



THE CITY OF SAN DIEGO

OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: 11/15/2012

SUBJECT: Horton Plaza Park Improvement Project (block bounded by Broadway, Broadway Circle, E Street and Fourth Avenue) – Authorization to bid and award construction contract and to enter into other contracts related to the project

CONTACT/PHONE NUMBER: David Graham, (619) 236-6980

DESCRIPTIVE SUMMARY OF ITEM:

Adoption of a resolution:

- Authorizing the Successor Agency or its agent, Civic San Diego (“CivicSD”), to solicit bids and award a contract to the lowest responsible bidder for construction of the Horton Plaza park improvement project (“Project”) in order to fulfill an enforceable obligation pursuant to the Owner Participation Agreement dated January 2011 (“OPA”) for the Horton Plaza Retail Center (“Retail Center”), using funds available in the third Recognized Obligation Payment Schedule (“ROPS III”) up to \$10,982,141; and
- Authorizing the Successor Agency or its agent, CivicSD, to enter into contracts and make expenditures up to \$1,025,171, using funds available in ROPS III, for additional work related to the Project, including: (i) the acquisition of furniture, fixture, and equipment for the Project in an amount not to exceed \$200,000; (ii) the payment of certain indirect costs of the Project, including additional design services, construction phase consultants, permits and plan check fees and other miscellaneous costs, in an amount not to exceed \$280,589; (iii) an agreement with the landscape architecture firm of Walker Macy for construction administration support services for the Project in an amount not to exceed \$294,582; and (iv) an agreement with a consultant for construction management and inspection services for the Project in an amount not to exceed \$250,000.

STAFF RECOMMENDATION

Approve the requested actions.

DISCUSSION:

BACKGROUND:

In January 2011, the former Redevelopment Agency of the City of San Diego (“Former RDA”) and Horton Land, LLC, Horton Plaza Venture, LLC and Horton Plaza LP (collectively, “Westfield” or “Developer”) executed the OPA with respect to the Retail Center.

As of February 1, 2012, upon the Former RDA's dissolution, the Successor Agency assumed all of the Former RDA's rights and obligations under the OPA.

Section 501(a) of the OPA requires the Successor Agency (as successor to the Former RDA) to pay a *minimum* of \$8 million in hard construction costs for a "world class plaza" located immediately adjacent to the Retail Center. Section 502 of the OPA obligates the Successor Agency to develop the Project in accordance with a prescribed schedule and in accordance with final construction plans created with the input of interested stakeholders. Section 501(a) of the OPA also requires the Developer to transfer certain real property to the Former RDA for the construction of the Project. While the Project will become a City asset upon completion of construction, Sections 503 and 504 of the OPA require the Developer to be responsible for maintenance and management of the Project for 25 years and to manage the programming of events and leasing of the three pavilions.

The Project will rehabilitate the historic Horton Plaza Park and create a new urban plaza on the site of the former Robinsons May ("RobMay") building of the Retail Center. The Project is envisioned to be a dynamic, active, public heart of the City, and a true gathering place for more than 200 civic events and community celebrations each year. Not only will the Project create vital new urban open space for a growing downtown population, it will also reactivate a historically significant community asset.

The Project improvements include:

- Rehabilitation of the historic Horton Plaza Park, including the Broadway Fountain designed by Irving Gill and restoring the lawn in the landscape areas to make the park more usable;
- The development of an urban plaza with amenities such as a large amphitheater, interactive water feature, architectural luminaria, public restrooms, underground storage, granite paving, movable tables and chairs and three food and beverage/retail pavilions to help activate the space; and,
- Public right-of-way improvements with enhanced paving to blend with the adjacent plaza

The Project will advance the Visions and Goals of the Downtown Community Plan and the Objectives of the Horton Plaza Redevelopment Project by:

- Developing a comprehensive open space system that provides a diverse range of outdoor opportunities for residents, workers, and visitors;
- Providing public open space within walking distance of all residents and employees;
- Making public parks and plazas harmonious, inspirational, and sources of community pride and character through community participation and design excellence;
- Reclaiming open spaces that have deteriorated, have design features that limit access and use opportunities, and/or are in need of activity and revitalization;

- Facilitating the development of mixed-use neighborhoods with open spaces, services, and retail within convenient walking distance of residents to maximize opportunities for walking;
- Encouraging the position of outdoor seating and/or cafés where appropriate; and,
- Adding public restrooms in a public space greater than one-half of a city block.

The site is located in the heart of downtown San Diego and is bounded by Broadway on the north, the Retail Center on the south, Fourth Avenue on the east and Broadway Circle on the west. The existing historic park is approximately 20,000 square feet, while the proposed new plaza is approximately 37,000 square feet.

ONGOING COMPLIANCE WITH THE OPA:

California Health and Safety Code section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations. Moreover, California Health and Safety Code section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation. The recommended actions addressed in this report are necessary to allow the Successor Agency to fulfill its contractual obligations under Part 5 Development of the Plaza Improvements and associated attachments (Attachment C) of the OPA, consistent with the above-described statutory provisions. If those recommended actions are not approved, the Successor Agency would be unable to fulfill its obligations under the OPA, and the Successor Agency may be found to be in default of OPA with Westfield. In addition, a blighted historic park would continue to be an eyesore and attractive nuisance in the heart of downtown, and an underutilized building would remain mostly vacant.

Pursuant to Section 502 of the OPA, CivicSD (formerly Centre City Development Corporation), acting as the Successor Agency's agent, engaged the urban design and landscape architecture firm of Walker Macy and their team of subconsultants ("Design Team") to gather public and stakeholder input and develop the vision for transforming an underutilized and blighted site into an attractive, durable, and flexible public open space. The Project has completed 80% construction drawings ("CDs") and is currently in permit review at the City. Plans/specifications and permitting are projected to be completed by the end of December 2012.

CivicSD will facilitate the competitive bidding process, leading to the award of the construction contract for the Project in early 2013, as discussed further below. The proposed new agreement with Walker Macy, in an amount not to exceed \$294,582, is for construction administration and support services during the construction phase. The proposed agreement for a consultant for construction monitoring and inspection services, in an amount not to exceed \$250,000, will assist staff in overseeing construction activities on behalf of CivicSD. Also, the Project will require the purchase of furniture, fixtures and equipment, pursuant to Attachment 8 Preliminary Design Guidelines of Attachment C herein, in an amount not to exceed \$200,000.

FISCAL CONSIDERATIONS:

As mentioned above, the OPA requires the Successor Agency to pay a *minimum* of \$8 million in hard construction costs for a “world class plaza.” Upon approval of the OPA, \$9.924 million of tax increment funds were budgeted for the Project to cover the minimum hard construction costs and design consultant contract. At the time the OPA was negotiated and approved by both parties, a conceptual design for the new urban plaza and rehabilitation of the historic park had not been prepared nor had a design team been selected. The \$9.924 million initial budget reflected both parties’ best estimate of the *minimum* cost for solely the design and hard construction costs for the future Project, acknowledging that many additional design, permitting, inspection, and administration line items would be necessary to establish the final budget and execute the Project. In addition, the eventual design of the Project components would be determined through a series of public workshops and input from the Centre City Advisory Committee, CivicSD, and Westfield.

Since approval of the conceptual and schematic designs, the Design Team has been working on CDs that are now 80% complete and in second plan review at the City. Based on 80% complete CDs, the cost estimate is \$11,708,912¹ for hard construction.

Each ROPS approved by the Successor Agency to date includes funding for the Project. Cumulatively, the ROPS documents provide \$12,757,312 for the Project², identified in various line items. For instance, line items 198, 199, 259, 295, and 303 in ROPS III, which covers the first half of calendar year 2013, relate to the Project. The Oversight Board and the California Department of Finance have approved all line items in each ROPS, including ROPS III, that provide funding for the Project. The ROPS amount of \$12,757,312 includes two main components in accordance with the OPA. First, \$12,007,312 is allocated for hard construction costs and soft costs.³ Second, \$750,000 is allocated for future capital repairs and replacements; more specifically, upon completion of the Project, the Successor Agency is obligated to deposit annually, beginning in FY 2015 and on the next four (4) anniversary dates, \$150,000 into the Plaza Capital Reserve Account for a total of \$750,000 for the Project’s future capital repairs and replacements.⁴

The current estimated Project budget to design, develop and construct the plaza improvements, based on the latest cost estimates of the 80% construction drawings (CDs) and all necessary permitting, inspection, and oversight requirements for completion of the Project, is \$14,286,905⁵. After deducting project costs incurred of \$1,552,822⁶, including expenditures

¹ See Attachment B, line labeled “Subtotal Hard Construction Cost.”

