

**MAINTENANCE AGREEMENT BETWEEN THE
CITY OF SAN DIEGO AND BIRD ROCK DEVELOPMENT
CORPORATION**

THIS MAINTENANCE AGREEMENT (Agreement) is made and entered into by and between the City of San Diego, a municipal corporation (City), and Bird Rock Development Corporation (d.b.a. Bird Rock Community Council), a non-profit corporation (Contractor).

RECITALS

WHEREAS, the City desires to retain the services of Contractor to provide administration of the maintenance services to Bird Rock Maintenance Assessment District (District); and

WHEREAS, the boundaries of the District are generally defined as follows: : the area bounded (i) on the west by the Pacific Ocean; (ii) on the north by La Cañada Street; (iii) on the east by Folsom Drive, Bellevue Avenue, Linda Rosa Avenue; and (iv) on the south by La Jolla Mesa Drive, Colima Street, Bird Rock Elementary School/Park, and Wrelton Drive within the La Jolla Community Planning Area; and

WHEREAS, a majority of the property owners in the District, weighted by the dollar amount of their assessments in the District, signed ballots in support of Contractor's role to assume the responsibility for administration of Contracts for Goods and Contracts for Services (as these terms are defined in San Diego Municipal Code 65.0202) for the District in accordance with the San Diego Municipal Code section 65.0212; and

WHEREAS, every year the City Council approves an updated engineer's report that includes a budget for the services to be provided within the district for the applicable fiscal year (District Budget);

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for other valuable consideration which is hereby acknowledged, City and Contractor hereby agree as follows:

ARTICLE I - SCOPE OF SERVICES

A. General Services

1. Contractor shall provide administration of the Contracts for Goods and Contracts for Services and prepare financial statements for the District in accordance with the "Maintenance Assessment Districts Ordinance" (Division 2, Article 5, Chapter VI, beginning at section 65.0201 of the San Diego Municipal Code) and the "Landscaping and Lighting Act of 1972" (Part 2 of Division 15 of the California Streets and Highways Code) , and as set forth in the assessment engineer's report approved by the City Council in connection with the formation of the District (Engineer's Report).

2. Contractor shall perform all duties as reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standards outlined in this Agreement and the Engineer's Report.

B. Specific Requirements

1. Contractor, at a minimum, shall provide the maintenance standards described in the Scope of Services (Exhibit A) within the boundaries of the District and for any Zone within the District, consistent with the City Council-approved current fiscal year District Budget afforded for such maintenance services and Exhibit B.
2. Contractor shall conduct on-site inspections of all work done under this Agreement in the District and shall submit a report to the City indicating that such on-site inspections have been completed.
3. Contractor shall correct any deficiency reported by City staff pursuant to Section II(B)(1) of this Agreement within thirty calendar days.
4. Contractor shall be responsible for responding, in writing, to the City regarding District maintenance complaints received by the City.
5. Contractor shall provide at least one noticed meeting with the property owners within the District annually and attempt to meet on a regular basis with the relevant planning group or designated property owners' representatives within the District. The noticed meeting shall be used to finalize plans and specifications for improvements and maintenance as described in the Engineer's Report, evaluate the performance of any maintenance contractor, and advise Contractor regarding the improvements and regular maintenance as described in the Engineer's Report for the District. With respect to any such meeting, Contractor shall use its best efforts to contact either orally or in writing the City, the relevant community planning group or designated property owners' representatives of the District, and provide notice in community newspapers, if available.
6. Contractor shall submit to the City no later than February 1 of each year a line item budget for the upcoming fiscal year. Contractor shall be required to budget a minimum of 10 percent as a contingency reserve. This proposed budget for services in the District will be brought forward to City Council for consideration as the District Budget for the upcoming fiscal year.
7. Contractor shall maintain a separate set of books and records of costs associated with Contractor's responsibilities under this Agreement for audit at the expense of the District.

ARTICLE II - SERVICES PROVIDED BY THE CITY

A. Budget

1. The City will carry out all actions reasonably necessary for processing the annual budget for maintenance of the District.
2. The City will review and consider Contractor's proposed budget for maintenance operations in preparing and approving the District Budget.
3. The City may, at its sole discretion, amend line items in the District Budget upon a written request from Contractor, provided the amendments would not increase the total amount authorized for reimbursement to Contractor.

B. Services

1. City staff shall conduct at least four District inspections during the term of this agreement to evaluate compliance with the maintenance standards. If, after City staff conducts an inspection, Contractor is found to be deficient with respect to any standard or if City staff finds that the District is not being properly administered by Contractor, a report of such findings will be presented to Contractor. If the deficiency is not satisfactorily corrected within thirty calendar days, the report will then be presented to the City Council. The City Council may use such findings as the basis for termination of this Agreement pursuant to Article VI hereof and San Diego Municipal Code section 65.0212.
2. The City reserves the right to deploy its public safety personnel in a manner which, in the City's sole discretion, best serves the needs of the public. Further, nothing in this Agreement shall be deemed to abrogate or waive the provisions of California Government Code section 845.
3. The City will coordinate the collection of assessments with the County of San Diego and provide general administrative services, assistance, and information to Contractor.

ARTICLE III - COMPENSATION AND REIMBURSEMENT

A. Invoices

1. Contractor shall submit monthly reimbursement requests to the City along with all supporting receipts, invoices, checks, payroll statements, bank statements, and all other records of services performed. Each expenditure submitted for reimbursement must show as cleared on the submitted bank statements.
2. The City will reimburse Contractor from District assessment funds within thirty days of receipt of a proper reimbursement request. The request must include both a Trial Balance and Summary of Expenses as of the period claimed. The Summary of Expenses shall detail expenses by expenditure category and line item

as reflected in the City Council-approved current fiscal year District Budget and in accordance with Exhibit B.

