

1 [Lease and Management Agreement - Botanical Garden Society - Waiving Fees - Botanical
2 Garden at Strybing Arboretum in Golden Gate Park]

3 **Ordinance approving and authorizing a Lease and Management Agreement between**
4 **the City and the San Francisco Botanical Garden Society for the San Francisco**
5 **Botanical Garden at Strybing Arboretum in Golden Gate Park, with an initial term of 10**
6 **years with two ten-year extension options; waiving the non-resident admission fee in**
7 **Park Code, Section 12.46(d) for certain persons and entities as set forth in the Lease**
8 **and Management Agreement; ratifying prior acts in connection with this Ordinance;**
9 **and making environmental findings.**

10 NOTE: Additions are *single-underline italics Times New Roman*;
11 deletions are ~~*strike through italics Times New Roman*~~.
12 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. **Findings.**

15 (a) The San Francisco Botanical Garden Generally. The City and County of San
16 Francisco (the "City") owns the San Francisco Botanical Garden (the "Botanical Garden"),
17 formerly known as Strybing Arboretum, a 55-acre garden and associated facilities located in
18 the southeast portion of San Francisco's Golden Gate Park along Martin Luther King Jr. Drive
19 and Lincoln Way, between 9th Avenue and 19th Avenue. The Recreation and Park
20 Commission has jurisdiction over the Botanical Garden and is responsible, through the City's
21 Recreation and Park Department ("RPD"), for its operation and management. The Botanical
22 Garden is a living museum of more than 8,000 different kinds of plants, many rare and
23 endangered and no longer found in their native habitats, and is a treasure for the residents of
24 San Francisco and the Bay Area as well as for visitors from around the world.

1 (b) The San Francisco Botanical Garden Society. The San Francisco Botanical
2 Garden Society (“SFBGS”) is a nonprofit 501(c)(3) corporation devoted to supporting,
3 promoting, and enhancing the use, appreciation and stature of the Botanical Garden. SFBGS
4 has provided crucial support and assistance to the City in the management and operation of
5 the Botanical Garden since 1955, including the construction and donation of the Helen
6 Crocker Russell Library Building; management and operation of the Library and Visitor
7 Orientation Center and Bookstore; funding and developing a special area plan (the “Botanical
8 Garden Master Plan”) for the Golden Gate Park Master Plan; providing education and visitors
9 programs, visitor publications, curatorial and plant collections management services,
10 community programming, horticulture education and volunteer programs; planning and
11 managing improvements to the Botanical Garden; paying costs to support the hiring of an
12 eleventh City gardener dedicated solely to the care and maintenance of the Botanical Garden;
13 and fundraising to support the Botanical Garden.

14 (c) The City and SFBGS’s Prior Agreements. On March 1, 2002, the City and SFBGS
15 entered into (i) a Memorandum of Agreement (Strybing Arboretum) (the “Cooperation
16 Agreement”), pursuant to which RPD and SFBGS agreed to cooperatively manage the
17 Botanical Garden, with RPD taking a primary role in managing certain functions and SFBGS
18 taking a primary role in managing other functions, and (ii) a lease (the “Original Lease”)
19 pursuant to which SFBGS leased from the City certain office space, library space, horticultural
20 space and book kiosk space within the Botanical Garden. The terms of the Cooperation
21 Agreement and the Original Lease have expired, and the City and SFBGS have continued to
22 operate under the terms of such agreements. In addition, the City and SFBGS entered into a
23 Grant Agreement, dated July 1, 2010 (as amended, the “Grant Agreement”), pursuant to
24 which the City provided a grant to SFBGS for the purpose of funding certain education and
25

1 community outreach and the operation and maintenance of the Botanical Garden's non-
2 resident entrance fee collection program. The Grant Agreement expires on June 30, 2013.

3 (d) Nursery Gift. SFBGS has offered to donate to the City the design and construction
4 of a Nursery Center for Sustainable Gardening within the Botanical Garden for the joint use of
5 the City and SFBGS (the "Nursery Project") as a gift-in-place valued at approximately \$14
6 million if SFBGS completes the Nursery Project. On April 10, 2012, the Board of Supervisors
7 adopted Resolution No. 125-12, in which the Board of Supervisors (a) adopted a Final
8 Mitigated Negative Declaration ("FMND") and a Mitigation Measuring and Reporting Program
9 (the "MMRP") for the Nursery Project, (b) imposed all the mitigation measures set forth in the
10 MMRP as conditions of such approval, and (c) accepted a gift-in-place to the City of the
11 Nursery Project valued at approximately \$14 million. Construction of the Nursery Project has
12 not commenced.

