

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made between the City of San Diego, a municipal corporation (City) and Plaza de Panama Committee, a California non-profit public benefit corporation (Committee).

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 have 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 happenings of the 1915 Exposition revolved. The California Pacific International Exposition was held in Balboa Park in 1935-36. 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. The 1989 Balboa Park Master Plan (currently in effect as subsequently amended) sets forth the City's goal, among others, 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. The Balboa Park Master Plan specifically calls for elimination of parking in the Plaza de Panama and return of the Plaza de Panama to pedestrian use. This improvement is included in the 2010 Unfunded Park Improvements List prepared by the City's Park and Recreation Department.

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 the undertaking of reclaiming and restoring the Plaza de Panama, by re-creating it as pedestrian space -- through modification and relocation of roadways, development of parking, and related improvements (collectively, the Proposed Project) -- is an undertaking of significant cost and effort that requires not only public resources, but also private

financial assistance and other support. The Committee has expressed its willingness to raise and contribute significant funds for the Proposed Project consistent with the City's goals for Balboa Park, and to take a leadership role by sponsoring the Proposed Project. The City recognizes the benefits that can be obtained for the City as a whole by partnering with the Committee to implement the Proposed Project, including support in design, environmental review, construction, and funding of such improvements.

F. The City and Committee desire to work together to further explore, analyze, and develop the Proposed Project to accomplish this long sought after goal along with other improvements consistent with improving parking and pedestrian access at Balboa Park, all to be completed in time for celebration of the Centennial of the 1915 Panama-California International Exposition in 2015.

G. The City and the Committee fully recognize the importance of and need for analysis, review, and approval of the Proposed Project, including environmental review and approval of discretionary permits. The City and Committee have initiated environmental review of the Proposed Project consistent with the California Environmental Quality Act and including review of impact to historical structures. The City and Committee fully understand and acknowledge that the City, as lead agency for environmental review, will fully consider any proposed alternatives and mitigating measures presented as part of the environmental analysis in making its decisions regarding the Proposed Project, including but not limited to the alternative of not proceeding with the Proposed Project. The City does not, by this Memorandum of Understanding, commit to approve the Proposed Project or any part of the Proposed Project and does not in any way delegate or waive its discretion in making future decisions regarding the Proposed Project, including interim and final approvals of the Proposed Project.

H. The City and the Committee set forth herein their understanding of the Proposed Project and the conceptual plan upon which both parties desire to proceed with the endeavors described herein. The City and the Committee recognize and expect that this preliminary expression of cooperation and intent may be superseded by more definitive agreements between the parties as the Proposed Project progresses.

ARTICLE 1 UNDERSTANDING

1.1. Understanding of the Parties. The City and the Committee commit to work together to explore, analyze, and develop the Proposed Project as expeditiously as possible through the planning and permitting process such that if the Proposed Project is authorized and approved by the City Council, it can be implemented and completed in time for celebration of the Centennial of the 1915 Panama-California International Exposition in 2015.

1.2. City Council Discretion. The City and the Committee understand and agree that final decision-making authority for approval of the Proposed Project, including consideration of all and any environmental analyses and reports, findings and discretionary permits, rests with the City Council. Nothing in this Memorandum of Understanding is intended to affect, replace, or circumvent that authority. This Memorandum of Understanding is a commitment to cooperate through that process and is not an approval of the Proposed Project. City, therefore, reserves the

right to impose feasible mitigation measures and alternatives, including but not limited to the alternative of not proceeding with the Proposed Project.

ARTICLE 2 PROPOSED PROJECT

2.1. Description. For the purpose of this Memorandum of Understanding, the Proposed Project, as generally referred to in Recital D, shall encompass the following:

2.1.1. The current parking lot located on the Plaza de Panama along with roadway paving at the West Prado and Plaza de California to be removed and the asphalt replaced by new paving material and perimeter landscaping. General vehicular traffic to be redirected south around the westerly side of the Museum of Man and the Plaza de California on roadways to be constructed. The existing fountain on the Plaza de Panama to remain but may be adjusted to integrate with the new design of the plaza or otherwise relocated within the Plaza de Panama. Complementary permanent improvements to be made to the Plaza de Panama, to the Plaza de California, to the Esplanade area south of the Plaza de Panama and El Prado west of the Plaza de Panama, which are anticipated to include water features (such as fountains or reflection pools), trees, benches, and additional pedestrian amenities and other features.

2.1.2. Roadway improvements, including a bridge/ramp, to allow vehicular traffic to bypass the Plaza de California, West El Prado, Plaza de Panama, and the Esplanade after entering the Park Central Mesa from the west across the Laurel Street/Cabrillo Bridge. The new bridge/ramp will direct vehicular traffic to the existing Alcazar parking lot, which will be reconfigured for passenger pick-up/drop-off purposes, disabled parking, service loading, and valet staging.

