

**MEMORANDUM OF UNDERSTANDING
RELATED TO NURSERY PROJECT**

between

City and County of San Francisco
Recreation and Park Department

and

San Francisco Botanical Garden Society

This Memorandum of Understanding (“MOU”) is made and entered into as of February 24, 2021 (the “Effective Date”), by and between the City and County of San Francisco (the “City”), acting by and through the Recreation and Park Department (“RPD”), and the San Francisco Botanical Garden Society, a California non-profit public benefit corporation (“SFBGS”).

A. WHEREAS, RPD and SFBGS are parties to a Lease and Management Agreement for the San Francisco Botanical Garden, dated December 11, 2013, which contemplates SFBGS providing RPD a gift of a nursery project (the “Project”); and

B. WHEREAS, The Lease and Management Agreement incorporates by reference a Construction Agreement between RPD and SFBGS, which sets forth additional terms and conditions concerning the Project; and

C. The Lease and Management Agreement and Construction Agreement envisioned that SFBGS would complete the Project based on a conceptual design that the Recreation and Park Commission approved in 2012 (Resolution No. 1203-08), subject to the ability of SFBGS to raise the balance of the necessary funds to complete the Project; and

D. WHEREAS, Based on its fundraising efforts and after further accounting for the needs of the Garden and in consultation with RPD, the SFBGS has proposed a revised design for the Project, as set forth in the attached conceptual plan (Exhibit A), and RPD believes it is in the best interests of the City to move forward with the revised design; and

E. WHEREAS, On February 18, 2021, the Recreation and Park Commission approved the conceptual plan for the revised Project and directed that the revised Project should proceed;

NOW, THEREFORE, the Parties agree as follows:

1. SFBGS shall complete the Project consistent with the new conceptual design (Exhibit A), notwithstanding any reference in the Lease and Management Agreement or Construction Agreement to the proposed 2012 design. All other provisions of the Lease and Management Agreement and Construction Agreement shall remain unmodified and in full force and effect. SFBGS, in its capacity as authorized representative, will provide to RPD the following:

(a) Three sets of plans for the improvements to be constructed by SFBGS, which shall be consistent with the Conceptual Plan approved by the Commission on February 18, 2021 and the plans approved by the Civic Design Committee as of the applicable

date, one set each at 90% completion of schematic design, 90% completion of design development, and 100% completion of construction documents. The 100% construction documents set shall be signed by a licensed landscape architect and architect and applicable engineers as per industry standards. Each set of plans shall be reviewed by RPD.

(b) All labor, materials, and project and construction management services necessary for construction of the Improvements pursuant to the approved plans and specifications

- 2. SFBGS acknowledges and agrees to comply with the recordkeeping and disclosure requirements in exhibit B.

IN WITNESS WHEREOF, the Parties execute this Memorandum of Understanding.

<p>CITY AND COUNTY OF SAN FRANCISCO</p> <p>DocuSigned by:  <small>AF27F6596709494</small></p> <p>By: Philip A. Ginsburg, General Manager Recreation and Park Department</p> <p>DATE: 2/24/21</p>	<p>SAN FRANCISCO BOTANICAL GARDEN SOCIETY</p> <p>By:  Stephanie Linder, Executive Director San Francisco Botanical Garden Society</p> <p>DATE: 2/24/21</p>
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APPROVED AS TO FORM:

DENNIS J. HERRERA
CITY ATTORNEY

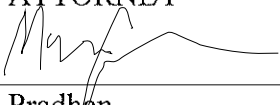
By: 
Manu Pradhan
Deputy City Attorney

EXHIBIT A – CONCEPTUAL DESIGN

Exhibit B

San Francisco Botanical Society (SFBGS) MOUs – Controller Provisions

Disclosure Obligations; Recordkeeping and Auditing

- A. **Acknowledgment of Disclosure Obligations under City Law.** San Francisco Administrative Code Section 67.29-6 requires the Department to disclose on its website the amount and source of all money, goods or services worth more than \$100 in the aggregate for the purpose of carrying out or assisting any City function. For all gifts, grants, and other donations received under this MOU, the disclosure must identify SFBGS as the contributor, the amounts contributed, and a statement as to any financial interest SFBGS has involving the City, including a contract, grant, lease, or request for license, permit, or other entitlement for use. Under the Administrative Code, the Department must post this information on its website within 30 days of the date of any such donation. If required by City law, the Department must also disclose this or other information about donations from SFBGS in any related resolution or ordinance , submitted to the Board of Supervisors for approval.
- B. **SFBGS' Reporting & Disclosure Obligations.**
1. **Donor and Grant Information.** SFBGS agrees to comply with San Francisco Administrative Code Section 67.29-6 by posting on its website the names of all individuals or organizations that contribute \$100 or more to SFBGS, by gift, grants, or other instruments, in the form of money, goods, or services, for the purpose of carrying out or assisting the Department's performance of its City functions; the amounts contributed; and a statement as to any financial interest the donor contributing to the SFBGS has involving the City, including any donor's contract, grant, lease, or request for license, permit, or other entitlement for use. SFBGS will post this information on its website within 30 days of receipt of any gift, grant or other instrument, and will also provide this information to the Department each year by no later than July 15 for the preceding fiscal year. SFBGS will maintain this donor information on its website until at least the end of the fifth fiscal year after the donation. To ensure compliance with this requirement and to maximize public transparency, SFBGS will not accept anonymous donations from a single source aggregating more than \$100 for purposes covered under this MOU. These provisions shall also apply to any grants received by SFBGS, if those grant funds are transferred to the City for the purpose of carrying out or assisting any City function.
 2. **Financial Reports.** SFBGS will provide to the Department and the Department will upload a PDF (searchable text) copy of the SFBGS' annual audited financial report and IRS Form 990 annual tax return into the City's financial system as part of the MOU documentation and prior to City's execution of this MOU. The annual audited financial report filings provided by the SFBGS must include detailed information about the SFBGS' total sources and uses of funds and also the sources and uses of funds dedicated to support the Department covered under this MOU, the names of the SFBGS' Board of Directors and Officers, and the

names of any and all payees of Funds covered by this MOU, including consultants, contractors and subcontractors and any current or past City employees paid and any funds provided directly to the City Department to support the Department's functions including but not limited to employee recognition and public events. Additionally, SFBGS will post its audited financial report and its IRS Form 990 and all related tax return schedules on its website annually within 60 days of the completion of each.

3. **Links to SFBGS Website.** The Department will provide a link on its website to SFBGS' website for the public to readily access the information required under this MOU. SFBGS will also post this MOU on its website along with copies of any other copies of Grant Awards or other City Contracts and MOU Agreements with any City Department including the Department covered by this MOU.
4. **SFBGS' Supplier Registration.** As part of the MOU Agreement execution, the SFBGS must register and submit an IRS Form W-9 through the SF City Partner portal, a complete copy of their most recent IRS Form 990 tax return and complete their Approved Supplier set up through the Controller's Supplier Management Unit.
5. **SFBGS' Invoices through SF City Partner Online (eSettlements) site.** If the MOU Agreement includes invoicing by SFBGS to the City Department, all invoices must be submitted online with any/all required supporting documentation through the SF City Partner portal's Online eSettlements site.

C. Recordkeeping and Auditing.

1. **Recordkeeping.** SFBGS will maintain books and records relating to this MOU, in accordance with generally accepted accounting practices consistently applied, that contain all information required to allow the Department and/or the City's Controller, at their discretion, to audit SFBGS' records and to verify contributions and expenditures in accordance with this MOU.
2. **Auditing.** SFBGS shall make such books and records relating to this MOU available to the Department and/or the City's Controller (or their representatives) upon commercially reasonable prior written notice, but in no event more than ten (10) days after such notice is provided to conduct an audit. SFBGS shall retain and shall allow the Department and/or the City's Controller to access such books and records for a period of the later of (i) five (5) years after the end of each year to which such books and records apply, (ii) five (5) years after the issuance date of the SFBGS' audited financial statement or the IRS Form 990 annual tax return to which such books and records apply, or (iii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the contributions or expenditures hereunder, until such audit or controversy is terminated.

