

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) n/a
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Public Works/Engineering	DATE: 10/17/2016
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SUBJECT: Balboa Park Plaza de Panama Project-Cooperation Agreement, Authorizing a Construction Contract, and related funding actions

PRIMARY CONTACT (NAME, PHONE): Richard Leja, (619) 533-5112, M.S. 908A	SECONDARY CONTACT (NAME, PHONE): Kris Shackelford, (619) 533-4121, M.S. 908A
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00



FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Financial Management	Park and Recreation	ORIG DEPT.	Nagelvoort, James 10/21/2016
Liaison Office	Equal Opportunity Contracting	CFO	
Environmental Analysis		DEPUTY CHIEF	Gomez, Paz 10/26/2016
Comptroller		COO	
Debt Management		CITY ATTORNEY	Rae, Christina
		COUNCIL PRESIDENTS OFFICE	

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

Accept the report and approve the requested actions as outlined in the report.

STAFF RECOMMENDATIONS:
Approve Requested Actions

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S): 3, Councilmember Gloria

COMMUNITY AREA(S):	Balboa Park
ENVIRONMENTAL IMPACT:	The City of San Diego as Lead Agency under CEQA has reviewed and considered Addendum No. 516820, to EIR No. 233958, and Mitigation, Monitoring, and Reporting Program covering this activity.
CITY CLERK INSTRUCTIONS:	

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 10/17/2016

ORIGINATING DEPARTMENT: Public Works/Engineering

SUBJECT: Balboa Park Plaza de Panama Project-Cooperation Agreement, Authorizing a Construction Contract, and related funding actions

COUNCIL DISTRICT(S): 3, Councilmember Gloria

CONTACT/PHONE NUMBER: Richard Leja/(619) 533-5112, M.S. 908A

DESCRIPTIVE SUMMARY OF ITEM:

Approve necessary actions to enter into agreements with Plaza de Panama Committee to accept donations for the previously approved project that will create additional parking, increase open accessible park area, improve traffic circulation, and limit pedestrian/vehicular conflicts.

Approved actions will also allow for construction of a new parking structure with a 2.2 acres roof-top park and a bypass bridge and road to divert vehicular traffic away from the pedestrian core of the park.

STAFF RECOMMENDATION:

Approve Requested Actions

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

Balboa Park is located in the heart of San Diego and is one of the City's largest developed parks at 1,172 acres and is host to numerous passive and active recreational activities, cultural institutions, and special events such as December Nights, Earth Fair, San Diego LGBT Pride and countless others. More than 12 million visitors come to Balboa Park each year to enjoy the diversity of activities the park has to offer.

This project proposes to restore the pedestrian and park uses to the core of Central Mesa and alleviate pedestrian/vehicular conflicts, while providing additional parking and maintaining access for emergency vehicles and ADA needs. The project consists of construction of a parking structure with a roof-top park, Centennial Bridge, Centennial Road, and improvements at El Prado, Plaza de Panama, Plaza de California, the Esplanade and Pan American Promenade.

On July 9, 2012, the City Council adopted amendments to the BPMP and CMPP to incorporate the proposed Project (Resolution R-307555) after an extensive public input process. City Council also certified the Environmental Impact Report (Project No. 233958/SCH No. 2011031074; R-307554) and approved Site Development Permit No. 837848 for the Project (R-307556).

The Project schedule was delayed by a legal challenge, however, the Court of Appeals ruled that the Project approvals were properly granted and the California Supreme Court declined to hear further appeals.

On September 19, 2016 City Council approved Resolution RR-310691 authorizing amendment to the FY 2017 Capital Improvement Program with the addition of CIP No. L-17002, Balboa Park Plaza de Panama Project. With this action, \$1 million was added to the CIP budget to fund

City expenditures for reviewing and finalizing construction drawings in conjunction with the Plaza de Panama Committee.

Please see the attached report to the City Council No. 16-089 for more detail.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal 2: Work in Partnership with all of our communities to achieve safe and livable neighborhoods

Objective 3: Invest in Infrastructure

FISCAL CONSIDERATIONS: Please see the attached report to the City Council No. 16-089 for more detail.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

Contracts or agreements associated with this action are subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

On July 9, 2012, after an extensive public input process, City Council adopted amendments to the BPMP and CMPP incorporating the Project (Resolution R-307555). City Council also certified the Environmental Impact Report (Project No. 233958/SCH No. 2011031074; R-307554), approved Site Development Permit No. 837848 (R-307556), and approved the Plaza de Panama Improvement Agreement (Document No. RR-307558).

On August 4, 2016 the Infrastructure Committee voted (4-0-0) to adopt the resolutions to create and fund CIP No. L-17002, Balboa Park Plaza de Panama Project, in the amount of \$1 million for the purpose of reviewing and finalizing the project design.

On September 19, 2016 City Council voted (8-1-0) to create and fund CIP No. L-17002, Balboa Park Plaza de Panama Project, in the amount of \$1 million for the purpose of reviewing and finalizing the project design.

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

This Project received a tremendous amount of community participation and input during the preparation of plan amendments and the Environmental Impact Report. The extent of community participation is further described in the Report to City Council, June 19, 2012, No. 12-080.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Balboa Park is one of the largest parks within the City's park system and is considered by many as the "crown jewel" of the system. Due to the park's central location, diverse recreational amenities, and historical significance it is visited by more than 14 million visitors each year and is considered a favorite local destination by city and county residents.

The projected impacts are described extensively throughout the Report to City Council, No. 12-080, and the Environmental Impact Report (EIR) and Addendum prepared for the Project.

Nagelvoort, James

Originating Department

Gomez, Paz

Deputy Chief/Chief Operating Officer



THE CITY OF SAN DIEGO

Report to the City Council

DATE ISSUED: October 24, 2016 REPORT NO.: 16-089
ATTENTION: Honorable Members of the Infrastructure Committee
SUBJECT: Balboa Park Plaza de Panama Project
REFERENCE: Balboa Park Plaza de Panama Project-Cooperation Agreement,
Authorizing a Construction Contract, and Related Funding Actions

REQUESTED ACTIONS:

1. Authorize the Mayor, or his designee, to enter into the Plaza de Panama Cooperation Agreement with the Plaza de Panama Committee (Committee) [Attachment 1]; and
2. On behalf of the residents of the City of San Diego, graciously accept all contributions to be made in the future from the Committee for this Project; and
3. Authorize the Mayor, or his designee, to negotiate and execute one or more agreements, for and on behalf of the City, to accept donations for the Project in a cumulative amount estimated to be \$30 million, and to deposit said funds in a special revenue fund; and
4. Authorize the Chief Financial Officer to increase the Capital Improvement Program (CIP) Budget in CIP No. L-17002, Balboa Park Plaza de Panama Project, and to appropriate and expend up to an additional \$48.0 million, of which up to \$1.0 million is from fund 400000, Capital Outlay-Sales Tax, up to \$8.0 million is from fund 400002, Capital Outlay-Misc. Revenue, up to \$39.0 million is from proceeds from the proposed bond issuance, for a total cap of \$49.0 million (which includes \$1 million previously approved by Council) on City expenditures for the Project; and
5. Authorize the Chief Financial Officer to increase the Capital Improvement Program Budget in CIP No. L-17002, Balboa Park Plaza de Panama Project, and to appropriate and expend up to \$30.0 million from donations to the City from the Plaza de Panama Committee and others; and
6. Authorize the Mayor, or his designee, to award a construction contract with the lowest responsible and reliable bidder in an amount not to exceed \$75.0 million, contingent upon the City Comptroller first certifying that funds are, or will be, on deposit with the City Treasurer; and
7. Authorize reimbursement through bond proceeds for any eligible costs which may be expended prior to the issuance of bonds.

STAFF RECOMMENDATION:

Approve the requested actions.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

Balboa Park, located in the heart of San Diego, is one of the City's largest developed parks at 1,172 acres and is host to numerous passive and active recreational activities, cultural institutions, and special events such as December Nights, Earth Fair, San Diego LGBT Pride

and countless others. It is estimated that more than 12 million visitors come to Balboa Park each year to enjoy a diversity of activities the Park has to offer.

Development, maintenance and management of Balboa Park are governed by the Balboa Park Master Plan (BPMP), Central Mesa Precise Plan (CMPP), East Mesa Precise Plan (EMPP) and subsequent amendments to these documents. The BPMP was adopted by City Council on July 25, 1989 (Resolution Number R-274090) and the CMPP was adopted by City Council on October 20, 1992 (Resolution Number R-280920). The BPMP speaks to the entirety of Balboa Park. The CMPP provides development guidelines for the central portion of the Park.

On July 9, 2012, the City Council adopted amendments to the BPMP and CMPP to incorporate the proposed Project (Resolution Number R-307555) after an extensive public input process. City Council also certified the Environmental Impact Report (EIR) (Project No. 233958/SCH No. 2011031074; Resolution Number R-307554) and approved Site Development Permit No. 837848 for the Project (Resolution Number R-307556).

The Project schedule was delayed by a legal challenge, however, the Court of Appeals ruled that the Project approvals were properly granted and the California Supreme Court declined to hear further appeals.

On September 19, 2016, the City Council approved Resolution Number R-310691 authorizing an amendment to the FY 2017 Capital Improvement Program with the addition of CIP No. L-17002, Balboa Park Plaza de Panama Project. With that action, \$1 million was added to the CIP budget to fund City expenditures for reviewing and finalizing construction drawings in conjunction with the Plaza de Panama Committee.