2.1.3. A new parking structure to be designed and constructed at the site of the current parking lot south of the Spreckels Organ Pavilion. The approximate 785 parking space, three level parking structure to be subterranean (Parking Structure) but naturally ventilated through exposure on the east and portions of the north and south elevations. The Parking Structure to feature an approximate 97,000 square foot landscaped roof, which will be usable as a park and may include playground equipment, restroom facilities, a Vistors Center, picnic tables and other amenities. The landscaped roof will integrate with pedestrian zones at the south along Presidents Way, west along the pedestrian/tramway adjacent to the international cottages, and at the north at the Spreckels Organ Pavilion.

2.1.4. Roadway improvements to be designed and constructed to allow traffic to continue through the Alcazar Garden parking lot, continuing west of the Esplanade, and around the west side of the Spreckels Organ Pavilion to the Parking Structure. Improvements oriented to pedestrians to also include a tramway to provide service between the Parking Structure and the Plaza de Panama, and other facilities in the general area of the Plaza de Panama.

2.2. Schedule. The City and the Committee desire to complete the Proposed Project prior to the 2015 Centennial of the 1915 Panama-California International Exposition.

2.2.1. The specific plans, designs, and analyses of the Proposed Project will be prepared by consultants and contractors selected and retained by the Committee and submitted to the City Council for review and approval as deemed necessary and appropriate by City staff and consistent with all requisite public hearings and established public approval processes. City will work with the Committee and its consultants to provide input and review where necessary in a complete and efficient manner.

2.2.2. If final approvals are received, construction is anticipated to commence by August 2012, and it is hoped and intended that the Project be completed prior to the 2015 Centennial of the 1915 Panama-California International Exposition.

2.3. Tax Exempt Bond Financing. As described in Section 5.2 below, if final approvals are received, the City shall diligently pursue the issuance of tax-exempt bond financing or other public finance instruments in order to generate funds for construction of the Parking Structure and other eligible Proposed Project costs, depending on the availability of funds.

ARTICLE 3 COMMITTEE CONTRIBUTIONS

3.1. Project Efforts. It is the desire of the parties that to the extent permitted by law, the Committee shall oversee and administer all aspects of the Proposed Project, other than as provided herein to the contrary, including fundraising, retention of consultants, contractors, authorization of expenditures and other activities related to the Proposed Project. The Committee itself, or its consultant, as appropriate will, select and/or engage contractors and consultants to perform the following activities in connection with the Proposed Project:

3.1.1. Prepare all design work and related documents necessary to meet all permitting and environmental review requirements for the Proposed Project;

3.1.2. Participate in all City noticed and conducted workshops, meetings and hearings to build community support, and to secure all necessary permits and public approvals for the Proposed Project. Such workshops, meetings and hearings may include, but not be limited to, those set forth in Council Policy 600-33 (*Community Notification and Input for City-Wide Park Development Projects*);

3.1.3. Process with the City and other appropriate government agency(ies) any necessary plan amendments and appropriate environmental documentation;

3.1.4. Design and prepare construction documents;

3.1.5. Award construction contracts, other than as provided in Section 4.2;

3.1.6. Provide funding for construction and project management, other than as provided in Section 5.2;

3.1.7. Provide contract management and supervision of construction, other than as provided in Section 4.2; and

3.1.8. As necessary, coordinate the incorporation and modification of other aspects and portions of Balboa Park that are related to Plaza de Panama or the Proposed Project.

ARTICLE 4 CITY CONTRIBUTIONS

4.1. City's Contribution. To reflect the City's good faith desire to: (1) proceed with development of the Proposed Project; (2) support the Committee's undertakings in connection with the Proposed Project; and (3) evidence the City's continuing commitment to Balboa Park's status as a world class urban cultural park, the City shall provide the Committee with the following support (to be provided in an expeditious manner) toward the Project:

4.1.1. The City shall assist in obtaining the permits necessary to undertake the Proposed Project.

4.1.2. The City shall provide inspection, development and support services related to the Proposed Project, including, but not limited to, processing, and facilitating the environmental study reports, the processing of permits requests and applications, and supporting any "public process" efforts determined to be necessary as part of the Proposed Project by the Committee or its consultants.

4.1.3. To the extent possible, the City shall waive the cost of staff time related to General Fund department staff. For Enterprise Fund Department and City engineering staff, the City shall defer the collection of fees until project funds are available for their payment.

4.1.4. The City shall make available City resources that are directly related to the Proposed Project.

4.1.5. The City shall provide staff assistance and direction to assist with aspects of the Proposed Project which are of a type that can only be accomplished by City personnel.