3. All invoices shall include the names and rates of pay for contracted personnel who have performed services on behalf of the District, the hours worked, and details of any reasonable and necessary out-of-pocket expenses. Reimbursement requests shall be signed by a representative of Contractor's board, not the Executive Director.
4. Contractor shall not request, nor shall it be entitled to, reimbursement under this Agreement for any expenditure that has been or may be properly charged to a funding source other than District assessment funds.
5. Contractor shall not request reimbursement under this Agreement for any expenditure that has been or may be properly charged to a funding agency other than the City.

B. Compensation

1. Contractor shall be compensated for its services pursuant to this Agreement solely by the terms of this Section III(B). In any given fiscal year, Contractor is entitled to receive an additional amount of up to 15 percent of budgeted annual expenditures, as reflected in the District Budget, in order to pay for the wages, salaries, and benefits of Contractor's administrative employees, but only to the extent such wages, salaries, and benefits compensate for activities directly undertaken for the administration of the District. Such additional amount shall constitute Contractor's "Administration." Contractor shall not be authorized to include charges for Administration on any amounts paid by Contractor that contain any administrative charges by the billing entity. If Contractor enters into any contracts with third parties for the performance of any of Contractor's duties under this Agreement and any such contract includes an administrative charge, Contractor shall not be entitled to receive Administration reimbursements for its own administration activities related to the work performed by third party contractors.
2. The Administration reimbursement to Contractor shall be limited to 15 percent of the budgeted annual expenditures in the District.
3. The City shall be compensated from the assessment revenues the greater of \$3500 or 4 percent of budgeted annual expenditures for administrative services associated with the annual budget processing, property tax enrollment and collections, professional engineering services, on-site inspections, and audit services from the District Budget.
4. The City will not reimburse Contractor for any expenditure that has been or may be properly charged to, or reimbursed by, a City funding source other than District assessment funds.

5. The City will not reimburse Contractor for any expenditure that has been or may be properly charged to, or reimbursed by, a public agency other than the City.

C. Advances

1. Upon a written request from Contractor, the City may make an annual cash advance of three months of working capital to Contractor based on the District's monthly cash flow budget requirements related to the City Council-approved current fiscal year District Budget. If the District reserves are not adequate to cover the working capital advance request, an advance will be based on available cash at the time of the request.
2. The advance will be returned on or before the termination of this Agreement as either a reduction of the final reimbursement request or a transfer of funds from Contractor.

D. Suspension Of Payment.

1. If Contractor fails to perform any of its obligations as set forth in this Agreement, the City shall have the right to suspend the payment of Administration costs to Contractor pursuant to Article III until such time as Contractor is in compliance with the terms of this Agreement. If, as a result of Contractor's failure to perform, the City elects to withhold payment, the City shall give Contractor written notice of its intention to suspend payment of Administration costs until Contractor has cured its noncompliance. Such notice shall provide Contractor with a description of the failure to perform upon which the City has based its suspension of payment hereunder. Upon the performance by Contractor of its obligations under this Agreement, the City shall resume payments of Administrative costs to Contractor in conformance with the terms of Article III set forth above.

ARTICLE IV - EFFECTIVE DATE AND TERM

Upon the execution of this Agreement by the parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2011 and continue for one year until June 30, 2012 [Term], unless terminated earlier in accordance with the terms of this Agreement. City shall have the option to renew this Agreement in one-year increments for up to four additional years. In no event shall the term of this Agreement extend beyond June 30, 2016.

ARTICLE V - DOCUMENTS, RECORDS, AND REPORTS

A. Ownership Of Documents

1. Once Contractor has been compensated for services performed, all documents, including, but not limited to reports and maps prepared in connection with or related to the Scope of Services, shall be the property of the City.
2. The City's ownership of these documents includes all incidental rights, whether or not the work for which they were prepared has been performed.
3. This Section V(A) shall apply whether the Agreement is terminated by the completion of the services, by the expiration of this Agreement under Article IV, or in accordance with any other provisions of this Agreement.
4. Notwithstanding the foregoing, Contractor shall have the right, at its sole cost, to make and retain separate copies of the documents.

B. Audit And Inspection Of Records

1. At any time during normal business hours and as often as the City deems necessary, Contractor and all subcontractors shall make available to the City for examination and copying at reasonable locations within the City of San Diego all data and records relating to all matters covered by this Agreement. Contractor and all subcontractors will permit the City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered in this Agreement.
2. Contractor and subcontractors shall maintain such data and records for a period of three years following receipt of the final payment of this Agreement. With respect to receipts, invoices, checks, payroll statements, bank statements, and all other evidence of payments for which Contractor is reimbursed by the City pursuant to this Agreement, Contractor shall maintain such documentation at its principal place of business in the City of San Diego for the required period of time. With respect to all records covered by this Section V(B), if Contractor does not make them available within the City of San Diego, then Contractor shall pay all City's travel related costs to audit records associated with this Agreement where records are maintained.

C. Financial Reports

Contractor shall provide an audited financial statement of all reimbursements and working capital advances paid to Contractor with District funds within ninety days after the end of Contractor's fiscal year. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited by an independent Certified Public Accountant (CPA) in accordance with Generally Accepted Auditing Standards (GAAS). The statements must include a Statement of Expenditures of the District's funds identified in the same expenditure classifications as contained in

the City Council-approved District Budget and show a comparison to the budgeted amounts, and a Statement of Compliance with the terms of this Agreement signed by Contractor. Failure to comply with these requirements could result in suspension of any current payments or possible future funding.

ARTICLE VI - TERMINATION

A. City's Right To Terminate For Default

1. If Contractor fails to perform or adequately perform any obligation required by this Agreement, Contractor's failure shall constitute a default. The Mayor or designee shall promptly give Contractor written notice of the occurrence of the default, and shall allow Contractor thirty days thereafter to cure the default, or to submit a written plan of action to cure such a default within a reasonable and safe period of time thereafter. Failure to cure the default or timely submit the plan of action within the thirty-day period, or failure to adhere to the plan of action, shall entitle the City Council to terminate this Agreement in accordance with San Diego Municipal Code section 65.0212.
2. Notwithstanding the foregoing, if the nature of the default could endanger the public's health and safety, Contractor shall cure the default within twenty-four hours of receipt of notice of the default. If Contractor fails to fully and timely cure the default, then the City Council may, in its sole and absolute discretion, terminate this Agreement.

