



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: October 5, 2011 REPORT NO: 11-133  
ATTENTION: Committee on Rules, Open Government and Intergovernmental Relations – Agenda of October 12, 2011  
SUBJECT: Memorandum of Understanding with Balboa Park Celebration Inc.

REQUESTED ACTION: Authorize the Mayor to execute a Memorandum of Understanding with Balboa Park Celebration Inc. for the purpose of planning, organizing and managing a Centennial Celebration of the 1915 Panama-California International Exposition in Balboa Park.

STAFF RECOMMENDATION: Approve Requested Action

SUMMARY:

Balboa Park Celebration Inc. (“the 2015 Committee”) is a non-profit, public-benefit Corporation formed to be the lead entity for the 2015 Centennial Celebration of the 1915 Panama-California International Exposition (“Celebration”). Its primary purpose is to facilitate, fund, and implement public ceremonies, events and activities equal to that historic occasion and worthy of Balboa Park, the venue that will serve as their primary stage.

The Exposition of 1915 was a milestone event that is widely credited with attracting the first international attention to San Diego. At the time, San Diego had fewer than 40,000 residents and was in the midst of an economic recession; organizing a celebration of such broad scope required a leap of faith on the part of civic leaders. The Exposition took as its theme a celebration of progress, prosperity and opportunity, as represented by the opening of the Panama Canal and the location of San Diego as the first U.S. port-of-call for northbound maritime trade, and left its legacy an invigorated economy and an enhanced civic reputation, while setting the tone for the development of Balboa Park as a cultural center.

The Celebration is desired by the City in order to sustain and expand those benefits by promoting Balboa Park’s historical, cultural, educational and recreational resources to the world. It is expected to include events that will build civic pride and community, redefine Balboa Park as a “new attraction” for many San Diegans, and deliver a positive economic impact to the City through projectable increases in tourism spending and hotel nights. While there is broad consensus as to the conceptual aspects of the Celebration, this agreement is a necessary step to allow the 2015 Committee to develop in detail the funding plans, programming schedules and opportunities for volunteer and organizational participation that will be critical to the Celebration’s success.

Responsibility for building a framework for the Celebration was placed with the 2015 Committee in consultation with the Mayor and key Balboa Park stakeholders and funders. The 2015 Committee has taken substantial first steps toward its civic purpose, and now comes before the City ready to enter into the Memorandum of Understanding under which it will serve the City by organizing, funding, and producing the Celebration.

## **HISTORY**

For more than a decade, conceptual planning for the Celebration has been undertaken by the City through engagement with Park users, Park stakeholders and the visitor industry. The fruit of those early efforts is incorporated in the current framework, which seeks to “create the extraordinary” through spectacular events that commemorate our heritage and allow residents and visitors alike to experience Balboa Park and San Diego in a new and compelling way.

The 2015 Committee is the anticipated outgrowth of efforts begun in early 2009, when community leaders and Balboa Park stakeholders met under the auspices of the Office of the Mayor to agree upon the general format and operating model of a Host Committee for the continued planning and ultimate implementation of the Celebration. The City of San Diego has been a party to this model several times. Three Super Bowls, and the America’s Cup Yacht Races are historic examples. This structure provides for a formal relationship between the City and a not-for-profit entity created for the specific purpose of organizing and managing the event.

The Host Committee model, by its nature and history, supports volunteer civic leadership and a private-sector funding role, both of which are critical to an undertaking of this magnitude given the City’s economic challenges. Its structure is also consistent with the City’s desire for a Celebration that generates tax revenues that support its General Fund, not just during 2015 but for years to come.

In March of 2010, a group that would be known as the Balboa Park 2015 Steering Committee (the “Steering Committee”) was organized to kick-start the planning process for the Celebration with seed funding in the form of a \$50,000 grant from the San Diego Tourism Marketing District. The Steering Committee set as its original purpose to search for, identify and hire an Executive Director who would manage the creation of a Host Committee and serve as the executive manager of the Celebration. The immediate reality was that, without a widely accepted, comprehensive vision of the Celebration and the tools for its implementation, the hiring of an Executive Director would be premature.

The Steering Committee then modified its mission and circulated a Request for Proposals to contract with an individual who would perform preliminary research that would result in the development of key guiding documents for the organization of a Host Committee and the articulation of a framing vision for the Celebration. As guiding parameters, the Steering Committee identified the following goals for the to-be-formed Host Committee:

- Host a world-class celebration of the Centennial of the 1915 Panama-California Exposition that enhances and expands the current national and international significance of Balboa Park and its institutions.
- Celebrate the resources in Balboa Park through a comprehensive use of its venues and amenities.

- Manage a broad range of activities whose content and pricing reflect the demographic, economic and cultural diversity of the region, including events that are free to the public.
- Work collaboratively with all parties interested in these goals, and especially with the City's cultural, historic and civic organizations.
- Host a celebration that is cost-neutral to the City, while directing any financial returns to Balboa Park.

The contracted consultant, Steve Silverman, principal of J&S Silverman Consulting, reviewed more than a decade of historical documents and conducted a comprehensive study with recommendations as described in the document, "Planning Framework, 2010-2015". The stated intent of the document was to provide a logical and integrated path to achieve the goals of the Celebration, and serve as a blueprint for its organization. The study, conducted over the summer of 2010 and completed in November 2010, attempted to amalgamate nearly a decade of ideas, opinions and documents addressing a long-anticipated event

The final document was based on more than 40 individual interviews with Balboa Park stakeholders that "sought to capture aspirations, perceptions, ideas, concerns, challenges, and products, as well as planning, organizational and institutional histories relevant to 2015," as defined in methodology outlined in the document. San Diego Mayor Jerry Sanders and City Councilmember Todd Gloria were interviewed along with numerous other stakeholders who provided a broad representation of park organizations, institutions and tenants, as well as individuals involved in local government, the tourism industry, local philanthropic organizations, community groups, and local media.

Concurrent and complementary planning for the Celebration was undertaken by the Balboa Park Cultural Partnership, a collaborative body for 26 arts cultural and science institutions within the Park. The Partnership hosted a November 2010 workshop that was attended by representatives from Balboa Park arts and cultural institutions, peer institutions throughout San Diego, City officials and others. That workshop, which was conducted by BRC Imagination Arts and funded through the Legler Benbough Foundation, produced numerous recommendations for specific programming and visitor experiences that were subsequently refined in a March 2011 report on the Celebration. (That report can be viewed online at [www.bpcp.org](http://www.bpcp.org).) The 2015 Committee will receive additional programming suggestions through a robust public outreach program, and its collaboration with the Balboa Park Cultural Partnership is ongoing.