Project Objectives

The underlying purpose of the Project is to restore pedestrian and Park uses to the Central Mesa and alleviate pedestrian/vehicular conflicts. To achieve this goal, six primary objectives were envisioned:

- Remove vehicles from the Plaza de Panama, El Prado, Plaza de California, the Mall (also called the Esplanade), and Pan American Road East (also called the Pan American Promenade) while maintaining public and proximate vehicular access to the institutions which are vital to the park's success and longevity. See Attachment 2 for a site map of Balboa Park Plaza de Panama Project.
- Restore pedestrian and Park uses to El Prado, Plaza de Panama, Plaza de California, the Mall, and re-create the California Garden behind the Organ Pavilion.
- Improve access to the Central Mesa through provision of additional parking, while maintaining convenient drop-off, disabled access, valet parking, and a new tram service with potential for future expansion.
- Improve a pedestrian link between the Central Mesa's two cultural cores: El Prado and the Palisades.
- Implement a funding plan including bonds that provide for construction of a paid parking structure intended to fund the structure's operations and maintenance, tram operations, and debt service on the structure only.
- Complete all work prior to January 2015 for the 1915 Panama-California Exposition centennial celebration.

Due to a delay caused by litigation, the last objective can no longer be met, and the tram discussed in Objective 3 is already operational.

Project Overview

The various components of the Project are listed below and a detailed description of each component is included.

1. Plaza de Panama
2. Plaza de California and El Prado
3. Centennial Bridge and Centennial Road
4. Alcazar Parking Lot
5. The Esplanade and Pan American Promenade
6. Organ Pavilion Parking Structure, Roof-top Park, Tram and Arizona Street Landfill

Presently, vehicles entering the Central Mesa of Balboa Park from the west travel across the Cabrillo Bridge through the Plaza de California. Traffic flows along El Prado and into the Plaza de Panama. Vehicles then turn south on Pan American Road toward the Palisades Area and Presidents Way. Traffic is two-way, and vehicles may exit the Park to the west in the same manner.

One of the primary goals of the Project is to remove vehicular access from the core of the Park, which is defined as the area from Plaza de California to Plaza de Panama and continuing to the Esplanade and Pan American Promenade. To achieve this goal, a new bypass bridge, "Centennial Bridge," would connect the eastern end of the Cabrillo Bridge to the western side of the Alcazar Parking Lot. At that point a new bypass road, "Centennial Road," would continue to the south where vehicles can access a new parking structure located beneath the current Organ Pavilion parking lot or continue to Presidents Way. Presidents Way would provide access to the Palisades area or exit to Park Boulevard.

Description of Project Components

Plaza de Panama

Vehicle circulation would be removed from the Plaza de Panama, and the Plaza would be redesigned with enhanced paving, landscaping, movable tables and chairs, 1915 replica light standards, and other amenities, such as shallow reflecting pools that can be turned off to accommodate large special events. The Plaza would incorporate shade trees along the eastern and western sides, with the central portion of the Plaza remaining mostly open for flexibility. The existing fountain located in the center of the Plaza would be retained. Landscaping around the Plaza would be returned to its original 1915 design.

Plaza de California and El Prado

The Plaza de California is a small plaza encircled by the California Building (Museum of Man). This Plaza was historically used as a pedestrian square during the Expositions. Vehicle circulation would be removed from the Plaza de California and the Plaza would be redesigned with enhanced paving, accent trees, and movable tables and chairs. El Prado is the primary east-west road that runs through the Central Mesa from Sixth Avenue to the Plaza de Panama. Vehicular traffic would be removed from El Prado between the Cabrillo Bridge and the Plaza de Panama. The space would be redesigned with enhanced paving, formal street trees, 1915 replica light standards and benches.

Centennial Bridge and Centennial Road

The Centennial Bridge and Centennial Road are proposed to reconfigure vehicular circulation and enable the core of the Park to be returned to pedestrian use. The Centennial Bridge would be approximately 405 feet long, connecting the Cabrillo Bridge to the Alcazar Parking Lot. Centennial Road would connect the Alcazar Parking Lot to the new Organ Pavilion parking structure and continue on to Presidents Way. Centennial Road would slope down from the Alcazar Parking Lot and pass beneath Pan American Promenade. The existing raised wood pedestrian path that connects the Alcazar Parking Lot with the Organ Pavilion would be realigned and extend to the International Cottages area.

Alcazar Parking Lot

The Alcazar Parking Lot would be reconfigured to provide drop-off, valet, and accessible parking. The parking lot would be reconfigured to include a total of 32 accessible parking spaces as well as a passenger drop-off area adjacent to the Alcazar Garden. Approximately 18 valet staging spaces would be located at the southeastern corner of the Parking Lot. A small valet booth and pergola structure would be located along the eastern edge of the Parking Lot. A raised pedestrian bridge and walkway along the south side of the House of Charm/Mingei Museum would be constructed, providing direct access from the Alcazar Parking Lot to the Plaza de Panama. Access to Palm Canyon and the Cabrillo Canyon archery range would be maintained.

The Esplanade and Pan American Promenade

Pan American Road, also known as the Mall or Esplanade, connects the Plaza de Panama to the Organ Pavilion. Pan American Road East, also known as Pan American Promenade, connects the Organ Pavilion to the Palisades area at Presidents Way. With vehicular circulation rerouted to Centennial Road, the Esplanade and Pan American Promenade would be redesigned to provide a tram and pedestrian route with enhanced paving, landscaping, benches and 1915 replica light standards.

Organ Pavilion Parking Structure, Roof-top Park, Tram and Arizona Street Landfill

The existing Organ Pavilion surface parking lot located southwest of the Spreckels Organ Pavilion would be removed and a new underground parking structure would be constructed with approximately 797 parking spaces on three levels, with a 2.2-acre roof-top park. This would result in a net gain of approximately 260 parking spaces for the Central Mesa. A deck over Centennial Road would provide pedestrian and tram access to the Organ Pavilion and northward to the Esplanade. Vehicle access to and from the new structure would be provided from two points of entry on the east side of the structure from Centennial Road. Park visitors arriving from both the west (via the Cabrillo Bridge) and the east (via Presidents Way) would be able to access the structure.

A new roof-top park would be constructed atop the parking structure and include the re-created "California Garden" and an open lawn. The roof-top park would have a central elevator courtyard with a large open air trellised pavilion around it. A new public restroom would be located at the northeast corner of the roof-top park to replace the 1990s-era restroom being removed near the International Cottages. A second small restroom would be provided adjacent to the new visitor center at the southwest corner. Tram stops would be located adjacent to the central elevator core and the visitor center.

Other Project Components

Accessibility

The City continues to strive to ensure that every public facility, service, activity, and program is fully accessible to, and useable by, individuals with disabilities in accordance with the Americans with Disabilities Act, as well as other accessibility standards. By complying with federal, state, and local access codes and disability rights laws, the Project will endeavor to increase accessibility and provide every individual with an equal opportunity to enjoy the Park.

Pedestrian Circulation

Pedestrians would still be able to cross the Cabrillo Bridge and enter the Park through the Plaza de California as they do now. The newly pedestrianized El Prado would provide improved access to the Plaza de Panama; from there, pedestrians could proceed south along the Esplanade to the Organ Pavilion and Palisades area. For those visitors being dropped off at the Alcazar Parking Lot, pedestrian access to El Prado would be either north through the Alcazar Garden or east via a newly constructed raised pedestrian walkway proposed as part of this Project.

Pan America Promenade would be for pedestrian and tram-only circulation. A grade-separated pedestrian deck would span Centennial Road and connect to the Esplanade. The Project would extend the Palm Canyon raised wood bridge to the International Cottages.

Bicycle Circulation

Bicycle use would be permitted within the core of the Park; however, no dedicated bicycle routes would be provided pursuant to the circulation objectives and policies of the CMPP. Bicycle circulation would also be allowed along Centennial Bridge and Centennial Road similar to automobiles. Bicycle storage facilities would be located within the Organ Pavilion parking structure and on the roof-top park.

Parking Changes

Parking has already been removed from the Plaza de Panama; however, drop-off locations still remain. The drop-off function as well as valet service would be relocated to a reconstructed Alcazar Parking Lot. The Alcazar Parking Lot would be reconstructed to accommodate accessible parking only, as well as drop-off and valet staging. As noted above, the Organ Pavilion surface parking lot would be removed, and a new below-grade parking structure would be located in its place.

Project Updates

The Plaza de Panama Project was originally undergoing plan check in conformance with the then-current 2012 codes and regulations when the Project was suspended. To comply with current standards, construction documents underwent an update analysis, including but not limited to, 2016 California Building Code, 2015 Caltrans Standards, California Building Code

Title 24, and 2015 Municipal Separate Storm Sewer System (MS4) permit. The following changes to the original construction drawings are required:

- The garage ventilation standards have been evaluated and will be fulfilled with carbon monoxide monitoring instrumentation and air mixing equipment to comply with carbon monoxide maximum limits.
- Updated structural standards will be met through compliance with a variety of measures at the shoring, parking structure, Centennial Bridge, and other applicable structures.
- Electrical code upgrades will include a transition to high-efficiency lamping for both site and structure lighting. This will also include related lighting control systems.
- New MS4 permit requirements will consist of installation of bio-filtration basins and storm water run-off storage.

Plaza de Panama Cooperation Agreement

The proposed Cooperation Agreement between the Committee is a formal agreement designed to ensure the timely completion of the Project. The agreement outlines roles and responsibilities between City and the Committee, including but not limited to, advertising and award of the construction contract, construction administration and project costs and financing.

The Committee will provide the City final construction documents and assist the City in preparing to competitively bid the construction contract. The Public Works Department will manage the Project as a regular CIP. The Committee's project team, given its expertise on the Project, will assist the Public Works Department in construction administration.

Construction Time Line

The Project would be constructed in four phases as described below. Phasing of the Project will allow for through traffic to be maintained throughout the duration of the Project. The Project would also allow pedestrian access to all non-construction zone areas. Construction is anticipated to begin in fall of 2017, with a 26-month construction duration.

- **Phase I-Utility Relocation and Road Construction**: this phase would entail underground wet and dry utility relocation east of the proposed parking structure and along Presidents Way. Construction of the bypass road east of the Organ Pavilion parking lot would be started as well. Construction duration would be approximately four months.
- **Phase II-Centennial Bridge and Parking Structure**; this is the most extensive phase of the Project and would include construction of the bypass bridge as well as excavation, shoring and construction of the parking structure. It would also include construction of the west portion of Pan American Promenade that spans the bypass road. Construction duration would be approximately 14 months.
- **Phase III-Alcazar Parking Lot and Pan American Promenade**: this phase would begin once the new parking structure is operational. It would include reconstruction of the Alcazar Parking Lot and associated improvements and completion of the bypass road. Construction duration would be approximately four months.