² See Attachment B, line labeled “Amount Available in ROPS for Horton Plaza Park.”

³ See Attachment B, line labeled “Adjusted Amount Available in ROPS for Horton Plaza Park Construction.”

⁴ See Attachment B, line labeled “Less: Horton Park Capital Reserve Obligation.”

⁵ See Attachment B, line labeled “Total” for the column labeled “Total Project Cost (Design and Construction).”

⁶ See Attachment B, line labeled “Total” for the column labeled “Cost Previously Encumbered.”

made prior to the establishment of the ROPS, remaining Project costs are estimated to be \$12,734,083⁷. However, the amount available in the ROPS for such Project costs is \$12,007,312⁸, producing a budget shortfall of approximately \$726,771⁹. The current cost estimates contain fairly conservative contingencies, and bids may be received that are less than the total estimate.

The Oversight Board has previously approved a resolution that authorizes the Successor Agency to enter into contracts and to otherwise make expenditures for approved line items in ROPS III. While the California Department of Finance has approved all of the line items in ROPS III pertaining to the Project, the Successor Agency now seeks, in an abundance of caution, the Oversight Board's authorization to award the construction contract for the Project, utilizing ROPS funds up to the amount of \$10,982,141, and to enter into the other contracts and make additional expenditures for the Project, utilizing ROPS funds up to the amount of \$1,025,171, resulting in the maximum aggregate expenditure of \$12,007,312 in ROPS funds toward design, construction, and project management. The construction contract will be accompanied by a list of potential alternative elements for deduction, if necessary, following a value-engineering process dependent on the amount of the lowest qualifying bid. These deduct alternatives could include such items as a green roof on the top of portions of the south pavilion; ambient sound system; and/or reduction or elimination of the interactive water feature. The Successor Agency will include an additional expenditure of up to \$726,771 in the construction contract only if additional, non-redevelopment funding sources are identified to offset this budget shortfall.

ECONOMIC IMPACTS: It is estimated that the Project will create approximately 185 construction jobs and 25 permanent jobs.

SUCCESSOR AGENCY ACTION: On November 13, 2012, the Successor Agency (i.e., the City Council) voted 8-0 (Councilmembers Lightner, Faulconer, Gloria, DeMaio, Zapf, Emerald, Alvarez and Council President Young) to support the staff recommendation. The Successor Agency expressed their desire that staff continue to find alternate funding sources to bridge the current budget gap of \$726,771 so as to avoid the need to value engineer the Project and degrade the quality of the new urban plaza, but were also hopeful that the bids come in favorably, eliminating the gap altogether.

CIVIC SAN DIEGO RECOMMENDATION: On October 17, 2012, the CivicSD Board voted 5-0 (Jones, Shaw, Morgan, Gattas, and Evans; Director Oncina recused) to support the staff recommendation.

CENTRE CITY ADVISORY COMMITTEE RECOMMENDATION: On September 21, 2011, the Centre City Advisory Committee (CCAC) voted 17-0, with four recusals, to support staff's

⁷ See Attachment B, line labeled "Total" for the column labeled "Cost not yet Encumbered."

⁸ See Attachment B, line labeled "Adjusted Amount Available in ROPS for Horton Plaza Park Construction."

⁹ See Attachment B, line labeled "ROPS Shortfall."

recommendation and the Project Area Committee (PAC) voted 17-0, with two recusals, to support staff's recommendation of approval of the schematic design. CCAC then received an update on the project at the 100% DD phase on March 21, 2012 and following staff's presentation, CCAC provided their continued support for the Project.

OTHER RECOMMENDATIONS: Staff and the consultant team presented the project to the Design Review Committee (DRC) of the City of San Diego Park and Recreation Board on September 14, 2011. The DRC voted 7-0 in favor of recommending approval of the schematic design to the Park and Recreation Board with the following suggestions:

- Place a high emphasis on the design of the luminaria since they will be such a dominant feature
- Coordinate with the Balboa Theatre to address their outdoor space needs
- Provide a southern focal point or visual termination to the plaza such as a fountain or work of art located near the Balboa Theatre
- Consider a 5 ½" by 16" riser to tread ratio for the plaza stairs
- Plaza stair handrails need to be an adequate number and of good design
- Provide benches or seating near transit stops on Fourth Avenue
- Attempt to incorporate solar energy into the design as much as possible
- The design of the plaza needs to be in context with the surrounding areas
- Develop a program for permanent and temporary signs and banners

At the City's Park and Recreation Board meeting on September 22, 2011, this item was moved to the Consent Agenda and approved without discussion.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Public Outreach – The Project Team has engaged the San Diego community at key milestones in the project through numerous public meetings. Stakeholders (consisting of adjacent owners, developers, and leaders of San Diego governmental and quasi-governmental agencies) and the community at large were invited to participate in a series of meetings and “open houses” to provide their input throughout the design process.

At the time of approval of the OPA, the consensus of the Agency/Council was for CivicSD's predecessor to form a three-to-five member design advisory group comprised of civic leaders in the community whose responsibilities in this role would be to provide input into the development of the Schematic Design. This advisory group was formed and was known as the Horton Plaza Design Committee (“Design Committee”).

The Project Team obtained direct input from the various groups at the following meetings over the past several months:

- April 7 & 8, 2011 – Design Committee and Stakeholder Meetings
- April 21, 2011 – Open House #1
- June 21, 2011 – Design Committee, Stakeholder Meetings and Open House #2
- June 22, 2011 – CivicSD Board Meeting
- July 26, 2011 – Design Committee, Stakeholder Meetings and Open House #3
- July 27, 2011 – CivicSD Board Meeting
- August 30, 2011 – Stakeholder Meetings

EQUAL OPPORTUNITY: This Project will utilize the Subcontracting Outreach Program (SCOPE). The mandatory subcontracting outreach percentage for this Project will be determined by the City’s Engineering and Capital Improvement Projects Department. This Project is subject to the City’s Equal Opportunity Contracting Program (San Diego Ordinance No. 18173, San Diego Municipal Code Sections 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL BACKGROUND INFORMATION:

Proposed Schedule:

Phase	Task	Anticipated Completion
Improvement Plans	80% CDs and Cost Estimate	September 2012
Bid and Construction	Authorization to Bid and Award	October/November 2012
	Final CDs; Building Permit Ready	December 2012
	Advertise, Bid and Award	March 2013
	Commence Construction	April 2013
	Targeted Plaza Opening	Spring 2014

Environmental Impact: This Project is covered under the Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified by the Former RDA on March 14, 2006 (Resolution R-04001), and subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former RDA Resolution R-04193), April 21, 2010 (Former RDA Resolutions R-04508 and R-04510), and August 3, 2010 (Former RDA Resolution R-04544). The FEIR is a “Program EIR” prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. An Environmental Secondary Study (ESS) dated

December 2010 was prepared in accordance with CEQA, state, and local guidelines and concluded that (i) the environmental impacts of the proposed Project were adequately addressed in the FEIR, (ii) the proposed Project is within the scope of the development program described in the FEIR, and (iii) no further environmental documentation is required under CEQA. No changes to the Project have occurred since the time of preparation of the ESS that would require further CEQA review.

Findings: All necessary findings required by State of California Community Redevelopment Law were previously adopted by the City Council and the Former RDA at a joint public hearing held in January 2011 (Council Resolution R-306546; Former RDA Resolution R-04598).

CONCLUSION: The Project provides for the ability to create new world-class urban open space that is necessary for a growing downtown population, but also affords the opportunity to rehabilitate the existing historic park and fountain. Approval of the recommended actions will allow CivicSD, on behalf of the Successor Agency, to make one more step towards realizing this goal and to fulfill the Successor Agency's obligations in accordance with the OPA with Westfield, an enforceable obligation. The Oversight Board is respectfully requested to approve the actions as described above.

