office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

108-0062018-002

Agenda Item **Nos. 5 (c) & (d)**
Meeting of March 20, 2018

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Executive Director

SUBJECT: Authorizing a Third Amendment to the Personal Services Contract with MJM Management Group, a California corporation, to extend the term by one year with up to two, one-year extensions at the discretion of the City and County of San Francisco for a management fee of $170,469, with a total aggregate management fee not to exceed $1,393,889, for property management services at Yerba Buena Gardens; former Yerba Buena Center Redevelopment Project Area

Authorizing a Third 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 one year with up to two, one-year extensions at the discretion of the City and County of San Francisco for an amount not to exceed $75,000, with a total aggregate amount not to exceed $2,175,000, for programming the public open space at Yerba Buena Gardens; former Yerba Buena Center Redevelopment Project Area

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EXECUTIVE SUMMARY

The Office of Community Investment and Infrastructure ("OCII") owns and operates Yerba Buena Gardens, a collection of urban mixed-use spaces that includes commercial and retail properties, cultural facilities, performance venues, recreational venues, a child development center, and sizable amounts of public open space including garden areas, plazas, children's play areas, artwork, a historic carousel, and the Martin Luther King Jr. Memorial Fountain (the "Gardens").

The Redevelopment Dissolution Law ("Dissolution Law") requires OCII to dispose of its properties under a Long-Range Property Management Plan ("PMP") that addresses "the disposition and use of the real properties of the former redevelopment agency." Cal. Health & Safety Code § 34191.5 (b). Dissolution Law also requires that the Oversight Board to the Successor Agency (the "Oversight Board") and the Department of Finance approve the PMP. On November 19, 2013, the Commission on Community Investment and Infrastructure ("Commission") recommended, by Resolution No. 53-2013, approval of OCII's PMP to the Oversight Board. On November 25, 2013, the Oversight Board approved, by Resolution No. 12-2013, the PMP and authorized its submittal to DOF. After a lengthy review, DOF required the Oversight Board to make certain technical changes and clarifications in the PMP in light of amendments to the Dissolution Law. On November 23, 2015, the Oversight Board approved, by Resolution No. 14-2015, the PMP and authorized OCII to take all actions as needed to effectuate compliance with the PMP. On December 7, 2015, DOF finally approved the PMP and its schedule for transfer. Letter, J. Howard to S. Oerth. The approved PMP disposition plan for the Gardens remains the same as the 2013 Commission-recommended PMP and provides for the transfer of the Gardens for a "governmental purpose" to the City and County of San Francisco (the "City"), which will continue to manage the Gardens as a single, unified set of properties using a restricted revenue source generated from the Gardens properties. Obtaining state approval of the Gardens' transfer as a "governmental purpose" was a major accomplishment that avoided the sale or disposition of specific properties to private parties.

OCII, the City and community stakeholders in the Gardens have been working since July 2013 to plan and implement the transfer of the Gardens to the City. An element of those efforts is to ensure a smooth transition, such that there is no interruption of essential property management and programming services. Under the PMP, the timeframe for transfer of the Gardens was to occur by the end of 2017. Due to the complexity of the transaction, the transfer has not yet been completed, however OCII, the City and stakeholders have been working diligently to effectuate the transfer before June 30, 2018, subject to approval of the acceptance of the Gardens properties by the San Francisco Board of Supervisors ("Board of Supervisors") and the Mayor.

As the owner/operator of the Gardens, the former San Francisco Redevelopment Agency (the "Former Agency") entered into agreements with MJM Management Group ("MJM") and Yerba Buena Arts and Events ("YBA&E") to provide property management and artistic programming services at the Gardens (collectively the "Agreements"). Both Agreements, which have been extended and amended twice, will expire on June 30, 2018. In March 2018, the City, as the future Gardens property owner, has requested amendments to the Agreements consisting of one-year extensions, with up to two additional one-year extensions at the discretion of the City. The proposed Third Amendments to the Agreements will (1) allow the City a transition period and ensure smooth ongoing operations of the Gardens, and (2) provide the City, or its assignee, time to undertake required public solicitation processes for Gardens property management services and artistic programming services prior to the end of the terms.

It is anticipated that the Agreements, as amended, will be assigned by OCII to the City through execution of an assignment and assumption agreement ("Assignment Agreement") upon approval by the San Francisco Board of Supervisors and Mayor of legislation accepting assignment of the Agreements no later than June 30, 2018.

The proposed Third Amendments to the Agreements have been reviewed by the City, and the City, as future property owner, supports the proposed terms and conditions.

Staff recommends authorizing the Third Amendments to the Agreements to ensure continuity in property management and artistic programming services at the Gardens.

BACKGROUND

OCII owns and operates the Gardens, which is a vast collection of urban mixed-use spaces that include commercial and retail properties, cultural facilities, performance venues, recreational venues, a child development center, and sizable amounts of public open space including garden areas, plazas, children's play areas, artwork, a historic carousel, and the Martin Luther King Jr. Memorial Fountain. The Gardens are located in the central three blocks of the former Yerba Buena Center Redevelopment Project Area D-1 (the "Project Area") and host over 2 million visitors per year. See Attachment 1 for a Gardens map.

In its capacity as a property owner to maintain and operate the Gardens, the Former Agency retained the services of contractors to furnish property management and artistic programming services as follows:

- ***MJM Agreement for Property Management at the Gardens*** - Since July 2009, MJM has been providing property management services for a two-block area of the Gardens, pursuant to a personal services contract (the "MJM Agreement") entered into by the Former Agency. The MJM Agreement includes a comprehensive scope of services that covers operations, maintenance, security services, capital work, and event coordination and is designed to maintain the Gardens in first-class condition and to enhance the enjoyment and safety of the general public.

- ***Yerba Buena Arts and Events Agreement for Artistic Programming at the Gardens*** - Since July 2000, YBA&E has been programming the open space at the Gardens, pursuant to a programming agreement (the "Programming Agreement") entered into with the Former Agency. The Programming Agreement covers planning, programming, and management of a variety of cultural and community events and activities in the Gardens.

Funding for the Gardens operations comes from revenue generated from existing short- and long-term commercial and ground leases, operating leases, and development exactions/fees in the Project Area, and is restricted to use for operation, security, maintenance, and capital improvements of the Gardens (the "Restricted Gardens Funding").