B. Notice

1. The City Council may terminate this Agreement with Contractor at any time provided:
 - (a) a public hearing is held on the City's intention to terminate this Agreement with Contractor;
 - (b) Contractor is provided thirty calendar days' notice of the public hearing on the City's intention to terminate this Agreement;
 - (c) a notice of the public hearing is mailed at least fifteen calendar days prior to the public hearing to each property owner within the District; and
 - (d) the City Council determines at the conclusion of the public hearing that it is in the best interests of the District to terminate this Agreement with Contractor.
2. Upon termination of this Agreement, the City shall assume administration of Contracts for Goods and Contracts for Services for the District as defined in San Diego Municipal Code section 65.0202. Contractor shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than thirty calendar days after receipt of written notice of termination. Until the

actual transfer of these assets is complete, Contractor shall continue to administer the Contracts for Goods and Contracts for Services for the District so that there is no interruption in or loss of service to property owners within the District. Contractor may be entitled to permitted costs during such period as set forth in Article III.

C. City's Right To Terminate For Bankruptcy Or Assignment For The Benefit Of Creditors

If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon Contractor, immediately cancel and/or terminate this Agreement, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement.

D. No Waiver Of Other Remedies

The rights and remedies of the City enumerated in this Agreement are cumulative and shall not limit the City's rights under any other provision of this Agreement or the San Diego Municipal Code, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

E. Contractor's Right To Terminate

Contractor may terminate this agreement after providing ninety calendar days written notice of its intent to terminate to the City. Contractor shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than ninety calendar days of issuance of written notice of termination. Until the actual transfer of these assets is complete, Contractor shall continue to administer the Contracts for Goods and Contracts for Services for the District so that there is no interruption in or loss of service to property owners within the District.

**ARTICLE VII - INDEPENDENT CONTRACTOR
AND DISTRICT MANAGEMENT**

A. Delegation Of Duties

Contractor is an independent contractor. Contractor shall administer the District services and activities and may engage one or more contractors to provide routine maintenance services including trash collection and disposal, graffiti removal, repair, landscaping, and lighting improvements. Accordingly, Contractor's duties specified in this Agreement may not be delegated by Contractor without the prior written consent of the City.

B. Parties' Representatives

1. Contractor agrees that a designated officer of Contractor (Contractor Representative) shall be the primary contact between Contractor and the City for the purposes of this Agreement (see Exhibit C). The Contractor Representative shall coordinate Contractor's activities for the engagement and shall participate in all phases of the engagement. In order to simplify invoice processing, it is agreed by Contractor that the Contractor Representative shall act as billing agent for work provided by Contractor. Contractor shall notify the City within ten calendar days of replacement of the Contractor Representative and shall provide an amended Exhibit C to reflect the replacement.
2. Contractor's management of the services of this Agreement is of substantial concern and importance to the City, requiring coordination with City services. The quality of performance will reflect on the City and its management. Accordingly, the City requires Contractor to inform the City on a regular basis of any changes in the Officers of Contractor and of the identity of its subcontractors and their areas of responsibility.
3. The Mayor or designee (City Representative) shall be the primary contact between the City and Contractor for purposes of this Agreement (see Exhibit C).

ARTICLE VIII - COVENANTS AND CONDITIONS

All provisions hereof expressed as either covenants or conditions on the part of the City or Contractor to be performed or observed shall be deemed to be both covenants and conditions.

ARTICLE IX - COMPLIANCE WITH CONTROLLING LAW

Contractor shall comply with all applicable laws, rules, regulations, ordinances, resolutions, and policies of the federal, state, and local governments as they pertain to this Agreement. In addition to the foregoing, Contractor shall comply immediately with any and all directives issued by the City or its authorized representatives under authority of any law, rule, ordinance, or regulation. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

ARTICLE X - ACCEPTABILITY OF WORK

The City shall decide any and all questions that may arise as to the quality or acceptability of the services performed, the manner of performance, the interpretation of instructions to Contractor, the acceptable completion of this Agreement, and the amount of compensation due. In the event Contractor believes that any requirement of the City interferes with or affects the independence of Contractor, Contractor shall confer with the City in order to resolve any possible conflict. In the event Contractor and the City cannot agree as to the quality or acceptability of the work, the manner of performance and/or the compensation payable to Contractor in this Agreement, the City or Contractor shall give

to the other written notice thereof. No later than ten calendar days thereafter, Contractor and the City shall each prepare a written report that supports its position and file the same with the other party. Thereafter, the City shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance, and/or the compensation payable to Contractor. This is not intended to be in any arbitration dispute between the parties of this Agreement.

ARTICLE XI - INFORMAL DISPUTE RESOLUTION

If Contractor and the City have any dispute as to their respective rights and obligations under this Agreement, or the meaning or interpretation of any provisions hereof, they shall first attempt to resolve such disputes by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice of the existence of the dispute and the need to meet informally to resolve such dispute. The parties shall endeavor thereafter to meet within five days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

ARTICLE XII - INDEMNIFICATION

Contractor agrees to defend, indemnify, protect and hold the City, and all of its officers, agents and employees harmless from any and all actions, suits, proceedings, liability, claims, demands for, damages or injuries to, any person, including injury to Contractor's officers, agents, and employees, and all claims that may arise from or are directly connected with or attributable to the negligence or failure to perform professional services or other obligations of this Agreement, or are caused or claim to be caused by the acts or omissions of Contractor, its officers, agents or employees, and all expenses of investigating and defending against same; provided, however, that this duty to defend, indemnify and hold harmless shall not include any claim arising from the established sole negligence or willful misconduct of the City, its officers, agents or employees.

