks.
- K. In the event that artworks procured and installed under the Public Art Program should need to be removed, relocated, and/or stored for any reason including to accommodate ongoing construction of the Treasure Island during the period of this Agreement, TIDA will make a good faith effort to notify SFAC staff of its intent to make changes that will affect installed artworks in sufficient time for staff to identify alternative locations for the artworks. TIDA will make a good faith effort to submit for Steering Committee and SFAC staff review plans for construction activities that will require the removal of artworks, impair the visibility of artworks, or otherwise affect the relationship of the artworks to the site. The Steering Committee will make a good faith effort to respond to a request by TIDA to relocate artworks in a timely manner, coordinate with the artist that produced the artwork and obtain the artist's recommendations regarding the location and method for removal, relocation, or storage. The cost of any unanticipated

Exhibit A – Scope of Services

removal, relocation, and/or storage of artworks to accommodate Treasure Island construction will be borne by TIDA.

- L. SFAC staff will notify TIDA staff in advance of any site visits by the SFAC staff, Steering Committee, or artists related to the installation or inspection of artworks, and coordinate such activities with Treasure Island construction or operation requirements.

IV. Maintenance/Conservation and Insurance of Artworks.

- A. SFAC staff will prepare a Maintenance Plan for ongoing maintenance/conservation and insurance of artworks commissioned under the Public Art Program, including budgets and timelines. The Steering Committee will recommend approval of the Maintenance and Conservation Plan to the TIDA Board. The TIDA Board, subject to its sole discretion, may approve the Maintenance and Conservation Plan.
- B. The Maintenance and Conservation Plan shall include: (1) repair, replacement, or improvement of artworks; (2) routine/on-going maintenance that can be accomplished by TIDA personnel with proper training; (3) major cleaning of artworks requiring specialized expertise and equipment and professional inspection of artwork to determine when maintenance is necessary; (4) recommended insurance of artwork; and (5) project maintenance costs and recommend reserves necessary to fund on-going maintenance.
- C. TIDA will be responsible for procuring professional services at the recommendation of the SFAC for the maintenance/conservation and insurance of permanent or long term temporary artworks acquired through the Public Art Program. TIDA will integrate the budget for the approved Maintenance and Conservation Plan with the operating budget for the Treasure Island public parcels following their completion. TIDA will not issue any notice to proceed on the selection and/or commissioning of any artists or artworks unless and until TIDA determines that funds are available for the future on-going maintenance/conservation and insurance of such artworks.

V. Activity, Collection, and Accounting Reports.

- A. The SFAC staff will prepare regular Activity and Accounting Reports for the term of this Agreement and submit them to TIDA Staff and the Steering Committee for review. TIDA Staff will provide the Reports to the TIDA Board to apprise them of progress.
- B. SFAC staff will prepare an annual Activity Report, which shall report on, among other things:
 - (1) Artist selection, artwork commissioning, other arts programming and maintenance of artworks; and

Exhibit A – Scope of Services

- (2) Inventory of artworks acquired by TIDA for its permanent collection.
- C. SFAC Staff will prepare quarterly Accounting Reports, which shall report on, among other things:
 - (1) Detailed description of all encumbrances and expenditures recorded by SFAC staff that are charged to the Public Art Program, including supporting documents, such as payment vouchers, purchase agreement, and invoices;
 - (2) Names, classification, and the hours of work spent by each SFAC staff member on the Art Program; and
 - (3) Inventory of assets and value.
- D. During the term of this Agreement, SFAC staff will make periodic evaluations of the insurance value of any artworks acquired during this period for TIDA's artwork collection. After the initial term of this Agreement, the SFAC will agree to provide these ongoing services in the future for an additional negotiated fee.
- E. SFAC staff will maintain files containing artwork records, artist files, condition reports, maintenance records, conservation reports, and other similar records. SFAC staff may provide copies of the files to TIDA for duplicate storage purposes, in the SFAC staff's discretion.