Long-Range Property Management Plan

Under the requirements of Dissolution Law, 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 Yerba Buena Gardens. Dissolution Law authorizes OCII to continue to comply with enforceable obligations, including the Agreements that the Former Agency entered into prior to its dissolution.

Dissolution Law requires that successors to redevelopment agencies, including OCII, dispose of their properties under a PMP. On November 23, 2015, by Resolution No. 14-2015, the Oversight Board to the Successor Agency (the "Oversight Board") approved the PMP and authorized OCII to take all actions as needed to effectuate compliance with the PMP. On December 7, 2015, the California Department of Finance ("DOF") approved the PMP and OCII's disposition of properties in accordance with the approved PMP. The approved disposition plan for the Gardens under the PMP is to transfer the Gardens to the City for a governmental purpose that is to continue to manage the Gardens as a single, unified set of properties using a restricted revenue source generated from the Gardens properties. As part of the disposition of the Gardens under the PMP, the Restricted Gardens Funding will transfer to the City along with the real property assets and assignment of leases and agreements.

OCII, the City, and community stakeholders in the Gardens have been working since July 2013 to plan and implement the transfer of the Gardens to the City. An element of those efforts is to ensure a smooth transition, such that there is no interruption of essential property management and programming services which are provided by MJM and YBA&E under the Agreements. Under the PMP, the timeframe for transfer of the Gardens was anticipated to occur by the end of 2017. Due to the complexity of the transaction, the transfer has not yet been completed but is expected to occur by June 30, 2018, subject to approval of the acceptance of the Gardens by the San Francisco Board of Supervisors and the Mayor.

The 2015 Second Amendments for the Agreements provide, among other things, that in the event that the City has not had sufficient time, prior to transfer, to undertake a public solicitation processes for property management and artistic programming services, the City and/or the Successor Agency may consider other options, including extension of the contracts for limited terms, which will be determined prior to the expiration of the Agreements.

DISCUSSION

In March 2018, the City requested one-year extensions, with up to two additional one-year extensions at the discretion of the City, to the terms of the Agreements. The City's request to extend the terms of the Agreements can be found as Attachment 2. The proposed Third Amendments will (1) allow the City a transition period and ensure smooth ongoing operations of the Gardens, and (2) also provide the City, or its assignee, time to undertake public solicitation processes for Gardens property management and artistic programming services prior to the end of the terms.

Proposed Third Amendments to the Agreements

The proposed Third Amendments have been reviewed by the City, and the City, as future property owner, supports the proposed the terms and conditions set forth below. The Third Amendment to the MJM Agreement can be found as Attachment 3, and the Third Amendment to the YBA&E Programming Agreement can be found in Attachment 4.

- Term – The proposed Third Amendments would extend the Agreements for one additional year commencing on July 1, 2018 through June 30, 2019, with two one-year extensions that the City, or its assignee, may exercise in its sole discretion.

  Staff anticipates that OCII will assign the Agreements to the City prior to June 30, 2018, as discussed below.

- City Contracting Provisions - Upon assignment of the Agreements to the City, or of City's consent to any future extension of same, the City may require standard City contracting provisions under San Francisco Administrative Code or other Laws to be incorporated into the YBA&E Agreement and the MJM Agreement.

- Compensation – The proposed Third Amendments include a continuation of the annual fee under the existing Agreements by one year, subject to the funding provisions of the Agreements. During the one-year extension, the maximum fee will be $170,469 for MJM and the funding contribution for Yerba Buena Arts and Events will be $75,000.

- Indemnification – The proposed Third Amendments also update the indemnification provisions of the Agreements to include the City.

All other terms and conditions in the Agreements, as proposed to be amended, remain in place and will not be amended through these Third Amendments.

Next Steps: Status of Disposition of the Gardens

OCII and City staff continue to work collaboratively and diligently to effect the transfer of the Gardens to the City. The City intends to introduce legislation to the Board of Supervisors no later than April 24th to seek approval, allowing the City's Real Estate Division to: i) accept fee title to the Gardens; and ii) accept assignment of the related agreements and leases, subject to the closing of escrow for the conveyance. The Successor Agency's Restricted Revenue Stream and related enforceable obligations will be transferred as part of the Gardens assets to the City, so the City can continue to fulfill the Successor's Agency's long-term obligations. OCII and City staff anticipate the completion of the transfer of the Gardens assets and related agreements to the City by June 30, 2018. This timing to transfer the Gardens prior to the end of the 2017-2018 fiscal year is consistent with OCII's obligation under the PMP and the Recognized Obligation Payment Schedule (the "ROPS"), which provides expenditure authority for the Agreements through the end of this fiscal year.

In order to facilitate the transfer, OCII intends to assign its rights, titles and interests in the Agreements to the City. With respect to the Agreements, the City and OCII propose to enter into an assignment of these agreements that transfers all of the Successor Agency's rights, titles, and interests in the Agreements to the City, and the City has agreed to accept and assume all of the Successor Agency's obligations under the Agreements. The effective date for the Assignment will be the later of the date on which both parties have executed the Assignment, or the date that the Mayor signs the resolution accepting the assignment of the Agreements. The form of the proposed Assignment Agreement is found in Attachment 5.

As contemplated in the PMP, the City does not intend to act as the long-term operator and manager of the Gardens. Through a community planning process, the City and community stakeholders developed a long-term management structure which resulted in the creation of a community-based non-profit, the Yerba Buena Conservancy, which will assume responsibility for management of the Gardens on behalf of the City once the City has taken ownership. The City and the Yerba Buena Gardens Conservancy are currently negotiating a master agreement for management and operations of the Gardens.

SMALL BUSINESS ENTERPRISE AND WORKFORCE COMPLIANCE

MJM Agreement

MJM is a San Francisco-based woman-owned firm that is certified by the City's Contract Monitoring Division ("CMD") as a Micro and Small-Local Business Enterprise. MJM's major subcontractors at the Gardens have included: (1) Costless Maintenance Services Company (a CMD certified Micro LBE-WBE) for maintenance work, (2) American Building Maintenance for janitorial and maintenance work, (3) A Topnotch Security Services (a CMD certified Micro LBE-WBE) for security services, (4) Security Intelligence Specialist for replacement security services in 2017, and (5) the Gardeners Guild (an employee owned firm) for landscaping services. MJM has demonstrated good-faith efforts towards meeting the 50% SBE program goal not only in its maintenance operations but also in the capital improvement program coordinated and approved by OCII. For the past three years, for example, approximately $3.9 million have been awarded for capital improvements of which $1.9 million (or 48%) are with SBEs. This includes over $650,000 (or 17%) to minority and women owned businesses in San Francisco.