ARTICLE XIII - INSURANCE

A. Prerequisites To Commencement Of Work

1. Prior to the execution of this Agreement by the Parties and approval by the City Attorney in accordance with Charter Section 40, and prior to Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall complete each of the following:
 - (a) obtain City approval of each insurance company (or companies), as required in Section B below;
 - (b) obtain all insurance coverage required in Sections XIII(C); XIII(D); and XIII(E), below;

- (c) obtain, and provide to the City, insurance certificates evidencing all insurance coverage required in Sections XIII(C); XIII(D); and XIII(E), below; and
 - (d) confirm that all insurance policies and insurance certificates contain the specific provisions required by Sections XIII(C); XIII(D); and XIII(E), below.
2. Contractor shall not allow any subcontractor to commence work on public property, unless and until all insurance required of the subcontractor, as described in Sections XIII(C), XIII(D), and XIII(E), below, has been obtained.

B. Insurance Companies

All insurance coverage required in Sections XIII(C), XIII(D), and XIII(E), below, shall be carried only by insurers that have been rated “A-,VI” or better, by the current A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. 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 shown on the List of Eligible Surplus Lines Insurers.

C. Commercial General Liability Insurance

1. At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial General Liability 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, bodily injury, and property damage in the amount of at least \$1,000,000 per occurrence, subject to an annual aggregate of at least \$2,000,000.
2. The policy shall expressly provide that:
- (a) all defense costs shall be outside the limits of the policy; and
 - (b) the policy cannot be canceled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
3. The policy shall be endorsed to expressly provide that:
- (a) The City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds; and
 - (b) the policy is primary and non-contributory to any insurance that may be carried by the City.

4. There shall be no endorsement or modification of the policy limiting the scope of coverage for insured versus insured claims, or for contractual liability.

D. Commercial Automobile Liability Insurance

1. At all times during the term of this Agreement, Contractor shall maintain in full force and effect Commercial Automobile Liability Insurance for all of Contractor's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of that form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of at least \$1,000,000 per occurrence.
2. The policy shall expressly provide that the policy cannot be canceled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
3. The policy shall be endorsed to expressly provide that The City, its elected officials, officers, agents, employees, and representatives are named as additional insureds.

E. Workers' Compensation Insurance

1. At all times during the term of this Agreement, Contractor shall maintain in full force and effect Workers' Compensation Insurance for all of Contractor's employees who are subject to this Agreement, to the extent required by the State of California, providing a minimum of \$1,000,000 of employers' liability coverage.
2. The policy shall expressly provide that the policy cannot be canceled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
3. The policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.

F. Endorsements

All endorsements required under Sections XIII(C), XIII(D), and XIII(E) above shall be in full force and effect for the entire term of this Agreement.

G. City's Right To Request And Review Contractor's Insurance Policies

The City reserves its right to request, and Contractor shall immediately submit to the City upon the City's request, copies of any policy required in Sections XIII(C), XIII(D), and XIII(E) above, and its right to review, at any time, Contractor's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are acceptable to the City. If the City determines that such insurance coverage, limits, deductibles, and/or self-insured retentions are unacceptable, the City and Contractor shall amend this Agreement to adjust such insurance coverage, limits, deductibles, and/or self-insured retentions to a level acceptable to the City, and Contractor shall comply with any such amendment.

H. Deductibles And Self-Insured Retentions

All deductibles and self-insured retentions on any policy shall be the responsibility of Contractor, and shall be disclosed on the insurance certificates and acceptable to the City.

I. Contractor's Liability Not Limited To Insurance Coverage

Contractor's liability, including, but not limited to, Contractor's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Article.

J. Modifications Affecting City's Exposure To Loss

Contractor shall not modify any policy (or endorsement thereto) that increases the City's exposure to loss for the duration of this Agreement.

K. Additional Insurance

Contractor may obtain additional insurance not required by this Agreement.

L. Expiration Of Policies

At least thirty calendar days prior to the expiration of each insurance policy required herein, Contractor shall provide the City an insurance certificate, showing that a new or extended policy has been obtained which meets the requirements of this Agreement.

M. Requirement To Maintain Insurance Coverage

Contractor maintenance of the insurance coverage required in Sections XIII(C), XIII(D), and XIII(E) above is a material provision of this Agreement. Any failure by Contractor to maintain or renew such coverage, or to provide the City evidence of renewal during the term of this Agreement, shall constitute a material breach of contract.

ARTICLE XIV - CONFLICT OF INTEREST

- A. Contractor is aware of and is subject to all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq., and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.
- B. If, in performing the professional services set forth in this Agreement, Contractor makes, or participates in, a “governmental decision” as described in Title 2, Section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department’s conflict of interest code, Contractor shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Contractor’s relevant financial interests.
- C. If the City requires Contractor to file a Statement of Economic Interests as a result of the professional services performed, Contractor shall be considered a “City Official” subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.
- D. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City’s determination that Contractor is subject to a conflict of interest code. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to a conflict of interest code.
- E. Contractor shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

If Contractor violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects Contractor to liability to the City for attorneys’ fees and all damages sustained as a result of the violation. It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of sections 1090 *et seq.* 87100 *et seq.* of the California Government Code relating to conflicts of interest for public officers and employees, as well as the conflict of interest codes of the City. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the City shall immediately terminate this Agreement by giving written notice thereof. Contractor agrees to abide by section 87100 *et. seq.* of the California Government Code during the term of this Agreement. The City may determine that Contractor is subject to a conflict of interest code and is required

to complete one or more statements of economic interest disclosing relevant financial interests. Upon the City's request, Contractor shall submit the necessary documentation.

- F.** Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any subcontractor or potential subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- G.** If Contractor violates any conflict of interest law, or any of the provisions of this Article XIV, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit E. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as a result of the violation.

