MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: 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

EXECUTIVE SUMMARY

The Office of Community Investment and Infrastructure ("OCII") owns and operates most of the public open space at Yerba Buena Gardens (the "Gardens"). Two long-term agreements with Gardens tenants provide funding for promotional, marketing, cultural and recreational events, and other open spaces uses in the Gardens. (The Gardens are depicted on Attachment A – Map of Yerba Buena Gardens.) Tax increment is not used for the funding of these events.

As a result, the former San Francisco Redevelopment Agency (the "Former Redevelopment Agency"), along with local stakeholders, such as the Yerba Buena Alliance (the "Alliance"), worked together to form Yerba Buena Arts and Events ("Arts and Events") to provide artistic programming required at the Gardens. In July 2000, the Former Redevelopment Agency entered into the Yerba Buena Gardens Programming Agreement with Arts and Events to plan, program, and manage a variety of cultural and community events and activities in the Gardens (the "Programming Agreement"). The Programming Agreement expires on June 30, 2013.

Staff recommends extending the Programming Agreement for two years until June 30, 2015, so that Arts and Events 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").

The proposed First Amendment would ensure that OCII continues its obligation to fund programming in the Gardens by extending the term of the Programming Agreement two years until June 30, 2015 and authorizing $150,000 in payments to Arts and Events for the extension period. The First Amendment would also update the Programming Agreement with OCII’s current equal opportunity programs. Accordingly, the First Amendment is consistent with a

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successor agency’s “work of winding down the redevelopment agency.” California Health and Safety Code §34177.3 (b).

The selection of contractors, such as Arts and Events, must be in accordance with OCII’s Purchasing Policy, as last amended on July 21, 2009 (the “Policy”). As described below, the First Amendment meets the Policy’s sole source method of procurement. Additionally, since OCII must finalize the Property Management Plan, including a disposition strategy for the Gardens, over the next six months, staff believes it would be prudent to continue using Arts and Events as OCII’s event-programming contractor at this time, given the transitional nature of the Gardens’ ownership and governance structure.

Staff recommends approval of the proposed First Amendment to the Programming Agreement with Arts and Events to program the public open space at the Gardens.

DISCUSSION

OCII owns and operates the Gardens. Two long-term agreements with Gardens tenants provide funding for promotional, marketing, cultural and recreational events, and other open spaces uses, in the Gardens from a restricted revenue source that also funds operation, maintenance, and capital improvements at the Gardens. The Former Redevelopment Agency and the Gardens community recognized that this type of programming was an essential ingredient of the success and activation of the Gardens.

As a result, the Former Redevelopment Agency, along with local stakeholders, such as the Alliance, worked together to form Arts and Events to provide essential artistic programming required at the Gardens. Therefore, in July 2000, the Former Redevelopment Agency entered into the Programming Agreement (which expires on June 30, 2013) with Arts and Events to plan, program, and manage a variety of cultural and community events and activities in the Gardens. Arts and Events programs events and cultural programming in outdoor venues throughout the Gardens including the Esplanade, the Upper Terrace, the East Garden, the Children’s Garden, the Carousel Plaza, and Jessie Square (please refer to Attachment A for exact locations).

Arts and Events Management and Mission

Arts and Events, commonly known as the Yerba Buena Gardens Festival, is governed by a community-based board of directors and is led by Linda Lucero its Executive Director, who oversees a staff of four permanent employees (See Attachment B the Yerba Buena Gardens Festival 2012 Season Report for a list of board members, staff members, and statistical data related to last season’s audience). The following is Arts and Events’ mission statement:

“YBG Festival is a presenting organization dedicated to enhancing the vitality and quality of life in the parks and open spaces of Yerba Buena Gardens ... through the curated presentation of free artistic, community, and cultural programs.

YBG Festival presents classical, world, jazz music, contemporary and traditional dance, theater, children’s and family programs, and cultural events, reflecting the
rich cultures and creativity of the region. Artistic excellence, inclusion, diversity and innovation are at the heart of our mission. As the only curated arts park fully dedicated to the long-term presentation of free arts and cultural programs, Yerba Buena Gardens has a unique place in the cultural landscape of San Francisco.”

The Programming Agreement requires Arts and Events to balance the programming of private revenue-producing events (such as Oracle, Apple, and Salesforce) and events that are free to the public (such as concerts, dance programs, and other cultural events) and to develop and sustain a self-financing program. Accordingly, Arts and Events determines the Gardens event fee schedule and also collects the fees and rental costs for the use of the Gardens. These rental fees pay for, along with grants, sponsorships, private donors, and OCII’s annual contribution, over 100 free programs and activities in the Gardens every year.