Operation of the Gardens requires a 54-person permanent workforce, which is comprised of 27 MJM employees and 27 subcontractor employees, and is made up of 54% San Francisco residents. MJM continues to meets and exceeds OCII's permanent workforce goals of 50% San Francisco residents.

Yerba Buena Arts & Events Programming Agreement

The Programming Agreement requires YBA&E, a San Francisco-based 501(c)(3) tax-exempt non-profit arts organization, to comply with OCII's SBE program. While there are limited contracting opportunities, as a small arts organization, YBA&E nevertheless works with a team of independent contractors and consultants, including a publicist, grant writer, videographer, and accountant, all of which are based in San Francisco.

The majority of YBA&E's contracting activities are contracts with artists to provide entertainment for free events at the Gardens. As a demonstration of its ongoing efforts to meet the spirit of the SBE program, YBA&E contracts with artists based in San Francisco for many of Yerba Buena Gardens Festival's performances. The following is a sample of San Francisco-based artists and organizations included in the 2017 Gardens Festival line-up:

- Richard Howell & Sudden Changes (May 27)
- Circus Bella's Bay City Rhapsody (June 23-24)
- Theater Rhinoceros: Lear! (July 7-8)
- Cascada de Flores (July 13)
- San Francisco Mime Troupe – Walls (July 23)
- San Francisco Lesbian/Gay Freedom Band (July 30)
- AfroSolo (August 5)
- LINES Dance Center (August 10)
- Paula West (August 26)
- Kugelplex with special guest Linda Tillery (September 2)
- Marcus Shelby Orchestra (September 23)

YBA&E's priority is to program and commission local artists, with an emphasis on presenting programs reflective of San Francisco's cultural and artistic diversity. YBA&E also hires temporary staff during the event season (May through October) and continues to recruit their seasonal staff from San Francisco.

Sole Source Procurement

Selection of contractors must be in accordance with OCII's Purchasing Policy ("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. Extension of the Agreements pursuant to the proposed Third Amendments meet the sole source method requirements under Section IX.D.1 (d) & (e) of the Policy. Ensuring that the Gardens' property management and programming is continuous upon, and immediately after, the transfer to the City protects an important public asset funded by the Former Agency. In the absence of these Agreements, OCII's "business assets or financial investments [would be] at risk" and there is not sufficient time nor authority under the unique circumstances to complete another means of procuring these essential services under the Policy. Moreover, both MJM and YBA&E have previously provided needed services to the Former Agency and OCII and gained specific information and experience making MJM and YBA&E uniquely qualified to provide the needed services. Examples of these unique qualifications include:

- MJM has developed productive working relationships and worked cooperatively with Gardens operators, tenants, and community stakeholders, which are critical to successfully managing a property in a unique and challenging urban setting like the Gardens.

- YBA&E has developed relationships with community stakeholders and local artists, 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 MJM to produce events at the Gardens' various outdoor venues, as required by the Programming Agreement and MJM's contract with OCII.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Authorization of the Third Amendment to provide property management at the Gardens is an OCII 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 Third Amendment to allow artistic programming in the public open space at the Gardens is considered part of the normal operations of an existing facility for public gatherings and is categorically exempt from environmental review pursuant to CEQA Guidelines Section 15323.

CONCLUSION

Staff anticipates that the proposed Third Amendments would ensure continued property management and artistic programming of the Gardens through the transfer to the City, and allow time for the City, or its assignee, to undertake the public solicitation processes for these services after it assumes ownership and management of the Gardens. Staff recommends Commission approval of the Third Amendments.

(Originated by Michelle De Guzman, Senior Development Specialist)

