OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

108-0102017-002

Agenda Item **No. 5(a)**
Meeting of August 1, 2017

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Interim Executive Director

SUBJECT: Authorizing the Executive Director to Extend the Term of the Agreement for Operation of a Child Care Center (Yerba Buena Gardens) with South of Market Child Care, Inc., a California nonprofit public benefit corporation; Former Yerba Buena Center Redevelopment Project Area D-1

EXECUTIVE SUMMARY

OCII owns a childcare facility at Yerba Buena Gardens, which has been successfully operated for the past 20 years by the South of Market Child Care, Inc., a California nonprofit public benefit corporation ("Operator" and/or "SOMACC"). The agreement between OCII and the Operator, which expires in August 2017, includes one 10-year option to extend. The Operator has satisfactorily performed its obligations under the agreement and has complied with the terms and conditions of the agreement; therefore, Staff is proposing a 10-year extension of the agreement to August 2027.

Staff recommends approval of the proposed Extended Term.

BACKGROUND

In 1997, the Redevelopment Agency of the City and County of San Francisco ("Former Agency") entered into an Agreement for Working Capital, Funding and Operation of a Child Care Center ("Original Agreement") with SOMACC to operate a childcare facility at Yerba Buena Gardens (the "Center"). The Former Agency completed construction of the Center in 1998 and the Operator has been operating the Center in good faith for the past 20 years.

The term of the Original Agreement runs from August 19, 1997 to August 18, 2017 (the "Initial Term"). The Original Agreement includes one 10-year option to extend the Initial Term, provided the Operator is not in default under the agreement.

Pursuant to California Health and Safety Code §§ 34170 et seq., the Former Agency was dissolved as of February 1, 2012 ("Redevelopment Dissolution Law"). OCII, as successor

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agency to the Former Agency, assumed all enforceable obligations of the Former Agency, including ownership of the Former Agency's real property in Yerba Buena Gardens, under the authority of the Redevelopment Dissolution Law. Redevelopment Dissolution Law authorizes OCII to continue to comply with enforceable obligations, such as the Original Agreement, that the Former Agency entered into prior to its dissolution.

Redevelopment Dissolution Law also requires successor agencies to former redevelopment agencies to dispose of their real property assets under a Long-Range Property Management Plan ("PMP"). In December 2015, the State Department of Finance approved, under the Redevelopment Dissolution Law, OCII's PMP. The PMP establishes a plan to transfer the entirety of the Former Agency's real property assets known as Yerba Buena Gardens, including the Center, to the City and County of San Francisco ("City") for a governmental purpose.

In August 2014, the Operator requested a ten-year extension of the Original Agreement as authorized under the Original Agreement. The Operator was not in default of the Original Agreement at the time of the request (and has not been in default since the request) and thus qualifies for the Extension. Accordingly, OCII's approval of the Extended Term is "in compliance with an enforceable obligation" pursuant to Redevelopment Dissolution Law.

DISCUSSION

SOMACC was established in 1970 in the South of Market neighborhood with a focus on serving low-income, recent immigrant (Filipino, Asian, and Latino), and homeless populations with quality early care and education in a safe and nurturing environment. Today, the Center is licensed by the State of California to provide infant, toddler, and preschool care for 90 children (66 preschool-aged children and 24 infant/toddler-aged children). Of the 90 children served about 44% are from low-income families (as defined by the California Department of Education Subsidized Program).

SOMACC has satisfactorily performed under the terms and conditions of the Original Agreement and provides valuable services to the South of Market neighborhood and the entire City by making affordable child care and related resources available to the community. Therefore, OCII and the Operator seek to enter into the Authorization of an Extended Term under the Agreement for Working Capital, Funding, and Operation of a Child Care Center (the "Extended Term"), (see Attachment 1 to this memorandum), in compliance with Redevelopment Dissolution Law and the PMP.

<u>The Extended Term</u>

The Extended Term includes the following key terms:

- One 10-year extension of the Original Agreement terminating on August 18, 2027.

- Deletion of Article 4 of the Original Agreement, Design, Construction and Delivery of the Center, as the Center has been constructed and delivered and the Former Agency and the Operator have fulfilled their respective obligations under the Original Agreement.