- Phase IV- Plaza Improvements: the final phase of the Project would include construction of the roof-top park and reconstruction of Plaza de Panama, West El Prado, Plaza de California, Esplanade and Pan American Promenade. Improvements would include ancillary structures (picnic shelters, restrooms, visitor center), enhanced paving, water features, benches, decorative lighting, landscaping and other Park improvements. Construction duration would be approximately four months.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #1: Provide high quality public service

Objective #1: Promote a customer-focused culture that prizes accessible, consistent, and predictable delivery of services

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods

Objective #3: Invest in Infrastructure

ENVIRONMENTAL ANALYSIS:

On July 9, 2012, City Council certified the EIR (Project No. 233958/SCH No. 2011031074; Resolution Number R-307554). Based upon review of the current Project, there are no project changes and no changes in circumstances have occurred. No new information of substantial importance has manifested, which would result in new significant or substantially increased adverse impacts as a result of the Project. Therefore, an environmental determination of Addendum has been made by staff and will be prepared in accordance with Sections 15162 and 15164 of the California Environmental Quality Act (CEQA) State Guidelines.

FISCAL CONSIDERATIONS:

Subject to City Council approval of the Plaza de Panama Cooperation Agreement between the Plaza de Panama Committee and the City, the City's financial contribution towards this CIP will be capped at \$49 million; remaining Project costs will be the sole responsibility of the Plaza de Panama Committee. Of the identified City contribution amount, a significant portion is proposed to be generated through implementation of a tax-exempt bond financing leveraging paid parking revenues generated from the new parking structure. Based on projected annual net-parking revenues of \$3.3 million, it is estimated that approximately \$39 million in Project proceeds could be generated from the proposed bond issuance, with annual debt service estimated to be \$2.7 million. The expected remaining balance after bond issuance of approximately \$10 million would be funded from City funds available for major capital projects. This includes \$1 million that was previously authorized by the City Council on September 19, 2016 (Resolution Number R-310691) for the purpose of reviewing and finalizing Project design. This action increases appropriations of City funds to the CIP Project by up to an additional \$9.0 million, of which up to \$1.0 million is from fund 400000, Capital Outlay – Sales Tax, and up to \$8.0 million is from Fund 400002, Capital Outlay – Misc. Revenue. (See Report No. 16-087, titled "Public Facilities Financing Authority of City of San Diego Lease Revenue Bonds, Series 2017 (Balboa Park Parking Related Public Improvements)," dated October 21, 2016, for a detailed discussion of the proposed parking fee structure, projected parking revenues and expenses, and the plan of finance).

In addition to the capital costs, this Project will require an estimated \$160,000 per year in increased General Fund operating costs for the Park and Recreation Department in Fiscal

Years 2018 and 2019, for a total of \$320,000. These costs will cover implementation of a parking management plan during construction.

During construction, the Park and Recreation Department will implement a parking management plan to assist Park visitors in locating parking during the periods when the Alcazar and Organ Pavilion parking lots will be closed. Park employees arriving before 9:30 a.m. will be encouraged to park at the Federal and Inspiration lots and utilize the free tram service to access the Central Mesa. At this time it is envisioned the daily tram hours of operation will be from 6:00 a.m. to 12:00 a.m. midnight. Signage and traffic control measures will be provided throughout the Park.

The Park and Recreation Department would be responsible for maintaining other improvements proposed for the Project. A majority of these improvements would be to existing Park facilities such as enhanced paving, enhanced landscaping and new light fixtures. However there are new improvements that would add to the long-term maintenance costs of Balboa Park. These elements include, but are not necessarily limited to, the following:

- Centennial Bridge and Centennial Road
- Plaza de Panama water features
- Pedestrian bridge south of the House of Charm
- Extended Palm Canyon boardwalk
- Additional site furniture (benches, trash receptacles, light standards, etc.)
- Visitor Center and restroom at Organ Pavilion parking structure
- Organ Pavilion parking structure roof-top park (2.2 acres)
- Storm Water Infrastructure

Annual operating costs for this “new facility” are anticipated to be approximately \$366,000 plus a one-time equipment cost of \$27,000. These costs would include staff, supplies, additional irrigation water and electricity. Staffing would include an Area Manager, Supervising Custodian, Custodian II, and Grounds Maintenance Worker II.

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

On July 9, 2012, after an extensive public input process, City Council adopted amendments to the BPMP and CMPP incorporating the Project (Resolution Number R-307555). City Council also certified the EIR (Project No. 233958/SCH No. 2011031074; Resolution Number R-307554), approved Site Development Permit No. 837848 (Resolution Number R-307556), and approved the Plaza de Panama Improvement Agreement (Resolution Number R-307558).

On August 4, 2016, the Infrastructure Committee voted (4-0-0) to adopt the resolutions to create and fund CIP No. L-17002, Balboa Park Plaza de Panama Project, in the amount of \$1 million for the purpose of reviewing and finalizing the Project design.

On September 19, 2016, the City Council voted (8-1-0) to create and fund CIP No. L-17002, Balboa Park Plaza de Panama Project, in the amount of \$1 million for the purpose of reviewing and finalizing the Project design.

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

This Project received a tremendous amount of community participation and input during the preparation of plan amendments and the EIR. The extent of community participation is further described in the Report to City Council, June 19, 2012, No. 12-080.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Balboa Park is one of the largest parks within the City's park system and is considered by many as the "crown jewel" of the system. Due to the Park's central location, diverse recreational amenities, and historical significance, it is visited by more than 12 million visitors each year and is considered a favorite local destination by City and County residents.

The projected impacts are described extensively throughout the Report to City Council, No. 12-080, and the EIR and subsequent Addendum prepared for the Project.

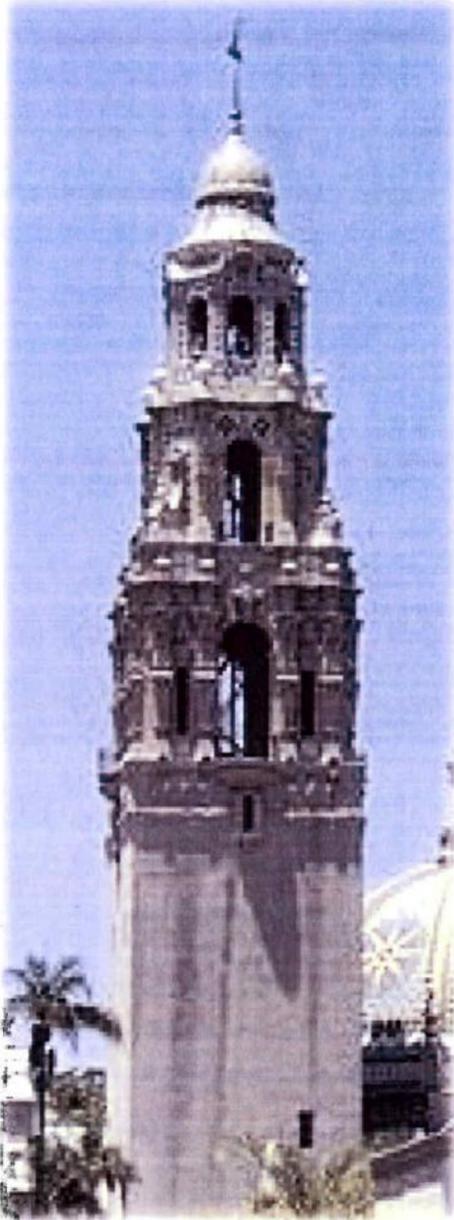


James Nagelvoort
Director, Public Works Department



Paz Gomez, PE, CEM, GBE
Deputy Chief Operating Officer
Infrastructure/Public Works

- Attachments:
1. Plaza de Panama Cooperation Agreement
 2. Balboa Park Plaza de Panama Project Site Map



PLAZA DE PANAMA

COOPERATION AGREEMENT

Plaza de Panama Committee
and the City of San Diego

November 2016

PLAZA DE PANAMA COOPERATION AGREEMENT

This Plaza de Panama Cooperation Agreement (Agreement) is entered into by and between the City of San Diego (City), a California municipal corporation, and the Plaza de Panama Committee (Committee), a California non-profit public benefit corporation, for the funding, design and construction of improvements to Balboa Park. This Agreement supersedes and replaces in its entirety the Plaza de Panama Improvement Agreement entered into by the City and the Committee in July 2012.

RECITALS

- A. Balboa Park is a 1,200 acre urban cultural park in San Diego, California, owned and operated by City. Balboa Park's present day look and feel continues to reflect the design and development created to host the 1915 Panama-California International Exposition. Balboa Park's central core, including the historic Exposition buildings, was declared a National Historic Landmark and National Historic Landmark District in 1977, and has been placed on the National Register of Historic Places.
- B. The Committee is a nonprofit public benefit corporation (tax-exempt under Section 501(c)(3) of the Internal Revenue Code and Section 23701 of the California Revenue and Taxation Code). The Committee was organized to accept, receive and administer contributions, gifts, legacies, bequests, devises and property (collectively, Funds), and to use and expend such Funds in accomplishing the improvements described herein.
- C. As an integral part of the plan for the 1915 Panama-California International Exposition, the Plaza de Panama was established and designed to serve as a central, sunlit, and airy plaza surrounded by beautiful architecture. The Plaza de Panama was the focus around which the 1915 Exposition revolved. The California Pacific International Exposition was held in Balboa Park in 1935-1936. In the periods after and between the Expositions, the Plaza de Panama was converted into a parking lot. The City's planning documents for Balboa Park have long reflected a plan to restore the Plaza de Panama to dedicated pedestrian space in order to create a more pedestrian oriented environment, reduce automobile and pedestrian conflicts, and minimize through traffic, along with improving public access and the circulation system through the Park while deemphasizing the automobile.
- D. The Committee was formed by Dr. Irwin Jacobs in response to this need. The Committee shares the City's long-standing commitment to nurture and enhance the natural, cultural, and historical resources of Balboa Park for its citizens and visitors, and the desire to sustain and improve Balboa Park as a world class urban and cultural park and source of civic pride.