This year, the following tasks were completed that had been identified in "Planning Framework 2010-2015" as necessary to meet the timeline for a 2015 event:

- In November and December of 2010, a start-up budget of \$1 million was conditionally funded for the 2015 Committee from the following sources: approximately \$450,000 in Transient Occupancy Tax revenue previously set aside for this purpose in the City's Major Events Revolving Fund; a \$300,000 cooperative, matching grant from the Tourism Marketing District and an additional \$300,000 in matching funds from a consortium of local philanthropic foundations.

- In February 2011, the Steering Committee organized a meeting at which Mayor Jerry Sanders, City Council Member Todd Gloria and County Supervisor Pam Slater-Price invited well-known civic leaders Nikki and Ben Clay to serve as volunteer co-chairs of a proposed new entity that would serve as a Host Committee. The Clays led an informational presentation to the Natural Resources and Culture Committee in March 2011 and assumed their roles in April 2011.
- In April 2011, the Clays invited individuals of significant civic stature to serve as the initial Board of Directors for the new entity, at which point the Steering Committee transferred its duties and knowledge and responsibilities to the new entity.
- The new entity incorporated as Balboa Park Celebration, Inc. on June 3, 2011 with a board of Ben Clay, Nikki Clay, Peter Ellsworth, Cheryl Kendrick, Mike McDowell, Patricia McQuater, Patti Roscoe and Frank Urtasun, and establishing as its primary purpose the planning, promoting and organizing the celebration, including fundraising and the hiring of administrative staff to support that purpose, all to the benefit of Balboa Park.
- In August 2011, the Board of Directors, following a public search, selected Mark A. Germyn to become the Chief Operating Officer for the Celebration and engaged him as a consultant until such time as a Memorandum of Understanding was approved by the City.
- In September and October 2011, a Memorandum of Understanding with the City was negotiated between the 2015 Committee and the City to be brought to the City Council for approval.

## **MEMORANDUM OF UNDERSTANDING**

Through the Memorandum of Understanding, the 2015 Committee seeks exclusive authority to plan, oversee, manage and conduct the Celebration on behalf of the City, including the scheduling of Celebration events, and the timely issuance of necessary City permits. .

The Memorandum of Understanding would give the 2015 Committee the exclusive authority to allocate venues and schedule events within Balboa Park during the Celebration Period running from July 1, 2014 through March 31, 2016. This Period include the time necessary for physical preparation for the Celebration, the Celebration, and closure, takedown and clean-up after the Celebration. The 2015 Committee anticipates the vast majority of Celebration events will occur between Dec. 31, 2014, and Jan. 1, 2016. During the Celebration Period, the 2015 Committee would create and manage a Master Calendar of events and a Venue Allocation Plan. The Master Calendar will also include official Celebration events to take place outside of Balboa Park.

In accepting responsibility to manage the Master Calendar and the Venue Allocation Plan, the 2015 Committee acknowledges its intention to authorize and accommodate events within Balboa Park that are not associated with or sanctioned by the Celebration. The 2015 Committee agrees with the City that non-sanctioned events should occur during the Celebration Period as space and infrastructure allow. The City acknowledges that the 2015 Committee has pledged its sincere efforts to accommodate any reasonable and non-conflicting uses of Balboa Park, to include traditional and recurring Balboa Park events that fall outside the scope of the Celebration. As the 2015 Committee

develops its plans, the City and the Committee may agree to adjust the Celebration Period and the boundaries of the venue and return to the City responsibility for scheduling within specified areas and time periods.

The Memorandum of Understanding establishes a scope of responsibility for the 2015 Committee necessary for the successful management of the Celebration and its related activities, including the authority to:

- raise funds to support its activities, the Celebration and Balboa Park, through such means as event partnerships, corporate sponsorships, temporary naming recognition, ticketed events and other funding planning;
- promote and market the Celebration;
- develop planning documents, such as event calendars, plans, budgets and processes necessary for the successful implementation of the Celebration, including but not limited to:
  - the Master Calendar,
  - a Community Outreach Plan,
  - a Venue Allocation Plan,
  - an Activities and Programming Schedule,
  - an Implementation Plan,
  - a Process for the Sanctioning of Official Events and Partnerships,
  - a Business Plan, Strategic Plan and Budget,
  - an External Communications Plan,
  - an Access, Transportation and Parking Management Plan; and
- plan for and construct properly permitted temporary structures and make temporary infrastructure improvements in Balboa Park as necessary and appropriate; and;
- use the City seal and logo, as well as enter into licensing agreements with the City to use names, logos, images and other intellectual property as appropriate.

The Memorandum of Understanding also establishes that the 2015 Committee is financially responsible for the Celebration, for events conducted in connection with the celebration, and for all debts incurred and obligations entered into by the 2015 Committee, and that the City shall not be held accountable or liable for any losses occurred by the 2015 Committee as a result of the Memorandum of Understanding.

As the event organizer, the 2015 Committee would have authority to raise funds through sponsorships, grants, donations, earned income and all other revenue sources; accept funds allocated by the City for the organization of the Celebration; set and charge fees for admission to Celebration events; and enter into agreements for sponsorships, partnerships, merchandising, contractors, consultants, professional advisors, etc., as necessary and appropriate to carry out its obligations.

The Memorandum of Understanding sets out regular reporting requirements for the 2015 Committee to inform the public on its progress and activities through the Balboa Park Committee and the Natural Resources and Culture Committee of the City Council.

In addition, the Memorandum of Understanding establishes deadlines the 2015 Committee to deliver to City staff its planning documents, in draft and comprehensive form, for information and comment.

The Memorandum of Understanding also establishes City Responsibilities that include

- the designation by the Mayor of the staff liaison as a single point of contact to the 2015 Committee to facilitate and coordinate interaction and communication between the City and the 2015 Committee as planning for the Celebration proceeds, and
- a commitment to review and consider whether and to what extent the City can waive charges for City services necessary to support unique, one-time events created or sanctioned by the 2015 Committee for the 2015 Celebration.

ENVIRONMENTAL REVIEW:

The MOU recognizes that events that may be undertaken by the 2015 Committee or its agents as part of the Celebration could potentially be considered Proposed Projects under the California Environmental Quality Act (CEQA) and potentially require environmental review. All Proposed Projects will be subjected to the appropriate review and approval processes on a case by case basis.