13 (e) Need for Continued Collaboration. The City and SFBGS recognize the need for
14 continued collaboration to meet the challenges and opportunities of creating and sustaining a
15 world-class botanical garden for the 21st century. The City and SFBGS have the shared goal
16 of creating one of the world's outstanding public botanical gardens, representing San
17 Francisco's horticultural heritage as well as diverse collections from around the world, and of
18 increasing levels of private and public financial support and resources to support such goal.
19 Towards that end, the City and SFBGS desire for SFBGS to continue to lease certain office
20 and related space in the Botanical Garden for administrative purposes, to lease and continue
21 to operate the Library, to access and utilize horticultural space in the Botanical Garden, and to
22 utilize space in the buildings within the Botanical Garden for educational seminars, receptions,
23 lectures and other special events. City and SFBGS further desire for SFBGS to provide
24 assistance with the operation and management of the Botanical Garden and with education,
25 fundraising and other activities which will support and enhance the Botanical Garden. The

1 City and SFBGS desire to provide a clear management structure that facilitates operation and
2 management of the Botanical Garden and SFBGS's efforts to raise funds to help augment
3 City funding for the Botanical Garden.

4 (f) Lease and Management Agreement. The City and SFBGS have negotiated a
5 Lease and Management Agreement that includes the following:

6 (1) An initial term of ten years, with two ten-year extension options.

7
8 (2) The leased premises shall consist of a portion of the Botanical Garden
9 comprised of the following, as generally depicted on Exhibits B-1 and B-2 of the Lease and
10 Management Agreement:

11 (i) Approximately 1,207 square feet of office space located in the rooms
12 presently designated as Rooms 1 and 3 of the San Francisco County Fair Building and in the
13 rooms presently designated as Rooms 23, 24, 25 and 30 of the Helen Crocker Russell Library
14 Building (collectively, the "Office Space"). SFBGS shall use the Office Space for office and
15 administrative purposes and community meetings.

16 (ii) Approximately 84 square feet of space constituting the bookstore and
17 approximately 800 square feet of space outside of the bookstore (the "Visitor Orientation
18 Center and Book Store"). SFBGS shall use the Visitor Orientation Center and Book Store
19 space for providing visitor orientation services and materials to the public and operation of a
20 book and gift store selling materials approved by RPD, including plant sales in the (space
21 outside the Visitor Orientation Center and Book Store.

22 (iii) Approximately 1378 square feet of space located in the rooms
23 presently designated as Rooms 31, 32, 35, 36, and 37 of the Library Building (the "Library
24 Space"), for operation of the Helen Crocker Russell Library of Horticulture. SFBGS shall use
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1 the Library Space for operation of a horticultural library open to the public during hours
2 approved by RPD and educational seminars and fundraising events at other times.

3 (iv) Horticultural space comprised of approximately 800 square feet of
4 space in the existing main greenhouse, approximately 800 square feet of space in the main
5 lath house, and approximately 80 square feet of space in the container growing grounds
6 (collectively, the "Horticultural Premises"), subject to adjustment from time to time by the City,
7 in its reasonable discretion. SFBGS shall use the Horticultural Premises for propagation and
8 sales of plants.

9 (v) Approximately 50 square feet of storage space located in the room
10 presently designated as Room 21 of the County Fair Building, and, subject to shared use by
11 the City, sufficient space in the room presently designated as Room 14 of the County Fair
12 Building for voice and data connections and a server closet (collectively, the "Storage and
13 Utility Space"). SFBGS shall use the Storage and Utility Space for the storage of supplies and
14 equipment incident to its operations.

15 (vi) Upon the completion of the Nursery Project and acceptance of the
16 improvements by RPD, the nursery (the "Nursery Premises") will be added to the leased
17 premises, with a portion of the Nursery Premises for the exclusive use of SFBGS and a
18 portion of the Nursery Premises available for shared used by SFBGS and RPD, as depicted
19 on Exhibit B-3 to the Lease and Management Agreement. Following completion of the
20 Nursery Project and demolition of the Horticultural Premises, SFBGS shall surrender the
21 Horticultural Premises to the City, and the leased premises shall thereupon be comprised of
22 the Office Space, the Visitor Orientation Center and Book Store, the Library Space, the
23 Storage and Utility Space and the Nursery Premises. SFBGS shall use the Nursery Premises
24 for observation, study, and community programs related to horticulture and natural resources
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1 conservation, the propagation and sales of plants related thereto, and nursery administrative
2 work areas.

3 (vii) In addition to the foregoing, the leased premises may be used for
4 educational and fundraising seminars, receptions, lectures, plant sales and other special
5 events sponsored by SFBGS. The leased premises shall not be used for any other purpose.