- E. The City recognizes that reclaiming and restoring the Plaza de Panama as pedestrian space through modification and relocation of roadways, development of parking, and related improvements (collectively, the Project) is an undertaking of significant cost and effort that requires private financial assistance. The Committee has expressed its willingness to raise and contribute a significant portion of the funds for the Project consistent with the City's goals for Balboa Park, and to take an active role alongside the City by sponsoring the Project, finalizing the design, and assisting in the construction effort for the Project in cooperation with the City. To date, the Committee has raised and spent more than \$14 million in support of the Project.
- F. The City and Committee desire to work together to accomplish the long sought after goal of reclaiming and restoring Plaza de Panama along with other improvements consistent with improving parking and pedestrian access at Balboa Park.
- G. The City and the Committee entered into the Plaza de Panama Improvement Agreement (Improvement Agreement) in July 2012, and at the same time the City certified Environmental Impact Report no. 233958, approved amendments to the Balboa Park Master Plan and the Central Mesa Precise Plan, as well as approved Site Development Permit no. 837848 for the Project. Litigation challenging various aspects of the Project entitlements was then filed, which delayed the implementation of the Improvement Agreement and construction of the Project. On May 28, 2015, the Court of Appeal upheld the City's actions with respect to the Project in all respects and Judgment was entered in favor of the City and the Committee on October 30, 2015.
- H. Due to the substantial delay caused by the litigation, Project costs have significantly increased compared to estimated costs in 2012. As a result, in order to complete the Project, the City has agreed to increase its financial contribution to \$45 million (City Contribution) plus City staff costs and City fees (\$4 million). The Committee has agreed to endeavor to raise and contribute the funds necessary to complete the Project, which is currently estimated at \$30 million (Committee Contribution). Further, the City and Committee agree that the City should now take the lead in constructing the Project. In addition to its significant past and future financial contribution, the Committee will continue to lead the effort to complete design and will assist and work collaboratively with the City during construction of the Project. Because engineers, consultants, designers, and the project management team engaged by the Committee designed the Project and worked closely with the City and park stakeholders in processing the Project entitlements, the Committee has the relationships, expertise and experience to help the City ensure that the improvements are completed in a cost-effective, efficient and timely manner. The City and Committee believe that this cooperative effort will produce a Project that will inspire San Diegans and visitors to our City for generations to come. Because performance of the 2012 Improvement Agreement was prevented by litigation, and given the altered roles for the City and the Committee in funding and managing the Project, the Parties agree that this new Agreement is required. This Agreement does not call for any physical changes to the Project as it was originally approved in 2012.
- I. On behalf of the residents of the City of San Diego, the Mayor and City Council graciously accept this contribution from the Committee, without which these

improvements to Plaza de Panama might not be accomplished.

NOW, THEREFORE, for valuable consideration the sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

ARTICLE 1—SCOPE OF WORK

1.1 Project Design. The Committee shall finalize construction level drawings and specifications for the Project and assist the City in obtaining all necessary permits for the Project. The Committee shall endeavor to ensure that the Project as permitted will be consistent with all of the following, and in the event of a conflict, the following order of precedence:

1.1.1 EIR. The requirements of the Environmental Impact Report, Project No. 233958, SCH No. 2011031074 (EIR) and its associated Mitigation, Monitoring and Reporting Program (MMRP).

1.1.2 Site Development Permit. Site Development Permit No. 837848 issued by the City.

1.1.3 Plaza de Panama Cooperation Agreement. This Agreement, including all its exhibits.

1.1.4 Plans and Specifications. The drawings, plans and specifications prepared by the Committee and approved by the City pursuant to Section 1.2.

1.1.5 City of San Diego Standard Drawings (2016 Edition).

1.1.6 City of San Diego Standard Specifications for Public Works (Whitebook, 2015 Edition).

1.1.7 Standard Specifications for Public Works Construction (Greenbook, 2015 Edition).

1.1.8 Bridge Standards. For the structural (but not aesthetic) components of the Centennial Bridge, general design will comply with AASHTO LRFD Bridge Design Specifications (6th Edition, with California Amendments) and the current edition of the CalTrans Bridge Design Manual, and seismic design will comply with Caltrans Seismic Design Criteria (SDC) Version 1.7 (November 2015). Construction of the structural components of the Centennial Bridge will comply with the 2015 CalTrans Standard Plans and Specifications.

1.2 Competitive Bidding. All plans and specifications prepared, required, or recommended under this Agreement, as reviewed by the City, shall allow for competitive bidding. The Plans and Specifications shall be designed so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specified product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported

by a written justification that has been approved in writing by the City. The Committee shall submit this written justification to the City prior to beginning work on such plans or specifications. Whenever the Committee recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

1.3 Project Construction. The City shall construct the Project as part of the City Capital Improvement Program in accordance with the Project design, and will furnish and/or contract for any and all labor, materials, equipment, transportation, utilities, security, services and facilities required to construct the Project. The City shall provide office space (at no cost to the Committee) in the City's on-site facilities for the Committee's design and project management support team.

1.4 Design Changes and Change Orders. The City and Committee must jointly agree on design changes and change orders during construction. If the City and Committee cannot agree on the necessity or appropriate cost of a design change or change order, the Parties shall immediately elevate the dispute to the Deputy Chief Operating Officer of Infrastructure/Public Works. As requested by the City, the Committee shall update the design and process approval of jointly agreed upon design changes through the appropriate City departments. Neither the City's nor the Committee's approval of any proposed design changes or change orders will be unreasonably withheld provided they are consistent with the EIR, Site Development Permit, and design requirements as identified in section 1.1 above and are necessary to complete the Project. Any disputes regarding this section that cannot be resolved by the City and Committee through normal discussions (including after elevating disputes over change orders to the Deputy Chief Operating Officer of Infrastructure/Public Works) shall be submitted to mediation pursuant to Section 6.3. Any disputes regarding payment of invoices for design changes and change orders shall be handled in accordance with Section 1.7 below.

1.5 Bid and Award of Construction Contract. The City shall award one or more contract(s) for the construction of the Project through a competitive process in accordance with the San Diego Municipal Code. The Committee shall assist the City throughout the contract bid and award process, including, but not limited to, development of bid documents, assistance in development of bid clarifications, attendance at pre-bid walkthroughs, assistance in development of bid alternates, bid alternate selection, and similar functions. The City shall be responsible for construction contract award and procurement. The City may use its own forces to construct portions of the Project, in its sole discretion.

1.6 Design Services Assistance During Construction. Throughout the construction process, the Committee will provide design and project management services to the City necessary to complete the Project. The Committee's design and project management support services shall include, but not be limited to, assisting and collaborating with the City in customary construction administration functions, attendance at weekly or special meetings, technical support to the City in responding to Requests for Information, assisting in reviewing submittals and shop drawings, assisting in communications between the contractor(s) and Balboa Park institutions, monitoring progress of the construction effort as requested by the City, and assisting in closeout.

1.7 Invoice Review. The City will submit quarterly Project expenditure reports to the Committee to review. At each invoice interval, the City and the Committee project management

teams will walk the site and jointly evaluate the work in place and, if applicable, material on order or in transit, in an attempt to reach mutual agreement on the percent complete for each invoice. Committee approval is not required for payment of any invoice to ensure compliance with Charter section 82. If the Committee disputes that such invoice should be paid for the amount contemplated by the City, the Parties shall immediately elevate the dispute to the Deputy Chief Operating Officer of Infrastructure/Public Works and shall use best efforts to ensure that such dispute is resolved before the invoice is paid by the City. The City shall be responsible for processing invoices and issuance of payment to the contractor and therefore the Committee's approval shall not be required for the payment of any invoice. Any disputes regarding this section that cannot be resolved by the City and Committee through normal discussions (including after elevating disputes to the Deputy Chief Operating Office of Infrastructure/Public Works) shall be submitted to mediation pursuant to Section 6.3

1.8 Project Cost and Funding. Project costs are all costs to complete the Project, including but not limited to costs to design, permit, construct, inspect, and oversee the Project, including Committee consultant costs, a contingency amount, and construction cost overruns, but not including City staff charges and City fees (Project Costs). The City Contribution to the Project Costs is \$45 million, to be used for construction of the parking garage and other Project elements and expenses. The City is also separately responsible for \$4 million in City staff charges, City permits, City inspections and other City costs. The Committee shall be responsible for any and all other Project Costs over the City Contribution of \$45 million whether or not those costs were anticipated or incurred as result of differing site conditions, delays (except for those caused by the City's negligence), design errors or omissions, change orders, contractor claims (except for those caused by the City's negligence), and fees by public agencies (not including City fees). The City shall notify the Committee promptly upon the discovery of any unanticipated Project Cost increases.

1.9 Demonstration of Funding. Because the Committee must undertake fundraising activities to make the Committee Contribution for the Project, the parties agree that the Committee must demonstrate to the City that it is making adequate progress toward raising the necessary funds at certain milestones in order for the City to continue to pursue the Project. In particular, the Committee must demonstrate to the reasonable satisfaction of the City that it has received commitments or donations for at least 25% of the Committee Contribution before the City advertises the construction contract. Prior to the City awarding the construction contract, the Committee shall provide the City with an irrevocable commitment for a fixed sum that is legally enforceable to cover 100% of the anticipated Committee Contribution based on the then-current Project budget that will demonstrate to the City that the requirements of Charter section 80 have been satisfied. Under no circumstances shall the irrevocable commitment exceed \$29,108,614. This irrevocable commitment may include the execution of donation agreement(s) or pledge agreement(s) as deemed necessary by the City, to secure access to such funds for the Project. The irrevocable commitment shall automatically terminate upon Project Completion.

