

**AGREEMENT FOR NAMING RIGHT OPPORTUNITY  
FOR DONOR TO THE RESTORATION OF  
THE BALBOA PARK BOTANICAL BUILDING AND GARDENS PROJECT**

This Naming Right Opportunity for Donor to the Restoration of the Balboa Park Botanical Building and Gardens Project Agreement (Agreement), made and entered into by and between the City of San Diego (City), a municipal corporation, and Forever Balboa Park (FBP), a nonprofit 501(c)(3) charitable organization, individually “Party” and collectively “Parties”, is effective upon execution by authorized representatives of both Parties and approval of the City Attorney, and acts as the Agreement referenced in Council Resolution number R-2021-528.

**RECITALS**

WHEREAS, FBP is a nonprofit 501(c)(3) charitable organization, organized to accept, receive, hold, invest, reinvest, and administer donations, gifts, legacies, bequests, devises, funds, benefits of trust, and property of any sort or nature, and to use, apply, or expend the income or principal thereof to support the San Diego Parks & Recreation Department (Department); and

WHEREAS, the Department and FBP are partnering with the Engineering and Capital Projects Department (ECP) in the restoration of the Balboa Park Botanical Building and Gardens (Project). ECP is currently working on Phase 1, funded by a State grant and FBP, and FBP is raising funds for Phase 2 implementation of the Project through philanthropic donations; and

WHEREAS, Phase 2 Project improvements will be documented in a Right of Entry Permit(s) between the City, FBP and its contractor(s).

WHEREAS, FBP desires to raise funding for the implementation of Phase 2 of the Project and has embarked on a capital campaign to raise this funding. As with any capital campaign, donor acknowledgement is a key component. FBP has partnered with RSM Design to prepare a Donor Acknowledgement and Naming Program (Naming Program) to aid in their fundraising efforts. This Naming Program was created in collaboration with City Historic Resources staff, the Botanical Building stakeholder steering committee, Parks and Recreation staff and the Balboa Park Committee. The Naming Program adheres to all City policies, including the San Diego Charter and San Diego Municipal Code, as well as any local, state, or federal regulation. The Naming Program has been designed to be as unobtrusive as possible and meet aesthetic and historical preservation concerns. The goal of this program is to create consistent and unified opportunities for donor participation in this Project without compromising the historical and visual integrity of this historic asset; and

WHEREAS, Council Policy 900-20 (Policy) requires that FBP must have an agreement with the CITY, identifying appropriate fundraising naming opportunities with gift levels for each naming opportunity, that is approved by the San Diego City Council (Council). Approval of this sample Agreement will constitute evidence of the approval of the agreement by the Department of Parks and Recreation and Council, pursuant to the Policy.

WHEREAS, Naming Program fundraising for this Project includes two components. The first component is Donor Acknowledgement, which includes donations to the Project and acknowledgement in the form of small plaques or engraving. The Donor Acknowledgment program was developed in accordance with Council Policy 100-02, Receipt of Donations, and includes the following elements:

- Concrete or stone pavers with donor names engraved
- Engraving on donor benches
- Engraving on donor interior water features
- Bronze plaques
- Cast plaster engraved plaques
- Brass lettering in pavement

WHEREAS, the second component of Naming Program fundraising is in naming right opportunities. Naming right opportunities of City-owned assets are reserved for larger donations and were developed in accordance with Council Policy 900-20, Naming of City Assets. Each opportunity listed below would have only one naming opportunity.

Naming Opportunities include:

- |                                  |                                     |
|----------------------------------|-------------------------------------|
| ● Welcome Gallery                | ● Central Rotunda                   |
| ● North Annex                    | ● North Entrance Lobby              |
| ● Multi-purpose Room (West)      | ● Multi-purpose Room (East)         |
| ● West Wing Gardens (Interior)   | ● East Wing Gardens (Interior)      |
| ● West Patio                     | ● Historic Pergola (Reconstruction) |
| ● West Fountain Plaza (Exterior) | ● East Fountain Plaza (Exterior)    |
| ● West Gardens (Exterior)        | ● East Gardens (Exterior)           |
| ● Potting Shed Area              |                                     |

Each of the above fifteen (15) identified City assets will be considered as naming opportunities with a gift value between \$225,000 and \$8,000,000.