- Deletion of Article 6 of the Original Agreement, Working Capital Fund, as OCII no longer provides funding for the Center.

- Updated insurance requirements.
- A provision acknowledging the assignment of the Original Agreement to the City upon the transfer of the Center to the City pursuant to the PMP.

All other terms and conditions in the Original Agreement remain in place and have not been amended through this Extended Term.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Commission's action to extend the term of the Original Agreement is not a project subject to environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15378(b)(5), because it is an administrative activity of government that will not result in direct or indirect physical changes in the environment.

CONCLUSION

Staff believes that the proposed Extended Term is consistent with Dissolution Law and the PMP and recommends Commission approval of the Extended Term.

(Originated by Denise Zermani, Senior Development Specialist)

Nadia

Nadia Sesay
Interim Executive Director

Attachment 1: Authorization of an Extended Term under the Agreement for Working Capital, Funding and Operation of a Child Care Center

Attachment 1

OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO)

AUTHORIZATION OF AN EXTENDED TERM UNDER THE AGREEMENT FOR WORKING CAPITAL, FUNDING AND OPERATION OF A CHILD CARE CENTER (Child Development Center – Yerba Buena Gardens)

This Extended Term to the Agreement for Working Capital, Funding and Operation of a Child Care Center (the "Extended Term") is entered into as of August _____, 2017 (the "Effective Date"), by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California, commonly known as the Office of Community Investment and Infrastructure, ("OCII" and/or the "Successor Agency"), and South of Market Child Care, Inc., a California nonprofit public benefit corporation ("Operator").

RECITALS

This Extended Term is made with reference to the following facts and circumstances:

A. As part of its program of development within the Yerba Buena Center Redevelopment Project Area ("Project Area"), the Redevelopment Agency of the City and County of San Francisco (the "Former Agency") constructed a facility designed to be operated as a child care center (the "Center");

B. The Former Agency constructed the Center on the rooftop of the George R. Moscone Convention Center, which the Former Agency leased from the City and County of San Francisco pursuant to the Yerba Buena Gardens Central Block Three Agency Rooftop Surface Lease dated July 1, 1996 (the "Rooftop Surface Lease").

C. On August 19, 1997, the Former Agency entered into an Agreement for Working Capital, Funding and Operation of a Child Care Center with the Operator, (the "Original Agreement"), to operate the Center on a site that includes the Center's buildings as well as landscaping, installed equipment, and other improvements constructed on and adjacent to the Center (collectively, the "Site"). The term of the Original Agreement runs from August 19, 1997 to August 18, 2017 (the "Initial Term").

D. Pursuant to the Original Agreement, the Former Agency has fulfilled its obligation to provide a Working Capital Fund to the Operator pursuant to Article 6 and Article 12, and, upon completion of the Center in 1998, the Agency tendered the Center to the Operator pursuant to Article 4.

E. Section 2.02 (a) of the Original Agreement provides that the Operator may request an extension of the Initial Term for one additional 10-year period and authorizes the exercise of an extension if no Operator Event of Default exists.

F. The Former Agency was dissolved on February 1, 2012, pursuant to California Health and Safety Code Sections 34170 et seq. (the "Redevelopment Dissolution Law").

G. OCII, as successor agency to the Former Agency, assumed all enforceable obligations of the Former Agency, including ownership of the Former Agency's real property in the Project Area, under the authority of the Redevelopment Dissolution Law, and under San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission ("Commission") and delegating to it state authority under the Redevelopment Dissolution Law).

H. Redevelopment Dissolution Law authorizes the Successor Agency to continue to comply with enforceable obligations, such as the Original Agreement, that the Former Agency entered into prior to its dissolution, Cal. Health & Safety Code § 34177 (c), but prohibits the Successor Agency from entering into new obligations "except in compliance with [a pre-dissolution] enforceable obligation." Cal. Health & Safety Code § 34177.3.

I. Redevelopment Dissolution Law requires successor agencies to former redevelopment agencies to dispose of their real property assets under a Long-Range Property Management Plan ("PMP"). Cal. Health and Safety Code, § 34191.5. On December 7, 2015, the State Department of Finance ("DOF") approved, under the Redevelopment Dissolution Law, the Successor Agency's PMP, which the Oversight Board of the City and County of San Francisco ("Oversight Board") had previously approved by Resolution No. 14-2015 (Nov. 23, 2015). The PMP establishes a plan to transfer the entirety of the Former Agency's real property assets known as Yerba Buena Gardens, including the Center, to the City for a governmental purpose and requires the transfer to occur in 2017.