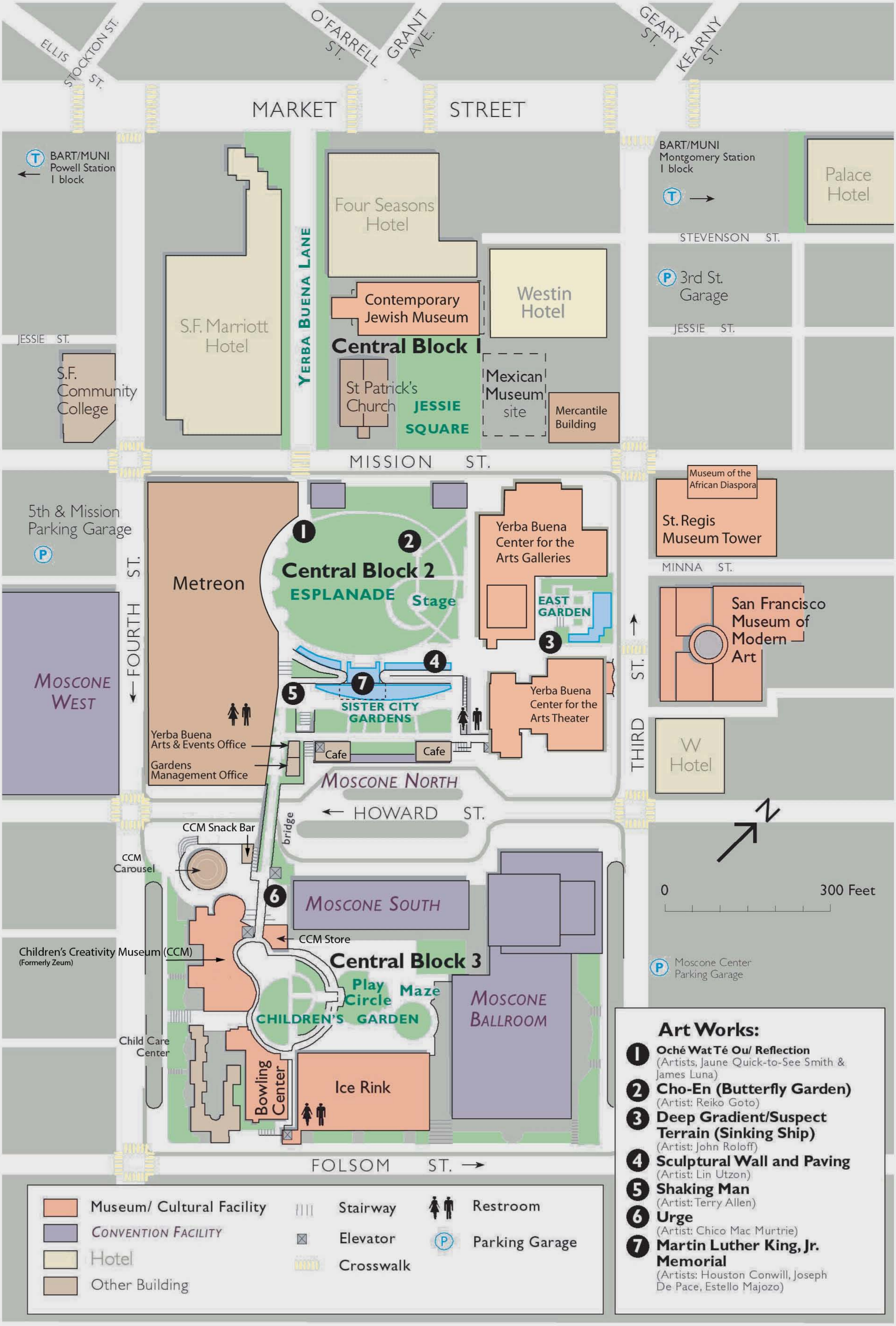
Nadia

Nadia Sesay
Executive Director

Attachment 1: Gardens Map
Attachment 2: City Letter of Request to Extend Term
Attachment 3: Third Amendment to MJM Contract
Attachment 4: Third Amendment to the YBA&E Programming Agreement
Attachment 5: Form of Assignment and Assumption Agreement

ATTACHMENT 1

YERBA BUENA GARDENS



Art Works:

1. **Oché Wat Té Ou/ Reflection** (Artists, Jaune Quick-to-See Smith & James Luna)
2. **Cho-En (Butterfly Garden)** (Artist: Reiko Goto)
3. **Deep Gradient/Suspect Terrain (Sinking Ship)** (Artist: John Roloff)
4. **Sculptural Wall and Paving** (Artist: Lin Utzon)
5. **Shaking Man** (Artist: Terry Allen)
6. **Urge** (Artist: Chico Mac Murtrie)
7. **Martin Luther King, Jr. Memorial** (Artists: Houston Conwill, Joseph De Pace, Estello Majozo)

ATTACHMENT 2

Myall, Hilde (CII)

From:	Updike, John
Sent:	Monday, March 05, 2018 1:45 PM
To:	Sesay, Nadia (CII)
Cc:	Myall, Hilde (CII); Keene, Joshua (ADM)
Subject:	Yerba Buena Gardens - request to extend MJM and A&E agreements

Nadia:

The City family continues to work collaboratively with your OCII team to effect the transfer of Yerba Buena Gardens ("YBG") to the City and still believes June 30, 2018 is an achievable date for that. The City intends to introduce legislation no later than Tuesday April 24th to seek approval, allowing the Real Estate Division to: i) accept fee title to YBG (subject to closing an escrow for the conveyance); and ii) accept assignment of the agreements, leases, etc. With that introduction date, we'd target receiving those authorities by June 1. As you are well aware, upon its acceptance, the City does not intend to act as the long-term operator and manager of Yerba Buena and is negotiating a lease with the non-profit Yerba Buena Conservancy ("YBC") to assume those duties on behalf of the City once the City has taken fee title to the property.

The initial goal was for the lease between the City and YBC to be in-place at the time the City accepts YBG from OCII, but given those negotiations are on a separate path from the actual transfer, it is difficult to estimate when exactly that agreement could become effective. Further, even if a lease is executed, it's unknown when the Conservancy will be logistically ready to manage operations of the property and oversee the associated agreements and leases. The current goal is to accept the agreements from OCII concurrent with the actual conveyance of YBG to City. However, it is not a requirement to accept concurrently (and assignment could occur prior to acceptance of YBG) so long as the Board has passed the above-mentioned legislation.

Most of the agreements and leases have meaningful terms remaining on them, so upon the City's acceptance of the agreements (and eventual transfer of those duties to the YBC), operations can continue uninterrupted. However, two operating agreements are set to expire on 6/30/18: the Personal Services Contract for Yerba Buena Gardens Property Management Services with MJM, and the Yerba Buena Gardens Programming Agreement with Yerba Buena Arts and Events. As you know, both of these agreements are critical to the day-to-day operations and asset management of YBG. Even if the City accepts the property on or before 6/30/18, it is not possible that the City will be able to negotiate new agreements with either party or solicit bids and potentially transition to new operators.

In order to ensure these critical asset management and operational functions continue as usual, we are requesting that on behalf of the City, to the extent you are able to, OCII extend each agreement on a limited term. The structure the City would recommend is to extend each contract until 6/30/2019 and to also include two, one-year options for extension, subject to City's (or it's assignee's) consent in its absolute and sole discretion. The reason for the initial limited term extension is to ensure operations can continue seamlessly upon transfer. The primary purpose of these additional limited term extensions is that it ensures that if the City turns over all duties and responsibilities to the YBC at a later date, the YBC has options to consider in lieu of competitively soliciting new offers. However, either the City or YBC would have sole discretion to not consent to those extensions and pursue alternatives for the future.

The City recognizes that OCII has no ability to extend these agreements such that they financially bind or obligate OCII in any way beyond June 30, 2018. Therefore, the City would suggest that the effectiveness of these limited term extensions and options are subject to either: a) City's acceptance of the property; or b) OCII's assignment of agreements to City prior to or upon transfer, but in no event later than June 30, 2018. Either action is contingent upon the resolution being approved and signed by the Board of Supervisors and Mayor in their absolute and sole discretion.

The City is prepared to execute an assignment agreement for the two operating agreements upon their extension by OCII, and to approve the assignment prior to conveyance if necessary, but note that the assignment will not become effective until the Board legislation approving the assignment is effective. Upon the effectiveness of the assignment agreement(s), the City will assume the contracts and their financial obligations, subject to budget appropriation.

Please let me know if you have any questions. The City appreciates your assistance and continuing cooperation on this challenging matter.

john

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ATTACHMENT 3

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

THIRD AMENDMENT TO PERSONAL SERVICES CONTRACT (Property Management Services – Yerba Buena Gardens)

This Third Amendment to Personal Services Contract (the "**Third Amendment**"), dated for reference purposes as March ___, 2018, 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 MJM Management Group, a California corporation ("**Contractor**").

