

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 28-2015

Adopted May 5, 2015

AUTHORIZING A SECOND 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 THREE YEARS FOR AN AMOUNT NOT TO EXCEED \$225,000, WITH A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$2,100,000, FOR PROGRAMMING THE PUBLIC OPEN SPACE AT YERBA BUENA GARDENS; FORMER YERBA BUENA CENTER REDEVELOPMENT PROJECT AREA

WHEREAS, The Redevelopment Agency of the City and County of San Francisco, a public body, (the “Former Agency”) was dissolved on February 1, 2012, pursuant to California Assembly Bill 26 (“AB 26”) and the California Supreme Court’s decision and order in the case entitled California Redevelopment Association et al. v. Ana Matosantos (2011) 53 Cal. 4th 231. In June 2012, the California State Legislature passed Assembly Bill 1484 (“AB 1484”) further amending the Community Redevelopment Law (together with AB 26, and as amended from time to time, the “Redevelopment Dissolution Law”); and,

WHEREAS, Under Redevelopment Dissolution Law, 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 (the “Successor Agency”), assumed all of the Former Agency’s enforceable obligations, including ownership of the Former Agency’s real property assets. As a result of these legislative acts the Successor Agency (1) became a separate legal entity, separate from the City and County of San Francisco (the “City”), and (2) owns and operates certain real property commonly known as Yerba Buena Gardens (the “Gardens”), which is located within 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 “Former YBC Project Area”); 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 the Successor Agency’s Gardens’ tenants provide for the funding of promotional, marketing, cultural and recreational event programming at the Gardens; and,

WHEREAS, These long-term agreements also govern the use of Gardens revenue generated from existing short- and long-term commercial and ground leases, operating leases, and development exactions/fees in the Former YBC Project Area and restricts this funding source to use for operation (including programming), security, and maintenance and capital improvements at the Gardens). In addition,

this revenue source is considered restricted Community Development Block Grant (“CDBG”) “Program Income” (as defined by Title 24 in the Code of Federal Regulations). According to an agreement with the federal government, this Program Income may be used for operation (including programming), maintenance and capital improvements, and security of the Gardens. The Successor Agency tracks this restricted Program Income and related Gardens expenditures through a separate account; 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”). The Programming Agreement was extended for two years, by Resolution No. 22-2013, adopted by the Commission on Community Investment and Infrastructure, on June 4, 2013. The Programming Agreement expires on June 30, 2015; and,

WHEREAS, Redevelopment Dissolution Law states that redevelopment agencies, including the Successor Agency, must dispose of their assets under a Long-Range Property Management Plan (“PMP”) (California Health and Safety Code, Section 34191.5). The Successor Agency submitted its PMP to the State Department of Finance (“DOF”) in November 2013. The PMP is a disposition plan for all of the Successor Agency’s real property assets, including the Gardens properties. The Successor Agency’s PMP proposes a transfer of the Gardens properties to the City for a governmental purpose. However, DOF must approve the Successor Agency’s PMP before the Gardens properties can be transferred. At this time, DOF is still reviewing the Successor Agency’s PMP; and,

WHEREAS, Pending the approval of the PMP, the Successor Agency has a continuing obligation to fund programming in the Gardens open space, which 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 type of property management activity is an enforceable obligation under Dissolution Law. 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;” and,

WHEREAS, The proposed Second Amendment would (1) extend the Programming Agreement for an additional three years until June 30, 2018, so the YBA&E can continue to program the open spaces in the Gardens until the Successor Agency’s DOF-

approved PMP can be implemented, and (2) update the Successor Agency's insurance and indemnification provisions. The City, as the future property owner, supports this extended term, which will (1) allow the City a transition period and ensure smooth ongoing operations of the Gardens, and (2) also give the City time to undertake a lengthy competitive bidding process for Gardens programming services prior to the end of the Programming Agreement term in 2018. However, in the unlikely event that (1) the Gardens have not transferred to the City before June 30, 2018, or (2) the Gardens have transferred to the City and the City has not had sufficient time to undertake a competitive bidding process for property management services, the City and/or the Successor Agency may consider other options, including but not limited to: (a) the Successor Agency may issue, subject to its Purchasing Policy, a Request for Qualifications prior to June 30, 2018, (b) the Successor Agency may extend the Programming Agreement term for a limited term, which will be determined prior to the expiration of the Programming Agreement, or (c) the City may extend the Programming Agreement term for a limited term until it undertakes a competitive bidding process; and,

WHEREAS, The cost of the three-year extension is \$225,000 (\$75,000 per year); and,

WHEREAS, Upon implementation the Successor Agency's DOF-approved PMP, fee interest in the Gardens properties will be transferred to the City along with the Successor Agency's enforceable obligations (i.e., leases, contracts, etc.) at the Gardens, including the Programming Agreement, which will be assigned to the City; and,

WHEREAS, Extension of the Programming Agreement meets the sole source method requirements under Section IX.D of the Successor Agency's Purchasing Policy because YBA&E has previously provided the needed services to the Successor Agency and in doing so has performed satisfactorily and has gained specific information and experience making them uniquely qualified to provide the needed services; and,

WHEREAS, Staff recommends authorization of the Second Amendment to the Programming Agreement; and,

WHEREAS, Authorization of the Second Amendment to provide artistic programming at the Gardens is a Successor Agency administrative activity that will not have any direct physical effects on the environment and is not a "Project" as defined in California Environmental Quality Act ("CEQA"), Guidelines Section 15378(b)(5). The Second Amendment will allow and fund programming in the public open space at the Gardens and will not result in direct or indirect physical changes in the environment; now therefore, be it

RESOLVED, that the Executive Director of the Successor Agency is authorized to execute a Second Amendment to the Programming Agreement with Yerba Buena Arts and Events, a California non-profit, public benefit corporation, substantially in the form of the Second Amendment on file with the Secretary of this Commission, to

extend the term of the Programming Agreement by three years for an amount not to exceed \$225,000, with a total aggregate amount not to exceed \$2,100,000, for programming the public open spaces at the Gardens, and to make other minor modifications to the Programming Agreement, in the form approved as to form by the Successor Agency's General Counsel.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of May 5, 2015.

Commission Secretary