By entering into this MOU, the City does not in any way delegate or waive its obligation to fully consider the environmental analysis of the Proposed Project and to take that information into consideration when considering the EIR an environmental analysis or applications for discretionary permits for the Proposed Project.

FISCAL CONSIDERATIONS:

Through previous Council actions, Transient Occupancy Tax funds in the amount of \$450,000 were placed in an interest-bearing account within the Major Events Revolving Fund for the purpose of supporting the Celebration. They are to be transferred to the 2015 Committee through a separate agreement, originating with the Department of Economic Development and approved by the City Council, that specifies appropriate uses for those funds. Those funds were authorized to be expended in the FY2012 Appropriation Ordinance O-20073, effective July 25, 2011, so there is no additional fiscal impact.

The Memorandum of Understanding allows for future Council action to assist the 2015 Committee by waiving some costs of City support services, such as those provided by the Police and Fire-Rescue departments, that are frequently a condition of the issuance of Special Event Permits. The Council also could make additional allocations of Transient Occupancy Tax funds to the 2015 Committee for that purpose. Each of those allocations and/or fee waivers would be subject to separate City Council action, and informed by projections of the return on investment the City would realize from its financial support of the Celebration.

Preliminary analysis of visitor demand, conducted by the San Diego Convention and Visitors Bureau and based on industry studies and attraction attendance data, project the Celebration will result in 300,000 visitor room nights, \$4.7 million in Transient Occupancy Tax revenue to the City, and \$330 million in total economic impact based on a promotional effort aimed at drawing short-haul visitors from the Western Region United States.

The same remodeling projects 600,000 visitor room nights, \$9.4 million in Transient Occupancy Tax revenue to the City, and \$661 million in total economic impact based on a promotional effort aimed at drawing long-haul visitors from across the United States.

The projections were presented by the San Diego Convention and Visitors Bureau to the Natural Resources and Culture Committee in March 2011, in the following format:

The projections were presented by the San Diego Convention and Visitors Bureau to the Natural Resources and Culture Committee in March 2011, in the following format:

Calendar Year 2015	LEVEL I Western Region U.S.	LEVEL II National U.S.
Room Nights Forecast*	300,000	600,000
Direct Spending of Trip	\$ 139,000,000	\$ 278,000,000
Total Economic Impact of Travel	\$ 330,800,000	\$ 661,600,000
Estimated Hotel Room Revenue	\$ 45,120,000	\$ 90,240,000
Estimated TOT at 10.5%	\$ 4,737,600	\$ 9,475,200
Estimated SDTMD Assessment 2%	\$ 902,400	\$ 1,804,800

(For purposes of comparison, according to data provided by the San Diego Convention Center 2015 Committee, ComicCon International generated 126,000 room nights in July 2010.)

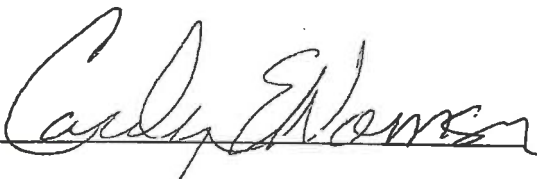
Once the Celebration is over and a final audit has been conducted, the 2015 Committee will pay to the City its remaining net proceeds to be used exclusively for Capital Projects in Balboa Park identified through the Park and Recreation Department's Capital Improvements Program.

**PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:**

The Steering Committee made an informational presentation to the Natural Resources and Culture Committee in March 2011.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

The Memorandum of Understanding anticipates extensive community outreach and public participation efforts once professional staff are in place. Planning efforts to this point have involved more than 100 individuals with strong records of participation in community affairs and Balboa Park, setting the stage for broad and inclusive participation.



Originating Department



Deputy Chief/Chief Operating Officer

Attachment: Memorandum of Understanding

## MEMORANDUM OF UNDERSTANDING

### BETWEEN THE CITY OF SAN DIEGO AND BALBOA PARK CELEBRATION, INC.

**THIS MEMORANDUM OF UNDERSTANDING** (MOU) is made and entered into by and between the City of San Diego, a California municipal corporation (City), with its principal place of business located at the City Administration Building, 202 C Street, San Diego, California 92101, and Balboa Park Celebration, Inc., a California nonprofit public benefit corporation (the “2015 Committee or “Committee”) with its principal place of business located at 2131 Pan American Plaza, San Diego, CA 92101 (each, a “Party,” and collectively referred to as the “Parties”).

### RECITALS

- A. City desires to create a year-long multi-faceted celebration to highlight the 100th Anniversary of the 1915 Panama California Exposition (“Celebration”).
- B. City intends that the Celebration be an event of significant magnitude to generate positive impacts on the local and regional economies, reverberate in the global media, and attract local, national, and international visitors through community, cultural, recreational, and promotional events and programs showcasing Balboa Park and the City of San Diego.
- C. 2015 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) formed for the primary purpose of planning, organizing, promoting, and implementing the Celebration, including fundraising to support that purpose, all for the benefit of Balboa Park.
- D. The intended scope, quality, and impact of the Celebration, including the cost of planning, organizing, and implementing a successful Celebration, is such that the interests of City are better served by the 2015 Committee being the lead entity organizing and managing the Celebration, rather than City.
- E. The 2015 Committee is implementing a planning framework for the successful execution of the Celebration and City intends to allow the 2015 Committee to organize events in and use Balboa Park to hold events for the Celebration on the terms and conditions set forth in this MOU.



- F. City and the 2015 Committee desire to incorporate the leadership, stewardship and missions represented by institutions, organizations, foundations, and individuals throughout the region seeking to support the Celebration.
- G. City and the 2015 Committee desire that the 2015 Committee be the sole organizer of the Celebration for and on behalf of City, and that the 2015 Committee be recognized by City as the Official Event Organizer for the Celebration with exclusive authority to conduct the Celebration on behalf of City and for the benefit of Balboa Park, the City, and the region.
- H. The 2015 Committee, in its role as the Official Event Organizer for the Celebration, desires to accommodate as many uses and events as possible during this time period and to use its best efforts to incorporate traditional events, activities, and uses during the Celebration Period.
- I. The 2015 Committee, also in its role as the Official Event Organizer for the Celebration, desires to plan a broad range of activities with content and pricing that reflect the demographic, economic, and cultural diversity of the region, including events that are free to the public.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

## **A G R E E M E N T**

### **Article I. Organization of Celebration**

Section 1.01 Official Event Organizer. The 2015 Committee shall, during the term of this MOU, be City's official organizer of the Celebration with exclusive authority to plan, oversee, manage, and conduct the Celebration on behalf of City and shall have the rights and obligations set forth in this MOU.