6 (3) SFBGS shall pay the City a base rent of \$100 per year.

7
8 (4) Fees paid by non-residents for admission to the Botanical Garden pursuant
9 to Park Code Section 12.46 and Section 6.11 of the Lease and Management Agreement
10 (“Admission Receipts”) shall be solely for the benefit of the Botanical Garden and shall be
11 allocated and distributed pursuant to the terms of Article 7 of the Lease and Management
12 Agreement and Exhibit E thereto. SFBGS shall collect Admission Receipts and remit them to
13 the City. Such receipts shall be distributed on a monthly basis by RPD according to the
14 following schedule:

15 (i) Admission Receipts shall first be used to reimburse SFBGS for its
16 approved “Authorized Collection Expenses” during such period. “Authorized Collection
17 Expenses” means all costs and expenses incurred by SFBGS in connection with its collection
18 of admission receipts, including personnel costs. “Authorized Collection Expenses” shall not
19 include capital expenses, penalties, late charges or interest on any late payments, or taxes or
20 other amounts withheld from wages or salaries which have not actually been paid by SFBGS
21 during the month for which reimbursement is being made.

22 (ii) Second, following the payment of the Authorized Collection Expenses
23 specified in (i) above, remaining Admissions Receipts shall next be paid to RPD until RPD has
24 received an aggregate amount of \$250,000 per Fiscal Year, provided, however, that before
25 the allocation is used for any other Botanical Garden purpose, RPD shall use such allocation

1 to fund three gardeners who are dedicated solely to the care and maintenance of the
2 Botanical Garden.

3 (iii) Third, any remaining Admissions Receipts shall next be paid to
4 SFBGS until the remaining approved direct out-of-pocket expenses that were incurred by
5 SFBGS during the first year of the non-resident admissions program ending June 30, 2011,
6 have been reimbursed.

7 (iv) Fourth, any remaining Admission Receipts shall next be paid to
8 SFBGS until SFBGS has received an aggregate of \$250,000 per fiscal year in addition to the
9 reimbursement for Authorized Collection Expenses described in (i) above. SFBGS shall
10 expend such admissions receipts for its costs and expenses for education, community
11 outreach, public programs and other initiatives.

12 (v) Finally, the balance of Admission Receipts shall be paid into the
13 "Botanical Garden Improvement Fund," which will be maintained by the City and shall not be
14 commingled with other City funds. Any interest accruing on the funds in the Botanical Garden
15 Improvement Fund shall be added to the Botanical Garden Improvement Fund. Expenditures
16 from the Botanical Garden Improvement Fund shall be used by the City only for the payment
17 of costs and expenses for maintenance, renovation and improvement of the Botanical Garden
18 and shall not be used for any other purpose unless the parties otherwise agree in writing.
19 Expenditures from the Botanical Garden Improvement Fund are intended to enhance the
20 Botanical Garden and not to replace traditional sources or levels of City funding.

21 (5) Under Section 6.11 of the Lease and Management Agreement, SFBGS is
22 not required to reimburse the City for the following nonresidents receiving free admission to
23 the Botanical Garden subject to the Board of Supervisors' approval by ordinance: (i) SFBGS
24 members, (ii) members of other botanical gardens participating with SFBGS in reciprocal
25 member programs, and (iii) school group students, teachers or chaperones. The Botanical

1 Garden will also be open to the public, including non-residents, without charge one day a
2 month, plus Thanksgiving, Christmas and New Year's Day.

3 A copy of the proposed Lease and Management Agreement is on file with the
4 Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by
5 reference.

6 (g) Public Benefits. The Board finds that the proposed Lease and Management
7 Agreement will have numerous public benefits, and will lessen the burden on the City in
8 operating and maintaining the Botanical Garden and in providing public programming and
9 education.

10 (h) Recreation and Park Commission Approval. Pursuant to San Francisco Charter,
11 Article IX, Section 9.118, any lease of real property for a period of ten or more years, including
12 options to renew, requires approval by the Board of Supervisors. On May 20, 2013, by
13 Recreation and Park Commission Resolution No. _____, a copy of which is on file with
14 the Clerk of the Board in File No. 130537, the Recreation and Park Commission
15 recommended that the Board of Supervisors approve the Lease and Management Agreement
16 between the City and SFBGS.