David Graham
Office of the Mayor

Jay Goldstone
Chief Operating Officer

Attachments: A – Site Plan and Illustrative Images
B – Project Budget
C – OPA Part 5 Development of the Plaza Improvements



ATTACHMENT A





Horton Plaza Improvement Project - Budget 11/15/2012

Project Cost Information	Total Project Cost (Design and Construction)	Costs Previously Encumbered	Cost not yet Encumbered
Hard Construction Costs (80% Construction Drawings)			
New Urban Plaza and Rehabilitation of Historic Park (includes 8% construction contingency)	\$ 11,708,912	\$ -	\$ 11,708,912
Subtotal Hard Construction Cost	\$ 11,708,912	\$ -	\$ 11,708,912
Furniture, Fixtures & Equipment (FF&E)	\$ 200,000	\$ -	\$ 200,000
Subtotal Hard Construction Costs & FF&E	\$ 11,908,912	\$ -	\$ 11,908,912
Soft Costs			
Subtotal All Soft Costs	\$ 2,377,993	\$ 1,552,822	\$ 825,171
TOTAL	\$ 14,286,905	\$ 1,552,822	\$ 12,734,083

Recognized Obligation Payment Schedule (ROPS)	
Amount Available in ROPS for Horton Plaza Park	\$ 12,757,312
Less: Horton Park Capital Reserve Obligation (2015-2019 @ \$150K per year)	\$ (750,000)
Adjusted Amount Available in ROPS for Horton Plaza Park Construction	\$ 12,007,312
Cost not Yet Encumbered from Total line above	\$ 12,734,083
ROPS Short fall	\$ (726,771)

Requested Amount for Authorization to Bid and Award	
Total Potential Construction Contract (from Subtotal Hard Construction Cost above)	\$ 11,708,912
Less: ROPS Short fall from above	\$ (726,771)
Requested Amount for Authorization to Bid and Award for Hard Construction	\$ 10,982,141

Attachment C
(Part 5. Development Of The Plaza Improvements)

**ORIGINAL
DUPLICATE**

**OWNER PARTICIPATION AGREEMENT
(Horton Plaza Retail Center)**

by and between

**REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO
AGENCY,**

and

**HORTON LAND LLC,
HORTON PLAZA VENTURE LLC and
HORTON PLAZA L.P.
(DEVELOPER)**

DOCUMENT NO. D-04599a/R-04599

FILED JAN 21 2011

OFFICE OF THE REDEVELOPMENT AGENCY
SAN DIEGO, CALIF.

Improvement shall be entitled, upon written request made to the Agency, to a Release of Construction Covenants from the Agency.

Section 419 Failure of Permitted Mortgagee to Developer Work of Improvement

In any case prior to the issuance of the Release of Construction Covenants for the Developer Work of Improvement by the Agency, where, following notice and an opportunity to cure as provided in this Agreement, neither Developer nor the Permitted Mortgagee has cured a default under this Agreement, the Agency may terminate this Agreement.

Section 420 Mortgagee Protections

No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement, the Agreement Affecting Real Property, or the Amendment to Grant Deed Restrictions shall defeat or render invalid or in any way impair the lien or charge of any Permitted Mortgagee, but the Agreement Affecting Real Property and the Amendment to Grant Deed Restrictions, and the covenants contained therein shall be senior in priority to any lien on the Property and the Sales Parcel. In the event any Mortgagee or proposed Mortgagee requests any modification or amendment to the lender protection provisions set forth in this Agreement, Agency agrees not to unreasonably withhold its consent to such requested modification or amendment.

Section 421 CEQA

The Agency acknowledges that prior to entering into this Agreement, the Agency has conducted environmental review for approval of this Agreement by the Agency and both the (i) Developer Work of Improvement and (ii) the Plaza Improvements.

PART 5. DEVELOPMENT OF THE PLAZA IMPROVEMENTS

Section 501 Plaza Improvements

a. Concurrent with the Close of Escrow, the Developer shall convey to the Agency fee simple title to the Sales Parcel in accordance with the terms and conditions of this Agreement. Upon conveyance of the Sales Parcel by the Developer to the Agency, the Agency shall develop and install on the Sales Parcel and the sidewalks depicted in Exhibit B attached to the Preliminary Design Guidelines as Attachment No. 8 a public plaza and open space and renovate, modify and revitalize the adjacent city-owned property known as the historic Horton Park as more particularly described in the “**Legal Description of Park Property**” (Attachment No. 2D) (collectively such Sales Parcel, the sidewalks and the historic Horton Park being referred to herein as the “**Plaza Property**”). Such improvements on the Plaza Property are collectively referred to herein as the “**Plaza Improvements**”. The Plaza Improvements shall be developed by the Agency within the times set forth in the Schedule of Performance and shall

satisfy the following requirements: (i) the hard construction costs of the Plaza Improvements shall be no less than Eight Million Dollars and NO/100 (\$8,000,000) plus the amount of other payments made by the Developer to Agency which are to be applied to the cost of the Plaza Improvements pursuant to the terms of this Agreement (the "**Minimum Plaza Expenditure**"); the sources of funds for the Minimum Plaza Expenditure shall include Four Million Six Hundred Thousand Dollars and NO/100 (\$4,600,000) on hand and the balance of Three Million Four Hundred Thousand Dollars and NO/100 (\$3,400,000) is contingent upon receipt of funds in fiscal years 2011 and 2012 from payments made by the Developer to Agency pursuant to Section 201b.1 and Section 201b.2 of this Agreement as well as other funds of the Agency; and (ii) the Plaza Improvements shall be constructed in accordance with the final construction plans described in Section 502 which were the basis for bidding and selection of the contractor as described in Section 502.

b. The Parties anticipate that upon completion of the Plaza Improvements by the Agency, the Sales Parcel shall be conveyed by the Agency to the City pursuant to the Cooperation Agreement (Attachment No. 5) between the Agency and the City.

c. Developer and Agency anticipate that the design and use of the Parcel C-1 Permanent Improvements may have a dining component and, in that event, the Parcel C-1 Permanent Improvements and the Plaza Improvements would benefit from an outdoor patio component on Parcel C-1 which may need to encroach into a portion of the Sales Parcel. In the event that the design of Parcel C-1 Permanent Improvements and the Plaza Improvements can accommodate such use and encroachment, Developer will request from the City any required encroachment permit and in a manner consistent with the Centre City PDO.

d. Any act of or failure to act by the Agency shall not excuse performance by the Agency of its obligations under this Agreement, including any future Agency discretionary approvals that may be needed for consideration of the Plaza Improvements.

Section 502 Design Process

The Plaza Improvements shall be developed on the Plaza Property by the Agency based upon the plans developed and approved by the Agency within the times set forth in the Schedule of Performance (Attachment No. 11) pursuant to the following terms and conditions (the "**Basic Concept and Schematic Drawings**"):

1. By the Agency entering into this Agreement, the Centre City Development Corporation (CCDC) shall be authorized on behalf of the Agency to select a design consultant to design and develop plans and drawings for the Plaza Improvements (the "**Design Consultant**") under and subject to the following terms and conditions, which shall be expressly provided for in the agreement between the Design Consultant and the Agency:

(a) The renovation and/or redesign of Horton Park shall be consistent with the Historical Resource Regulations pursuant to San Diego Municipal Code sections 143.0201 through 143.0280;

(b) Subject to the requirements of Section 502.1(a) above, the Basic Design and Schematic Drawings shall comply with and be consistent with the Preliminary Design

Guidelines as set forth in Attachment No. 8 and the 2006 Downtown Community Plan and the Centre City PDO; and

(c) The Plaza Improvements shall require a minimum capital investment for hard construction costs by the Agency in the amount of the Minimum Plaza Expenditure. In connection with the design and bidding process, Agency shall enlist the services of a qualified architect or engineer to identify options and alternatives with the goal of obtaining multiple qualified bids which satisfy the Minimum Plaza Expenditure and any limitations imposed by other governmental agencies as required by law on the authority of the Agency to enter into a construction contract for the Plaza Improvements. The foregoing in no way relieves Agency of its obligation to Developer under this Agreement to design and develop the Plaza Improvements.

2. Upon selection of the Design Consultant, the CCDC shall meet periodically with interested stakeholders including the Centre City Advisory Committee for the purpose of soliciting public input concerning the Basic Concept and Schematic Drawings.

