

Commission on Community Investment and Infrastructure

RESOLUTION NO. 22-2013

Adopted June 4, 2013

AUTHORIZING A FIRST AMENDMENT TO THE YERBA BUENA GARDENS PROGRAMMING AGREEMENT WITH YERBA BUENA ARTS AND EVENTS, A CALIFORNIA NON-PROFIT, PUBLIC BENEFIT CORPORATION TO EXTEND THE TERM BY TWO YEARS FOR AN AMOUNT NOT TO EXCEED \$150,000 FOR PROGRAMMING THE PUBLIC OPEN SPACE AT YERBA BUENA GARDENS; FORMER YERBA BUENA CENTER REDEVELOPMENT PROJECT AREA

WHEREAS, The Office of Community Investment and Infrastructure (the “OCII” or “Successor Agency”), the Successor Agency to the San Francisco Redevelopment Agency (the “Former Redevelopment Agency”), owns and operates certain real property commonly known as Yerba Buena Gardens, within the three central blocks of the former Yerba Buena Center Redevelopment Project Area D-1, which was duly adopted on April 24, 1966 in accordance with Community Redevelopment Law, and which expired by its own terms on January 1, 2011 (the “Gardens”); and,

WHEREAS, Two long-term agreements (the Central Block One Retail Lease dated March 31, 1998 and the Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens dated March 31, 1998) with its Gardens’ tenants provide funding for promotional, marketing, cultural and recreational events, and other open-space uses in the Gardens. Operations include maintenance, and capital improvements at the Gardens. These funds are a restricted revenue source and do not include property tax revenue; and,

WHEREAS, On July 11, 2000, the Former Redevelopment Agency entered into the Yerba Buena Gardens Programming Agreement (the “Programming Agreement”) with Yerba Buena Arts and Events, a California non-profit, public benefit corporation (“YBA&E”) to plan, program, and manage a variety of cultural and community events and activities in the Gardens (the “Programming Agreement”), which expires on June 30, 2013; and,

WHEREAS, The Successor Agency desires to extend the Programming Agreement for two years until June 30, 2015, so that YBA&E can continue to program events in the Gardens until a disposition and/or retention plan can be implemented pursuant to the long-range property management plan that is required by Redevelopment Dissolution Law and that will be submitted to the OCII Commission, the Oversight Board, and the State Department of Finance (“DOF”) (the “Property Management Plan”). In the Property Management Plan, OCII must identify its real property for one of the following uses: governmental use, future development, fulfillment of an enforceable obligation, or sale of the property. Redevelopment Dissolution Law requires the Oversight Board and DOF to approve the Property Management Plan and imposes other conditions on the real property if the plan is approved; and,

WHEREAS, Programming of the outdoor spaces is an essential ingredient of the success and activation of the Gardens, and is therefore, an important aspect of the overall property management activities at the Gardens. As such, this property management activity is an enforceable obligation. California Health Safety Code §34171(d)(1)(F) (defining enforceable obligations to include “[c]ontracts or agreements necessary for the administration or operation of the Successor Agency”). It is also part of the “winding down” of redevelopment agencies that is allowed under Redevelopment Dissolution Law. Section 34177.3 (b) of the California Health and Safety Code states that: “Successor agencies may create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance.” The proposed First Amendment would ensure continued programming in the Gardens until the OCII’s DOF-approved Property Management Plan can be implemented; and,

WHEREAS, The cost of the two-year extension is \$150,000 (\$75,000 per year). The funding source is not property tax revenue, but rather is revenue generated from OCII’s tenants at the Gardens (i.e., Marriott Hotel, Metreon, Yerba Buena Lane retail tenants, several small commercial retail leases, and an operating agreement) and an annual development fee from the St. Regis Hotel. The revenue is deposited into OCII’s YBG separate account established for this purpose and is restricted to uses related to Gardens maintenance, security, operations, cultural operations, and capital improvements; and,

WHEREAS, The expenditure of funds for a six month period, the name of the payee, and a description of the contract appears on ROPS 13-14A under line 144, which was approved by the Oversight Board and the DOF, and additional expenditure under the amendment must be approved by the Oversight Board and the DOF on future ROPS’s; and,

WHEREAS, A copy of the proposed First Amendment is on file with the Secretary of this Commission; and,

WHEREAS, Selection of YBA&E meets the sole source requirements under the Successor Agency’s Purchasing Policy because YBA&E has previously provided the needed services (i.e. artistic event programming) to the Former Redevelopment Agency and the Successor Agency and, in doing so, has performed satisfactorily (by complying fully with the terms of the Programming Agreement since 2000) and gained specific information and experience making YBA&E uniquely qualified to provide the needed services. For example, over the past 13 years, YBA&E has developed relationships with community stakeholders, which are critical to successfully producing hundreds of events in a unique and challenging urban setting like the Gardens. Also, YBA&E has proven experience working cooperatively with the Gardens Manager to produce events at the Gardens’ various outdoor venues, as required by the Programming Agreement and MJM’s

Contract with the Successor Agency. In addition, the Successor Agency must finalize the Property Management Plan, including a disposition strategy for the Gardens, over the next six months. The continued use of YBA&E avoids disruption in event programming during this transitional time; and,

WHEREAS, Staff recommends approval of the First Amendment to the Programming Agreement with YBA&E to extend the term by two years to June 30, 2015 at a cost of \$150,000 to continue programming the open space at the Gardens. Additionally, the First Amendment will add the Successor Agency's current Equal Opportunity Programs to the Programming Agreement. Accordingly, the First Amendment is consistent with a successor agency's "work of winding down the redevelopment agency." California Health and Safety Code §34177.3 (b); now therefore, be it

RESOLVED, that the Executive Director of the Office of Community Investment and Infrastructure is authorized to execute a First Amendment to the Programming Agreement with Yerba Buena Arts and Events, a California non-profit, public benefit corporation, substantially in the form of the First Amendment on file with the Secretary of this Commission, to extend the term of the Programming Agreement by two years for an amount not to exceed \$150,000 for programming the public open space at the Gardens and to add the Office of Community Investment and Infrastructure's current Equal Opportunity Programs to the Programming Agreement, in the form approved as to form by the City Attorney acting as counsel to the Successor Agency.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of June 4, 2013.



Commission Secretary