

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 6-2018

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

WHEREAS, 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; and,

WHEREAS, 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); and,

WHEREAS, 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; and,

WHEREAS, On July 11, 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”; and,

WHEREAS, 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; and,

WHEREAS, OCII Resolution No. 28-2015 contemplated that in the event that (1) the Gardens had 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, the City and/or the Successor Agency may consider, among other options, extending the Programming Agreement term for a limited term until it undertakes a public solicitation process; and,

WHEREAS, As required under Redevelopment Dissolution Law, Cal. Health & Safety Code § 34181 (a) and the PMP, OCII and the City intend to transfer the Gardens assets from OCII to the City and, to facilitate the transfer, OCII will assign its rights, titles and interests in the Agreement to the City through the execution of an Assignment and Assumption Agreement. The City, as the future property owner, has requested this extended term to the Programming 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; and,

WHEREAS, The proposed Third Amendment would extend the Programming Agreement for one additional year until June 30, 2019, with two one-year extensions that the City may exercise in its sole discretion; and,

WHEREAS, The City, upon assumption of the Programming Agreement, intends to assume the cost of the one-year extension in the amount of \$75,000, which is subject to the funding provisions of the Programming 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; and,

WHEREAS, Extension of the Programming Agreement meets the sole source method requirements under Section IX.D.1.e. of the Successor Agency’s Purchasing Policy because the Successor Agency’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, YBA&E has previously provided the needed services to the Successor Agency and has gained specific information and experience making them uniquely qualified to provide the needed services per Section IX.1.d. of the Successor Agency’s Purchasing Policy; and,

WHEREAS, 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 programming of the outdoor spaces is an essential ingredient of the success and activation of the Gardens, and is therefore, an important aspect of the overall property management activities at the Gardens. As such, this property management activity is an enforceable obligation. California Health Safety Code §34171(d)(1)(F) (defining enforceable obligations to include “[c] contracts or agreements necessary for the administration or operation of the Successor Agency”). It is also part of the “winding down” of redevelopment agencies that is 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”); and,

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

WHEREAS Authorization of the Third Amendment to provide artistic programming at the Gardens is part of the normal operations of an existing facility for public gatherings and is therefore categorically exempt from environmental review under the California Environmental Quality Act (“CEQA”), pursuant to CEQA Guidelines Section 15323; now therefore, be it

RESOLVED, that the Executive Director of the Successor Agency is authorized to execute a Third Amendment to the Programming Agreement with Yerba Buena Arts and Events, a California non-profit, public benefit corporation, substantially in the form of the Third Amendment on file with the Secretary of this Commission, to extend the term of the Programming Agreement by one year for an amount not to exceed

\$75,000, with a total aggregate amount not to exceed \$2,175,000, 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 March 20, 2018.

Commission Secretary