RECITALS

This Third Amendment is made with reference to the following facts and circumstances:

A. The Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, (the "**Former Agency**") was dissolved on February 1, 2012 pursuant to California Health and Safety Code Sections 34170 et seq. (the "**Redevelopment Dissolution Law**"), which vested in successor agencies certain authority, rights, powers, duties, and obligations to complete work related to approved enforceable obligations and to wind down redevelopment activities.

B. Under Redevelopment Dissolution Law, the Successor Agency succeeded to the organizational status of the Former Agency and assumed all enforceable obligations of the Former Agency, including ownership of the Former Agency's real property in the former Yerba Buena Center Redevelopment Project Area D-1(the "**Former YBC Project Area**"). See also 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).

C. As a result of these legislative acts the Successor Agency (1) became a separate public entity 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 YBC Project Area.

D. On July 1, 2009, the Former Agency and the Contractor entered into a three-year personal services contract for property management services for the Gardens with one three-year option to extend (the "**Original Contract**"). The Original Contract was amended in August 2010 to update insurance, indemnification, and equal opportunity provisions (the "**First Amendment**"). In May 2012, in accordance with the terms of the Original Contract, the Executive Director extended the term to June 30, 2015. The Original Contract and First Amendment were amended by OCII Resolution 27-2015 by the Commission on May 5, 2015 to extend the term for an additional (3) three years until June 30, 2018 (the "**Second Amendment**"). Together, the Original Contract, the First Amendment, Second Amendment, and this Third Amendment comprise the "**Contract**."

E. 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 Oversight Board Resolution No. 14-2015 (Nov. 23, 2015). The PMP establishes a plan to transfer the entirety of the Gardens to the City for a governmental purpose. Oversight Board Resolution No. 14-2015 also authorizes OCII, upon approval of the PMP, to take all actions as needed, to the extent permitted under applicable law, to implement the PMP.

F. OCII Resolution No. 27-2015 contemplated that in the 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 public solicitation process for property management services, the City and/or the Successor Agency may consider, among other options extending the contract term for a limited term, which will be determined prior to the expiration of the Contract.

G. The City, as the future property owner, has requested this extension of the term to the Contract, which will (1) allow the City a transition period and ensure smooth ongoing operations of the Gardens, and (2) also provide the City, or its assignee, time to undertake a public solicitation process for Gardens property management services prior to the end of the Contract term. As required under Redevelopment Dissolution Law, Cal. Health & Safety Code § 34181 (a) and the PMP, OCII intends to transfer the Gardens assets to the City and, to facilitate the transfer, OCII intends to assign its rights, titles and interests in the Contract to the City.

H. The proposed Third Amendment would extend the Contract for one additional year commencing on July 1, 2018 and terminating on June 30, 2019, with two, one-year extensions that the City, or its assignee, may exercise in its sole discretion.

I. Under OCII's DOF-approved PMP, OCII has a continuing obligation to fund property management in the Gardens until it is transferred to the City. 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 required 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." DOF-accepted enforceable obligations are found in an approved Recognized Obligation Payment Schedule ("**ROPS**").

J. The City, upon assumption of the Contract, intends to assume the cost of the Contractor's management fee for the one-year extension in the amount of $170,469, which is subject to the funding provisions of the Contract, including the approval of the Gardens Fiscal Year 2018-2019 budget by the Board of Supervisors of the City and County of San Francisco. The source of funds for the management fee comes from revenue generated from existing short- and long-term commercial and ground leases, operating leases, and development exactions/fees in the Former YBC Project Area. This revenue source is 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 U.S. Department of Housing and Urban Development, this Program Income may be used for operation, maintenance (including capital improvements), and security of the Gardens.

K. Extension of the Contract pursuant to this Third Amendment meets the sole source method requirements under Section IX.D.1.e. of OCII's Purchasing Policy because OCII's assets and financial investments are at risk and the urgent need for appropriate property management of the Gardens will not permit the delay required to complete other procurement methods. In addition, the Contractor has previously provided the needed services to OCII and in doing so has performed satisfactorily and has gained specific information and experience making them uniquely qualified to provide the needed services. Section IX.D.1.d. of OCII's Purchasing Policy.

L. OCII and the Contractor therefore seek to enter into this Third Amendment upon the basis of the terms, covenants and conditions set forth below. In anticipation of the assignment and assumption of the Contract to the City (the "Assignment Agreement"), the City has consented to this Third Amendment.

AGREEMENT

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

1. <u>Term and Termination,</u> Section 2.A is deleted in its entirety and replaced with the following:

   "The initial term of this Contract began on July 1, 2009 and ended on June 30, 2012. The initial term was extended through June 30, 2015 by the Executive Director pursuant to the terms of the Contract. A Second Amendment extended the term for one additional three-year period from July 1, 2015 through June 30, 2018. This Third Amendment extends the term for a one-year period from July 1, 2018 through June 30, 2019 (the "**Extended Contract Term**"); subject to two (2), one-year (1-year) term extensions at the sole discretion of the successors and assigns of OCII (the "**Discretionary Extensions**"); and subject further to the incorporation of standard City contracting provisions under local law and policy that the successors and assigns of OCII may require at any time during the Extended Contract Term or the Discretionary Extensions."

2. <u>Compensation: Management Fee</u>, Section 4.A is deleted in its entirety and replaced with the following:

"The total maximum management fee payable under this Contract during the Extended Contract Term is $170,469, which the City, upon assumption of the Contract through the Assignment Agreement, intends to assume, subject to the funding provisions of the Contract, including the approval of the Gardens Fiscal Year 2018-2019 budget by the Board of Supervisors of the City and County of San Francisco. The City, or its assignee, upon exercising any of the Discretionary Extensions will agree to payment of the management fees for such extensions."

"Contractor warrants that it will provide the services and produce the deliverables described in Attachment A, "Scope of Services," and Attachment C, "Reporting Requirements," with no additional compensation from OCII or the City. (The Contractor will be reimbursed separately for direct expenses pursuant to Section 7.C., Operating Fund Reimbursement, of this Contract.)"