VI. General Conditions.

- A. The cost to TIDA for the SFAC staff Services described in this Agreement, including SFAC staff administrative time and expenses, and all costs associated with implementation of the Services, artist selection, artwork commissioning, installation and acquisition, shall not exceed the proceeds Art Fees collected over the course of development. Budgets for all expenditures under this program will be established and authorized through the issuance of Work Plans and NTPs.
- B. The Services for the Public Art Program will be coordinated with the timing of design and construction of the public parcels on Treasure Island. TIDA will authorize the Steering Committee and SFAC staff to implement the Services described above through the issuance of NTPs and Task Orders. TIDA is under no obligation to issue any NTP or Work Plan, and shall not issue any NTP or Work Plan unless and until it identifies a source of funds for the maintenance/conservation and insurance of artworks.
- C. Artworks acquired with Treasure Island Public Art Trust funds are the property of TIDA.

1 [Memorandum of Agreement between the Treasure Island Development Authority and the
2 City and County of San Francisco Arts Commission for the Development and Management of
3 a Public Art Program]

4 **RESOLUTION AUTHORIZING THE TREASURE ISLAND DIRECTOR TO EXECUTE A**
5 **MEMORANDUM OF AGREEMENT WITH THE SAN FRANCISCO ARTS COMMISSION**
6 **FOR DEVELOPMENT AND MANAGEMENT OF A PUBLIC ART PROGRAM FOR**
7 **TREASURE ISLAND.**

8 WHEREAS, Former Naval Station Treasure Island is a military base located on
9 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by
10 the United States of America, acting by and through the Department of the Navy; and,

11 WHEREAS, The Base was selected for closure and disposition by the Base
12 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
13 subsequent amendments; and,

14 WHEREAS, On April 21, 2011, the TIDA Board of Directors unanimously made certain
15 environmental findings under the California Environmental Quality Act ("CEQA") and approved
16 a package of legislation in furtherance of the development project (the "Project"), including a
17 disposition and development agreement (the "DDA") with the Developer; and,

18 WHEREAS, On June 7, 2011, the Board of Supervisors unanimously confirmed
19 certification of the final environmental impact report and made certain environmental findings
20 under CEQA (collectively, the "FEIR") and approved a package of legislation in furtherance of
21 the Project, including the DDA; and,

22 WHEREAS, The DDA requires vertical developers on Treasure Island and Yerba
23 Buena Island to pay a 1% Art Fee for the development of a public art program on Treasure
24 Island; and,

1 WHEREAS, The San Francisco Arts Commission ("SFAC") has extensive expertise
2 and experience in public art and public art program administration, commissioning artworks,
3 developing arts master plans and managing public art projects and its broad knowledge about
4 art policies, best practices; and,

5 WHEREAS, Public Art has an important role in shaping the public environments,
6 making public spaces a destination, and improving the quality of life in a community; and,

7 WHEREAS, TIDA staff have negotiated with SFAC staff to have the SFAC assist TIDA
8 by developing an Arts Master Plan, manage the Arts Fees and arts program budget, qualify
9 and select artists, artworks and art projects, prioritize the implementation of arts projects,
10 contract with artists and manage the fabrication and installation of artworks, and develop
11 conservation and maintenance plans and budgets for artworks; now, therefore, be it

12 RESOLVED, That the Authority Board of Directors approves the Memorandum of
13 Agreement between the TIDA and the SFAC in substantially the form on file with the Board
14 Secretary; and, be it

15 FURTHER RESOLVED, That the Authority Board of Directors authorizes the Treasure
16 Island Director to enter into any additions, amendments or other modifications to the
17 Memorandum of Agreement that the Treasure Island Director determines, following
18 consultation with the City Attorney, are in the best interests of the City, that do not materially
19 increase the obligations or liabilities of the TIDA, that do not materially reduce the rights of the
20 TIDA, and are necessary or advisable to complete the transactions contemplated by the
21 Memorandum of Understanding, such determination to be conclusively evidenced by the
22 execution and delivery by the Treasure Island Director of the documents.

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CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected 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 15, 2015.

Jean-Paul Samaha, Secretary

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