1.10 Payment of Committee Contribution.

1.10.1 The Committee shall directly pay for all of the services it provides under this Agreement, including, but not limited to, design and drawing activities, permit processing, assistance to the City during the procurement process,

assistance during construction, and providing as-builts at Project Completion, as provided in section 1.15 below.

1.10.2 The City and Committee shall jointly calculate the Committee's anticipated share of the construction contract costs thirty (30) calendar days prior to the construction contract award for the Project. The Committee shall deposit with the City funds equal to 25% of the Committee's anticipated share of the construction contract costs to create a contingency fund (Committee Contingency Fund) within 10 calendar days of receiving notice by the City that funds for the Committee Contingency Fund are required. The Committee's original deposit into the Committee Contingency Fund shall be known as the Original Contingency Balance.

1.10.3 The City and the Committee shall review invoices received under the construction contract(s) and the City shall pay approved costs (1) from the City Contribution for costs related to the parking garage and related Project elements(e.g. the park and structures on top of the parking garage), and (2) from the Committee Contingency Fund for all other Project Costs. Once the parking garage is complete, the City shall pay approved costs equally from the City Contribution and from the Committee Contingency Fund until the City Contribution is exhausted. Once the City Contribution has been exhausted, all invoices and Project Costs will be paid solely from the Committee Contingency Fund.

1.10.4 In order to maintain the Original Contingency Balance, the Committee shall replenish the Committee Contingency Fund the amount required to bring its balance up to the Original Contingency Balance on the first business day of each month. The Committee's obligation to replenish the Committee Contingency Fund shall terminate once the remaining construction contract costs are less than or equal to the balance remaining in the Committee Contingency Fund.

1.10.5 The Committee shall provide Quarterly Reports to the City (in a format approved by the City) with the appropriate documentation and level of detail required concerning Committee Project Costs and direct payments made by the Committee to cover those Project Costs.

1.10.6 The City shall provide the Committee with quarterly reports on the balances of the Committee Contingency Fund and all payments made out of that fund for the previous quarter. If a balance remains in the Committee Contingency Fund at the end of the Project, following a final reconciliation and after confirming there are no outstanding claims by any party to this Agreement or any outstanding claims from the contractor(s), the remaining funds shall be returned to the Committee. In any event, any remaining funds in the Committee Contingency Fund shall be returned to the Committee within sixty (60) calendar days of Project Completion, as defined in section 1.11 below.

1.11 Time for Completion. The Committee shall use its best efforts to finish the design in accordance with the schedule set forth in Exhibit B. The City shall use its best efforts to ensure that contract award and construction proceeds in accordance with the schedule set forth in Exhibit B. However, it is acknowledged that scheduling and duration are subject to change by agreement of the parties or through events beyond their control. Any change in Project sequencing from that sequence set forth in Exhibit B is subject to Committee approval, which shall not be unreasonably withheld. Upon completion of all punch list items on the Project, and any and all claims asserted by the contractor(s) have been resolved (as demonstrated by the City's final payment to the contractor(s)), the City will notify the Committee in writing that the Project is deemed Complete (Project Completion).

1.12 Right of Entry. The City hereby grants the Committee, its officers, employees, consultants, contractors and suppliers, the right to enter the portions of Balboa Park described in the EIR as being utilized to complete the Project, solely and exclusively to design the Project and provide additional services in support of the Project as requested by the City.

1.13 Warranty. The Committee warrants to the City that the Project design shall be of good quality and free of defects. The Committee will correct or replace any portion of the Project for which the design was not in conformance with this warranty at its own cost and expense, if notified by the City within one year after the date of Project Completion.

1.14 ADA Compliance. The Committee shall design the Project in compliance with the Americans with Disabilities Act (ADA). The City may evaluate the design of the Project for compliance, but such review shall not relieve the Committee from its responsibility to comply with the Americans with Disabilities Act and related state and federal accessibility regulations.

1.15 Project Records. Prior to Project Completion, the Committee shall keep all documents and records related to the Project that it creates or that come into its possession. All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine (Project Documentation), prepared by the Committee pursuant to this Agreement shall become the property of the City upon Project Completion. Project Documentation shall be shared with the City prior to Project Completion upon request. The Committee, including its employees and independent contractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the City to the deliverable materials after Project Completion. At Project Completion all Project Documentation shall be delivered to the City for safekeeping. The Committee shall also ensure that within six (6) months of Project Completion as-builts shall be prepared and delivered to the City.

1.16 Insurance Requirements. The Committee shall procure insurance as shown in Exhibit C to protect against claims for loss including injuries to persons or damage to property, which may arise out of or in connection with the design of the Project by the Committee or any other actions by the Committee under this Agreement, including actions by the Committee's officers, consultants, designers, contractors, subcontractors and suppliers. The Committee shall maintain this insurance for the duration of this Agreement and at all times thereafter when the Committee is correcting, removing, or replacing work in accordance with this Agreement.

1.16.1 Liabilities. The Committee's liabilities, including but not limited to the Committee's indemnity obligations, under this Agreement shall not be deemed limited in any way to the insurance coverage required by this section.

1.16.2 Proof of Insurance. The Committee shall provide the City all required insurance certificates and endorsements within 15 calendar days of the effective date of this Agreement.

1.16.3 Lapse in Coverage. If any policy of insurance required by this section is canceled or expires, the Committee shall immediately notify the City and cease all work under this Agreement. Work shall not resume until the Committee provides a replacement policy that complies with the requirements of Exhibit C and is approved by the City.

1.16.4 Alternate Insurance. In lieu of procuring the insurance itself, the Committee may require its consultants, designers, contractors, and other firms that will work on the Project under contract to the Committee to each procure insurance that complies with Exhibit C, including the required endorsements in favor of the City, its elected officials, officers and employees. The Committee may also procure wrap-insurance for some or all of the Project that complies with Exhibit C with the City's approval, which shall not be unreasonably withheld.

1.16.5 Contractor Insurance Requirements. Unless waived by the Committee, the City shall ensure that its contract for the construction of the Project requires the Contractor and each of its subcontractors shall name the Committee, and its officers, employees, consultants, and contractors as additional insureds.

1.17 Prevailing Wage Rates. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work done under this Agreement is subject to State prevailing wage laws. The Committee and its consultants shall comply with State prevailing wage laws including, but not limited to, the requirements listed in exhibit F.

1.18 Temporary Parking Management Plan. The City will coordinate with the Committee to create a temporary parking management plan to be put in place during construction of the Project which will conform to the temporary parking management plan as contemplated in the EIR. The City will implement and pay for the temporary parking management plan. The Committee will not be financially responsible for the temporary parking management plan and the cost of implementing this plan will not be part of the Project Costs.

1.19 Donor Recognition. The City agrees that the Committee shall be entitled to naming rights for the Centennial Bridge, Centennial Road, the Rooftop Park, and the new physical features included on the Rooftop Park (e.g. visitor center, comfort center, trellis pavilion, etc.), subject to Mayoral approval, which shall not be unreasonably withheld. The City shall work closely with the Committee to identify additional donor recognition features within the Project area to memorialize philanthropic contributions to the Project funding. Permissible donor features may include plaques, benches, naming elements (not conferred above), and other reasonable features used within the City in similar circumstances. The design and location of donor recognition features shall be subject to City approval.

ARTICLE 2 — CITY CONTRIBUTION

2.1 Bond Financing. If approved by the Mayor and City Council, the City expects to issue City General Fund backed bonds to generate sufficient proceeds for construction of the parking structure and other Project elements, establish necessary construction and debt service payment accounts and cover appropriate costs of issuance, solely supported by the parking garage revenue. The parking garage revenue is also expected to pay for operation and maintenance of the parking structure. The actual amount of proceeds to be generated from the expected offering is dependent on a number of factors, including the projected amount of the parking garage revenue, bond market conditions, credit assessments, and the cost of operating the parking structure.

2.2 City's Contribution. The City Contribution for Project Costs is \$45 million. The City may fund its City Contribution using a combination of sources, including, but not limited to bond proceeds and capital outlay funding. The City Contribution will be used to cover costs associated with the parking garage and other Project elements. If bonds are issued, the City shall use those proceeds to pay for Project Costs as permitted by applicable laws and regulations governing bond financing, including costs which are eligible for reimbursement under Federal Treasury Regulation 1.150-2. Nothing in this Agreement shall obligate the City to make any payment for the construction of the parking structure or other Project improvements from any particular money source; the source of Project funds shall be solely left to the City's discretion.

ARTICLE 3 — TERM OF AGREEMENT

3.1 Term of Agreement. This Agreement shall become effective on the date it is fully executed by both Parties. This Agreement shall expire one year after the date of Project Completion, except for Article 5, which shall survive the expiration of this Agreement and continue so long as a viable claim exists.

3.2 Notification of Delay. The Parties shall each immediately notify the other in writing if they encounter or anticipate a delay in performing any of their obligations under this Agreement. Neither Party shall be excused from timely performing any of its obligations under this Agreement without the other Party's written waiver thereof or written consent to an extension of time for such performance, neither of which will be unreasonably withheld.

3.3 Termination for Cause. In the event of a material breach by either Party ("Breaching Party"), the other Party ("Non-Breaching Party") may terminate this Agreement for cause prior to the expiration date in Section 3.1. The Non-Breaching Party shall give thirty (30) calendar days prior written notice to the Breaching Party of an intent to terminate the Agreement and provide the Breaching Party an opportunity to remedy the conditions constituting the default. If the Breaching Party fails to remedy or fails to engage in reasonable actions to cure the conditions constituting default within thirty (30) calendar days, the Non-Breaching Party may then terminate the Agreement for cause by delivering written notice of termination to the Breaching Party. The Non-Breaching Party may not terminate this Agreement as long as the Breaching Party is engaged in reasonable actions to cure the conditions constituting default and initiated the actions within thirty (30) calendar days of written notice from the Non-Breaching Party. If the

Committee is the Breaching Party, upon receipt of written notice of termination, the Committee shall be obligated to restore the Project site to its original condition at its sole cost and expense prior to such termination becoming effective, unless the Committee elects to complete the Project in a timely manner and the City agrees. The Breaching Party shall have no other obligations upon termination of this Agreement and the Non-Breaching Party shall not be entitled to any other damages or relief arising from the default.