WHEREAS, the City requires additional funding to complete the Project; and

WHEREAS, the City accepted the Naming Program and authorized the negotiation and execution of this Agreement through Council Resolution number R-2021-528; and

WHEREAS, without this Naming Program, the City would be unable to complete this Project; and

WHEREAS, all proposed donor names for the naming or renaming rights that include funding shall require final written approval of the Mayor or his designees.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

## **Section 1. Donation and Naming Opportunity**

1.1 FBP agrees and confirms that consistent with the Naming Program and this Agreement Betty J. Beyster donated at the Gold Level toward implementation of Phase 2 of the restoration of the Balboa Park Botanical Building and Gardens (Project) in exchange for the naming right opportunity to name the East Wing Gardens (Interior) the Betty J. Beyster East Wing Gardens.

1.2 The City agrees to submit this Agreement to the Mayor or his designees for approval to name the East Wing Gardens (Interior) the Betty J. Beyster East Wing Gardens.

1.3 No fundraising based on naming opportunities may occur before the Agreement has been approved by the CITY Council.

1.4 Naming opportunities shall not create any conflict of interest, as set forth in the CITY's Ethics Ordinance (Chapter 2, Article 7, Division 35 of the San Diego Municipal Code) and the Fair Political Practices Commission regulations (Title 2 of the California Code of Regulations, sections 18110-18997).

1.5 All donations and gifts, including any interest accrued, submitted to FBP by a donor to which naming opportunities on the Premises is agreed to by FBP shall be used by FBP solely and exclusively for design, construction and related costs of the Project and the Authorized Uses. FBP shall separately account for all donations and gifts for the Project and the Authorized Uses from FBP's other monies.

1.6 The Council reserves the right to rename any CITY asset for any reason, i.e. if the resident, organization, or business for which a City asset is named is determined to be disreputable, becomes disreputable or does not otherwise support the Guiding Principles set forth in Council Policy 900-20, etc.

## **Section 2. Recognition**

2.1 With the approval of the Mayor or his designees, and in consideration of the donation, and after completion of the Project, the City will name the East Wing Gardens (Interior) the Betty J. Beyster East Wing Gardens.

2.2 The cost of all implementation and signage for the naming opportunities shall be born solely by FBP, but ownership of the Premises shall remain at all times with the CITY.

2.2 The City and FBP further agree to acknowledge the Donors in a manner consistent with donor recognition pursuant to City Council Policy, all applicable local, state and federal policies, laws, rules, regulations, compatible with the architecture and design of the Project, and commensurate with the donation amount. Acknowledging that recognition serves an important role in FBP's ongoing fundraising efforts, the City shall consult with and seek input from FBP on recognition for this donation.

## **Section 3. Miscellaneous**

3.1 Integration. This Agreement and the references cited in 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 agreed to in writing by both Parties in the form of an amendment to this Agreement. All prior negotiations and agreements concerning the subject matter hereof are merged into this Agreement.

3.2 No Waiver. No failure of either the City or FBP to insist upon the strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, term, and condition hereof shall continue in full force and effect to any existing or subsequent breach.

3.3 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

3.4 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Party to this Agreement has 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.

3.5 Compliance with Controlling Law. Both Parties shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. The laws of the State of California shall govern and control any dispute involving the terms and conditions of this Agreement.

3.6 Jurisdiction, Venue, and Attorneys' Fees. The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.

3.7 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered City of the State of California.

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

3.9 Signing Authority. The representative(s) signing, on behalf of a nonprofit organization, corporation, partnership, joint venture or governmental entity, for each Party, hereby declare(s) that authority has been obtained to sign on behalf of the nonprofit organization, corporation, partnership, joint venture, or governmental entity, for each Party, and agrees to hold the other Party or Parties hereto

harmless if it is later determined that such authority did not exist on the date of signature.

3.10 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute the single signed original as though City and FBP had executed the same page.

*[Signatures on following page(s).]*

IN WITNESS WHEREOF, this Agreement is executed by the City and FBP:

I hereby certify that I can legally bind FBP; I understand all terms and conditions of this Agreement; and I agree to all terms and conditions of this Agreement.

**FOREVER BALBOA PARK ,**

*Elizabeth C Babcock*

*8/11/2022*

By:

Elizabeth C. Babcock, PhD  
President and CEO  
Forever Balboa Park

Date:

I hereby certify that I can legally bind the City; I understand all terms and conditions of this Agreement; and I agree to all terms and conditions of this Agreement.

**THE CITY OF SAN DIEGO**

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

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

Jay Goldstone, Chief Financial Operating  
Officer

By:

Andy Field, Director  
Parks and Recreation  
Department

Date:

Approved as to form on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_;

MARA W. ELLIOTT, City Attorney

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

Jane M. Boardman  
Deputy City Attorney