ARTICLE XV - ATTORNEYS' FEES

If either party brings any action or proceeding to enforce, protect or establish any right or remedy arising out of or based upon this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees.

ARTICLE XVI - NOTICE

Unless otherwise provided in this Agreement, in all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage paid. When so given, such notice shall be effective from the date of mailing of the same. Unless otherwise provided by notice in writing from the respective parties, notice shall be addressed as follows.

Notice to the City shall be addressed:

City of San Diego
Park and Recreation Department, Open Space Division
Maintenance Assessment Districts Program
202 C Street, Mail Station 5A
San Diego, California 92101

Notice to Contractor shall be addressed:

Bird Rock Community Development Corporation
5666 La Jolla Boulevard #168
La Jolla, California 92037

Either party may change the address for its receipt of notice hereunder by giving notice thereof in the manner herein specified. Nothing herein contained shall preclude or render inoperative service or such notice in the manner provided by law.

ARTICLE XVII - CONTRACTS AWARDED BY CONTRACTOR

Contractor shall comply with the San Diego Municipal Code sections 65.0212 (c)(6) and 65.0214 for the award of any contract pertaining to the District.

ARTICLE XVIII - NON-DISCRIMINATION REQUIREMENTS

A. Equal Opportunity Contracting Program

Contractor and each of its Subcontractors shall comply with the City's Equal Opportunity Contracting Consultant Requirements, which is attached hereto as Exhibit D and incorporated herein by this reference.

B. Non-Discrimination Ordinance

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. This language shall be in contracts between Contractor and any subcontractors, vendors and suppliers.

C. Compliance Investigations

Upon the City's request, Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination In Contracting Ordinance (Municipal Code sections 22.3501-22.3517.). Contractor understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in remedies being ordered against Contractor up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination In Contracting Ordinance. Contractor further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination In Contracting Ordinance apply only to violations of said Ordinance.

ARTICLE XIX - STORM WATER POLLUTION PREVENTION

Contractor and each of its Subcontractors shall comply with the Storm Water Management And Discharge Control ordinance, San Diego Municipal Code section 43.0301 *et seq.*, in performing or delivering services in the District, regardless of location.

ARTICLE XX - DRUG-FREE WORKPLACE

Contractor agrees to comply with the City's Drug Free Workplace requirements and shall certify to the City that it will provide a drug-free workplace. Any subcontract entered into by Contractor pursuant to this Agreement shall contain this provision.

ARTICLE XXI - AMERICANS WITH DISABILITIES ACT

Contractor shall comply with Council Policy 100-04, adopted by Resolution No. R-282153 relating to the federally-mandated Americans with Disabilities Act (ADA). Contractors and subcontractors will be individually responsible for their own ADA program.

ARTICLE XXII – EQUAL BENEFITS ORDINANCE

Contractor shall comply with the City of San Diego's Equal Benefits Ordinance (San Diego Municipal Code, Chapter 2, Article 2, Division 43, sections 22.4301-22.4308), which requires Contractor to offer the same benefits to employees with domestic partners as are offered to employees with spouses. The City's execution of this Agreement shall be contingent upon receipt of Contractor's Certification of Compliance (Exhibit F) wherein Contractor agrees to maintain equal benefits for its employees for the duration of this Agreement. The failure of Contractor to maintain equal benefits for employees shall be a material breach of this Lease.

ARTICLE XXIII - EMPLOYMENT OF CITY STAFF

This Agreement may be unilaterally and immediately terminated by the City if Contractor employs an individual, who, within twelve months immediately preceding such employment did, in the individual's capacity as a City officer or employee, participate in, negotiate with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of Contractor for this project.

ARTICLE XXIV - MISCELLANEOUS PROVISIONS

A. 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.

B. California Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Contractor covenants and agrees to submit to the personal jurisdiction of any state court in the City of San Diego, State of California for any dispute, claim or matter arising out of or related hereto.

C. Integrated Agreement

This Agreement including Attachments and/or Exhibits contains all of the agreements of the parties and all prior negotiations and agreements are merged herein. This Agreement cannot be amended or modified except by written agreement, and mutually agreed upon by the City and Contractor.

D. Severability

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

E. Waiver

The failure of the City to enforce a particular condition or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

F. Headings

All headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. Counterparts

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

IN WITNESS WHEREOF, this Agreement executed by City of San Diego acting by and through the Mayor or designee and by Contractor pursuant to Resolution No. R- _____.

THE CITY OF SAN DIEGO

BIRD ROCK DEVELOPMENT CORP

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

I HEREBY APPROVE the form and legality of the foregoing Agreement this ____ day of _____, 2011.

JAN I. GOLDSMITH, City Attorney

By: _____

Adam R. Wander
Deputy City Attorney

LIST OF EXHIBITS:

- A. Scope of Services
- B. Budget Submission Format
- C. Identification of Contractor Representative and City Representative
- D. Equal Opportunity Contracting Program [EOCP] Consultant Requirements
- E. Conflict of Interest and Procurement Policy for Nonprofit Corporations Contracting with the City of San Diego
- F. Equal Benefits Ordinance – Certification of Compliance