3.4 Committee's Right to Terminate. Prior to award of a construction contract for this Project, the Committee may terminate this Agreement for its convenience if either of the events described in Sections 3.4.1 or 3.4.2 occurs. If the Committee decides to exercise its right to terminate this Agreement pursuant to Section 3.4.1 below, it shall notify the City in writing of its decision within ten (10) calendar days. Notwithstanding the previous sentence, the Committee may not terminate this Agreement under Section 3.4 after a construction contract for the Project has been awarded. The City shall notify the Committee and receive the Committee's written approval, prior to awarding the construction contract, to ensure the Committee does not need to terminate this Agreement pursuant to Section 3.4.2. Termination shall become effective upon receipt by the City of notice of the Committee's decision to terminate this Agreement.

3.4.1 Insufficient City Contribution. The Committee may terminate this Agreement in its sole discretion if the City does not approve funding by June 1, 2017, sufficient for the City to contribute \$45 million toward Project Costs.

3.4.2 Cost Overruns. The Committee may terminate this Agreement in its sole discretion if the Committee's share of anticipated Project Costs exceed the amount of those costs included in Exhibit A by more than 5% for any reason, including but not limited to the discovery of hazardous substances on the Project site, changes in the Project required by the City, or unexpectedly high bids by contractors for the Project work.

3.5 City's Right to Terminate. The City may terminate this Agreement for its convenience if the Committee is unable to make the timely demonstration to the City required in Section 1.9 that it has raised, or made adequate progress in raising, the Committee Contribution. If the City decides to exercise its right to terminate this Agreement pursuant to this Section 3.5, it shall give thirty (30) calendar days prior written notice to the Committee of an intent to terminate the Agreement and provide the Committee an opportunity to remedy the condition giving rise to the City's right to terminate. If the Committee fails to remedy the condition within thirty (30) calendar days after receipt of notice by the City then the City may then terminate the Agreement by delivering written notice of termination to the Committee.

3.6 Joint Right to Terminate.

3.6.1 If the low bid for the construction contract (using the bid alternate jointly selected by the City and the Committee) for the Project exceeds the anticipated amount of the construction contract as shown on Exhibit A (\$60,038,145), the City and Committee shall confer to determine whether to proceed with the Project and, if so, how the additional Project Costs will be funded. If either Party does not agree to proceed with the Project under this Section 3.6.1, either party may terminate this Agreement for its convenience prior to contract award.

3.6.2 The City and the Committee must each certify to the other the amount each has secured for the Project to ascertain if the combined amount is sufficient to pay the Project Costs before the contract may be awarded for construction of the Project. If either Party fails to make the required certification within 60 calendar days of bid opening, either Party may terminate this Agreement for its convenience.

3.7 Force Majeure. In the event the performance of either party is delayed due to causes which are outside their control, and could not be avoided by the exercise of due care, which may include, but is not limited to, war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of the work, inability to obtain materials, labor or equipment, or litigation or legal proceedings challenging one or more of the project approvals, then the time for performance shall be extended by an amount equivalent to the length of delay. Neither party shall receive compensation from the other party for a force majeure event.

ARTICLE 4 — MANDATORY CONTRACT CLAUSES

4.1 Nondiscrimination in Contracting. Pursuant to SDMC Section 22.3512, the Committee shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of contractors, vendors or suppliers. The Committee shall provide equal opportunity for contractors to participate in subcontracting opportunities. The Committee understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in contract termination, debarment, or other sanctions.

4.1.1 Subcontracts. Pursuant to SDMC Section 22.3512, the Committee shall ensure that the language of Section 4.1 is incorporated into all of its contracts with firms working on the Project.

4.1.2 Disclosure Requirements. Pursuant to SDMC Section 22.3514, upon the City's request, the Committee agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Committee has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Committee for each subcontract or supply contract. The Committee further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance. The Committee understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in contract termination, debarment, and other sanctions.

4.2 Access for Persons with Disabilities. Pursuant to City Council Policy 100-04, the Committee shall comply with all portions of Title 24 and the ADA. The Committee shall ensure that language requiring compliance with City Council Policy 100-04 is incorporated into all its contracts with firms working on the Project. The Committee and its consultants, designers, contractors and construction managers will be individually responsible for administering their own ADA and Title 24 program. The Committee shall execute and submit to the City the Certification for Title 24/ADA Compliance, as shown in Exhibit D.

4.3 Drug Free Workplace. Pursuant to City Council Policy 100-17, the Committee shall certify that it will provide a drug-free workplace by executing and submitting to the City the Drug-Free Workplace Certification as shown in Exhibit E. The Committee shall ensure that language requiring compliance with City Council Policy 100-17 is incorporated into all its contracts with firms working on the Project. The Committee and its consultants, designers, contractors and construction managers will be individually responsible for administering their own drug-free workplace program.

4.4 San Diego Business Tax Certificate. The Committee, all consultants, designers, contractors, subcontractors, and construction managers not already having a City of San Diego Business Tax Certificate for the work contemplated shall secure the appropriate certificate from the City Treasurer, City Operations Building, Community Concourse, before performing any work on the Project.

4.5 Product Endorsement. Pursuant to Administrative Regulation 95.65, any advertisements referring to the City of San Diego as a user of a product or service will require prior written approval of the Mayor or his designee. The Committee shall ensure that language requiring compliance with Administrative Regulation 95.65 is incorporated into all its contracts with firms working on the Project.

ARTICLE 5 - INDEMNITY

5.1 General Indemnity for the City. The Committee agrees to defend, indemnify, protect and hold harmless the City, its elected officials, officers and employees, from and against all third-party claims or judgments asserted, or third-party liability established for damages or injuries to any person or property arising directly or indirectly out of the Committee's actions undertaken pursuant to this Agreement, which are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of the Committee, its officers, employees, consultants, designers, contractors or construction managers. The Committee's obligation to indemnify the City shall not include any liability to the extent caused by the negligence or willful misconduct of the City, its elected officials, officers, employees, or contractors. The Committee's obligation to defend shall not include claims or liability caused or claimed to be caused by the sole negligence or sole willful misconduct of the City, its elected officials, officers, employees, or contractors. The City may elect to conduct its own defense, in its sole discretion, without invalidating this section. The Committee may satisfy the obligation in this Section through the acquisition of a reasonable and adequate insurance policy for that purpose, with the approval of the City which shall not be unreasonably withheld.

5.1.1 Litigation Challenging Project Approvals. The Committee's obligation to defend and indemnify the City shall not include any third-party claims or litigation challenging the propriety of this Agreement, the bond issuance, construction contract award, or any other Project approvals.

5.1.2 Maintenance and Repair. The Committee's obligation to defend and indemnify the City shall not include any third-party claims or litigation arising from the City's failure to properly maintain or repair any phase of the Project after acceptance by the City.

5.1.3 City Costs. The Committee's obligation to indemnify the City shall not include the cost of any City employee time arising from a third-party claim, litigation or judgment.

5.2 Indemnity for Design Services. With respect to the design of the Project, except as otherwise provided by California Civil Code section 2782.8, the Committee shall indemnify and hold harmless the City, its elected officials, officers and employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of the Committee, its design professionals, officers or employees. The Committee's obligation to indemnify the City shall not include the cost of any City employee time arising from a third-party claim, litigation or judgment.

5.3 General Indemnity for the Committee. The City agrees to defend, indemnify, protect and hold harmless the Committee and the Committee's members, officers, consultants, designers, contractors, subcontractors and suppliers, from and against all third-party claims or judgments asserted, or third-party liability established for damages or injuries to any person or property arising directly or indirectly out of the construction of the Project, which are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of the City, its elected officials, officers and employees. The City's obligation to indemnify the Committee shall not include any liability to the extent caused by the negligence or willful misconduct of the Committee or the Committee's members, officers, consultants, designers, contractors, subcontractors and suppliers. The City's obligation to defend shall not include claims or liability caused or claimed to be caused by the sole negligence or sole willful misconduct of the Committee or the Committee's members, officers, consultants, designers, contractors, subcontractors and suppliers. The Committee may elect to conduct its own defense, in its sole discretion, without invalidating this section. The City may satisfy the obligation in this Section through the acquisition of a reasonable and adequate insurance policy for that purpose, with the approval of the Committee which shall not be unreasonably withheld. This section does not apply to any claims for additional compensation from contractors, or their subcontractors, hired by the City to construct the Project if the basis for the claim is unforeseen conditions at the Project site, errors in the Project design, or additional work requested by the Committee. The City shall require the contractor awarded the construction contract for the Project to defend and indemnify the Committee and the Committee's members, officers, consultants, designers, construction manager, contractors, subcontractors and suppliers to the same extent the contractor is required to indemnify and defend the City under the construction contract.

5.4 Survival. The indemnity provisions in this Article shall survive expiration and termination of this Agreement and continue so long as a viable claim exists.

ARTICLE 6 - GENERAL PROVISIONS

6.1 Compliance with Laws. The Committee shall comply with all applicable local, state and federal laws, statutes, ordinances, and regulations in the performance of its obligations under this Agreement. The Committee shall require all consultants, designers, contractors and construction managers it hires to work on the Project to similarly comply with all laws while working on the Project.

6.2 Contract Interpretation. This Agreement is intended to permit the parties to complete the Project

according to the project schedule in Exhibit B. This Agreement, its exhibits, and the documents listed in Section 1.1 are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

6.3 Mandatory Mediation. If a dispute arises out of or relates to this Agreement that cannot be resolved through normal contract negotiations, the Committee and the City must first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS or any other neutral organization agreed upon by the parties before having recourse in a court of law.