4.1.6. In the undertaking of its responsibilities in connection with the Proposed Project as set forth in this MOU, the City shall provide the Committee and its consultants, contractors, subcontractors or other person associated with the

Project with the appropriate rights (whether it be by right of entry permit, license, or otherwise) necessary to enter onto the City's property. The City shall manage and maintain existing leases, renewals and rights of entry permits so as not to interfere, jeopardize, compromise, or delay the Proposed Project.

4.1.7. The City shall provide funding as described in Section 5.2.

4.2. Construction of Parking Garage. If, in connection with public financing of the Parking Garage, the City determines that it is necessary and appropriate for the City to oversee construction of the Parking Garage, then the City shall manage and supervise construction of the Parking Garage consistent with the City's Charter and applicable regulations.

ARTICLE 5 FUNDING

5.1. Committee's Funds. Except as provided in Section 5.2 below, the Committee shall raise the funds necessary to accomplish and complete the Proposed Project through various efforts and methods, including donor contributions, fundraising projects and related capital campaigns (collectively, Fundraising). The Committee is authorized to make all necessary decisions and take all appropriate and necessary actions with respect to Fundraising, including, without limitation, using certain pledges received as collateral to obtain third-party loans but without recourse to any City assets. The City shall cooperate with the Committee in connection with the undertaking of its Fundraising efforts, and upon request by the Committee, provide appropriate information to support such efforts. The Committee shall be responsible for management of donor information and record keeping. All Funds held or controlled by the Committee shall be assets of the Committee. The City shall have no control, authority or power with respect to any of the Funds.

5.2. Parking Structure (excluding rooftop park) and Tram System. The City recognizes that the Proposed Project is an undertaking of such significant cost that it will not be feasible through Funds raised by the Committee alone. Accordingly, to ensure funding for the Parking Structure and Tram System, and provided that the necessary approvals for the Proposed Project have been obtained, the City shall diligently pursue the issuance of tax-exempt bonds or other financing vehicle (Bonds) in an amount intended to be supported solely from revenues generated by the operation of the Parking Structure. The proceeds of the issuance of the Bonds shall be primarily applied towards construction of the Parking Structure. The City will own and operate the Parking Structure and Tram System. The City and the Committee acknowledge that it will be necessary to charge for parking in the Parking Structure, which revenues will be used to satisfy the annual debt service on the Bonds. As a result, all revenue collected by the City from parking fees will be used to satisfy the debt service obligations incurred to construct the Parking Structure, to pay for its operation and maintenance, to fund the Tram System and to cover other necessary costs and expenses related to the Proposed Project.

ARTICLE 6 MISCELLANEOUS

6.1. Term. This MOU shall become effective upon full execution by the parties and shall expire no later than five years from the date hereof, unless extended for a specific period of time by the City and the Committee. This MOU shall terminate upon any of the following: (1) execution by the parties of a subsequent agreement for development of the Proposed Project; (2) notice by either party to the other of termination of the MOU; (3) City denial of the Proposed Project; and (4) City approval of the Proposed Project in a form unacceptable to Committee (Committee to decide in its sole discretion if City's approval of Proposed Project is unacceptable) or (5) the bonds to be issued by the City will not yield funds adequate to support construction of the Parking Structure.

6.2. No Agency. The Committee does not constitute the legal representative of the City for any purpose whatsoever. The Committee does not have any right or authority to assume or create any obligation or responsibility, express or implied, to make any commitments on behalf of or in the name of the City, and may not bind the City in any manner.

6.3. Representations and Warranties of Committee. The Committee is a non-profit corporation duly organized, validly existing, and in good standing in the State of California. The Committee has been organized for the purpose described in this MOU and has obtained exempt status as a 501(c)(3) nonprofit public benefit corporation.

6.4. Non-Liability for Breach. This MOU is a preliminary expression of mutual cooperation and intent. It is not intended to be a binding contract and is not enforceable against either party, nor against any elective or appointive board, commission, member, officer, employee, or other agent of the City.

6.5. Cooperation. The Committee and the City shall use their good faith best efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes and provisions of this MOU.

6.6. Counterparts; Signatures. This MOU may be executed in counterparts which, when taken together, shall constitute a single signed original as though all parties had executed the same page. A signature on this MOU delivered by portable document format (pdf) or facsimile shall be deemed an original signature.

IN WITNESS WHEREOF, this MOU is executed by the Committee, acting by and through its board of directors, and the City, acting by and through its _____, pursuant to Resolution No. _____ of the City Council authorizing this MOU.

PLAZA DE PANAMA COMMITTEE,
a California nonprofit public benefit
corporation

By: _____
Irwin Jacobs, President

CITY OF SAN DIEGO, a municipal
corporation

By: _____
Jerry Sanders, Mayor

APPROVED AS TO FORM:

JAN GOLDSMITH, City Attorney

By: _____
Name: _____
Deputy City Attorney