J. To the extent that a successor agency acts in compliance with an existing enforceable obligation, such as the Original Agreement, and implements the PMP, the Redevelopment Dissolution Law does not require review and approval by the Oversight Board or DOF. Cal. Health & Safety Code §§ 34181(e) & 34191.5 (f). In addition, Oversight Board Resolution No. 14-2015 authorizes OCII, upon approval of the PMP, to take all actions as needed, to the extent permitted under applicable law, to implement the PMP.

K. On August 14, 2014, the Operator requested a ten year extension of the Original Agreement as authorized under Section 2.02 of the Original Agreement ("Extension"). The Operator was not in default of the Original Agreement at the time of the request (and has not been in default since the request) and thus qualifies for the Extension. Accordingly, the Successor Agency's approval of the Extension is "in compliance with an enforceable obligation." Cal. Health & Safety Code § 34177.3 (a).

L. The Operator has satisfactorily performed under the terms and conditions of the Original Agreement and provides valuable services to the South of Market neighborhood and the entire City by making affordable child care and related resources available to the community

M. OCII and the Operator therefore seek to enter into this Extended Term for the purposes of memorializing (a) the extension of the Initial Term pursuant to Operator's request and (b) certain changes to the Original Agreement necessary to reflect Redevelopment Dissolution

Law and PMP, as set forth below. In anticipation of the assignment and assumption of the Original Agreement to the City, the City has consented to this Extended Term.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, OCII and Operator agree as follows:

1. The following new Section is added to the Operating Agreement immediately following Section 2.02 (c):

   "2.02 (d) First Extended Term. Pursuant to Article 2.02 (b), above, on September 14, 2014, the Successor Agency received the Operator's written notification of its desire to extend the term of the Operating Agreement. Successor Agency and Operator have agreed to a 10-year extension of the Operating Agreement commencing on August 19, 2017 and terminating on August 18, 2027 (the "First Extended Term"), unless terminated earlier in accordance with the terms of the Operating Agreement. Together, the Initial Term and First Extended Term shall comprise the "Term**"** of the Operating Agreement."

2. Article 4, Design, Construction and Delivery of the Center, is deleted in its entirety as the Center has been constructed and delivered and the Former Agency and the Operator have fulfilled their respective obligations under the Original Agreement.

3. Article 6, Working Capital Fund, is deleted in its entirety.

4. Article 13, Insurance, is deleted in its entirety and replaced with Attachment 8, Insurance Requirements, which is incorporated hereto into the Original Agreement as if fully set forth therein.

5. Article 25, Liaison and Notices, is amended to reflect current addresses for the Successor Agency and the Operator as follows:

   "The Office of Community Investment and Infrastructure
   One South Van Ness Avenue, 5th Floor
   San Francisco, CA 94103
   Attn: Executive Director

   South of Market Child Care, Inc.
   790 Folsom Street
   San Francisco, CA 94107
   Attn: Executive Director"

6. Miscellaneous. The following miscellaneous provisions apply to this Extended Term:

   a. Incorporation. This Extended Term constitutes a part of the Original Agreement and any reference in any document to the Original Agreement as amended hereby.

   b. Ratification. To the extent of any inconsistency between this Extended Term and the Original Agreement, the provisions contained in this Extended Term shall control. Except as otherwise amended hereby, all terms, covenants, conditions and provisions of the Original Agreement shall remain in full force and effect.

   c. Successors and Assigns. This Extended Term shall be binding upon and inure to the benefit of the successors and assigns of the Successor Agency and Operator, subject to the limitations set forth in the Original Agreement.

   d. Counterparts. This Extended Term may be executed in any number of counterparts, all of which, together, shall constitute the original agreement.

   e. Governing Law; Venue. This Extended Term shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this Extended Term shall be litigated in courts located within the County of San Francisco, State of California.

   f. Integration. This Extended Term contains the entire agreement between the parties with respect to the subject matter of this Extended Term. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this Extended Term. No prior drafts of this Extended Term or changes from those drafts to the executed version of this Extended Term shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this Extended Term.

   g. Assignment to City. As part of the required transfer of the Site and Center to the City and County of San Francisco under Redevelopment Dissolution Law and the PMP, the Successor Agency will assign this Agreement to the City and County of San Francisco or its designee.

