

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 3-2015

Adopted January 20, 2015

CERTIFYING THAT THE APPOINTMENT OF DENISE ZERMANI FULFILLS A CRITICALLY NEEDED POSITION RELATED TO THE MANAGEMENT AND TRANSFER OF THE YERBA BUENA GARDEN ASSETS AND APPROVING AN AGREEMENT FOR THE TEMPORARY EMPLOYMENT OF A RETIRED CALIFORNIA PUBLIC EMPLOYEE RETIREMENT SYSTEM ("CALPERS") ANNUITANT UNDER SECTION 7522.56 OF THE CALIFORNIA GOVERNMENT CODE

WHEREAS, State law requires, as part of the dissolution of redevelopment agencies, the Office of Community Investment and Infrastructure (acting as the Successor Agency to the former Redevelopment Agency of the City and County of San Francisco) ("OCII" or "Successor Agency") to dispose of its real estate assets, including the real property assets at Yerba Buena Gardens in downtown San Francisco (the "YBG Assets"); these assets were transferred by operation of law to the Successor Agency upon the dissolution of the former agency. See generally Cal. Health & Safety Code § 34191.1 et seq.; and,

WHEREAS, The YBG Assets are the largest and most complicated portfolio of properties that the Successor Agency owns and manages. Over many years, the Redevelopment Agency of the City and County of San Francisco ("Former Agency") acquired and developed the YBG Assets, which include commercial and retail properties, cultural facilities, recreational venues, e.g. an ice skating center and bowling alley, a childcare center, and significant amounts of public open space with fountains, terraces, outdoor performance spaces, children's play areas, an historic carousel, public artwork, and many other attractions. Notably, most of the YBG Assets are situated above the City's convention center; and,

WHEREAS, The Successor Agency prepared and submitted in November 2013, to the California Department of Finance ("DOF"), a long term Property Management Plan ("PMP") that proposes transferring the YBG Assets to the City and County of San Francisco ("City"); and,

WHEREAS, DOF continues to review the PMP and to request additional information from the Successor Agency about property management, revenues, and liabilities associated with the YBG Assets. Transfer of the YBG Assets will require extensive negotiations with the City and an understanding of the numerous underlying agreements with business owners, non-profit organizations, and community groups that have interests in the YBG Assets; and,

WHEREAS, Ms. Zermani held the position of Senior Development Specialist ("SDS") and managed for many years the Successor Agency's YBG Assets. The SDS is the

advanced journey level of a three-level Development Specialist Series (the "DS Series") at the Successor Agency. Ms. Zermani worked within the DS Series since 2000. During her tenure at the Former Agency and Successor Agency, Ms. Zermani performed satisfactorily and gained specific information and experience making her uniquely qualified to oversee the management and disposition of the YBS Assets; and,

WHEREAS, Ms. Zermani retired from the Successor Agency as of close of business December 30, 2014, and became a CalPERS retired annuitant and OCII has initiated the recruitment process for filling the vacant SDS position by issuing on January 5, 2015 an internal job posting; and,

WHEREAS, Ms. Zermani is the most knowledgeable person on matters related to the YBG Assets, and the Successor Agency wishes to engage her as a retired annuitant employee to perform specialized, critically necessary, on-going duties and functions related to the YBG Assets on a part-time basis for a limited duration. These duties include the following: (a) management of the complex portfolio of YBG Assets, (b) disposition and transition of the YBG Assets to the City and County of San Francisco ("City"), (c) other special project work related to the Successor Agency's PMP, including drafting written responses to DOF's requests for information, (d) completion of the transfer to the City of the Moscone North Convention, which is currently pending review by DOF, and (e) assistance in other specialized matters related to the dissolution of redevelopment agencies and the wind down of redevelopment activities; and,