3. Section 11.A, General Indemnification, is deleted in its entirety and following is inserted in lieu thereof:

   "To the fullest extent allowable by law, Contractor shall hold harmless, defend at its own expense and indemnify OCII and the City, and its respective commissioners, members, officers, agents and employees against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, arising directly or indirectly from all acts or omissions to act of contractor or its officers, agents or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses arising from OCII's negligence or willful acts and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its officers, agents or employees. In addition to Contractor's obligation to indemnify OCII and the City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend OCII and the City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by OCII and/or the City and continues at all times thereafter. This section does not apply to contracts for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8."

4. Miscellaneous. The following miscellaneous provisions apply to this Third Amendment:

   a. Incorporation. This Third Amendment constitutes a part of the Contract and any reference in any document to the Contract as amended hereby.

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

c. Successors and Assigns. This Third Amendment shall be binding upon and inure to the benefit of the successors and assigns of OCII (including the City or its assignee) and Contractor, subject to the limitations set forth in the Contract.

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

e. Governing Law; Venue. This Third Amendment 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 Third Amendment shall be litigated in courts located within the County of San Francisco, State of California.

f. Integration. This Third Amendment contains the entire agreement between the parties with respect to the subject matter of this Third Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this Third Amendment. No prior drafts of this Third Amendment or changes from those drafts to the executed version of this Third Amendment 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 Third Amendment.

[**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**]

IN WITNESS WHEREOF the parties have executed this Third Amendment to the Contract as of the date first above written.

OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, Successor Agency to the San Francisco Redevelopment Agency, a public body, corporate and politic

By:______________________________
Nadia Sesay
Executive Director

MJM MANAGEMENT GROUP, a California corporation

By: Mary J McCue
Mary McCue
President/CEO
Federal Tax ID#94-3141456

APPROVED AS TO FORM:

By:_________________________
James B. Morales
General Counsel

Authorized by OCII Resolution No. __ -2018 adopted on _____ ___, 2018.

RECOMMENDED:

DEPARTMENT OF REAL ESTATE

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

ATTACHMENT 4

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

THIRD AMENDMENT TO YERBA BUENA GARDENS PROGRAMMING AGREEMENT

This Third Amendment to Personal Services Contract (the "**Third Amendment**") is dated for reference purposes as March _____, 2018, 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 Yerba Buena Arts and Events, a California non-profit, public benefit corporation ("**YBA&E**").

RECITALS

This Third Amendment is made with reference to the following facts and circumstances:

A. The Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, (the "**Former Agency**") was dissolved on February 1, 2012 pursuant to California Health and Safety Code Sections 34170 et seq. (the "**Redevelopment Dissolution Law**"), which vested in successor agencies certain authority, rights, powers, duties, and obligations to complete work related to approved enforceable obligations and to wind down redevelopment activities.

B. Under Redevelopment Law, the Successor Agency succeeded to the organizational status of the Former Agency, and assumed all enforceable obligations of the Former Agency, including ownership of the Former Agency's real property in the former Yerba Buena Center Redevelopment Project Area D-1 (the "**Former YBC Project Area**"). See also 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).

C. As a result of these legislative acts the Successor Agency (1) became a separate public entity 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 YBC Project Area.

D. In 2000, the Former Agency, together with the Yerba Buena Alliance, formed YBA&E to provide essential artistic programming required at the Gardens. On July 11, 2000, the Former Agency entered into the Yerba Buena Gardens Programming Agreement with YBA&E to plan, program, and manage a variety of cultural and community events and activities in the Gardens (the "**Original Agreement**"), which expired on June 30, 2013. The Original Agreement was extended, by Resolution No. 22-2013 (June 4, 2013), for two years to June 30, 2015 (the "**First Amendment**") and amended, by Resolution No. 28-2015 (May 5, 2015), for a three year period from July 1, 2015 through June 30, 2018 (the "**Second Amendment**"). Together, the Original Agreement, the First Amendment, the Second Amendment, and this Third Amendment comprise the "**Agreement**."

E. 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 Oversight Board Resolution No. 14-2015 (Nov. 23, 2015). The PMP establishes a plan to transfer the entirety of the Gardens to the City for a governmental purpose. In addition, Oversight Board Resolution No. 14-2015 also authorizes OCII, upon approval of the PMP, to take all actions as needed, to the extent permitted under applicable law, to implement the PMP.

F. OCII Resolution No. 28-2015 contemplated that in the 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 public solicitation process for artistic programming services, the City and/or the Successor Agency may consider, among other options, extending the Agreement term for a limited term until it undertakes a public solicitation process.

G. The City, as the future property owner, has requested this extension of the term to the Agreement, which will (1) allow the City a transition period and ensure smooth ongoing operations of the Gardens, and (2) also provide the City, or its assignee, time to undertake a public solicitation process for Gardens artistic programming services prior to the end of the Agreement term. As required under Redevelopment Dissolution Law, Cal. Health & Safety Code § 34181 (a) and the PMP, OCII intends to transfer the Gardens assets to the City and, to facilitate the transfer, OCII intends to assign its rights, titles and interests in the Agreement to the City.

H. The proposed Third Amendment would extend the Agreement for one additional year commencing on July 1, 2018 and terminating on June 30, 2019, with two one-year extensions that the City, or its assignee, may exercise in its sole discretion.

I. Under OCII's DOF-approved PMP, OCII has a continuing obligation to fund programming in the Gardens until it is transferred to the City. In addition, this type of programing 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 required 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." DOF-accepted enforceable obligations are found in an approved Recognized Obligation Payment Schedule ("**ROPS**").

J. The City, upon assumption of the Agreement, intends to assume the cost of the YBA&E's fee for the one-year extension in the amount of $75,000, which is subject to the funding provisions of the Agreement, including the approval of the Gardens Fiscal Year 2018-2019 budget by the Board of Supervisors of the City and County of San Francisco. The source of funds for the fee comes from revenue generated from existing short- and long-term commercial and ground leases, operating leases, and development exactions/fees in the Former YBC Project Area. This revenue source is 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, maintenance (including capital improvements), and security of the Gardens.

K. Extension of the Agreement pursuant to this Third Amendment meets the sole source method requirements under Section IX.D.1.e. of OCII's Purchasing Policy because OCII's assets and financial investments are at risk and the urgent need for appropriate property management of the Gardens will not permit the delay required to complete other procurement methods. In addition, the Contractor has previously provided the needed services to OCII and in doing so has performed satisfactorily and has gained specific information and experience making them uniquely qualified to provide the needed services. Section IX.D.1.d. of OCII's Purchasing Policy.