EXHIBIT A – SCOPE OF SERVICES

1. The Contractor shall maintain all areas consistent with requirements set forth in the Engineer’s Report (“Project Description” section). A map showing general areas of maintenance is provided in the Engineer’s Report as “Exhibit A, Boundary Map.”
2. The Contractor, at a minimum, shall provide the following specific maintenance standards within the boundaries of the District as described in the Engineer’s Report:
 - (a) Litter Control (Ongoing)
Remove litter from right-of-way sidewalks, curbs, gutters and landscaped areas. All trash removed will be disposed of at a City-approved waste site.
 - (b) Tree Maintenance and Replacement (Ongoing)
All trees located in the public right-of-way in the District shall be maintained in a manner which promotes healthy tree growth, including, but not limited to, fertilization, pest control, watering, staking and trimming. Trees that present an immediate safety hazard or have potential for private property damage shall be corrected immediately. Dead and irreparably damaged trees will be replaced in a timely manner with healthy trees of the same species and of at least 24 inch box size. All tree trimming above 16 feet and tree replacement shall be conducted by a certified arborist and pest applications shall be conducted by certified professional applicators.
 - (c) Other Landscape Maintenance and Repair (Ongoing)
All plant material in the public right-of-way shall be maintained in optimum condition and landscaped areas shall be kept weed free. Street gutters shall be kept free of dirt, sand and debris, and sidewalks may be cleaned as necessary. The landscape irrigation system shall be properly maintained to ensure optimum tree health and plant growth. Trash receptacles and street benches shall be repaired or replaced as needed.
 - (d) Graffiti Control (Five (5) days per week: Monday through Friday, excluding City holidays)
All graffiti shall be removed from the public right-of-way within twenty-four (24) hours of being reported. All graffiti observed on private property shall be reported for repair within twenty-four (24) hours to the Contractor, the City, Neighborhood Services, Planning and Development Business Center, or Neighborhood Code Compliance Department / Graffiti Control Program (619-525-8522).
 - (e) Sidewalk Safety Hazards (Ongoing)
All sidewalk safety hazards which are observed in the course of providing enhanced maintenance services, as described in this Agreement shall be barricaded immediately and then, immediately following barricading, reported for repair to the City’s General Services Department: Street

Division. For purposes of this Agreement, “safety hazard” includes, but is not limited to, the following conditions: cracked, raised, uneven, damaged, or unsafe sidewalks or curbs; damaged meter boxes; and damaged or unsafe street vaults and grates.

If an unsafe sidewalk condition exists and is reported to the City’s Street Division (at 619-527-7500 OR go to www.sandiego.gov and select Request a Street Repair – either means of reporting provides a “standard notification number” confirming that the report was made and received), the City will take action to temporarily mitigate the potential hazard and notify abutting property owners of their responsibility to permanently repair/replace the sidewalk. The Contractor shall have no obligation to repair or otherwise protect against such conditions, and shall have no liability to the City or any third party for claims or loss related to such conditions, except to the extent the condition is directly caused by the negligence or willful misconduct of the Contractor, its employees or agents or if the “observed” condition is not immediately barricaded and reported as required in this provision.

- (f) Lighting Service (Ongoing)
Street light lamps observed to be out or street light poles which have been damaged shall be immediately reported for repair to the City, Public Works Business Center, General Services Department / Street Division / Electrical Section, General Information and Service Requests, Street Light and Traffic Signal Maintenance (619-527-8056).

- (g) Miscellaneous (Ongoing)
Provide for services that the City and the Contractor find reasonable and necessary from time to time to accomplish the intent of this Agreement in accordance with the Engineer’s Report with respect to any Improvement including: security services, promotion of public events, the installation, construction, or acquisition of facilities such as, benches, booths, kiosks, display cases, pedestrian shelters and signs, trash receptacles, decorations and banners.

EXHIBIT B - SAMPLE BUDGET DETAIL SUBMISSION (Sample)

Open Space Division - Maintenance Assessment Districts
Worksheet for FY 2011 Proposed Budget
Bird Rock - Fund No. 70281

Object	SAP	Program Element/Description	FY 2010	FY 2011
Account	Account		Estimate	Proposed Budget
		Budget Positions	0.00	0.00
1100	500011	Salaried Wages Budgeted	\$0.00	\$0.00
2000	502061	Fringe	\$0.00	\$0.00
		Total Labor & Fringe	\$0.00	\$0.00
		Supplies		
3101	511010	Office Supplies (Equip & Supplies)	\$250.00	\$250.00
3102	511011	Postage/ Mailing	\$1,000.00	\$1,000.00
3212	511026	Soil & Conditioner	\$0.00	\$0.00
3213	511027	Garden Nur Containers	\$0.00	\$0.00
3214	511028	Garden Nur Stock	\$0.00	\$20,000.00
3243	511041	Dry Goods/Wearing Apparel (seasonal decorations)	\$5,248.75	\$5,000.00
3298	511069	Unclas Mat & Supp (Computers, Software)	\$0.00	\$0.00
		Total Supplies	\$6,498.75	\$26,250.00
		Services		
4114	512003	Prelim Eng - In House	\$0.00	\$0.00
4118	512034	Engineering Service	\$0.00	\$0.00
4151	512059A	Unclasif Prof Services (BRDC Admin. Overhead)	\$18,000.00	\$19,000.00
4217	512134	Landscaping Services	\$65,000.00	\$84,800.00
4222	512059B	Misc Cont Serv (Security Srvc.)	\$1,320.00	\$1,320.00
4226	512059	Cont Serv-City Force	\$0.00	\$0.00
4240		Reimbursement Agreements (Formation Fund)	\$0.00	\$0.00
4272	512114	Park Div Services (Developed Regional Parks)	\$0.00	\$0.00
4274		Contract Svc Chgs	\$0.00	\$0.00
4279	512117	Other Non-Personnel Expense (Computers, Software)	\$0.00	\$0.00
	512077	Photocopy Services	\$0.00	\$1,000.00
4313		Photo and Blueprint	\$0.00	\$0.00
4314		Photocopy and Xerox	\$500.00	\$0.00
4351	512138	Advertising	\$0.00	\$0.00
4460	512070	Training	\$0.00	\$0.00
4691	512145	Motive Equip Rental -Pool	\$0.00	\$0.00
4692	512102	Motive Equip Rental-Usage	\$0.00	\$0.00
4693	512101	Mot Eq Rental -Assignment	\$0.00	\$0.00
4810	512048	Insurance	\$4,100.00	\$4,300.00
4813	512048	Other Insurance	\$0.00	\$0.00
4881	516014	Transfers - Cash	\$0.00	\$0.00
49591	516024	Special Districts Administration	\$3,500.00	\$6,404.00
4951	512115	Overhead Billed (20% of wages)	\$0.00	\$0.00
4960	512114	Accounting Department Charges	\$4,200.00	\$5,000.00
49887	513003	IT/Other (One Time Purchases - Computers, Software)	\$0.00	\$0.00
		Total Services	\$96,620.00	\$121,824.00
4881	516014	Capital Improvements Program	\$0.00	\$229,000.00
		Utilities		
5101	514100	Electric Services	\$1,850.00	\$53.00
5204	514104	Water Serv-Incl Hydr Rent	\$9,000.00	\$10,957.00
5205	514105	Sewer Service Charge (Storm drain)	\$250.00	\$209.00
		Total Utilities	\$11,100.00	\$11,219.00
		Total Costs / Appropriations :	\$114,218.75	\$388,293.00
		Fund Balance		
4905	512133	Contingency Reserve	\$356,520.52	\$127,213.52
		GRAND TOTAL	\$470,739.27	\$515,506.52