Section 1.02 Celebration Period. For the purpose of this MOU, the time period for the Celebration shall be defined as July 1, 2014 through March 31, 2016 (the "Celebration Period"), which time shall include physical preparation for the Celebration, the Celebration, and closure, take-down, and cleanup of the Celebration.

Section 1.03 Event Scheduling. For the purpose of avoiding conflict in the scheduling of Special Events (as defined in San Diego Municipal Code section 22.4003 of City's Special Events Ordinance) in Balboa Park during the Celebration Period, and ensuring the accommodation of Celebration events, the 2015 Committee shall, in coordination with City's Office of Special Events, determine the scheduling of Special Events during the Celebration Period. The 2015 Committee shall also have the ability to schedule, through City's Office of Special Events, Special Events to be held

on other City-owned property as part of the Celebration. City shall not schedule Special Events in Balboa Park during the Celebration Period without the approval of the 2015 Committee, and the 2015 Committee and City shall work together to ensure that Special Events and other events scheduled during the Celebration Period do not conflict with Celebration events or preparation for Celebration events and/or ensure that the events scheduled are part of the Celebration.

- (a) *Initial Master Events Calendar and Venue Allocation Plan.* On or before November 1, 2012, the 2015 Committee shall issue an initial calendar of all of the events to be held in Balboa Park during the Celebration Period (the “Master Calendar”) and an initial plan for allocating venues within the Park to particular events or uses (the “Venue Allocation Plan”). The 2015 Committee shall post the Initial Master Calendar and Venue Allocation Plan on the BalboaPark.org website and otherwise make it publicly available, along with email and mailing addresses for the submission of public comment.
- (b) *Revised Master Calendar and Venue Allocation Plan.* The 2015 Committee shall make updated drafts of the Master Calendar and Venue Allocation Plan publicly available from time to time, and shall include such updates in its informational reports referenced in Section 3.02.
- (c) *Comprehensive Master Calendar and Venue Allocation Plan.* On or before January 1, 2014, the 2015 Committee shall provide to City a Master Calendar and Venue Allocation Plan that sets forth, as comprehensively as possible, the events and venue allocations for Balboa Park during the Celebration Period. The 2015 Committee shall make such documents publicly available by February 1, 2014. The Parties acknowledge and agree that these documents may be modified as necessary after that date.
- (d) *Boundary Adjustment.* As the 2015 Committee develops the plans for the Celebration, the Parties may, by mutual agreement, adjust the boundaries of the area and or time period for which the 2015 Committee is responsible for event scheduling under this MOU, and return to City the responsibility for scheduling within such areas or time periods as identified by the Parties.

Section 1.04 Right of Entry. City hereby grants the 2015 Committee the non-exclusive right to enter upon City’s property in Balboa Park, not subject to lease, as necessary during the Term of this MOU for the purpose of planning, managing, and conducting the Celebration. For any areas not open to public access, the 2015 Committee shall provide reasonable notice and schedule a mutually agreeable time with City for its inspection and/or access. City shall grant the 2015 Committee such additional Right of Entry Permits as may be necessary and appropriate for the Committee’s activities and exclusive use of areas of Balboa Park or other City-owned property for certain periods of time on such terms and conditions as City deems appropriate.

Section 1.05 Special Event Permits and Park Use Permits. All events conducted in conjunction with the Celebration shall be permitted consistent with City’s Special Events Ordinance, City’s Special Events Permit Process, and City’s park permit requirements, including any necessary environmental review. City shall work with the Committee to expeditiously process Committee’s permit applications for permits issued by City, and assist Committee through the City’s permitting processes.

Section 1.06 Event Funding and Fiscal Responsibility. For the purpose of this MOU and as between City and the 2015 Committee, the 2015 Committee shall be fiscally responsible for the Celebration, events conducted in connection with the Celebration, and all debts incurred and obligations entered into by the Committee. The 2015 Committee shall not hold City accountable or liable for any monetary or other losses incurred by the Committee as a result of or related to this MOU. As the event organizer, the 2015 Committee shall:

- (a) Raise funds through sponsorships, grants, donations, earned income and all other revenue sources and use those funds exclusively for the planning and implementation of the Celebration, including administrative costs;
- (b) Accept funds allocated by City for the organization of the Celebration. City shall provide the 2015 Committee with any agreements controlling the use or segregation of any funds prior to their transfer to the Committee, and the Committee shall abide by the terms of any such agreements;
- (c) Set and charge fees for admission to Official, Partner and Sanctioned Celebration events, and use the revenue from such events to offset expenses, fund other events, or otherwise benefit Balboa Park.
- (d) Enter into agreements for sponsorships, partnerships, merchandising, contractors, consultants, professional advisors, etc., as necessary and appropriate to carry out its obligations under this MOU.

Section 1.07 Existing Leaseholds. Nothing in this MOU is intended to affect or infringe upon concurrent leasehold interests or contractual rights of City's lessees in Balboa Park.

## **Article II. Term**

Section 2.01 Term. The term of this MOU ("Term") shall commence on the last date set forth on the signature page of this MOU and shall continue until June 30, 2016.

Section 2.02 Extension of Term. In the event that the Parties desire additional time to wrap-up the activities of the 2015 Committee after the Celebration, the Parties may extend the MOU for the period of time necessary, set forth in writing signed by both Parties. However, in no event shall the term of this MOU, including any and all extensions, exceed five (5) years.

Section 2.03 Termination.