L. OCII and YBA&E seek to enter into this Third Amendment upon the basis of the terms, covenants and conditions set forth below. In anticipation of the assignment and assumption of the Agreement to the City (the "Assignment Agreement"), the City has consented to this Third Amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Successor Agency and YBA&E agree as follows:

1. Section 3.(b) <u>Extended Terms</u> is deleted in its entirety and replaced with the following:

   "Extended Terms were exercised in two-year increments by the Former Agency from July 1, 2002 through June 30, 2013. On June 4, 2013, the Commission extended, by Resolution No. 22-2013, the Agreement for an additional two-year period, which began on July 1, 2013 and ended on June 30, 2015. On May 5, 2015 the Commission approved, by Resolution No.28-2015, a Second Amendment extending the term for a three-year period from July 1, 2015 through June 30, 2018. This Third Amendment extends the term for a one-year period from July 1, 2018 through June 30, 2019 (the "**Extended Agreement Term**"); subject to two (2), one-year (1-year) term extensions at the sole discretion of the successors and assigns of OCII (the "**Discretionary Extensions**"); and subject further to the incorporation of standard City contracting provisions under local law and policy that the successors and assigns of OCII may require at any time during the Extended Contract Term or the Discretionary Extensions."

2. Section 4.(a) <u>Funding for Initial Term</u> is amended to include the following:

   "Section 4.(a)(iii) <u>Funding for the Extended Term Agreement and Discretionary Extensions.</u> The City, upon assumption of the Agreement through the Assignment Agreement, intends to assume the cost of the one-year extension in the amount of $75,000, subject to the funding provisions of the Agreement, including the approval of the Gardens Fiscal Year 2018-2019 budget by the Board of Supervisors of the City and County of San Francisco.

3. Section 4.(b) Funding Obligation is amended to include the following:

"The obligation to make any payments under the Agreement is subject to, the availability of funds, including the approval of the Gardens Fiscal Year 2018-2019 budget by the Board of Supervisors of the City and County of San Francisco."

4. Section 15, Indemnification, is deleted in its entirety and following is inserted in lieu thereof:

"To the fullest extent allowable by law, YBA&E shall hold harmless, defend at its own expense and indemnify OCII and the City, its respective commissioners, members, officers, agents and employees against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, arising directly or indirectly from all acts or omissions to act of YBA&E or its officers, agents or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses arising from OCII's negligence or willful acts and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on YBA&E, its officers, agents or employees. In addition to YBA&E's obligation to indemnify OCII and the City, YBA&E specifically acknowledges and agrees that it has an immediate and independent obligation to defend OCII and the City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to YBA&E by OCII and/or the City and continues at all times thereafter. This section does not apply to contracts for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8."

5. Miscellaneous. The following miscellaneous provisions apply to this Third Amendment:

   a. Incorporation. This Third Amendment constitutes a part of the Agreement and any reference in any document to the Agreement as amended hereby.

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

   c. Successors and Assigns. This Third Amendment shall be binding upon and inure to the benefit of the successors and assigns of OCII and YBA&E, subject to the limitations set forth in the Agreement.

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

   e. Governing Law; Venue. This Third Amendment 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 Third Amendment shall be litigated in courts located within the County of San Francisco, State of California.

f. Integration. This Third Amendment contains the entire agreement between the parties with respect to the subject matter of this Third Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this Third Amendment. No prior drafts of this Third Amendment or changes from those drafts to the executed version of this Third Amendment 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 Third Amendment.

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IN WITNESS WHEREOF OCII and YBA&E have executed this Third Amendment to the Agreement as of the date first above written.

YBA&E:

YERBA BUENA ARTS AND EVENTS, a California non-profit, public benefit corporation

By:______________________________

Linda Lucero, Executive Director

Federal Tax Identification No. 94-3368964

OCII:

OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic

By:______________________________

Nadia Sesay

Executive Director

APPROVED AS TO FORM:

By:__________________________

James B. Morales

General Counsel

Authorized by OCII Resolution No. __ -2018 adopted on _____ ___, 2018.

RECOMMENDED:

DEPARTMENT OF REAL ESTATE

By:__________________________

John Updike

Director of Property

City and County of San Francisco

ATTACHMENT 5

ASSIGNMENT AND ASSUMPTION AGREEMENT (YERBA BUENA GARDENS PROGRAMMING AGREEMENT AND PERSONAL SERVICES CONTRACT WITH MJM MANAGEMENT GROUP)

This Assignment and Assumption Agreement ("Assignment") is dated for reference purposes as _____________, 2018 , 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 ("Successor Agency" or "OCII"), as Assignor and the City and County of San Francisco, a municipal corporation, acting by and through the Department of Real Estate ("City") as "Assignee."

RECITALS

A. Over a forty-year period, the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, ("Former Agency") implemented a program of redevelopment under the Yerba Buena Center Redevelopment Plan, which provided for, among other things, the acquisition of various properties for, and the funding and development of, Yerba Buena Gardens, located within three central blocks of the Yerba Buena Center Redevelopment Project Area ("YBG"). The Former Agency and the Successor Agency retained certain properties within YBG and directly managed and operated these properties (the "YBG Properties").

B. In 2000, the Former Agency, together with the Yerba Buena Alliance, formed Yerba Buena Arts and Entertainment, a California non-profit, public benefit corporation ("YBA&E") to provide essential artistic programming required at the YBG Properties' Gardens (the "Gardens"). On July 11, 2000, the Former Agency entered into the Yerba Buena Gardens Programming Agreement with YBA&E to plan, program, and manage a variety of cultural and community events and activities in the Gardens (the "Original YBA&E Agreement") which expired on June 30, 2013. The Commission on Community Investment and Infrastructure (the "Commission") extended, by Resolution No. 22-2013 (June 4, 2013), the Original YBA&E Agreement for two years to June 30, 2015 (the "First Amendment") and extended it again on May 5, 2015 for a three year period from July 1, 2015 through June 30, 2018 (the "Second Amendment"). The Commission extended, by Resolution No. _____ (____, 2018) the Original YBA&E Agreement, for a _____ period from July 1, 2018 through June 30, 2019 ("Third Amendment"). The Original YBA&E Agreement, as amended, comprises the "YBA&E Agreement".