6.3.1 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Agreement, if possible, and chosen from lists furnished by JAMS or any other agreed upon mediator.

6.3.2 Mediation Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All joint expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

6.3.3 Conduct of Mediation. Mediation hearings will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code Sections 1115 - 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though the City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

6.3.4 Mediation Results. Any resultant agreements from mediation shall be documented in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

6.3.5 Expedited Mediation. Because it will be in the parties' interest to resolve any disputes as quickly as possible, the City and the Committee shall agree to a procedure whereby any mediation will be resolved in no more than one week from the time the dispute arises. A list of acceptable mediators will be identified and agreed upon by the Parties prior to award of the construction contract.

6.4 Time is of the Essence. The City and the Committee mutually agree that time is of the essence with respect to the dates and times set forth in this Agreement and the project schedule in Exhibit B.

6.5 Mutual Obligations. The City and the Committee commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under this Agreement.

6.6 Successors-In-Interest. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all parties to this Agreement have been succeeded by another entity, and all rights and obligations of the parties signatory to this Agreement shall be vested and binding on their successors in interest.

6.7 Third-Party Beneficiaries. Nothing in this Agreement shall grant rights or benefits to anyone other than the City and the Committee, and any alleged third party beneficiaries are hereby expressly disclaimed. The parties understand and agree, however, that to the extent permitted by law, the City is an intended third party beneficiary of the Committee's agreements with its consultants, designers, contractors and construction managers performing work on the Project.

6.8 Severability. Should any provision of this Agreement be held invalid or illegal by a court or administrative agency of competent jurisdiction, such invalidity or illegality shall not invalidate the whole of this Agreement, but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the parties shall be construed and enforced accordingly, except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely frustrate either or both parties' essential objectives set forth in this Agreement.

6.9 Independent Contractor. The Committee is and shall be an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Committee as to the details of accomplishing the work or to exercise a measure of control over the work means that the Committee shall follow the wishes of the City as to the results of the work only.

6.10 Waivers. The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions unless the waiver is in writing. Prior waivers shall not preclude the right of either party to thereafter enforce each and every provision of this Agreement.

6.11 Limitation on Powers. Nothing in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

6.12 Conflict of Interest. The Committee shall establish and make known to its members, consultants, designers, contractors and construction managers, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Committee members shall not accept gratuities or any other favors from potential consultants, designers, contractors or construction managers who may or are working on the Project.

6.13 Notices. All notices required to be given under this Agreement must be in writing and either served personally, sent by facsimile transmission, or mailed by express or certified mail with

delivery confirmation. Notices shall be effective upon receipt. Notices shall be mailed to:

Plaza de Panama Committee
c/o KCM Group
1940 Garnet Avenue, Suite 300
San Diego, CA 92109
Attn: Gordon Kovtun

Public Works Department
Attn: Kris Shackelford
City of San Diego
525 "B" Street, Ste. 750 MS 908A San Diego,
CA 92101

6.14 Assignment. The Committee shall not assign its rights or obligations under this Agreement without the City's prior written approval, which shall not be unreasonably withheld. Any attempted assignment in violation of this section shall be void and incapable of creating any contractual relationship between the City and a putative assignee.

6.15 Survival. Any obligation that accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.

6.16 Incorporation of Exhibits. All exhibits referenced in this Agreement and the documents referenced in Section 1.1 are hereby incorporated into and made a part of this Agreement by reference.

6.17 Integration Clause. The City and the Committee represent, warrant and agree that no oral promise or agreement not expressed herein has been made to them, that this Agreement contains the entire agreement between the parties, that this Agreement supersedes any and all prior oral agreements or understandings between the parties unless otherwise provided herein, and that in executing this Agreement, neither party is relying on any statement or representation made by the other party concerning the subject matter, basis or effect of this Agreement other than as set forth herein, and that each party is relying solely on its own judgment and knowledge. This Agreement may not be amended except by an instrument in writing signed by both parties.

6.18 Counterparts. This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego pursuant to Resolution No. R-_____ authorizing such execution, and the Plaza de Panama Committee acting by and through its authorized officers.

PLAZA DE PANAMA COMMITTEE

THE CITY OF SAN DIEGO

By:_____

By:_____

Name:_____

Name:_____

Date:_____

Date:_____

I HEREBY Approve the form of the foregoing agreement this ____day of _____, 2016.

JAN GOLDSMITH, City Attorney

By:_____

Exhibit A

Balboa Park Plaza de Panama Project

Kris Shackelford

10/24/2016

L-17002

(Project Title)

ACTIVITY

		TOTALS	%
A.	<u>Engineering</u>		
	Program & Construction Management (City)	\$3,750,000.00	
	PdP Committee Consultant Services (Preconst)	\$2,699,590.00	
	PdP Committee Consultant Services (Construction)	\$4,895,950.00	
	PdP Committee Consultant Services Contingency	\$379,777.00	
	Environmental Document/DSD	\$5,000.00	
	DSD Fees	\$245,000.00	
		<u>\$11,975,317.00</u>	<u>15.3%</u>
B.	<u>Construction</u>		
	Construction Contract	\$60,038,145.00	
		<u>\$60,038,145.00</u>	<u>76.9%</u>
D.	<u>Contingencies</u>		
	Contingency Reserve	\$6,095,152.00	
		<u>\$6,095,152.00</u>	<u>7.8%</u>
	Total Project Cost	\$78,108,614.00	100.00%



Construction Management and Consulting Services

Plaza de Panama Preliminary Project Construction Schedule

EXHIBIT B
Page 1 of 6

ID	Name	Duration	Start	Finish	2017				2018				2019				2020				
					Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	
1	PROJECT CONSTRUCTION	774 days	Mon 11/21/16	Thu 11/7/19																	
2																					
3	UPDATES, PROCESSING, BID AND AWARD	204 days	Mon 11/21/16	Thu 8/31/17																	
4	Plan Updates and Plan Check Processing	95 days	Mon 11/21/16	Fri 3/31/17																	
5	Bid and Award	109 days	Mon 4/3/17	Thu 8/31/17																	
6																					
7	UTILITY RELOCATION	86 days	Fri 9/1/17	Fri 12/29/17																	
8	Relocate Utilities	86 days	Fri 9/1/17	Fri 12/29/17																	
9																					
10	PARKING STRUCTURE AND ROOF TOP PARK	311 days	Mon 1/1/18	Mon 3/11/19																	
11	Demo/Excavation/Shoring	129 days	Mon 1/1/18	Thu 6/28/18																	
12	Parking Structure Construction	174 days	Wed 7/11/18	Mon 3/11/19																	
13																					
14	BRIDGE	195 days	Mon 1/1/18	Fri 9/28/18																	
15	Foundations	66 days	Mon 1/1/18	Mon 4/2/18																	
16	Structure and Roadway	129 days	Tue 4/3/18	Fri 9/28/18																	
17																					
18	ALCAZAR LOT	85 days	Tue 3/12/19	Mon 7/8/19																	
19	Alcazar Lot and Centennial Road	85 days	Tue 3/12/19	Mon 7/8/19																	
20																					
21	PLAZAS AND ESPLANADE AREAS	88 days	Tue 7/9/19	Thu 11/7/19																	
22	Plazas and Esplanade Improvements	88 days	Tue 7/9/19	Thu 11/7/19																	

Balboa Park Plaza de Panama Construction Sequence

PHASE I: Utility Relocation and Road Construction

Approximate Duration: 4 Months



Pan American West
Roadway Widening

Pedestrian
Access

Electrical Service
Relocation

Storm Drain
Installation

Temporary
Overhead Electrical

Centennial Road
South Construction



Balboa Park Plaza de Panama Construction Sequence PHASE II.A: Bypass Bridge & Parking Structure Construction Approximate Duration: 8 Months



Balboa Park Plaza de Panama Construction Sequence PHASE II.B: Bypass Bridge & Parking Structure Construction Approximate Duration: 6 Months



Bypass Bridge
Construction

Bridge Construction
Access Road (Existing)

Pedestrian
Access

Parking Structure
Construction

Centennial Road
South Complete

Balboa Park Plaza de Panama Construction Sequence

PHASE III: Utility Relocation, Restroom Demolition, & Alcatraz Lot Approximate Duration: 4 Months



Balboa Park Plaza de Panama Construction Sequence PHASE IV: Esplanade & Plaza Improvements Approximate Duration: 4 Months



Bypass Bridge Complete

Alcatraz Lot Operational

Pan American Road East, Plaza and Esplanade Improvements

Parking Structure Operational

Centennial Road South



EXHIBIT C

Insurance Requirements

C-1 Insurance Carriers. As a minimum requirement of acceptability, all insurance carriers shall be duly authorized by the California Insurance Commissioner to transact the business of insurance in the State of California. Except for the State Compensation Insurance Fund, insurance coverage must be from an insurance carrier licensed in the State of California and rated "A-" and "VI" or better by the A.M. Best Key Rating Guide. The required insurance policies and the certificate(s) of insurance shall contain the endorsements required below.

C-2 Workers' Compensation and Employer's Liability Insurance.

C-2.1 Workers' Compensation in compliance with the applicable state and federal laws.

C-2.2 Employer's Liability:

Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 each employee
Bodily Injury by Disease	\$1,000,000 policy limit

C-2.3 Required Endorsements.

C-2.3.1 Cancellation. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

C-2.3.2 Waiver of Subrogation. The policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City, and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured.

C-3 Commercial General Liability Insurance. The policy or policies shall be written on ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from premises and operations, XCU (explosion, underground, and collapse), independent contractors, products/completed operations, personal injury and advertising injury, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. All policy coverage shall be on an occurrence basis and in amounts not less than the following limits of liability:

General Annual Aggregate Limit	
(Other than Products/Completed Operations)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

C-3.1 Required Endorsements.