- (a) *Event of Default*. The following shall constitute an event of default ("Event of Default") under this MOU regardless of whether any such event shall be voluntary or involuntary or shall result from the operation of applicable laws, rules or regulations or shall be pursuant to or in compliance with any judgment, decree or order of any court of competent jurisdiction:
  - (i) The 2015 Committee shall fail to cause to be carried and maintained the insurance required under this MOU;
  - (ii) The 2015 Committee shall make any material misrepresentation or shall breach any warranty made herein;

- (iii) The 2015 Committee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or similar law, or shall make a general assignment for the benefit of creditors, or shall have an involuntary case or other proceeding instituted against it seeking similar relief; or
  - (iv) Either party shall otherwise fail to perform or observe any other covenant or condition set forth herein and such failure shall continue unremedied for a period of thirty (30) days after the receipt of written notice thereof from the nondefaulting party.
- (b) *Termination or Mediation.* Upon the occurrence of an Event of Default, and at any time thereafter so long as the same shall be continuing, the nondefaulting party may declare, at its option, this MOU to be in default and: (i) if the Event of Default is a filing under Section 2.03(a)(iii) above, may immediately terminate this MOU without any liability whatsoever; or (ii) proceed under the Alternative Dispute Resolution procedures set forth in Section 7.06 hereof.

### **Article III. 2015 Committee's Responsibilities**

Section 3.01 Comprehensive Project Management. The 2015 Committee shall plan, organize and provide comprehensive project management of the Celebration. The scope of responsibilities shall be those necessary to the successful management of the Celebration and its related events and activities including but not limited to all of the following.

- (a) *Fundraising.* The 2015 Committee shall raise funds to support its activities, the Celebration, and Balboa Park. The Committee's fundraising efforts shall include the opportunity for event partners, corporate sponsors, temporary naming recognition, ticketed events, and other funding planning.
- (b) *Permits and Approvals.* The 2015 Committee shall obtain all permits and approvals necessary for Celebration events and activities.
- (c) *Promotion.* The 2015 Committee shall promote and market the Celebration, including marketing through print, electronic and broadcast media.
- (d) *Event Planning.* The 2015 Committee shall develop event calendars, plans, budgets, and processes necessary for the successful implementation of the Celebration. Those documents shall include:
  - (i) *Community Outreach Plan.* The Community Outreach Plan shall describe the steps the Committee will take to engage the community in the planning for the Celebration, including obtaining community input and the use of volunteers.
  - (ii) *Master Calendar.* The Master Calendar shall list all Celebration events scheduled to take place during the Celebration Period, including events scheduled to take place both in and outside of Balboa Park.
  - (iii) *Venue Allocation Plan.* The Venue Allocation Plan shall designate the uses of property within Balboa Park during the Celebration Period as necessary for the holding of Celebration events including but not limited to areas for (a) staging, (b) paid events and

entertainment areas, (c) food/beverage/alcoholic beverage service areas, and (d) paid parking areas.

- (iv) **Activities and Programming Schedule.** The Activities and Programming Schedule shall, to the extent deemed necessary by the Committee for planning purposes, list programs and events taking place within Balboa Park during the Celebration Period, including programs and events to take place within leaseholds and in outdoor public spaces, whether or not related to the Celebration.
- (v) **Implementation Plan.** The Implementation Plan shall set forth the Committee's plan for implementation of the Celebration, including timelines representing all activities necessary to implement the Celebration.
- (vi) **Process for the Sanctioning of Official Events and Partnerships.** The 2015 Committee shall set forth a process for applying to have an event included as an official event of the Celebration and/or to be an official partner for the Celebration.
- (vii) **Business Plan, Strategic Plan, and Budget.** The 2015 Committee shall develop a Business Plan for the execution of the Celebration within a set budget, a Strategic Plan for raising the necessary funds, and a Budget for the Celebration.
- (viii) **External Communications Plan.** The External Communications Plan shall set forth the 2015 Committee's plan for marketing Celebration events to and providing information to the media in local, national, and international markets.
- (ix) **Access, Transportation and Parking Management Plan.** The 2015 Committee shall develop a plan to address transportation and parking during the Celebration, including access and circulation within the Park. The Plan may include user fee based access, transportation and parking management programs and facilities from December 31, 2014 through January 2, 2015, and user fees tied to specific events at other times during the Celebration Period.
- (e) **Infrastructure.** The 2015 Committee shall plan for and construct properly permitted temporary structures and facilities, and temporary infrastructure improvements, in Balboa Park as necessary and appropriate for the Celebration.
- (f) **Name, Branding, and Logos.**
  - (i) **Use of City Name and Seal.** City grants the 2015 Committee the right to use City's name and seal in connection with the Committee's organizing of the Celebration to signify City's official endorsement of the Celebration and of the 2015 Committee as the organizer of the Celebration. City may, in its discretion, grant permission to use City's seal or name in the title or theme of a special event during the Celebration Period. Such request shall be considered through the Special Events Permit Process.
  - (ii) **Intellectual Property.** City and the 2015 Committee shall enter into one or more license agreements, substantially in the form of the attached Exhibit A, for the use by the 2015 Committee of the names, logos, images and other intellectual property owned by City and identified by the Parties from time-to-time as appropriate in its organization and promotion of the Celebration and/or specific Celebration events. Such license(s) to use City's

intellectual property shall be limited in time and scope, be consistent with the desire of the Parties to produce and promote high quality events that showcase Balboa Park and the City of San Diego, and be without charge to the 2015 Committee.

- (iii) Internet Domains. City grants the 2015 Committee the right to use the following internet domain names registered by City: (a) balboa2015.net/.com/.org; (b) balboapark2015.net/.com/.org; (c) balboaparkcentennial.net/.com/.org; (d) bp2015.net/.com/.org and (e) bpcentennial.net/.com/.org.
- (iv) Acknowledgment of City Support. The 2015 Committee shall, to the extent possible and practicable, acknowledge City and its support of the Celebration in its promotional communications for the Celebration and Celebration events, including but not limited to websites, print advertisements, signs, banners, public service announcements, media interviews, newsletters, and other marketing efforts.
- (g) *Park Institution and User Group Relations*. The 2015 Committee shall include, as part of its Ongoing Community Outreach Plan, elements for engagement with and participation by park institutions and user groups in the Celebration planning and implementation.

#### Section 3.02 Informational Reports at Public Meetings.

- (a) *Balboa Park Committee*. During the Term of this MOU, the 2015 Committee shall make quarterly (or monthly if requested by the City) informational progress reports to the Balboa Park Committee at its regularly scheduled meetings.
- (b) *Natural Resources and Culture Committee*. During the Term of this MOU, the 2015 Committee shall make semi-annual informational progress reports to the San Diego City Council Natural Resources and Culture Committee at its regularly scheduled meetings.