3. Representatives from the Developer and the CCDC shall meet as frequently as required for the purposes of consulting on the Basic Concept and Schematic Drawings and assuring subsequent levels of plan development comply with the requirements of this Agreement. The CCDC shall confer with and reasonably consider Developer's feedback on the proposed Basic Concept and Schematic Drawings; and

4. Agency Executive Director or designee shall assure that the Basic Concept and Schematic Drawings approved by the Agency and successive levels of plan development including the final plans for the Plaza Improvements satisfy the Preliminary Design Guidelines including but not limited to the requirement set forth therein that the Plaza Improvements include four (4) kiosks containing up to 1,200 square feet in the aggregate and that the hard construction costs of the Plaza Improvements equal or exceed the Minimum Plaza Expenditure. In addition, each successive level of plan development shall be consistent with and the logical evolution of the preceding level of plan development. The plans shall be prepared in a manner such that changes in successive plan levels may be identified and tracked. The CCDC shall keep Developer generally informed of the progress of the design and plan development process and, on request of Developer, make available to Developer for its review the then current plans for the Plaza Improvements.

5. The Design Consultant shall also prepare a twenty-five year capital repair and replacement plan as more particularly described in the Maintenance and Operations Agreement (defined below) for the Plaza Improvements.

Section 503 Maintenance and Operations Agreement

Concurrent with the Close of Escrow, Developer shall enter into a "**Maintenance and Operations Agreement**" substantially in the form attached hereto as Attachment No. 9 with the

Agency to provide for the maintenance and operation (the “**Maintenance Obligations**”) of the Plaza Improvements. The Maintenance and Operations Agreement shall provide for the establishment and administration of a capital reserve account (the “**Plaza Capital Reserve Account**”) in accordance with the provisions therein; provided, however, that the obligations and any indebtedness of the Agency created by this Agreement with respect to the Plaza Capital Reserve Account or the Cooperation Agreement with respect to the Plaza Capital Reserve Account is subordinate to any pledge of tax increments to bond holders of any tax increment bonds issued prior to the date of this Agreement. Subject to the occurrence of the Close of Escrow, beginning on or before the end of fiscal year 2014-2015 and on the next four (4) anniversary dates thereof ending on or before the end of fiscal year 2018-2019, the Agency shall deposit One Hundred Fifty Thousand Dollars and NO/100 (\$150,000) for a total of Seven Hundred and Fifty Thousand Dollars and NO/100 (\$750,000) into the Plaza Capital Reserve Account which funds shall be used for the purposes set forth in the Maintenance and Operations Agreement. A Memorandum of Maintenance and Operations Agreement substantially in the form attached to the Maintenance and Operations Agreement shall also be recorded concurrently at the Close of Escrow. Upon Completion of the Plaza Improvements by the Agency, the Agency shall assign the Maintenance and Operations Agreement to the City.

Section 504 Programming Agreement

Concurrent with the Close of Escrow, Developer shall enter into a “**Programming Agreement**” substantially in the form attached hereto as Attachment No. 10 with the Agency relating to the use, management, and programming of the Plaza Improvements. In accordance with the Programming Agreement, the Developer shall cause the activation of the Plaza Improvements. Upon Completion of the Plaza Improvements by the Agency, the Agency shall assign the Programming Agreement to the City.

PART 6. USE OF THE PROPERTY

Section 601 Uses

a. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that Developer, such successors and such assignees shall use the Property only for the uses specified in the Redevelopment Plan, the Centre City Planned District Ordinance, the Grant Deed, as amended by the Amendment to Grant Deed Restrictions and the Agreement Affecting Real Property.

b. Notwithstanding the generality of subsection a., above, Developer, its successors and assigns, shall develop, maintain and use the Property as follows until August 9, 2036:

(1) A regional shopping center containing not less than 600,000 square feet of gross leasable retail area (the “**Retail Center**”) together with parking to accommodate approximately 2,100 automobiles (the “**Parking Facilities**”), provided that this is intended only

ORIGINAL

COOPERATION AGREEMENT
BY AND BETWEEN
THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO
AND
THE CITY OF SAN DIEGO
FOR THE DESIGN AND CONSTRUCTION
OF THE PLAZA IMPROVEMENTS

Attachment 5
DOCUMENT NO. D-04599e/R-04599

FILED JAN 21 2011

OFFICE OF THE REDEVELOPMENT AGENCY
SAN DIEGO CALIF

This Cooperation Agreement for the Design and Construction of the Plaza Improvements [Agreement] is made and entered into by and between the Redevelopment Agency of the City of San Diego, a public body corporate and politic [Agency], and the City of San Diego, a California municipal corporation [City], referred to herein individually as "Party" and collectively as "Parties", with reference to the following:

RECITALS

- A. The City holds fee title to that certain real property consisting of a public park site referred to by Assessor Parcel Number 533-610-17-00, located at 325 Broadway Avenue, in the City of San Diego, State of California [Park Property], more particularly described in Exhibit A, and more commonly known as Horton Plaza Mini-Park.
- B. The Agency is engaged in activities necessary and appropriate to carry out and implement the Redevelopment Plan for the Horton Plaza Redevelopment Project Area [Project Area]; a copy of the Redevelopment Plan, as amended, is on file in the office of the secretary to the Agency as Document No. D- 04405e / R- 04405; and
- C. In order to carry out and implement the Redevelopment Plan, the Agency approved as a combined document the Implementation Plans for the Centre City and Horton Plaza Redevelopment Project Areas for the period of July 2009 to June 2014.
- D. The Redevelopment Plan for the Project Area provides for the development of parks, open public spaces and related facilities and the Implementation Plan for the Project Area identifies the need to increase the supply of parks, open public spaces and related facilities.
- E. The Centre City Development Corporation, Inc. [CCDC] is authorized, on behalf of the Agency, to administer the Project Area and implement redevelopment projects therein.
- F. In accordance with California Community Redevelopment Law, the Agency will be acquiring that certain real property adjacent to the Park Property and referenced by Assessor Parcel Number 533-610-09-00, located at 199 Horton Plaza, in the City of San Diego, State of California [Sales Parcel], and more particularly described in Exhibit B, pursuant to that certain Owner Participation Agreement dated January 19, 2011 between the Agency and the Developer therein, a copy of which is on file in the office of the secretary to the Agency as Document No. D- 04599e / R- 04599 [OPA]. The Park Property and the Sales Parcel are

collectively referred to herein as the “**Plaza Property**”. All capitalized terms not otherwise defined herein shall have the same meaning as used in the OPA.

G. Pursuant to the OPA, the Agency is required to construct certain public improvements located on the Plaza Property [**Plaza Improvements**] and to pay all costs associated with the design and construction thereof. The Agency is required to enter into contracts with the Developer for the operation, maintenance and programming of the Plaza Improvements as more particularly described herein below pursuant to the OPA and this Agreement.

H. Upon completion of the Plaza Improvements, the Agency shall assign said agreements as described in Recital G to the City and concurrently therewith convey the Sales Parcel and the improvements thereon to the City for designation as a public plaza under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of these recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Agency agree as follows:

AGREEMENT

ARTICLE I – DEVELOPMENT OF PLAZA IMPROVEMENTS

1.1 Design of Plaza Improvements. The Agency shall design the Plaza Improvements on the Plaza Property in accordance with the OPA which shall include input from the stakeholders as described therein. The City shall cooperate with the Agency in designing Plaza Improvements on the Plaza Property and any necessary improvements or modifications to City facilities required for construction thereof.

1.2 Construction of Plaza Improvements. The construction contract for Plaza Improvements will be awarded by the Agency and administered by and through the CCDC, on behalf of the Agency, in accordance with the OPA.

1.3 Conveyance of Sales Parcel. Upon the Completion Date of the Plaza Improvements, the Agency shall convey and the City shall accept conveyance of the Sales Parcel from the Agency with the improvements thereon in accordance with the Grant Deed substantially in the form attached hereto as Exhibit C. For purposes of this Agreement, “Completion” or the “Completion Date” shall mean the occurrence of all of the following: (i) issuance of any certificate of occupancy by the City, as required, and/or sign off of the engineering permit or equivalent approval by the City; (ii) recordation of a Notice of Completion by Agency or its contractor; (iii) certification or equivalent by the Agency’s project architect that the Plaza Improvements (with the exception of minor “punchlist” items) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; (iv) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic’s liens that have been recorded or stop notices that have been delivered with respect to

the Plaza Improvements; and (v) and the Plaza Improvements have been developed in accordance with the OPA.

1.4 Opening of Plaza Improvements. From and after the Completion Date and acceptance by the City of the Sales Parcel, the City shall open and use the Plaza Improvements on the Plaza Property as a public plaza.