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IN WITNESS WHEREOF the parties have executed this Extended Term to the Agreement for Working Capital, Funding and Operation of Child Care Center as of the date first above written.

SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY, a public body, corporate and politic

By:________________________________
Nadia Sesay
Interim Executive Director

SOUTH OF MARKET CHILD CARE, INC., a California nonprofit public benefit corporation

By:________________________________
Noushin Mofakham
Executive Director

APPROVED AS TO FORM:

By: ___________________________
James B. Morales
General Counsel

[Authorized by Commission Resolution No. _____, adopted on ____ ____, 2017]

RECOMMENDED:

DEPARTMENT OF REAL ESTATE

By: ___________________________
John Updike
Director of Property
City and County of San Francisco

Attachment 8

Insurance Requirements

From and after the commencement of the Term, Operator shall obtain and maintain, or shall contractually require others to maintain, throughout the Term the minimum insurance coverage as set forth in this Article, at no expense to OCII. If the Operator maintains broader coverages and/or higher limits than the minimums shown in this Article, OCII requires and shall be entitled to the additional coverage and/or the higher limits so maintained in the insured or beneficiary capacities set forth in this Attachment 8. Exceptions and/or deviations from the requirements of this Article shall be permitted with the written approval of the person serving as OCII's risk manager, which approval shall not unreasonably be withheld or delayed.

(a) Minimum Scope of Insurance

Coverage shall be at least as broad as:

l. Insurance Services Office form CG 00 01 providing Commercial General Liability coverage on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury, or other form approved by OCII.

2. Insurance Services Office form CA 00 01 providing Automobile Liability coverage (Code 1 "any auto"), or if Operator has no owned autos, Code 8 ("hired") and Code 9 "non-owned autos"), or other form approved by OCII.

3. Workers' Compensation insurance as required by the State of California, and Employers Liability Insurance.

4. Property Insurance against all risks of direct physical loss to the tenant improvements or betterments, and personal property of the Center.

5. Umbrella Liability coverage for bodily injury, personal injury and property damage in excess of the underlying policies and, when coverage is not provided by the underlying policies (eg, for sexual misconduct), in excess of the self-insured retention (subject to agreement by OCII as to the self-insured retention and any otherwise excluded coverages).

6. Directors and Officers Liability covering any claim made against the Operator's Directors and Officers, individually or collectively, for a wrongful act.

7. Professional Liability Insurance appropriate to the Operator's profession covering all negligent acts, errors and omissions.

(b) Minimum Limits of Insurance.

Operator shall maintain limits no less than:

1. General Liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage.

2. Automobile Liability: $1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the State of California and Employer's Liability limits of $1,000,000 for bodily injury by accident and $1,000,000 per person and in the annual aggregate for bodily injury by disease.

4. Umbrella Liability coverage: $5,000,000 per occurrence, with coverage against Sexual Misconduct liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

5. Directors and Officers Liability: $1,000,000 per occurrence.

6. Property Insurance: Full Replacement Value of the Operator's improvements or betterments, boiler and machinery and personal property of the Center with no coinsurance penalty provision.

7. Professional Liability: $2,000,000 per claim and in the annual aggregate. If the Operator's Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained by the Operator for no less than five (5) years beyond the expiration of this Agreement.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, the City and their respective commissioners, members, officers, agents and employees; or Operator will provide evidence of funding for reasonable expectation of losses and related investigations, claim administration and defense expenses.

(d) Other Insurance Provisions

1. The general liability, automobile liability and umbrella liability policies are to contain, or be endorsed to contain, the following provisions: "the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, the City and County of San Francisco, and their respective officers, agents, employees and Commissioners" are to be covered as additional insureds as respects liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Operator; and liability arising out of work or operations performed by or on behalf of the Operator.

2. The Operator's insurance coverage shall be primary insurance, at least as broad as ISO CG 20 01 04 13, as respects OCII, the City and their respective Commissioners, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, the City and their respective Commissioners, officers, agents or employees shall be excess of Operator insurance and shall not contribute with it.