#### Section 3.03 Meetings and Reports with City Staff.

- (a) *Meetings*. During the Term of this MOU, the 2015 Committee shall meet with the Director of the Park and Recreation Department, the Director of the Office of Special Events, and a liaison designated by the Mayor (collectively, "City Staff") on a quarterly basis (based on City's fiscal quarters) or as needed to inform City Staff of the Committee's progress, for review and input by City Staff of Committee plans and documents, and for coordination of efforts and other advice and input.
- (b) *Reports*.
  - (i) On or before March 30, 2012, the 2015 Committee shall deliver to City Staff for information and comment:
    - An Ongoing Community Outreach Plan, including community participation and input throughout the planning process
  - (ii) On or before November 1, 2012, the 2015 Committee shall deliver to City Staff for information and comment:

- Initial Activities and Programming Schedule
  - Initial Master Calendar
  - Initial Venue Allocation Plan
  - Initial Implementation Plan
  - Process for the Sanctioning of Official Events and Partnerships
- (iii) On or before February 1, 2013, the 2015 Committee shall deliver to the City for information and comment:
- Initial Business Plan, Strategic Plan & Initial Budget
  - External Communications Plan
- (iv) On or before May 1, 2013, the 2015 Committee shall deliver to the City for information and comment:
- Initial Access, Transportation & Parking Management Plan
  - Proposed Licensing & Merchandising Agreements
  - Updated Activities and Programming Schedule
- (v) On or before November 1, 2013, the 2015 Committee shall deliver to the City for information and comment:
- Comprehensive Master Calendar
  - Comprehensive Venue Allocation Plan
  - Comprehensive Access, Transportation and Parking Management Plan
  - Comprehensive Activities and Programming Schedule (with most recent updates)
  - Comprehensive Implementation Plan
  - Updated Business Plan, Strategic Plan & Revised Budget
- (vi) The 2015 Committee shall deliver to City Staff for its information and comment any material revisions to the documents listed in this section, and any other material planning documents developed by or for the 2015 Committee, prior to issuance or implementation of the revised document(s).
- (vii) On or before June 30, 2016, the 2015 Committee shall submit a final event report to City, in a format reasonable for storage, that includes, but is not limited to, a compilation of all previously submitted plans, documents, promotional and advertising materials, press reports and a final comprehensive report detailing the events and activities of the Celebration with estimated attendance and gross revenue where applicable.
- (viii) City Staff shall endeavor to provide its comments to the 2015 Committee within 30 days of receipt of the subject document.

Section 3.04 Lobbying and Political Activities. Except in communications with City (including any of its officials, employees, council, boards, or committees) to carry out the terms of and perform under this MOU, the 2015 Committee shall not use, and shall not allow its subcontractors or consultants to use, any of the funds, personnel, or materials received in connection with this MOU, to influence, or attempt to influence, any governmental decision or election in any manner, whatsoever. This prohibition shall apply to any decision of any kind to be made by any electorate, legislative body, agency, bureau, board, commission, district, or any other instrument of federal, state, or local government. The term, “influence or attempt to influence,” shall mean the making, with the intent to influence, any communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.

#### **Article IV. City Responsibilities**

Section 4.01 City Cooperation. The Mayor shall designate a staff liaison as a single point of contact to the 2015 Committee to facilitate and coordinate interaction and communication between the City and the Committee as the Committee proceeds with its planning, operations, fund-raising, and event implementation. The Mayor’s liaison, along with the Director of the Park and Recreation Department, and the Director of the Office of Special Events shall direct other city staff, as necessary, to work with the Committee to facilitate the goals and objectives of this MOU.

Section 4.02 City Services for Celebration Events. For each unique, one-time event created or sanctioned by the 2015 Committee for the Celebration and to be held during the Celebration Period, City shall review and consider whether and to what extent it can waive charges for City services necessary to support that event. This section shall not apply to traditionally held events or activities planned to be held during the Celebration Period, whether or not such events are sanctioned by the Committee as part of the Celebration.

Section 4.03 City Funding. City shall, contemporaneous with this MOU and pursuant to the terms of a separate agreement (the “Funding Agreement”), provide the 2015 Committee with \$450,000 in funds from City’s Major Events Revolving Fund (MERF) previously identified by City Council for support of a 2015 Celebration. The Funding Agreement will set forth the requirements for expenditure and reporting related to the funds.

#### **Article V. Wrap-Up of Celebration and Wind-Up of 2015 Committee**

Section 5.01 Definition of Event Proceeds. The definition of “Proceeds” from the Celebration shall mean the total net sum of all revenue to the 2015 Committee, including but not limited to sponsorships, grants, donations, earned income and other revenue sources less the total expenses incurred by the 2015 Committee, after reconciliation of accounts and confirmation by a final audit. In the event that the total expenses exceed the total revenue, then the amount of the Proceeds shall be zero (\$0).

Section 5.02 Distribution of Event Proceeds. After such reconciliation and final audit, the 2015 Committee shall pay the full amount of the Proceeds to City to be used exclusively for capital projects in Balboa Park identified through the Park and Recreation Department’s Capital Improvement Program. The 2015 Committee shall endeavor to conduct the reconciliation and final audit within three months of the close of the Celebration Period.



Section 5.03 Granting of Intellectual Property Rights. As part of the consideration for this MOU, the 2015 Committee agrees that upon termination of this MOU, the 2015 Committee grants to City, at no cost to City, all copyrights, trademarks, or service marks used, registered, and/or owned by the 2015 Committee at any time during the Term of this MOU.

Section 5.04 Wind-Up of the 2015 Committee. After the Celebration Period, the 2015 Committee shall terminate the business of the 2015 Committee, collect, pay, compromise and settle all debts and claims for and against the 2015 Committee including its obligation to pay the Proceeds to the City, sell any assets, wind-up its affairs, and voluntarily dissolve the corporation.

Section 5.05 Non-Liability of City for 2015 Committee Debts and Obligations. Nothing in this Article shall make City liable in any way for the debts or obligations of the 2015 Committee.

## **Article VI. Relationship of the Parties**

Section 6.01 Representations and Warranties of the 2015 Committee. The 2015 Committee represents and warrants that it (i) is a non-profit public benefit corporation serving a charitable purpose and duly organized, validly existing, and in good standing in the State of California; (ii) has been organized for the purpose described in this MOU and has obtained tax exempt status as a 501(c)(3) nonprofit public benefit corporation; (iii) it has all the requisite power and authority to execute, deliver, and perform this agreement; and (iv) has taken all necessary action to approve and execute this agreement.