1.5 Maintenance of Plaza Improvements. Upon the Completion Date and acceptance by the City of the Sales Parcel, the Agency shall assign that certain Maintenance and Operations Agreement with the Developer substantially in the form attached hereto as Exhibit D for the maintenance and operations of the Plaza Property and Plaza Improvements thereon [**Maintenance Agreement**] and the City shall assume the obligations as assignee therein pursuant to that certain Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit G. The Agency shall indemnify the City of all costs for repairs and replacements due to defective design or construction. A notice or memorandum of the Maintenance and Operations Agreement substantially in the form attached to the Maintenance and Operations Agreement shall also be recorded against the Plaza Property concurrently at the Close of Escrow.

1.6 Programming of Plaza Improvements. Upon the Completion Date and acceptance by the City of the Sales Parcel, the Agency shall assign that certain Park/Plaza Property Event Programming and Use Agreement with the Developer substantially in the form attached hereto as Exhibit E [**Programming Agreement**] to activate or cause the activation of the Plaza Improvements thereon and the City shall assume the obligations as assignee therein pursuant to that certain Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit G.

1.7 Right of Entry and Encroachment on Park Property. The City authorizes the Agency and its subcontractor agents to enter onto the Park Property, as needed, to construct the Plaza Improvements in conjunction with the Agency's construction of the Plaza Improvements on the Sales Parcel and Park Property. The Agency shall provide notice to the City one week prior to commencement of construction and closure of the Park Property to the public.

ARTICLE II – COSTS OF HORTON PARK PLAZA

2.1 Design and Construction Costs. The Agency shall pay for all costs associated with the design and construction of the Plaza Improvements.

2.2 Maintenance costs. Except relative to the contribution of Agency pursuant to Section 2.3 below, as between the City and Agency, the City shall be responsible for all costs associated with the maintenance and operations of the Plaza Improvements. Notwithstanding the preceding sentence, the Property Manager (as defined therein) shall pay for said costs in accordance with the Maintenance Agreement. Except relative to the contribution of Agency pursuant to Section 2.3 below, the Agency shall not pay for any costs associated with the maintenance or operations of the Plaza Improvements.

2.3 Plaza Capital Reserve Account. Upon the Completion Date and acceptance by the City of the Sales Parcel and upon the annual anniversary date thereof for the following four (4) years, the Agency shall deposit One Hundred Fifty Thousand Dollars and NO/100 (\$150,000) for a total aggregate amount of Seven Hundred Fifty Thousand Dollars and NO/100 (\$750,000) into a capital reserve account for the fulfillment of the certain replacement, refurbishment and restoration obligations under the Maintenance Agreement [**Plaza Capital Reserve Account**].

ARTICLE III – OTHER OBLIGATIONS

3.1 Developer Contribution. In the event Developer makes the Developer Contribution as set forth in Section 301.6 of the OPA, the City shall accept such funds and deposit same into a restricted City account which funds shall be administered by the City under the following terms and conditions:

(a) Developer shall contribute Seven Hundred and Fifty Thousand Dollars and NO/100 (\$750,000) payable to the City of San Diego upon (i) execution of the OPA by Agency and (ii) City's and Agency's execution of this Agreement. From such sum not less than Two Hundred and Fifty Thousand Dollars (\$250,000) shall be paid annually by the City for three (3) years for the benefit of the Balboa Theater or, to the extent the Agency Executive Director or designee determines that such funds are better used to fund the costs of the Plaza Improvements, to Agency for use in funding costs of Plaza Improvements and, in that event, such funding shall increase the amount of the Minimum Plaza Expenditure (as defined in the OPA) for use in connection with the development of the Plaza Improvements pursuant to Section 501 of the OPA;

(b) Developer shall contribute One Hundred and Fifty Thousand Dollars and NO/100 (\$150,000) to the Lyceum Theater payable to the City of San Diego upon (i) execution of the OPA by Agency, and (ii) City's and Agency's execution of this Agreement. From such sum not less than Fifty Thousand Dollars and NO/100 (\$50,000) shall be paid annually by the City for three (3) years for the benefit of the Lyceum Theater;

(c) Developer shall contribute One Hundred Thousand Dollars and NO/100 (\$100,000) payable to the City upon (i) execution of the OPA by Agency and (ii) City's and Agency's execution of this Agreement. Such funds shall be used for the purpose of funding the operation of a permanent homeless shelter. In the event that such homeless shelter is not completed prior to the Close of Escrow of the OPA, the Agency may choose another homeless shelter which benefits the Horton Plaza Redevelopment Project in accordance with the California Community Redevelopment Law (Health and Safety Code sections 33000 *et seq.*) to receive such funds for its operations.

3.2 Termination of Plan Effectiveness. In the event the effectiveness of the Redevelopment Plan for the Project Area terminates prior to the Agency having met its obligations under the OPA and to the extent the Agency is otherwise unable to meet those obligations in accordance with Community Redevelopment Law, the Agency hereby authorizes the City to carry out any

and all activities necessary to effectuate the provisions of the OPA until such time as such obligations are satisfied.

3.3 Amendment to Grant of Easement. Concurrently at the Close of Escrow, the City shall consent to the Amendment to Grant of Easement substantially in the form of and attached hereto as Exhibit F which shall be recorded against that area located in E Street, the Broadway Circle area and Fourth Avenue as more particularly described and depicted on Exhibit A and Exhibit B attached thereto [**Expanded Easement Area**] such that the "Easement Area" shall be modified to include the area as more particularly described in Exhibit "A" to the Grant of Easement recorded December 23, 1987 at File No. 87-704292 Official Records and the Expanded Easement Area at the Close of Escrow. Section 607 of the OPA requires that the Developer ensure the Amendment to Grant of Easement to be recorded against the Expanded Easement Area shall be superior to the lien of any mortgage or deed of trust.

ARTICLE IV – CHANGES IN OWNERSHIP OR CONTROL OF DEVELOPER; TRANSFERS

4.1 Changes in Ownership or Control of Developer; Transfers. Prior to the assignment of the Maintenance and Operations Agreement and the Programming Agreement to the City by the Agency pursuant to this Agreement, assignment of the Maintenance and Operations Agreement and the Programming Agreement shall be governed by the provisions of the OPA. Notwithstanding the preceding sentence, the Agency Executive Director or designee agrees to confer with a representative of the City with respect to any Developer transaction prior to the Completion of the Plaza Improvements that would result in an entity other than the Developer being a party to the Maintenance and Operations Agreement and the Programming Agreement at the time said agreements are assigned to the City. For purposes of this Section 4.1, the City's initial designated representative shall be the City of San Diego Park and Recreation Director.

ARTICLE V – TERM

5.1 Term. This Agreement shall become effective on the date it is fully executed by both Parties hereunder [**Effective Date**].

5.2 Termination. Either Party may terminate this Agreement in the event of Developer's failure to timely cure a Developer default under the OPA.

ARTICLE VI - GENERAL PROVISIONS

6.1 Agency's Representative. The Agency's obligations under this Agreement will be performed by CCDC, at the Agency's discretion. The City will recognize CCDC as the Agency's representative for purposes of this Agreement.

6.2 Third Party Beneficiaries. This Agreement is solely for the benefit of the Agency and the City, and no third person or entity shall be deemed to have any rights or remedies herein.

Any provision of this Agreement that appears to vest any right of action in third parties is unintended, and any such third party beneficiary is hereby expressly disclaimed.

6.3 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

6.4 Integration and Modification. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

6.5 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control for such time until such Exhibit is executed, if applicable, in which case said Exhibit shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.


6.6 Non-Liability of Agency and City Officials and Employees. No member, official, officer, employee or consultant of either Party shall be personally liable to the other Party or any successor in interest thereto, in the event of any default or breach by the Agency or by the City or for any amount which may become due to the City or any successor in interest thereto, or on any obligations under the terms of this Agreement.

6.7 No Joint and Several Liability. The Parties acknowledge and agree that as stated in Government Code Section 895, this Agreement is an agreement between public entities designed to implement the disbursement or subvention of public funds from one entity to the other and, as such, is not subject to the joint and several liability provisions of Government Code Sections 895 to 895.8.

6.8 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.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, and by the Redevelopment Agency of the City of San Diego, acting by and through its Executive Director or designee.

REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO


By: 
Name: Janice L. Weinrick
Deputy Executive Director
Date: 1/19/11

I HEREBY APPROVE the form and legality
of the forgoing agreement this 18th day of
January, 2011.

KANE, BALLMER & BERKMAN
Agency Special Counsel

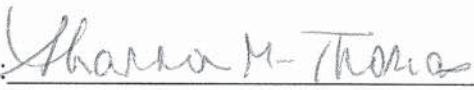
By: 
Theodore M. Ballmer

CITY OF SAN DIEGO

By: 
Name: Jay M. Goldstone
Chief Operating Officer
Date: 1/19/11

I HEREBY APPROVE the form and legality
of the forgoing agreement this 30th day of
January, 2011.

JAN I. GOLDSMITH, City Attorney

By: 
Deputy City Attorney

ATTACHMENT NO. 8

PRELIMINARY DESIGN GUIDELINES

(PLAZA IMPROVEMENTS)

1.0 Purpose of this Document

This document provides preliminary design guidelines for features, fixtures, materials and finishes to be included in the proposed Horton Park/Plaza Improvements (Plaza Improvements) in accordance with Section 501 of that certain Owner Participation Agreement by the Redevelopment Agency of the City of San Diego and the Developer (OPA). Unless otherwise specifically defined herein, all terms capitalized herein shall have the meanings ascribed to such terms as set forth in the OPA.

2.0 Plaza Improvements Description

The Plaza Improvements involves the creation of an approximately 37,000 square foot public urban plaza that will energize and complement the existing 20,000 square foot, historic Horton Park and adjacent Westfield Horton Retail Center. The Plaza Improvements are envisaged to be the dynamic, active public heart of the city and a true community gathering place. A vibrant and stimulating place to gather for large civic events and host community celebrations.

This signature space will take advantage of San Diego's mild temperate climate; be attractive for use by individuals as well as groups and offer a variety of activities such as socializing, eating, interacting with art, entertainment, people-watching, and relaxing.

The Plaza Improvements should be easily accessible and have good circulation throughout the space. The urban plaza should be memorable and iconic.

A preliminary list of the types of activities and events is provided as **Exhibit "A"** to guide the project design. The design may include facilities for large outdoor concerts and events.

3.0 Site Location and Description

The site is comprised of two parcels of land as depicted on the attached Map of Plaza Property (**Exhibit "B"**). One is currently occupied by the partially vacant former Robinsons-May building. The other contiguous site is the existing historic Horton Park. The total combined sites are approximately 1.3 acres in area, bounded by Broadway to the north; Fourth Avenue to the east; the existing Bradley Building (to be retained) and Broadway Circle to the west; and E-Street to the south (pedestrian promenade – closed to vehicular traffic). More specifically, the site is comprised of two legal parcels:

- A. Historic Horton Park and fountain at Broadway street level. Approximately 20,000 square feet; and

- B. Partially vacant Robinsons-May building parcel, generally at the level of E Street, approximately 10 feet below the Horton Park grade. Approximately 37,000 square feet.

The existing site topography affords the opportunity to create a unique multi-level space which may facilitate integrated stepped seating for outdoor performance area. The existing Bradley Building (Citibank) will remain immediately adjacent to the west boundary. The Developer intends to activate it with café / restaurant / retail usages focused on the Plaza Improvements.

4.0 Design Objective

The objective is to create a "place of memories" that will draw inspiration from the unique urban characteristics of San Diego's streets and lanes and transform these elements into a new form of organization, celebrating the city. The completed Plaza Improvements is envisioned to achieve recognition as one of the "best public places". An essentially urban and urbane, sophisticated and understated design approach is called for, letting the people, the surroundings and adjoining significant places become the focus.

The concept envisages an active and vibrant program of daily and weekly events that will keep the Plaza Improvements populated and delightful, the Plaza Improvements will complement the historic Horton Park, Westfield Horton Retail Center, the historic Balboa Theatre and Fourth Avenue environs. As such, the concept of the new plaza evokes the vision of a place that actively connects, integrates and responds to these three significant adjoining community gathering places.

5.0 Design Examples

In developing the vision for the Plaza Improvements the Parties reviewed the following successful signature urban plazas, all of which contain elements considered important to the future success of the Plaza Improvements. These urban plazas provided helpful planning, design, construction and operational cues to help visualize the Plaza Improvements objectives. The example plaza/parks reviewed are as follows:

- A. Pioneer Square - Portland
- B. Union Square - San Francisco
- C. Bryant Park - New York
- D. Main Plaza Conservancy - San Antonio

6.0 Design Process

The design process will be in accordance with the CCDC protocol and the OPA. It is anticipated that, consistent with the Agency's direction, the design process will include ample opportunity for public involvement to ensure a diverse variety of viewpoints are considered. The Agency will fund the design and construction of the Plaza Improvements.

7.0 Plaza Improvements Operation

Upon completion of the Plaza Improvements the Developer will take on responsibility for maintenance as well as programming events and activities of the Plaza Improvements, on behalf of the City. Such programming is intended to ensure that the new urban plaza encourages pedestrian traffic and visitation to the maximum extent possible while retaining its attraction to downtown residents and workers alike as a place to sit in the sun and eat lunch and read a book.

The Plaza Improvements anticipates high quality furniture, fixtures, equipment and finishes to present an attractive and well designed appearance, encourage use, improve maintainability and extend the Plaza Improvements lifecycle.

8.0 Plaza Components:

The following table identifies the potential components and elements that may be included in the project design. Nothing herein shall require the Agency to spend more than the Minimum Plaza Expenditure. All elements incorporated into the Plaza Improvements must take into consideration the minimum budget for the capital cost and long term maintenance expense of such improvements:

Component	Comment / services required
Flexible Outdoor Performance Space	An area with services to support flexible or temporary staging with power supply – three phase, fiber optics, Wi-Fi, media interface box (for cable / satellite outside broadcasts), structures for mounting of audio equipment and stage lighting.
Interactive water features	Water feature to complement the historic Horton Park Fountain.
Public Restrooms	To provide sanitation and comfort amenities.
Public Art / Sculpture	Art installations by local, national or internationally recognized artists including cultural & performance arts facilities/events. In accordance with City arts program for Capital Improvement Projects.
Operations Area	Restroom amenities to be controlled access for staff operating in the four permanent kiosks and for city personnel (police, fire, paramedics).
Furniture & Equipment	Seating, tables and lighting, benches, bicycle racks, irrigation control boxes, drinking fountains, tree grates, ventilation grates, planters, light poles, flagpoles, signage, interpretive markers, waste management facilities, utility vaults, water meters, etc.
Storage Area	An area needed to store supplies for cleaning, stage components, extra furniture, maintenance equipment, etc.
Mechanical Equipment Area	Space for any fountain mechanical equipment, electrical, media and irrigation equipment.

The Design shall include:

Four Permanent Kiosks	Up to 15ft x 20ft (max 300sf) per kiosk	Design to be consistent with contemporary look and feel of Plaza Improvements as noted above. Must provide services to each kiosk including water, electrical, telephone, sewer to facilitate possible food preparation uses to meet code requirements.
-----------------------	---	---

9.0 Planning & Layout:

Plaza Improvements may take advantage of the existing topography with the main body of the “floor” area lower than the historic park affording the opportunity to create an intimate amphitheatre space with stairs or perrons doubling as seating. The change in elevation may provide the opportunity to integrate some functional back of house amenities.

The Plaza Improvements may create distinct areas that may be strategically compartmentalized for smaller events and activated for reservations and permitted uses so as not to impact the whole plaza. The new plaza can creatively complement the historic park by acknowledging and complementing the historic fountain in accordance with City historic regulations.

The adjacent Bradley Building may be refurbished by the Developer and it is intended that it may incorporate a café / bistro dining operation with outdoor seating adjacent or overlooking the Plaza Improvements. The designer shall consult with Developer regarding its intended development of Parcel C-1 and in accordance with the Scope of Development for Parcel C-1 under the OPA.