3. Defense shall be outside the limits with respect to all Operator's required auto insurance. Defense may permissibly be inside the limits with respect to any general liability insurance.

4. Operator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and their respective Commissioners, officers, agents or employees.

6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to OCII.

7. For Workers' Compensation and Employers Liability Coverage, the insurer shall agree to waive all rights of subrogation against OCII, the City and their respective members, officers, agents and employees for losses arising from work performed by Operator or for OCII.

8. Notwithstanding the coverages and limits set forth in this Agreement, the Operator must maintain any and all insurance coverage required by accreditation or licensing entities to enable the Operator to maintain its accreditation and/or license to operate the Center.

(e) Acceptability of Insurers

Insurance is to be placed with insurers with a current A. M. Best rating of no less than A:VII, unless otherwise acceptable to OCII.

(f) Verification of Coverage

Operator shall furnish OCII with certificates of insurance and, at OCII's request, with original endorsements effecting coverage required by this clause. The certificates or endorsements for each insurance policy are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The certificates or endorsements may be on forms provided by OCII. All certificates and endorsement are to be received prior to the commencement of the Term, unless previously agreed to by OCII. OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

(g) Subcontractors

Operator shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.

(h) Release and Waiver of Subrogation

1. Operator hereby waives all rights of recovery and causes of action, and releases OCII from any liability, from all losses and damages occasioned to the property located within or upon or constituting a part of the Center, which losses and damage are of the type covered under the policies required by this Article 8 to the extent that said loss is reimbursed by an insurer. The policies required by this Article 8 shall provide for waivers of any right of subrogation that the insurer of the Operator may acquire against OCII hereto with respect to any such losses.

2. Each person or entity that becomes a subtenant, licensee or other user of the Center shall be deemed to have waived and released all of its rights to recover from City and OCII for such losses and damages that the subtenant, licensee or other user sustains by reason of a risk covered under the types of policies required by this Article 8 to the extent that said loss is reimbursed by an insurer.

(i) Right to Maintain

1. If, at any time, Operator shall neglect to maintain the insurance required pursuant to this Article 8 or shall fail to deliver policies as required pursuant to this Article 8, OCII may effect such insurance as the agent of the Operator, upon five (5) business days written notice to the Operator, by taking out policies with companies satisfactory to OCII running for a period not exceeding three (3) years in any one policy.

2. OCII shall not be limited in the proof of any damages which OCII may claim against the Operator (arising out of or by reason of the Operator's failure to provide and keep in force insurance as aforesaid) to the amount- of the insurance premium or premiums not paid or incurred by the Operator and which would have been payable upon such insurance, but shall be entitled to recover any damages and the costs and expenses of suit suffered or incurred during any period when the defaulting party shall have failed or neglected to provide such insurance.

(j) Changes in Insurance

From time to time in consultation with their respective risk managers, the Director of OCII and the Executive Director of the Operator shall review the provisions of this Article 8 and, upon mutual agreement, may make changes to the provisions of this Article 8 to take into consideration the then current insurance market and sufficiency of the insurance limits. In any event, insurance policies, coverages and limits shall be evaluated by the Operator and OCII not less frequently than every five (5)years from the anniversary date of the completion of construction of the Center to determine adequacy and completeness of coverage.

(k) Restoration with Insurance Proceeds

OCII shall be responsible for the restoration of any damage or destruction to the Center to the extent that insurance proceeds are available to OCII, provided, however, that OCII shall have the absolute right to restore or not to restore any damage or destruction to the Center in its sole discretion.

In the event that OCII elects not to restore any damaged or destroyed Center, OCII shall notify the Operator and this Agreement shall terminate as of the date specified in such notice.

(l) Restoration Upon Condemnation of the Center

If any portion of the Center is taken by condemnation, this Agreement: (a) shall terminate as to that portion taken, provided, however, that if OCII elects to restore or replace such Center, this Agreement shall be in effect as to such restored or replaced Center; or (b) shall terminate as to all of the Center being operated by the Operator under this Agreement if OCII determines not to operate the Center not taken by condemnation. Any award for the taking of the Center or any part thereof shall be paid to OCII.