Section 6.02 Independent Entity. The 2015 Committee, its board members and employees, are private entities independent of City. Although City and the 2015 Committee may cooperate to plan, fund and implement the Celebration and Celebration events, the 2015 Committee, its board members and employees, are not employees, consultants, contractors or public officials of City. The 2015 Committee does not constitute the legal representative of City for any purpose whatsoever. The 2015 Committee does not have any right or authority to assume or create any obligation or responsibility, express or implied, to make any deals and/or commitments on behalf of or in the name of City, and may not bind City in any manner. The 2015 Committee agrees that neither it nor its personnel or agents will hold themselves out as, or claim to be, officers or employees of City, or of any department of City, and that they will not, by reason of this MOU or any implementing agreements, make any claim, demand, or application for any right or privilege applicable to an officer or employee of the City, including but not limited to workers' compensation coverage, unemployment insurance benefits, or employee retirement membership or credit.

Section 6.03 No Joint Venture. Nothing in this MOU shall be construed to create a joint venture or legal partnership of any kind between the City and the 2015 Committee.

## **Article VII. Risk Management**

Section 7.01 Insurance. At all times during the term of this MOU, the 2015 Committee shall maintain insurance coverage as set forth below. All required insurance shall be submitted to the City within ten (10) days of approval of MOU. The 2015 Committee shall maintain all required insurance in full force and effect during the entire period of performance under this MOU. Failure to do so shall be cause for termination of the MOU.

- (a) Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1,000,000.00 (one million) per occurrence and subject to an annual aggregate of \$2,000,000.00 (two million). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- (b) Commercial Automobile Liability. For all of the 2015 Committee's automobiles including owned, hired and non-owned automobiles, the 2015 Committee shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1,000,000.00 (one million) per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- (c) Workers' Compensation. For all of the 2015 Committee's employees and to the extent required by the applicable state or federal law, the 2015 Committee shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1,000,000.00 (one million) of employers' liability coverage, and the 2015 Committee shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
- (d) Deductibles. All deductibles on any policy shall be the responsibility of the 2015 Committee and shall be disclosed to the City at the time the evidence of insurance is provided.
- (e) Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Contract must be from an insurance carrier licensed in the State of California and rated "A-, VI" or better by the A.M. Best Key Rating Guide and authorized by the California Insurance Commissioner to do business in the State of California. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- (f) Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this MOU:
  - (i) Commercial General Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

**PRIMARY AND NON-CONTRIBUTORY COVERAGE.** The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of the 2015 Committee's insurance and shall not contribute to it.

**SEVERABILITY OF INTEREST.** The policy or policies must be endorsed to provide that the 2015 Committee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

(ii) Automobile Liability Insurance Endorsements

**ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the 2015 Committee.

**SEVERABILITY OF INTEREST.** The policy or policies must be endorsed to provide that 2015 Committee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

(iii) Worker's Compensation Insurance Endorsements

**WAIVER OF SUBROGATION.** The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

- (g) Reservation of Rights. The City reserves the right, from time to time, to review the 2015 Committee's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the 2015 Committee for the cost of the additional premium for any coverage requested by the City in excess of that required by this MOU without overhead, profit, or any other markup.
- (h) Additional Insurance. The 2015 Committee may obtain additional insurance not required by this MOU.
- (i) Excess Insurance. All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

- (j) Notice of Cancellation. All policies shall include language stating that the policy shall not be cancelled, terminated, or modified unless thirty (30) days prior written notice is sent by certified mail to the 2015 Committee and to the City addressed to the Director, Parks and Recreation Department, 202 C Street, San Diego, CA 92101.

Section 7.02 Indemnification and Hold Harmless Agreement. With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of a Party (“the Originating Party”), or the acts or omissions of that Party’s respective employees, volunteers, agents, and officers, arising out of performance involving this MOU, the Originating Party agrees to defend, indemnify, protect, and hold harmless the other Party, its agents, officers, and employees from and against all liability. The Originating Party’s duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the other Party, its agents, officers, volunteers or employees.

Section 7.03 Limitation of Liability. In no event shall a Party be liable to the other Party to this MOU for any indirect, special, consequential, incidental or punitive damages or lost profits, however caused, which are incurred by such Party, its employees, subcontractors, and/or agents, or any third party, arising out of this MOU, or the performance or breach of this MOU, even if such Party has been advised of the claim or potential claim or of the possibility of such damages.

Section 7.04 Audits. For each fiscal year beginning July 1 and ending June 30 (“Fiscal Year”), the 2015 Committee shall provide audited financial statements to City including a statement of the Committee’s revenues and expenditures. Such financial statements shall be audited by an independent Certified Public Accountant and submitted to the City within one hundred-fifty (150) days of the Fiscal Year end date and posted on the Committee’s website.

Section 7.05 Audit and Inspection of Records. The Conservancy shall make available to the City for examination at reasonable locations within the City/County of San Diego, at any time during normal business hours and as often as the City deems necessary, all of the data and records with respect to all matters covered by this MOU, any and all implementing agreements, and subcontracts [City’s Right]. The City’s Right includes the right to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by the subject agreements. The Committee shall maintain such data and records for a period of not less than five years following termination of this MOU, or alternatively, shall transfer such data and records to City. The Committee shall include the City’s Right as described in this Section in any and all of its subcontracts, and shall ensure that it is binding upon all of its subcontractors. The City’s Right shall survive the termination of this MOU.

Section 7.06 Alternative Dispute Resolution. For any disputes, claims and/or causes of action arising out of or relating to this MOU, and such dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation under the [Commercial Business] Mediation Rules of the American Arbitration Association.

- (a) Costs. Each party shall bear its own costs in attending and participating in the mediation and the parties shall share equally in the cost of the mediator.

- (b) Initiation of Mediation. Either party may request in writing that the other party agree to mediation of the dispute; such notice shall set forth the subject of the dispute and the relief requested.
- (c) Selection of Mediator. The parties shall select a mediator within 30 days of receipt of the request for mediation. The mediator may be selected from lists furnished by either or both parties. If a mediator has not been agreed upon within such thirty-day period, then the dispute shall be mediated by a neutral chosen by JAMS.
- (d) Discovery. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The parties may agree to exchange any information they deem necessary.
- (e) Authorized Representative. All parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement.
- (f) Agreements. Any agreements resulting from the mediation shall be documented in writing with the proper approvals by each party.
- (g) Confidentiality. All negotiations and proceedings pursuant to this section are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law.