10.0 Plaza Design Characteristics

The following provides guidelines for the overall character and design of the Plaza Improvements:

A. Views, Circulation, Boundaries, and Subspaces

- 1) Define the plaza as a distinct space
- 2) Scale subspaces to invite people in to the plaza
- 3) Define subspaces with grade changes, planting diversity, or seating arrangement
- 4) Grade changes greater than five feet require careful consideration.
- 5) Consider extending planting into the public right of way to draw attention to the plaza
- 6) Consider the creation of pedestrian routes to direct traffic from sidewalks to building and mall entrances
- 7) Easy access to ground level retail as well as seating and viewing areas
- 8) Opportunities for pleasant meandering shortcuts
- 9) Guide pedestrian flow through the use of built elements

- 10) Accommodate the needs of the disabled, elderly, and parents with strollers with easy access to each level
- 11) Consider design plaza edges with nooks and corners to provide a variety of seating and viewing opportunities
- 12) Subspaces to accommodate small groups within a larger plaza area
- 13) Minimize barriers between the sidewalk and the street to accommodate pedestrian traffic
- 14) Unimpeded open space to accommodate concerts or rallies
- 15) Allow active areas which accommodate public interaction as well as areas which allow for a more relaxed and secure experience
- 16) Sight lines into and through the plaza to extend the perception of space and to draw in the public
- 17) Encourage heavy use across varied activities to minimize vandalism

B. Visual and Spatial Complexity

- 1) Frame views out of the plaza, where appropriate, to visually link the plaza with the rest of the city
- 2) Visually connect subareas within the plaza
- 3) Physically separate subareas with modest level changes where appropriate
- 4) Physically connect level changes with ramps as well as steps
- 5) Minimize dramatic grade changes which discourage public use
- 6) Consider the use of focal points to draw people downward into any sunken area
- 7) Allow the use of plantings to draw people upward into any raised areas
- 8) Allow the use of plants to define different areas within the plaza

C. Microclimate

- 1) Consider filtered shade by means of deciduous trees and vine covered trellises which reduce temperatures in summer, yet allow sun in the winter
- 2) Consider shade by use of canopies, arcades and trellises
- 3) Consider the amount of hard plaza pavement to that amount necessary for proposed uses, projected pedestrian circulation and volume to minimize heat island effect
- 4) Allow the use of trees, shrubs, groundcovers, and vines to cool the surrounding areas
- 5) Allow the use of sun-shade patterns to develop seating locations
- 6) Allow the use of water features to moderate microclimate

D. Paving and horizontal surfaces

- 1) Use paving materials that are hardwearing and able to be maintained with pressure washing on a regular basis
- 2) Allow natural stone unit paving (possibly reconstituted)
- 3) Use of post-applied finishes or coating to be minimized

- 4) Allow material color that is monolithic (not applied) and naturally occurring color variances may be acceptable
- 5) Allow paving that is non-porous and finished to be graffiti resistant
- 6) Consider all trafficable hardscape horizontal areas to withstand appropriate vehicle loads for deliveries and events
- 7) Consider paving materials that have a code approved slip co-efficient. Softscape areas may minimize the use of grass or lawn
- 8) Consider the use of decomposed granite mulch, tilled soil or landscape materials to offer variety of texture in planter areas.

E. Walls and Vertical surfaces

- 1) Minimize number of solid vertical surfaces generally
- 2) Allow "green living wall" and vertical landscaping to discourage graffiti and vandalism. Allow vertical surfaces of the permanent kiosks to be as transparent as practically possible
- 3) Avoid use of applied finishes to solid wall elements and allow use of solid natural materials where possible
- 4) Consider the inclusion of amphitheatre-style stair seating formed from monolithic natural materials

F. Lighting

- 1) General lighting to ensure a minimum illumination level as required.
- 2) Use lighting systems to minimize electricity consumption
- 3) Employ alternative energy (solar) powered systems where possible
- 4) Select lighting fixtures that facilitate safe inspection, maintenance and replacement of consumable parts
- 5) Enhanced lighting system to create dramatic, dynamic, sculptural and/or theatrical embellishments
- 6) Plan lighting to discourage inappropriate plaza use

G. Plaza Seating and Site Furniture

- 1) Ample seating
- 2) Fifty percent (50%) of recommended seating may be secondary, in the form of steps, planter seat walls, retaining walls, or mounds of turf
- 3) Allow seating wall heights to be approximately 16"-18"
- 4) A variety of seating locations which accommodate the needs of various sitters
- 5) Seating in shaded areas as well as in sunny areas
- 6) Shade may be created by trees, trellises, canopies, umbrellas, or building walls
- 7) Seating where sitters can watch passersby
- 8) Anticipate dense furnishings, focal elements, and defined edges to accommodate stopping and relaxing but discourage overnight sleeping
- 9) Consider some linear or circular seating which encourages interaction
- 10) Allow backless benches, right angle arrangements, or movable chairs and tables to encourage and accommodate groups
- 11) Consider seating materials that are inviting and which do not damage clothing

H. Safety

- 1) Use layout needs to promote visibility both into and out from the plaza
- 2) Allow main entrances to be highlighted using lighting, signage, materials and detailing
- 3) Allow directional signs linking the plaza to transit stops, taxi stands, nearby neighborhood streets, and orientation within the area
- 4) Provide lighting which promotes a feeling of safety at night. Illuminate corners and out of the way locations
- 5) Allow plaza lighting to link to streetscape lighting

I. Planting Design

- 1) Select low water use and low maintenance plant materials.
- 2) Consider the impact of expanses of paving on the heat gain of the plaza.
- 3) Consider the use of a variety of native and adapted trees, evergreen shrubs, flowering shrubs, vines, groundcovers, perennials, and annuals to provide color, texture, and fragrance
- 4) Consider the use of feathery-leaved trees to provide a see through effect to subspaces within the plaza and reduce leaf drop debris
- 5) Consider the installation of fully mature trees as feature elements
- 6) Consider the eventual height and mass of mature plants in regard to views, shade, and maintenance
- 7) Adequate soil depth and width to encourage healthy growth
- 8) Irrigation and drainage to ensure survival of trees, shrubs and ground covers
- 9) Consider fully automated state-of-the-art irrigation system utilizing drip irrigation to minimize wasted water due to overspray and evaporation

J. Interactive Civic Art and Fountains

- 1) Allow for the location of civic art to promote interaction and communication among people
- 2) Consider any plaza element as an opportunity for art, such as manhole covers, paving, railings, overhead structures, signage, etc
- 3) Encourage art which communicates a relationship to place, creates a sense of joy and stimulates play and creativity
- 4) Consider water features for visual attraction, to screen traffic noise, and for cooling effects
- 5) Consider art, sculpture, and fountains that engage people to interact by means of touch, movement, and play
- 6) Locate any sculptures and art elements to not impede pedestrian circulation patterns and lines of sight
- 7) Scale sculptures and fountains to the size of the plaza
- 8) Design fountains to prevent overspray onto adjacent paving

K. Food Service and Concessions

- 1) A variety of food service options from cafes to vendors may be considered

- 2) Accommodate a variety of patterns for arranging vendors
- 3) Locations for temporary concessions
- 4) spaces which are highly visible and accessible and contiguous to direct pedestrian routes
- 5) Comfortable places to sit and eat
- 6) Distribute trash containers around the plaza

L. Plaza Management and Maintenance

- 1) Consider a flexible stage and audience area away from the main circulation path
- 2) Areas for storage of movable chairs, tables and equipment
- 3) Exterior electrical needs of any lighting and speaker systems
- 4) Attachment locations to affix and hang banners, decorations, and temporary signs within Plaza Improvements
- 5) Allow information kiosks to post scheduled events
- 6) Program automated irrigation systems to facilitate specialized watering requirements
- 7) Adequate number of litter containers
- 8) Coordinate the design of all plaza furnishings
- 9) Select built materials for durability and longevity

Exhibits

- A – List of proposed activities and events
B – Site Map

EXHIBIT "A"

LIST OF PROPOSED ACTIVITIES AND EVENTS

Arts/Entertainment

Italian Street Painting Festival
Music Festivals (Salsa, Blues, Jazz, Country, Rock and Classical, etc.)
Outdoor Concerts
Plays and Dance Performances/Events
Sand Castle Making Events
Summer Movie Series
American Idol Tryouts

Distribution/Promotions/Community Partnerships

Autograph Signing Events
Distribution of Transit and Tourist Information Promotions with San Diego Zoo, Wild Animal Park and Sea World
Promotional Activations (advertizing events for movies or other products including alcohol)
Radio/Television Station Events
Receptions (tied to Convention Center events)
Retailer Activations
Sales Events

Educational/School/Kids

CPR Classes
Fingerprinting Event
Library on Wheels
Local Choir Performances
Marching Bands
Local, Civic and School Performances
Puppet Show
Safety Training
Self Defense Classes
School Functions
SDSU/USD/UCSD – Events – College Night
Storybook Time
Museum Partnership