C-3.1.1 Additional Insureds. The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, and employees, agents, and representatives with respect to liability arising out of (a) Ongoing operations performed by you or on your behalf, (b) Your products, (c) Your work, including but not limited to your completed operations performed by you or on your behalf, and (d) premises owned, leased, controlled, or used by you.

C-3.1.2 Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of the Committee's insurance and shall not contribute to it.

C-3.1.3 Cancellation. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

C-3.1.4 Severability of Interest. The policy or policies must be endorsed to provide that the Committee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

C-4 Commercial Automobile Liability Insurance. Contractor shall provide at its expense a policy written on an ISO form CA 00 01 12 90, or a later version of this form or equivalent form, providing coverage at least as broad in the amount of \$1,000,000 combined single limit per accident, covering bodily injury and property damage for owned, non-owned and hired automobiles.

C-4.1 Required Endorsements:

C-4.1.1 Additional Insureds. The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers,

employees, agents, and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Committee.

C-4.1.2 Cancellation. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

C-4.1.3 Severability of Interest. The policy or policies must be endorsed to provide that the Committee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

C-5 Surplus Lines. A policy by a Surplus Lines insurer is presumptively invalid unless the insurer is on the List of Approved Surplus Line Insurers (LASLI List) maintained by the California Department of Insurance. The LASLI List may be found at:

<http://www.insurance.ca.gov/0100-consumers/0030-licensee-info/0031-surplus-lines>,

All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described above.

C-6 Architects & Engineers Professional Liability. For all Design Consultant's

employees who are subject to this Agreement, the Design Consultant shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$2 million per claim and \$4 million annual aggregate. The Design Consultant shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Professional Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Professional Services. The Design Consultant shall agree that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss.

EXHIBIT D

Certification for Title 24/ADA Compliance

1. GENERAL:

All City projects are now subject to City of San Diego Resolution No. R-282153 adopted on June 14, 1993. All bidders should be aware of the provisions of Council Policy 100-04 which was established by the above numbered resolution. The policy applies equally to the contractor and all Subcontractors. The elements of the policy are outlined below.

2. BACKGROUND:

The issue of accessibility, both architecturally and programmatically by people with disabilities, to public and private entities has been addressed by Section 504 of the Rehabilitation Act of 1973, and most recently by the Americans with Disabilities Act (ADA) of 1990. This broad reaching legislation addresses the right of people with disabilities to obtain equal access to services, programs, buildings, facilities, and employment.

3. PURPOSE:

It is the intent of the City Council that the City of San Diego take a leadership role in addressing compliance with the ADA in the workplace. It is the purpose of this policy to establish the requirement that all City contractors, including but not limited to construction contracts, consultants, grantees, and providers of goods and services agree to comply with all applicable titles of the ADA.

4. DEFINITIONS:

- A. "Qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.
- B. "Employee" means the employee of a contractor directly engaged in the performance of work pursuant to a contract as described in Section 2.
- C. "Contractor" means any person or entity who enters into an agreement with the City for the construction of capital improvements or the provision of goods or services. Contractor shall include, but not limited to consultants, grantees, lessees and vendors.

5. CITY CONTRACTOR REQUIREMENTS:

A. Every person or organization entering into a contractual agreement with or receiving a grant from the City of San Diego shall certify to the City of San Diego that it will comply with the ADA by adhering to all of the provisions of the ADA listed below:

1. Title I. Employment Mandates:

"No contractor may discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment."

2. Title II. State and Local Government:

"No qualified individual with a disability maybe excluded on the basis of disability, from participation in, or be denied the benefits of services, programs, or activities by contractors or Subcontractors providing services for the City."

3. Post a statement addressing the requirements of the ADA in a prominent place at the worksite.

B. Contractors shall include in each Subcontract agreement, language which indicates the Subcontractor's agreement to abide by the provisions of subdivisions (1) through (3) inclusive of Section 2A. Contractors and Subcontractors shall be individually responsible for their own ADA employment programs.

PROJECT TITLE: _____

I hereby
certify that I am familiar with the requirements of San Diego City Council Policy
No. 100-4 regarding the American With Disabilities Act (ADA)
outlined in EXHIBIT "E" - Certification for Title 24/ADA Compliance, and that

(Name under which business is conducted)

complies with said policy. I further certify that each Subconsultants/Subcontract
agreement for this project contains language which indicates the
Subconsultants/Subcontractors agreement to abide by the provisions of the
policy as outlined.

Signed _____

Printed Name _____

Title _____

EXHIBIT E

Drug-Free Workplace Certification

City of San Diego Drug-free Workplace Requirements

1. GENERAL:

All City projects are now subject to City of San Diego Resolution No. R-277952 adopted on May 20, 1991. All bidders should be aware of the provisions of Council Policy 100-17 which was established by the above numbered resolution. The policy applies equally to the contractor and all subcontractors. The elements of the policy are outlined below.

2. DEFINITIONS:

Drug-free workplace - A site for the performance of work done in connection with a contract let by City of San Diego for the construction, maintenance, or repair of any facility or public work by an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this section.

Employee - The employee of a contractor directly engaged in the performance of work pursuant to a contract as described herein Section 3, "City Contractor Requirements."

Controlled Substance - A controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. Sec. 812).

Contractor - The department, division, or other unit of a person or organization responsible to the contractor for the performance of a portion of the work under the contract.

3. City Contractor Requirements:

Every person or organization awarded a contract or grant by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace by doing all following:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
- b) Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.

- (2) The person's or organization's policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c) Posting the statement required by subdivision (1) in a prominent place at contractor's main office. For projects large enough to necessitate a construction trailer at the job site, the required signage would also be posted at the job site.

Contractors shall include in each subcontract agreement language which indicates the subcontractor's agreement to abide by the provisions of subdivisions a) through c) above. Contractors and subcontractors shall be individually responsible for their own drug-free workplace programs.

Additionally, Contractors will submit the signed form below, certifying compliance with San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace.

Note: The requirements of a drug-free awareness program can be satisfied by periodic tailgate sessions covering the various aspects of drug-abuse education. Although an in-house employee assistance program is not required, contractors should be able to provide a listing of drug rehabilitation and counseling programs available in the community at large.

Questions about the City's Drug-free Workplace Policy should be referred to the Director, Purchasing & Contracting Department.

**CONTRACTOR CERTIFICATION
REGARDING DRUG-FREE WORKPLACE COMPLIANCE**

PROJECT TITLE: _____

I hereby
certify that I am familiar with the requirements of San Diego City Council Policy No.
100-17 regarding Drug-Free Workplace as outlined in EXHIBIT F — DRUG-FREE
WORKPLACE CERTIFICATION, and that

(Name under which business is conducted)

has in place a drug-free workplace program that complies with said policy. I further
certify that each subcontract agreement for this project contains language which
indicates the subcontractors agreement to abide by the provisions of the policy as
outlined.

Signed _____

Printed Name _____

Title _____

EXHIBIT F

Prevailing Wage Rate Requirements

F-1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the Committee, its consultants and any subconsultants shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

F-1.1 Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Committee, its consultants and all subconsultants shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

F-1.2 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

F-2 Penalties for Violations. Committee, its Consultants and all subconsultants shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

F-3 Payroll Records. Committee, its consultants and all subconsultants shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Committee, its consultants and all subconsultants to also comply with section 1776. Committee, its consultants and all subconsultants shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Committee is responsible for ensuring its consultants and all subconsultants submit certified payroll records to the City and online to the Labor Commissioner.

F-3.1 For agreements entered into on or after April 1, 2015, Committee, its consultants and all subconsultants shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by

Labor Code section 1771.4, as well as to the City.

F-4 Apprentices. Committee, its consultants and all subconsultants shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Committee shall be held responsible for the compliance of their consultants and subconsultants with sections 1777.5, 1777.6 and 1777.7.

F-5 Working Hours. Committee, its consultants and all subconsultants shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

F-6 Required Provisions for Subcontracts. Committee shall include at a minimum a copy of the following provisions in any contract they enter into with a consultant and/or subconsultant: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

F-7 Labor Code Section 1861 Certification. Committee in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, Committee certifies that “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

F-8 Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego’s Equal Opportunity Contracting Department at 619-236-6000.

F-9 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no Consultant or subconsultant may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a Consultant or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Design Professional is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Design Professional shall provide proof of registration to the City upon request.

F-9-1 A Consultant’s inadvertent error in listing a subconsultant who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a protest or grounds for considering the bid or proposal non-

responsive provided that any of the following apply: (1) the subconsultant is registered prior to proposal due date; (2) within twenty-four hours after the proposal due date, the subconsultant is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subconsultant is replaced by another registered subconsultant pursuant to Public Contract Code section 4107.

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:
October 25, 2016

SUBJECT: Balboa Park Plaza de Panama Project – Cooperation Agreement, Authorizing a Construction Contract, and Related Funding Actions

GENERAL CONTRACT INFORMATION

Recommended Contractor: TBD
Amount of this Action: N/A
Funding Source: City of San Diego
Goal: TBD

SUBCONTRACTOR PARTICIPATION

There is no subcontractor associated with this action; however, subsequent actions must adhere to funding agency requirements.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Not Applicable

Contracts or agreements associated with this action are subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

This action authorizes the Mayor and/or his designee to:

1. Enter into the Plaza de Panama Cooperation Agreement with the Plaza de Panama Committee;
2. Accept all contributions to be made in the future for the Committee for this project;
3. Negotiate and execute one or more agreements, for and on behalf of the City, to accept donations for the Project in a cumulative amount estimated to be \$30 million;
4. Award a construction contract in an amount not to exceed \$75 million; and
5. Authorize the reimbursement through bond proceeds for any eligible costs which may be expended prior to the issuance of bonds.

This action also authorizes the Chief Financial Officer (CFO) to increase the CIP Budget and to appropriate and expend up to an additional \$48 million on City expenditures for the Project. The CFO is also authorized to increase the CIP Budget to appropriate and expend up to \$30 million from donations to the City from the Plaza de Panama Committee and others.

CCA