17 (i) Competitive Bidding Waiver. Pursuant to Chapter 23.33 of the Administrative Code,
18 the Board finds that due to the unique nature of the SFBGS as an organization dedicated
19 solely to supporting and promoting the Botanical Garden, competitive bidding the Lease and
20 Management Agreement is impractical or infeasible. The Board further finds that the Lease
21 and Management Agreement provides consideration in an amount not less than the fair
22 market value of the leased premises because the monetary value of the services and
23 functions that SFBGS will provide under the proposed Lease and Management Agreement
24 exceeds the fair market value of the leased premises. A 2012 appraisal report prepared for
25 the City by Clifford Advisory, LLC., a copy of which is on file with the Clerk of the Board in File

1 No. 130537, estimated the fair market value (“FMV”) of the initial leased premises, not
2 including the new Nursery Premises, as \$81,289 annually, and the FMV of the space to be
3 utilized by the SFBGS within the proposed Nursery Premises, if the Nursery Premises are
4 added to the leased premises, as \$302,773 annually. The annual value of the services and
5 support to the Botanical Garden to be provided by SFBGS under the Lease and Management
6 Agreement is estimated to be \$2,163,000, which far exceeds the FMV for the leased premises
7 even after the Nursery Premises are added to the leased premises, if applicable. SFBGS’
8 support includes employing a professional curatorial staff to assist RPD in plant collection
9 development (\$573,504), conducting youth education programming (\$210,429), operating the
10 Helen Crocker Russell Botanical Library (\$196,412), and volunteer management, docent
11 program, classes and public program (\$189,351), and garden improvements (\$283,264).
12 Further, if SFBGS completes the Nursery Project, the estimated cost of which is
13 approximately \$14 million, then upon completion SFBGS will donate the Nursery Project to
14 the City in accordance with Board of Supervisors Resolution 125-12 dated April 10, 2012.

15

16 **Section 2. Environmental Findings.**

17 This Lease and Management Agreement authorizes the existing, ongoing operation
18 and use of the San Francisco Botanical Garden at Strybing Arboretum by the San Francisco
19 Botanical Garden Society. No change in use is proposed, and this lease would not be
20 considered a project under the California Environmental Quality Act. As noted in Section 1,
21 the previously approved Nursery Project, approved by the Recreation and Park Commission
22 on March 15, 2012 by Resolution No. 1203-008, and by this Board on April 10, 2012 by
23 Resolution No. 125-12, was analyzed in a Final Mitigated Negative Declaration (“FMND”),
24 which was reviewed, considered, and adopted by both the Recreation and Park Commission
25 and this Board. By those same actions, the Recreation and Park Commission and this Board

1 also adopted the Mitigation Measuring and Reporting Program (“MMRP”) for the Nursery
2 Project. Both the FMND and the MMRP are on file with the Clerk of the Board of Supervisors
3 in File No. 120288 and are incorporated herein by reference.
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5 **Section 3. Approval of Lease and Management Agreement and waiver of non-**
6 **resident entrance fee for specified persons/entities.**

7 (a) The Board of Supervisors hereby authorizes the General Manager of the
8 Recreation and Park Department or his designee to execute and enter into the Lease and
9 Management Agreement with SFBGS in substantially the form filed with the Clerk of the
10 Board of Supervisors in File No. 130537.

11 (b) The Board of Supervisors waives the non-resident entrance fee in Park Code
12 Section 12.46(d) for the following non-resident persons and entities as set forth in the Lease
13 and Management Agreement filed with the Clerk of the Board of Supervisors in File No.
14 130537: 1) school group students, teachers and chaperones, 2) SFBGS members, 3)
15 members of other botanical gardens participating with SFBGS in reciprocal member
16 programs, and 4) the general public, including non-residents, one day per month, and on
17 Thanksgiving, Christmas and New Year’s Day.

18 (c) The Board of Supervisors authorizes the General Manager to enter into additions,
19 amendments, or other modifications to the Lease and Management Agreement (including,
20 without limitation, preparation and attachment of, or charges to, any or all of the exhibits) that
21 the General Manager, in consultation with the City Attorney, determines are in the best
22 interest of the City, do not materially decrease the benefits of the Lease and Management
23 Agreement to the City, do not materially increase the obligations or liabilities of the City, do
24 not authorize the performance of any activities without pursuing all required regulatory and
25 environmental review and approvals, and are necessary or advisable to complete the

1 transactions which the Lease and Management Agreement contemplate and effectuate the
2 purpose and interest of this Ordinance, such determination to be conclusively evidenced by
3 the execution and delivery by the General Manager of the Lease and Management
4 Agreement and any such additions, amendments, or other modifications to those documents.

5
6 **Section 4. Ratification of Prior Acts.**

7 All actions that City officers and employees have heretofore taken with respect to the
8 subject matter of this Ordinance and not inconsistent herewith are hereby approved,
9 confirmed and ratified.

10
11 **Section 5. Effective Date.** This ordinance shall become effective 30 days from the
12 date of passage.

13
14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16 By: _____
17 FRANCESCA GESSNER
18 Deputy City Attorney
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