EXHIBIT C

**IDENTIFICATION OF CONTRACTOR REPRESENTATIVE
AND CITY REPRESENTATIVE**

Pursuant to Article VII:

The Contractor Representative shall be:

Joe Parker

Contact Phone Number: (858) 922-9676

The City Representative shall be:

Andrew Field, Assistant Deputy Director

Contact Phone Number: (619) 533-6724

EXHIBIT D

EQUAL OPPORTUNITY CONTRACTING PROGRAM [EOCP] CONSULTANT REQUIREMENTS

CONTENTS:

- A. City's Equal Opportunity Commitment
- B. Equal Opportunity Agreement
- C. Consultant Work Force
- D. Equal Employment Opportunity Plan
- E. Listing of Sub-consultants
- F. Sub consultant Participation Level
- G. Definitions
- H. Certification
- I. Contract Activity Reports

- A. The City of San Diego is strongly committed to equal opportunity in solicitation of professional service consultants. The City encourages prime consultants to share this commitment. Prime consultants are encouraged to take positive steps to diversify and expand their Sub-consultant solicitation base and to offer consulting opportunities to all eligible Sub-consultants.

Consultant shall comply with requirements of San Diego Ordinance No. 18173, Section 27.2701 through 22.2708, Equal Employment Opportunity Outreach Program [see Attachment 1].

- B. All proposers shall sign, submit with proposal package, and agree to be bound by the *Equal Opportunity Agreement* [see Attachment 2].

C. Consultant Work Force

1. Prior to award of contract, successful proposer must submit to the City's EOCP office a *Work Force Report* [see Attachment 3] or an *Equal Employment Opportunity [EEO] Plan*.
2. If under representations are noted in the *Work Force Report* when compared to County Labor Force Availability data, Consultant will be requested by EOCP staff to submit an *Equal Employment Opportunity Plan*.

- D. An acceptable *Equal Employment Opportunity Plan* must include at least the following assurances that:

1. The Consultant will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the contractor's employees are assigned to work;
2. A responsible official is designated to monitor all employment related activity to ensure the company EEO Policy is being carried out and to submit reports relating to EEO provisions;
3. The Consultant disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination, review and

- posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;
4. The Consultant reviews, at least annually, all supervisors' adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
 5. The Consultant discusses its EEO Policy Statement with Sub-consultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
 6. The Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from Sub-consultants, consultants and other businesses;
 7. The Consultant disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
 8. The Consultant disseminates its EEO Policy to union and community organizations;
 9. The Consultant provides immediate written notification to the City when any union referral process has impeded the Consultant's efforts to maintain its EEO Policy;
 10. The Consultant maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
 11. The Consultant maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
 12. The Consultant encourages all present employees, including people of color and women employees, to recruit others;
 13. The Consultant maintains all employment selection process information with records of all tests and other selection criteria;
 14. The Consultant develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Consultant's employment needs;
 15. The Consultant conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
 16. The Consultant ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
 17. The Consultant establishes and documents policies and procedures to ensure

job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and

18. The Consultant is encouraged to participate in voluntary associations which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Consultant is a member will be considered as being part of fulfilling these obligations, provided the Consultant actively participates.

E. Listing of Sub-consultants

1. Proposer shall submit a *Sub-consultants List* [see Attachment 4] indicating Scope of Services, percentage of contract, dollar amount of contract, certification status, and where certified.
2. Sub-consultants and vendors must be named on the *Sub-consultants List* if they receive more than \$10,000 or more than one-half of one percent [.5%], whichever amount is less.
3. Proposer shall also submit Sub-consultant commitment letters on Sub-consultant letterhead, no more than one page each, from all proposed Sub-consultants to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

F. Sub-consultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary Sub-consultant participation level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise [MBE], Women Business Enterprise [WBE], Disadvantaged Business Enterprise [DBE], Disabled Veteran Business Enterprise [DVBE], or Other Business Enterprise [OBE] level.
2. Attainment of the 15% Sub-consultant participation level goal is strongly encouraged but strictly voluntary.
3. If the subcontractor participation level goal of 15% is not achieved, proposer is required to complete an *Outreach and Teaming Survey* [see Attachment 5] and submit it to:

City of San Diego Equal Opportunity Contracting Program [EOCP]

1010 Second Avenue, Fifth Floor

San Diego, CA 92101

Phone (619) 533-4464 Fax (619) 533-4474

The *Outreach and Teaming Survey* is due to EOCP five working days from date of notification of selection and must be received prior to award of contract. Survey information will be used by EOCP staff to assist consultants with achieving Sub-consultant participation level goals on future City contracts.

