

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 2 10-year extension options; waiving the non-resident admission fee in Park**  
7 **Code Section 12.46(d) for certain persons and entities as set forth in the Lease and**  
8 **Management Agreement; ratifying prior acts in connection with this Ordinance; and**  
9 **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;  
13 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 9<sup>th</sup> Avenue and 19<sup>th</sup> 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.  
25

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 1,378 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  
25

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  
25

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 every morning  
2 between 7:30 a.m. and 9:00 a.m., and all day, during its hours of operation, one day a month,  
3 plus Thanksgiving, Christmas and New Year's Day.

4 A copy of the proposed Lease and Management Agreement is on file with the  
5 Clerk of the Board of Supervisors in File No. 130537 and is incorporated herein by 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. 1305-11, a copy of which is on file with the  
14 Clerk of the Board in File No. 130537, the Recreation and Park Commission recommended  
15 that the Board of Supervisors approve the Lease and Management Agreement between the  
16 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



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

16  
17 **Section 2. Environmental Findings.**

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

1 and this Board. By those same actions, the Recreation and Park Commission and this Board  
2 also adopted the Mitigation Measuring and Reporting Program ("MMRP") for the Nursery  
3 Project. Both the FMND and the MMRP are on file with the Clerk of the Board of Supervisors  
4 in File No. 120288 and are incorporated herein by reference.

5  
6 **Section 3. Approval of Lease and Management Agreement and waiver of non-**  
7 **resident entrance fee for specified persons/entities.**

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

12 (b) The Board of Supervisors waives the non-resident entrance fee in Park Code  
13 Section 12.46(d) for the following non-resident persons and entities as set forth in the Lease  
14 and Management Agreement filed with the Clerk of the Board of Supervisors in File No.  
15 130537: 1) school group students, teachers and chaperones, 2) SFBGS members, 3)  
16 members of other botanical gardens participating with SFBGS in reciprocal member  
17 programs, and 4) the general public, including non-residents, every morning between 7:30  
18 a.m. and 9:00 a.m., and all day, during its hours of operation, one day per month, and on  
19 Thanksgiving, Christmas and New Year's Day.

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

1 not authorize the performance of any activities without pursuing all required regulatory and  
2 environmental review and approvals, and are necessary or advisable to complete the  
3 transactions which the Lease and Management Agreement contemplate and effectuate the  
4 purpose and interest of this Ordinance, such determination to be conclusively evidenced by  
5 the execution and delivery by the General Manager of the Lease and Management  
6 Agreement and any such additions, amendments, or other modifications to those documents.  
7


8 **Section 4. Ratification of Prior Acts.**

9 All actions that City officers and employees have heretofore taken with respect to the  
10 subject matter of this Ordinance and not inconsistent herewith are hereby approved,  
11 confirmed and ratified.  
12

13 **Section 5. Effective Date.** This ordinance shall become effective 30 days from the  
14 date of passage.  
15

16 APPROVED AS TO FORM:  
17 DENNIS J. HERRERA, City Attorney

18 By:

  
19 **FRANCESCA GESSNER**  
20 Deputy City Attorney

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## City and County of San Francisco

### Tails Ordinance

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 130537

**Date Passed:** July 23, 2013

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

June 20, 2013 Budget and Finance Committee - CONTINUED

June 21, 2013 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

June 21, 2013 Budget and Finance Committee - RECOMMENDED AS AMENDED

July 16, 2013 Board of Supervisors - PASSED ON FIRST READING

Ayes: 8 - Breed, Chiu, Cohen, Farrell, Kim, Tang, Wiener and Yee

Noes: 3 - Avalos, Campos and Mar

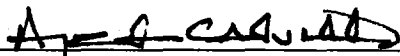
July 23, 2013 Board of Supervisors - FINALLY PASSED


Ayes: 8 - Breed, Chiu, Cohen, Farrell, Kim, Tang, Wiener and Yee

Noes: 3 - Avalos, Campos and Mar

File No. 130537

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/23/2013 by the Board of Supervisors of the City and County of San Francisco.

  
Angela Calvillo  
Clerk of the Board

  
Mayor

8/7/2013  
Date Approved