WHEREAS, The California Public Employees Retirement System ("CalPERS") generally does not authorize CalPERS retired annuitants to become employed with a CalPERS employer, such as the Successor Agency, unless the employer reinstates the former employee. The CalPERS law, however, provides certain exceptions including the temporary appointment of a CalPERS annuitant with specialized skills; and,

WHEREAS, Section 21224 of the California Government Code authorizes the employment of a retired annuitant employee with specialized skills needed in performing work of limited duration, provided, that (1) the appointment does not exceed a combined total of 960 hours per fiscal year, (2) the compensation does not exceed the maximum monthly base salary paid to other employees performing comparable duties divided by 173.333 to equal an hourly rate, and (3) the retired annuitant does not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate; and,

WHEREAS, OCII staff has prepared an agreement, attached as Exhibit 1 to this Resolution, for the temporary employment of Ms. Zermani that meets the CalPERS law; and,

WHEREAS, Section 7522.56 of the California Government Code also requires that the appointment of a retired CalPERS annuitant shall not occur following 180 days of

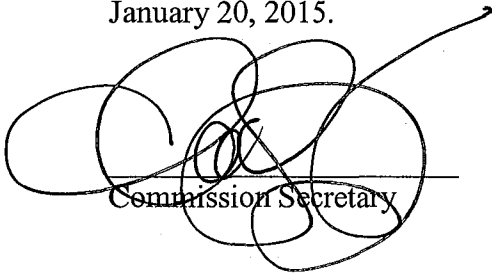
retirement unless the employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the governing body of the employer in a public meeting wherein the appointment is not considered on a consent calendar; and,

WHEREAS, Approval of an agreement to hire temporarily a retired annuitant employee is not a project under Section 15378 (b) (2) California Environmental Quality Act Guidelines because it is a "personnel-related action" that will not have a direct or indirect effect on the environment. Now, therefore, be it

RESOLVED, That the Successor Agency Commission hereby certifies that the temporary appointment of Denise Zermani fills a critically needed position to manage, and prepare for the disposition of, the YBG Assets; and,

BE IT FURTHER RESOLVED that the Successor Agency Commission authorizes the Executive Director to execute the Agreement for Temporary Employment of a Retired CalPERS Annuitant between Denise Zermani and the Successor Agency, substantially in the form that is attached to this Resolution as Exhibit A.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of January 20, 2015.



Commission Secretary

**AGREEMENT FOR TEMPORARY EMPLOYMENT
OF A RETIRED CALPERS ANNUITANT**

THIS AGREEMENT FOR TEMPORARY EMPLOYMENT OF A RETIRED CALPERS ANNUITANT ("Agreement") is 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 ("Successor Agency" or "OCII"), and DENISE ZERMANI, an individual ("Ms. Zermani" or "Retired Annuitant Employee") (collectively, the "Parties"). This Agreement is effective on January 20, 2015.

RECITALS

WHEREAS, state law requires, as part of the dissolution of redevelopment agencies, the Successor Agency to dispose of its real estate assets, including the real property assets at Yerba Buena Gardens in downtown San Francisco (the "YBG Assets"), that were transferred by operation of law to the Successor Agency upon the demise of the former San Francisco Redevelopment Agency ("Former Agency"). See generally Cal. Health & Safety Code § 34191.1 et seq. The YBG Assets are the largest and most complicated portfolio of properties that the Successor Agency owns and manages. Over many years, the Former Agency acquired and developed the YBG Assets, which include commercial and retail properties, cultural facilities, recreational venues, e.g. an ice skating center and bowling alley, a childcare center, and significant amounts of public open space with fountains, terraces, outdoor performance spaces, children's play areas, an historic carousel, public artwork, and many other attractions. Notably, most of the YBG Assets are situated above the City's convention center; and