#### **Article VIII. Miscellaneous**

Section 8.01 Compliance with All Laws. The parties shall comply with all applicable federal, state, and local laws, ordinances, and regulations in implementing this MOU, including environmental laws and regulations. Nothing in this MOU waives or delegates City's discretion in making future decisions regarding any "project" as that term is defined by the California Environmental Quality Act (CEQA). The City and Committee fully understand and acknowledge that proposed Celebration events may constitute "projects" under CEQA requiring environmental review. The City does not, by this MOU, commit to approve any project or any part of a project that requires environmental review under CEQA, and the City will fully consider such environmental review in making its decisions regarding any such project including, where called-for, any proposed alternatives and mitigating measures presented as part of the environmental analysis.

Section 8.02 Implementation. The Parties agree to take such lawful actions, and enter into such legal agreements as are necessary and appropriate to implement the purpose and intent of this MOU.

Section 8.03 Impossibility/Commercial Impracticability/Force Majeure. Neither Party is liable for failing or delaying performance of any obligation under this MOU if the performance is rendered impossible or commercially impracticable by a force or forces beyond the City's or the 2015 Committee's control (each, a "Force Majeure"), including but not limited to: fire, flood, riot, earthquake, civil commotion, pandemic, disease, strike, lockout, labor disturbances, explosion, sabotage, accident, war, Act of God, or any law (including ordinances, rules or regulations) which becomes effective after the date of this MOU.

Section 8.04 Council Policies and Municipal Code. The 2015 Committee (referred to in this section as “Contractor”) agrees to comply with the following City Policies and Municipal Code sections.

- (a) *Council Policy 100-04: Americans with Disabilities Act*. Contractor agrees to comply with Council Policy 100-04, which establishes that all City contractors, including but not limited to construction contractors, consultants, grantees, and providers of goods and services agree to comply with all applicable titles of the Americans with Disabilities Act. Council Policy 100-04 is located on the City’s website at [http://docs.sandiego.gov/councilpolicies/cpd\\_100-04.pdf](http://docs.sandiego.gov/councilpolicies/cpd_100-04.pdf) and is incorporated herein by reference.
- (b) *Council Policy 100-17: Drug-Free Workplace*. Contractor agrees to comply with Council Policy 100-17 that requires all City construction contractors, consultants, grantees and providers of services to provide a drug-free workplace for the performance of work done in connection with a contract held by the City. Council Policy 100-17 is located on the City’s website at [http://docs.sandiego.gov/councilpolicies/cpd\\_100-17.pdf](http://docs.sandiego.gov/councilpolicies/cpd_100-17.pdf) and is incorporated herein by reference.
- (c) *Non-Discrimination in Contracting*. Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between the Contractor and any subcontractors, vendors, and suppliers shall contain this language.

Section 8.05 Conflict of Interest. The 2015 Committee shall comply with all applicable conflict of interest laws, as updated from time to time during the course of this MOU, including, but not limited to: California Government Code sections 1090 et. seq., and sections 81000-91015(the California Political Reform Act) and applicable regulations; California Corporations Code sections 5230-5239 (standards of conduct applicable to nonprofit public benefit corporations); and City’s Ethics Ordinance, San Diego Municipal Code §§ 27.3501-27.3595. Nothing in this Section shall be construed to create any additional duties or obligations, on the part of Corporation or City, beyond those obligations to follow existing California laws.

Section 8.06 Non-Assignment. The 2015 Committee shall not assign the rights or obligations under this MOU without the City’s prior written approval, which will not be unreasonably withheld. Any assignment in violation of this paragraph shall constitute a material default of this MOU . In no event shall any putative assignment create a contractual relationship between the City and any putative assignee. Nothing herein shall prohibit the right of the 2015 Committee to delegate or contract with other parties to perform portions of its rights, duties or obligations hereunder provided such delegates or contractors shall be bound by this MOU.

Section 8.07 Jurisdiction and Venue. The venue for any suit or proceeding concerning this MOU, the interpretation or application of any of its terms, or any related disputes shall be the County of San Diego, State of California.

Section 8.08 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this MOU and the Exhibits, the main body of this MOU shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this MOU, the law, rule, regulation, order, or code shall control. Varying degrees of specificity among provisions of this MOU, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most specific requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this MOU.

Section 8.09 Notices. All notices and statements to be given under this MOU shall be given at the respective addresses of the parties as set forth below, unless notification of a change of address is given in writing. Any notice shall be sent by registered or certified mail, or by a nationally recognized courier service, or by personal service, and shall be effective upon receipt.

For the City:	Office of the Mayor 202 C Street (MS 11) San Diego, CA 92101
With a copy to:	Office of Special Events 1200 Third Avenue, Suite 1326 San Diego, CA 92101
And a copy to:	City Attorney 1200 Third Avenue, Suite 1620 (MS 51) San Diego, CA 92101
For the 2015 Committee:	Balboa Park Celebration, Inc. 2131 Pan American Plaza San Diego, CA 92101 Attention: Executive Director

Section 8.10 No Waiver. No failure of either the City or the 2015 Committee to insist upon the strict performance by the other of any covenant, term or condition of this MOU, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this MOU, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this MOU, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

Section 8.11 Municipal Powers. Nothing contained in this MOU shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

Section 8.12 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this MOU, and the decision of whether or not to seek advice of counsel with respect to this MOU is a decision which is the sole responsibility of each Party. This MOU shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of this MOU.

Section 8.13 Amendment. The Parties may amend this MOU at any time by mutual written agreement, subject to City Council approval where applicable.

Section 8.14 Integration. This MOU and the Exhibits and references incorporated into this MOU fully express all understandings of the Parties concerning the matters covered in this MOU. No change, alteration, amendment, or modification of the terms or conditions of this MOU, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties.

Section 8.15 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this MOU, as well as all continuing obligations indicated in this MOU, shall survive for no more than three years from the end of the Celebration Period unless otherwise indicated.

[Signatures on next page.]



**Article IX. Signatures**

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or his designee, pursuant to San Diego Charter Section 265, and by the 2015 Committee, by its duly authorized representative.

THE CITY OF SAN DIEGO,  
a California municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

BALBOA PARK CELEBRATION, INC.,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

I HEREBY APPROVE the form of the foregoing MOU this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

JAN I. GOLDSMITH, City Attorney

By: \_\_\_\_\_

Carrie L. Gleeson  
Deputy City Attorney