Exhibits/Shows

Animal Show
Antique Road Show
Art Show
Boat Show
Car Show
Fashion Show
Fishing Expo

Fairs/Festivals/Markets

Block Parties
Cultural Festivals
Farmers Market
Festival of Flowers
Food Festival/BBQ Competitions
Eating Competitions
Health Fairs
Job Fairs
Religious Events
Renaissance/Period Festivals
Native American Festival

Fundraising/Awareness

Bloodmobiles
Breast Cancer Walk (Start/Endpoint)
Civic Awareness Events
Community Events
Fundraising Events
Holiday Food/Toy Drives
Inaugurations (Mayoral)
Pet Adoptions
Political Rally / Events / Addresses
Recycle/Shred Events

Sports/Fitness/Games

Bike Rental Location
Bike Repair Seminars
Bocce Ball Tournament
Gaming Tournaments (chess, checkers, etc.)
Holiday Bowl Activities
Extreme Sports Events (skateboarding, etc.)
Fitness Activities
Midnight Moon Bike Ride
Rock N Roll Marathon location
Horseshoe Tournament
Running and Cycling Events
San Diego Charger/Padre Season Kick-Off
San Diego Charger/Padre Championship Rallies
Sporting Event Viewing Area
National Current Event Viewing Area
Video Game Competitions
Yoga in the Park
X-Games

Special Events/Holiday

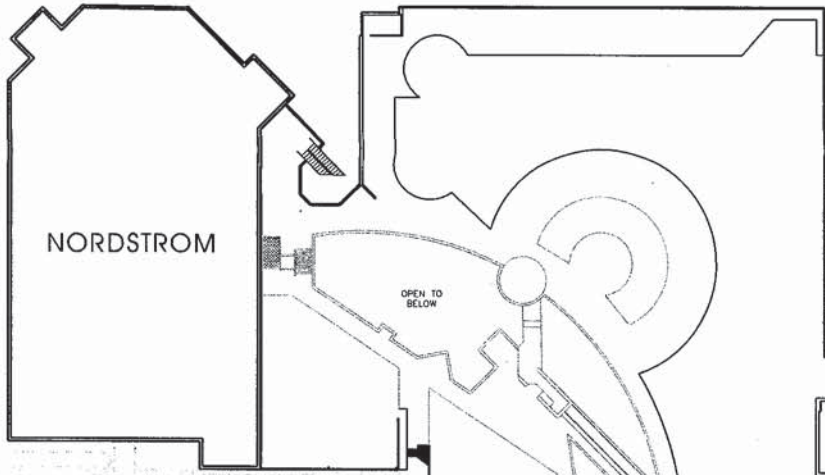
Big Bay Balloon Parade (start/finish)
Chanukah Menorah Lighting
Chinese New Year Parade and Festival
Cinco de Mayo Festival
Community "Christmas Carols in the Park"
Earth Day Event
Easter Activities
Halloween Programs
Holiday Village/Marketplace
Mardi Gras Events
Martin Luther King Day Events
Memorial/Veterans' Day Events
New Year's Eve Celebration
Parades
Red Bull Race Rally
St. Patrick's Day Events
Summer Solstice Festival
Tree Lighting Ceremony
Wine / Martini Tasting Parties
Weddings
Birthday Parties
Beer Garden Event
4th of July Events
Company Parties/Team Building Activities
Film Shoots
Movie Premier Events
Press Conferences
Restaurant Sponsored (for Charity) Events
Tailgate Celebrations
Taste of San Diego (culinary focused)

EXHIBIT "B"

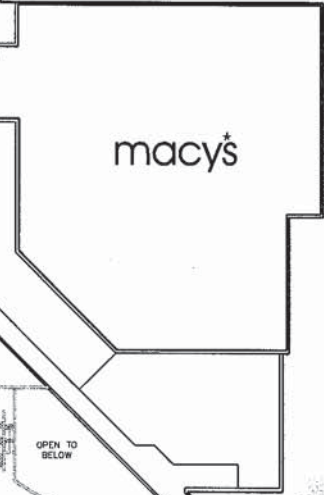
MAP OF PLAZA PROPERTY

[BEHIND THIS PAGE]

FIRST AVENUE



OPEN TO BELOW



OPEN TO BELOW

OPEN TO BELOW

BROADWAY CIRCLE

BROADWAY CIRCLE



G STREET

G ST GARAGE

4TH ST GARAGE

CINEMA OVER PARKING

CINEMA LOBBY

E STREET

BALBOA THEATER

BROADWAY AVENUE

FOURTH AVENUE

0' 60' 120'



OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-35

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY AUTHORIZING CERTAIN CONTRACTS AND EXPENDITURES RELATED TO THE HORTON PLAZA PARK IMPROVEMENTS IN ACCORDANCE WITH THE EXISTING OWNER PARTICIPATION AGREEMENT FOR THE HORTON PLAZA RETAIL CENTER

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as amended by Assembly Bill 1484 (AB 1484); and

WHEREAS, in January 2011, the Former RDA and Horton Land, LLC, Horton Plaza Venture, LLC and Horton Plaza LP (collectively, Developer) executed an Owner Participation Agreement (OPA) with respect to the Horton Plaza Retail Center (Retail Center) in downtown San Diego; and

WHEREAS, as of February 1, 2012, the Successor Agency has assumed the Former RDA's rights and obligations under the OPA by operation of AB 26; and

WHEREAS, among other things, the OPA requires the Developer to transfer the Horton Park Plaza site (Site) to the Successor Agency for the construction of a new world-class urban plaza and related improvements on the Site (Project) and obligates the Successor Agency to pay

a minimum of \$8 million toward the hard construction costs of the Project and to cause the development of the Project in accordance with final construction plans created with the input of interested stakeholders; and

WHEREAS, the OPA also obligates the Successor Agency to make five annual deposits of \$150,000 each into the Plaza Capital Reserve Account, beginning in Fiscal Year 2015 and continuing in the next four fiscal years, for a total contribution of \$750,000 toward the Project's future capital repairs and replacements; and

WHEREAS, in compliance with the OPA, Civic San Diego (CivicSD), formerly known as Centre City Development Corporation, engaged the urban design and landscape architecture firm of Walker Macy and sub-consultants to gather public and stakeholder input and develop more specific designs for the Project; and

WHEREAS, based on the current design of the Project, the total hard and soft costs for design and construction of the Project are estimated to be \$14,286,905, including \$11,908,912 in total hard construction costs; and

WHEREAS, after deducting costs already incurred for the Project in the amount of \$1,552,822, the remaining costs of the Project are estimated to be \$12,734,083; and

WHEREAS, the Successor Agency, the Oversight Board, and the California Department of Finance have approved line items in certain Recognized Obligation Payment Schedules (collectively, ROPS) that cumulatively provide funding of \$12,757,312 for the Project, which includes (i) \$12,007,312 for design and construction costs of the Project (ROPS Project Funds) and (ii) \$750,000 for the five annual deposits into the Plaza Capital Reserve Account beginning in Fiscal Year 2015; and

WHEREAS, the remaining design and construction costs of the Project exceed the amount of funding shown in the ROPS by approximately \$726,771, and CivicSD will explore the availability of additional, non-redevelopment funding sources to offset this budget shortfall; and

WHEREAS, California Health and Safety Code section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and California Health and Safety Code section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Successor Agency or its agent, CivicSD, is authorized to solicit bids and award a contract to the lowest responsible bidder for construction of the Project in order to fulfill the obligations under the OPA, using up to \$10,982,141 of the ROPS Project Funds.

2. The Successor Agency or its agent, CivicSD, is authorized to enter into contracts and make expenditures up to \$1,025,171, using the ROPS Project Funds, for additional work related to the Project, including: (i) the acquisition of furniture, fixture, and equipment for the Project in an amount not to exceed \$200,000; (ii) the payment of certain indirect costs of the Project, including additional design services, construction phase consultants, permits and plan check fees and other miscellaneous costs, in an amount not to exceed \$280,589; (iii) an agreement with Walker Macy for construction administration support services for the Project in an amount not to exceed \$294,582; and (iv) an agreement with a consultant for construction management and inspection services for the Project in an amount not to exceed \$250,000.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on November ____, 2012.

Chair, Oversight Board