OCII’s Future Property Management Plan

Staff recommends extending the Programming Agreement for two years until June 30, 2015, so that Arts and Events can continue to program events in the Gardens until the Property Management Plan can be implemented pursuant to Redevelopment Dissolution Law. 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. Subject to additional review by staff and the OCII Commission, the Property Management Plan will seek to preserve the Gardens as a governmental use and fulfillment of an enforceable obligation.

Pending the approval of the Property Management Plan, OCII has a continuing obligation to fund programming in the Gardens. In addition, this type of 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] contracts 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.

Proposed First Amendment to the Programming Agreement

As mentioned above, pending the approval of the Property Management Plan, OCII has a continuing obligation to fund programming in the Gardens. In order to do that, the Programming
Agreement must be amended. The following are the key terms contained in the proposed First Amendment:

- **Term.** The term of the Programming Agreement will be extended two years to June 30, 2015.

- **Contract Amount.** The cost of the two-year extension is $150,000 ($75,000 per year). The funding source 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 (not property tax revenue). The revenue is deposited into OCII’s YBG separate account, which was established for this purpose, and is restricted to uses related to Gardens maintenance, security, operations, cultural operations, and capital improvements. No tax increment will be used to fund the First Amendment.

  Payments to Arts and Events for the first half of fiscal year 2013-14, as shown on OCII’s Recognized Obligation Payment Schedule 13-14A, have been approved by the Oversight Board and the DOF.

- **EOP Programs.** The First Amendment updates the Programming Agreement to include OCII’s current equal opportunity programs, including the Small Business Enterprise Program, and OCII’s Minimum Compensation and Health Care Accountability Policies.

**Sole Source Procurement**

Selection of contractors, such as Arts and Events, must be in accordance with OCII’s Purchasing Policy. Pursuant to Section IX.D of the Policy, OCII is allowed to select a contractor pursuant to a “Sole Source Method,” which occurs when services are solicited from only one source. To allow this type of procurement, a contractor must meet one of the five requirements to qualify as a Sole Source. One of the requirements found in Section IX.D(1)(d) of the Policy states that “the proposed Contractor has previously provided the needed Goods or Services to the Agency and, in doing so, has performed satisfactorily and gained specific information and experience making the proposed Contractor uniquely qualified to provide the needed Goods or Services.” Staff believes Arts and Events meets this requirement.

Arts and Events was created by the Former Redevelopment Agency and the Alliance to provide essential artistic programming services at the Gardens. Arts and Events has previously provided the needed services (i.e. 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 Arts and Events uniquely qualified to provide the needed services. For example, over the past 13 years, Arts and Events 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, Arts and Events has proven experience working cooperatively with MJM Management Group (“MJM”), OCII’s Gardens Manager, to
produce events at the Gardens’ various outdoor venues, as required by the Programming Agreement and MJM’s contract with OCII.

Additionally, as mentioned earlier in this Memorandum, OCII must finalize the Property Management Plan, including a disposition strategy for the Gardens, over the next six months. Staff believes it would be prudent to continue using Arts and Events as OCII’s event-programming contractor at this time, given the transitional nature of the Gardens’ ownership and governance structure.

COMMUNITY SUPPORT

Since 2000, Arts and Events has enjoyed strong community support for its work at the Gardens. Staff has consulted with key stakeholders, and notified its Gardens tenants (Marriott Hotel, Metreon, Moscone, etc.) and surrounding neighbors (St. Patrick’s Church, the Alliance, TODCO, and many others), about the proposed First Amendment. Attachment C to this memorandum contains correspondence supporting the proposed First Amendment from local Arts and Events supporters.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The proposed First Amendment is exempt from California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3), because the activities under the proposed First Amendment would not directly cause any significant adverse change in the physical environment.

STAFF RECOMMENDATION

Staff recommends approval of the proposed First Amendment to the Programming Agreement with Arts and Events to extend the term by two years to June 30, 2015 at a cost of $150,000 to provide programming of public open spaces at the Gardens.

(Originated by Denise Zermini, Development Specialist)

Tiffany Bohoe
Executive Director

Attachment A: Map of Yerba Buena Gardens
Attachment B: Yerba Buena Gardens Festival 2012 Season Report
Attachment C: Supporting Correspondence