WHEREAS, the Successor Agency prepared and submitted in November 2013, to the California Department of Finance ("DOF"), a long term Property Management Plan ("PMP") that proposes transferring the YBG Assets to the City and County of San Francisco ("City"); DOF continues to review the PMP and to request additional information about property management, revenues, and liabilities associated with the YBG Assets. Transfer of the YBG Assets will require extensive negotiations with the City and an understanding of the numerous underlying agreements with business owners, non-profit organizations, and community groups that have interests at the YBG Assets; and

WHEREAS, Ms. Zermani held the position of Senior Development Specialist ("SDS") and managed for many years the Successor Agency's YBG Assets. The SDS is the advanced journey level of a three-level Development Specialist Series (the "DS Series") at the Successor Agency. Ms. Zermani had been working within the DS Series since 2000. During her tenure at the Former Agency and Successor Agency, Ms. Zermani performed satisfactorily and gained specific information and experience making her uniquely qualified to oversee the management and disposition of the YBS Assets; and

WHEREAS, Ms. Zermani retired from the Successor Agency as of close of business December 30, 2014, and became a CalPERS retired annuitant; and

WHEREAS, as of January 1, 2015, the Successor Agency will have a critical need for an employee to perform specialized skills related to the management and disposition of the YBG Assets, as further described in Resolution No. 5-2015 adopted by the governing body of the Successor Agency, the Commission of Community Investment and Infrastructure, at a public hearing on January 20, 2015; and,

WHEREAS, The Retired Annuitant Employee is the most knowledgeable person on matters related to the YBG Assets, and the Successor Agency wishes to have Retired Annuitant Employee perform these specialized, critically necessary on-going duties and functions related to the YBG Assets on a part-time basis for a limited duration; and,

WHEREAS, the California Public Employees Retirement System ("CalPERS") generally does not authorize CalPERS retired annuitants to become employed with a CalPERS employer, such as the Successor Agency, unless the employer reinstates the former employee. The CalPERS law, however, provides certain exceptions including the temporary appointment of a CalPERS annuitant with specialized skills; and

WHEREAS, Section 21224 of the California Government Code authorizes the Retired Annuitant Employee's employment as a person with specialized skills needed in performing work of limited duration, provided, that (1) the appointment does not exceed a combined total of 960 hours per fiscal year, (2) the compensation does not exceed the maximum monthly base salary paid to other employees performing comparable duties divided by 173.333 to equal an hourly rate, and (3) the retired annuitant does not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

NOW, THEREFORE, the parties do mutually agree as follows:

AGREEMENT

1. Appointment and Scope of Services: Pursuant to this Agreement, Retired Annuitant Employee shall temporarily perform the following functions: (a) management of the complex portfolio of YBG Assets, (b) disposition and transition of the YBG Assets to the City and County of San Francisco ("City") as required by redevelopment dissolution law, (c) other special project work related to the Successor Agency's PMP, including drafting written responses to DOF's requests for information, (d) completion of the transfer of the Moscone North Convention Center to the City, which is currently being reviewed by DOF, and (e) assistance in other specialized matters related to the dissolution of redevelopment agencies and the wind down of redevelopment activities. Such employment is "at will" and is subject to the terms of this Agreement. The Retired Annuitant Employee shall perform said duties at the pleasure of and under the direct supervision of the Successor Agency or its designee.

2. Compensation and Work Schedule:

a. Rate of Pay: Retired Annuitant Employee shall be paid at the rate of \$57.26 per hour, which represents the hourly rate of the \$9,925.50 monthly salary that would be paid, under current salary schedules, to an SDS employee performing

comparable duties. The Successor Agency has confirmed that this rate is not less than the minimum, nor in excess of the maximum, paid by the Successor Agency to other employees performing comparable duties (divided by 173.333 to equal an hourly rate) as listed on the Successor Agency's publicly available pay schedule. Payments will be made on regularly scheduled Successor Agency payroll dates, and shall be subject to all applicable payroll taxes and withholdings. As required under CalPERS law, such compensation shall be the sole compensation for Retired Annuitant Employee services under this Agreement.