C. On July 1, 2009, the Former Agency and MJM Management Group, a California Corporation (the "Contractor") entered into a three-year personal services contract for property management services for the Gardens with one three-year option to extend (the "Original MJM Contract"). The Original MJM Contract was amended in August 2010 to update insurance, indemnification, and equal opportunity provisions (the "First Amendment"). In May 2012, in accordance with the terms of the Original MJM Contract, the OCII Executive Director extended the term to June 30, 2015. The Original

MJM Contract, as amended by the First Amendment, was extended for an additional three years from June 30, 2015 to June 30, 2018 by the Commission pursuant to Resolution No. 27-2015 adopted on May 5, 2015 (the "Second Amendment"). The Commission extended, by Resolution No. _____ (____, 2018) the Agreement for a _____ period from July 1, 2018 through June 30, 2019 ("Third Amendment"). The Original MJM Contract, as amended, comprises the "MJM Agreement." (Together, the YBA&E Agreement and the MJM Agreement are referred to as the "Agreements.")

D. On February 1, 2012, California law dissolved all redevelopment agencies, including the Former Agency, pursuant to California Health and Safety Code Sections 34170 et seq. ("Redevelopment Dissolution Law"). By operation of law, the assets of the Former Agency were transferred to the Successor Agency, which also assumed all of the Former Agency's enforceable obligations. These assets and obligations included the YBG Properties, and certain related recorded and unrecorded leases ("YBG Leases") and certain related recorded and unrecorded agreements (together "YBG Leases and Agreements").

E. Redevelopment Dissolution Law requires successor agencies to former redevelopment agencies to dispose of the former agencies' property assets under a Long-Range Property Management Plan ("PMP") pursuant to Cal. Health and Safety Code, Section 34191.5. On November 23, 2015, the Oversight Board of the City and County of San Francisco approved, by Resolution No. 14-2015, the Successor Agency's PMP. On December 7, 2015, the California Department of Finance ("DOF") approved the Oversight Board's resolution regarding the PMP, which provides, among other things, for the transfer of the YBG Properties, and the YBG Leases and Agreements to the City for a "governmental purpose." Cal. Health & Safety Code § 34181 (a).

F. The source of funds for payment of the assigned Agreements is a restricted account into which the Successor Agency deposits revenues generated from existing short- and long-term commercial and ground leases, operating agreements, and development exactions/fees in the Former Yerba Buena Center Redevelopment Project Area (the "Separate Account"). Under enforceable obligations, the Separate Account may be used only for operation, maintenance (including capital improvements), and security of YBG (which includes the services provided under the Agreements).

G. On April 27, 2017, the Successor Agency filed a civil complaint against YBA&E for damages to the Crescent Pool at YBG associated with an event for which YBA&E had received a permit. Successor Agency to the Redevelopment Agency of the City and County of San Francisco v. San Francisco Museum of Modern Art, et al. (No. CGC-17-558438, San Francisco Superior Court) (the "Crescent Pool Litigation"). Costs associated with this claim are being paid from the Separate Account.

H. As required under Redevelopment Dissolution Law, Cal. Health & Safety Code § 34181 (a) and the PMP, OCII and the City intend to transfer the YBG Properties from OCII to the City by quitclaim deed. At this time, the City and OCII are entering into this Assignment that transfers all of the Successor Agency's rights, titles, and interests in the Agreements to the City, and the City has agreed to accept and assume all of the Successor Agency's obligations under the Agreements.

NOW THEREFORE, for good and valuable consideration received, Assignor and Assignee agree as follows:

1. The Effective Date of this Assignment shall be the latest of (a) the date that both parties have duly executed this Assignment, or (b) the date that the Board of Supervisors' resolution approving this Assignment is adopted (the "Effective Date").

2. Assignor hereby irrevocably grants, conveys, assigns and transfers to Assignee all of Assignor's rights, title and interest in and to the Agreements.

3. Assignee hereby accepts assignment of Assignor's rights, title, and interest in the Agreements from Assignor and assumes Assignor's obligations under the Agreements from and after the Effective Date.

4. The parties hereby agree that funds from the Separate Account will continue to fund services and other amounts due under the Agreements from and after the Effective Date.

5. Assignor agrees to indemnify, defend, and protect Assignee against, and hold Assignee harmless from, any and all liabilities, losses, claims, suits, damages, and expenses, including, without limitation, reasonable attorneys' fees and defense costs ("Losses"), relating to, arising from, or in connection with the Agreements accruing on or before the Effective Date; provided, however, that any costs associated with these Losses, including the Crescent Pool Litigation, will be paid from the Separate Account. Assignee agrees to indemnify, defend, and protect Assignor against, and hold Assignor harmless from, any and all liabilities, losses, claims, suits, damages, and expenses, including, without limitation, reasonable attorneys' fees and defense costs relating to the Agreements and accruing subsequent to the Effective Date.

6. Assignor represents to Assignee, to its knowledge: (1) Assignor has delivered true and correct copies of the Agreements to Assignee and (2) Assignor is not aware of any defaults under the Agreements.

7. This Assignment shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

8. The parties hereby agree to execute such other documents and perform such other acts as may be necessary or desirable to carry out the purposes of this Assignment.

9. This Assignment may be executed in one or more counterparts, each of which so executed shall be deemed an original, regardless of its date and\or delivery, and said counterparts, taken together, shall constitute one document.

10. As a condition of the assignment of the Agreements to the City, or of City's consent to any future extension of same, the City may require standard City contracting provisions under San Francisco Administrative Code or other Laws to be incorporated into the Agreements.

11. This Assignment shall be enforced and interpreted according to the laws of the State of California as applied to contracts that are executed and performed entirely in the State of California, without regard to, or giving effect to any choice of laws doctrine.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, OCII ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL THE CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS AGREEMENT, AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY; THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF A RESOLUTION, AND THIS AGREEMENT, SHALL BE NULL AND VOID UNLESS THE CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS ASSIGNMENT, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS AGREEMENT BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement as of the date first noted above.

ASSIGNOR:

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: ____________________________

Nadia Sesay
Executive Director

APPROVED AS TO FORM:

By: ____________________________

James B. Morales
General Counsel

ASSIGNEE:

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Department of Real Estate

By: ____________________________

John Updike
Director of Property

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: ____________________________

Heidi J. Gewertz
Deputy City Attorney

Authorized by San Francisco Board of Supervisors Resolution No. _____-2018 adopted on ____________________________, 2018