- b. Work Schedule and 960-hour Limitation: Retired Annuitant Employee is expected to devote necessary time, within and outside normal business hours, to the business of the Successor Agency. However, pursuant to Government Code section 21224, Retired Annuitant Employee is allowed to work a maximum of 960 hours per fiscal year for all public employers that contract with CalPERS for retirement benefits. The Successor Agency retains the right to designate, reduce, change, or amend the number of hours assigned to Retired Annuitant Employee consistent with the Successor's Agency's workload and other needs. If Retired Annuitant Employee's annual hours are approaching 960, then the Successor Agency retains the right to summarily suspend Retired Annuitant Employee's duties under this Agreement and to reassign any scheduled hours, as needed, to ensure that Retired Annuitant Employee does not exceed the maximum hours allowed by this Agreement. Retired Annuitant Employee will be responsible for keeping track of her hours worked.
- c. Exempt Position: The performance of duties comparable to the SDS position under this Agreement is exempt from Fair Labor Standards Act ("FSLA") overtime pay requirements. This temporary employment generally will not exceed 40 hours per week. The Successor Agency will assign Retired Annuitant Employee specific hours to work.

3. Employment Status:

- a. Benefits: Other than the compensation described above in Section 2, Retired Annuitant Employee will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. Retired Annuitant Employee understands and agrees that she is not, and will not be, eligible to receive any benefits from the Successor Agency, including any Successor Agency group plan for hospital, surgical, or medical insurance, any Successor Agency retirement program, or any paid holidays, vacation, sick leave, or other leave, with or without pay, or any other job benefits available to an employee in the regular service of the Successor Agency, except for Worker's Compensation Insurance coverage.
- b. No Property Right in Employment: Retired Annuitant Employee understands and agrees that the terms of her employment are governed only by this Agreement and not by Successor Agency collective bargaining agreements and that no right of

regular employment for any specific term is created by this Agreement. Retired Annuitant Employee further understands that she acquires no property interest in her employment by virtue of this agreement, that the employment is "at will" as defined by the laws of the State of California (meaning that she can be terminated at any time for any reason or for no reason), and that she is not entitled to any pre- or post-deprivation administrative hearing or other due process upon termination or any disciplinary action.

- c. Employment of a Retiree: Retired Annuitant Employee understands that CalPERS retired annuitants may be employed by a CalPERS public agency employer, by temporary appointment to a position not to exceed 960 hours in any fiscal year for all such employers; either (1) during an emergency to prevent stoppage of public business or (2) because the retired employee has skills needed in performing the work of limited duration.
4. Representation of Retired Annuitant Employee: Retired Annuitant Employee represents that she is properly trained to perform the duties required of the position and this Agreement.
5. Effective Date and Term of Agreement: This Agreement shall be effective January 20, 2015 ("Effective Date"), and shall terminate automatically at midnight on December 31, 2016 or earlier if the Retired Annuitant Employee works a total of 960 hours for a CalPERS employer in a fiscal year. Employment is temporary, at-will and may be terminated with or without cause and with or without notice at any time by the Retired Annuitant Employee or the Successor Agency.
6. Non-Assignment of Agreement: This Agreement is intended to secure the individual services of the Retired Annuitant Employee and is not assignable or transferable by employee to any third party.
7. Governing Law/Venue: This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this contract shall be in San Francisco County.
8. Enforceability: If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
9. Conflict of Interest: Retired Annuitant Employee agrees that during the term of this Agreement, she will not maintain any financial interest or engage in any other contract employment, occupation, work, endeavor or association, whether compensated for or not, that would in any way conflict with, or impair Retired Annuitant Employee's ability to perform the duties described in this Agreement. Furthermore, Retired Annuitant Employee agrees to abide by the Successor Agency's duty of loyalty, which appears at Section IX.H (Prohibited Activities of Present and Former Employees, Commissioners

and Consultants) of the Agency's Personnel Policy. Any work performed for the Successor Agency outside the terms of this Agreement must be approved in advance in writing by the Executive Director. Retired Annuitant Employee agrees to disclose whether she is performing work for any other CalPERS public agency employer as required by section 3.D. of this Agreement.

10. Entire Agreement and Modification: This Agreement constitutes the entire understanding of the parties hereto. This Agreement supersedes any previous contracts, agreements, negotiations or understandings, whether written or oral, between the parties. Retired Annuitant Employee shall be entitled to no other compensation or benefits than those specified herein, and Retired Annuitant Employee acknowledges that no representation, inducements or promises not contained in this Agreement have been made to Retired Annuitant Employee to induce Retired Annuitant Employee to enter into this Agreement. No changes, amendments, or alterations hereto shall be effective unless in writing and signed by both parties. Retired Annuitant Employee understands that no oral modification of this Agreement made by any officer, agent, or employee of the Successor Agency is effective. Retired Annuitant Employee specifically acknowledges that in entering into and executing this Agreement, she relies solely upon the provisions contained herein and no others.
11. Support Services and Equipment: Retired Annuitant Employee shall be provided office space and the necessary equipment during assigned working hours, sufficient to fulfill obligations under this Agreement, as determined by the Successor Agency, at no cost to employee.
12. Reimbursement for Expenses: Retired Annuitant Employee shall be reimbursed by Successor Agency in accordance with Successor Agency policy (and federal and state law) for all authorized and necessary travel undertaken by Retired Annuitant Employee in performance of services pursuant to this Agreement. Retired Annuitant Employee shall document and claim said reimbursement for such travel in the manner and forms required by the Successor Agency. Other than as specifically provided herein, Retired Annuitant Employee shall receive no other compensation or reimbursements for expenses incurred by her in performance of this Agreement.
13. Notices: All notices permitted or required under this Agreement shall be given to the respective parties by hand-delivery or by mail at the following address, or at such other address as the respective parties may provide in writing for this purpose, by deposit in the U.S. Mail, postage pre-paid, addressed as follows:

Office of Community Investment and Infrastructure,
Successor Agency to the Redevelopment Agency of the City and County of San
Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Executive Director
(415) 749-2400

RETIRED ANNUITANT EMPLOYEE:

Denise Zermani
157 Meernaa Avenue
Fairfax, CA 94930
(415) 272-4292

14. Indemnification: The Successor Agency shall defend, save harmless and indemnify Retired Annuitant Employee against any tort, professional liability, claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Retired Annuitant Employee's services as a part-time SDS for YBG, except that this provision shall not apply with respect to any intentional tort or crime committed by Retired Annuitant Employee, or any actions outside the course and scope of her employment as an SDS for YBG.
15. No Presumption of Drafter: The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.
16. Assistance of Counsel: Each party to this Agreement warrants to the other party that the party has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

SUCCESSOR AGENCY:

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

By: _____
Tiffany Bohee
Executive Director

APPROVED AS TO FORM:

By: _____

RETIRED ANNUITANT EMPLOYEE:

Denise Zermani
157 Meernaa Avenue
Fairfax, CA 94930
(415) 272-4292

14. **Indemnification:** The Successor Agency shall defend, save harmless and indemnify Retired Annuitant Employee against any tort, professional liability, claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Retired Annuitant Employee's services as a part-time SDS for YBG, except that this provision shall not apply with respect to any intentional tort or crime committed by Retired Annuitant Employee, or any actions outside the course and scope of her employment as an SDS for YBG.
15. **No Presumption of Drafter:** The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.
16. **Assistance of Counsel:** Each party to this Agreement warrants to the other party that the party has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

SUCCESSOR AGENCY:

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By: _____
Tiffany Bohee
Executive Director

APPROVED AS TO FORM:

By: _____

James B. Morales
Interim General Counsel

RETIRED ANNUITANT EMPLOYEE:

DENISE ZERMANI

By: _____