G. Definitions

1. Certified “**Minority Business Enterprise**” [MBE] means a business which is at

least fifty-one percent [51%] owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent [51%] of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

2. Certified “**Women Business Enterprise**” [WBE] means a business which is at least fifty-one percent [51%] owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent [51%] of the stock must be owned by, and the business operated by, one or more women.
3. Certified “**Disadvantaged Business Enterprise**” [DBE] means a business which is at least fifty-one percent [51%] owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent [51%] of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.
4. Certified “**Disabled Veteran Business Enterprise**” [DVBE] means a business which is at least fifty-one percent [51%] owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).
5. “**Other Business Enterprise**” [OBE] means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

H. Certification

1. The City of San Diego is a signatory to a Memorandum of Understanding [MOU] with the California Department of Transportation [CALTRANS], and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:
 - a. Current certification by the City of San Diego as MBE, WBE, or DBE;
 - b. Current certification by the State of California Department of Transportation [CALTRANS] as MBE, WBE or DBE;
 - c. Current *interim certification* as MBE, WBE or DBE by any member agency of the San Diego Joint Agency Contracting Opportunities Task Force [JACO: County of San Diego, San Diego Unified Port District, San Diego County Water Authority, San Diego City Schools, San Diego Association of Governments, Metropolitan Transit Development Board, or the City of San Diego]; or
 - d. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.
2. DVBE certification is received from the State of California’s Department of

General Services, Office of Small and Minority Business, (916) 322-5060.

- I. To permit monitoring of compliance, successful proposer shall submit to EOCP *Contract Activity Reports* [see Attachment 6] reflecting work performed by Sub-consultants.

LIST OF ATTACHMENTS TO EXHIBIT D:

1. San Diego Municipal Ordinance No. 18173, Section 22.701 through 22.2708
2. Equal Opportunity Agreement
3. Work Force Report
4. Sub-consultants List
5. Outreach and Teaming Survey
6. Contract Activity Report
7. Consultant Certification for a Drug-Free Workplace

**ATTACHMENT D-1:
Municipal Code
DIVISION 27
EQUAL EMPLOYMENT OPPORTUNITY
OUTREACH PROGRAM**

§ 22.2701 Purpose and Intent

The overall objective of the City's Equal Employment Opportunity ("EEO") Program is to ensure that contractors doing business with or receiving funds from the City will not engage in unlawful discriminatory employment practices prohibited by State or Federal law. Such employment practices include, but are not limited to, the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.

§ 22.2702 Definitions

Unless stated otherwise, the following definitions apply to this Division:

"City" means The City of San Diego and those agencies, boards, commissions and corporations authorized to act on behalf of, or as an agent for, the City of San Diego.

"Contract" means an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded by or on behalf of the City.

"Contractor" means any person, firm, partnership, corporation, or combination thereof, who is selected to enter into, or actually enters into a contract with department heads and officers empowered by law to enter into contracts on behalf of the City for public works or improvements to be performed, or for a franchise, concession or lease of property, or for goods, services or supplies to be purchased, at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of, or collected by, the City.

"Equal Employment Opportunity Plan" means a document prepared by a contractor in accordance with a form and format supplied by the City which describes the contractor's plan of action.

"Gender" means the character of being male or female.

"Program Manager" means the Program Manager for the City's Equal Opportunity Contracting Program or his or her designee.

"Work Force Analysis" means a comparison of a contractor's Work Force Report with applicable County Labor Force Availability data.

"Work Force Report" means a report, in a format supplied by the City but compiled by the contractor, of the contractor's total work force which indicates the number of males and females in each identified ethnic group by occupational category.

§ 22.2703 Scope

Except as provided in Section 22.2704, this Division applies to all contractors except:

(a) Contractors and subcontractors who do less than a total of \$10,000 worth of business with the City during the preceding twelve (12) months or who have less than a total of fifteen (15) employees, except that contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring.

(b) Contracts to which any city (other than The City of San Diego), county, district or other political subdivision, or any joint powers authority created under authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is a party.

(c) Nonprofit charitable, educational, or religious associations or corporations, as evidenced by records on file with the City to be compiled for purposes of this Division in accordance with procedures established by the City Manager.

(d) Emergency contracts, if a written partial or full waiver is granted by the City Manager except that contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring. The City Manager may grant a partial or full waiver from the requirements of this Division for an emergency contract only to the limited extent necessary in order to expedite the award of such contract. For purposes of this Section, the term "emergency" has the same meaning as in San Diego City Charter, Section 94.

§ 22.2704 Mandatory Nondiscrimination Contract Clause

Notwithstanding the provisions of Section 22.2703, every contract shall contain a nondiscrimination clause which shall read as follows:

Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime contractors shall ensure that their

subcontractors comply with this Program. Nothing in this Section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

§ 22.2705 Duty to Submit Reports

(a) If a contract is competitively solicited, after the lowest responsible bidder has been determined and prior to the execution of the contract, the apparent low bidder shall submit to the Equal Opportunity Contracting Program a Work Force Report, on a City form, or an Equal Employment Opportunity Plan approved by the Program Manager.

If a contract is not competitively solicited, the contractor shall submit to the Equal Opportunity Contracting Program a Work Force Report or an Equal Employment Opportunity Plan approved by the Program Manager prior to tendering the signed contract documents to the City for signature.

(b) Staff will conduct a work force analysis on all Work Force Report submittals to determine whether or not an Equal Employment Opportunity Plan is required. If an Equal Employment Opportunity Plan is required, the contractor will submit a Plan for approval by the Program Manager.

(c) Any Equal Employment Opportunity Plan approved by the City shall not include quotas, goals or timetables for increasing women and minority employment and will not require terminating or laying off existing employees.

(d) If the apparent low bidder or contractor does not submit either a Work Force Report or Equal Employment Opportunity Plan as required by this Section, for purposes of awarding the contract only, the City Manager will ensure an administrative hearing is conducted by an independent hearing officer to determine if the contract should be awarded in accordance with City, State, and Federal law.

§ 22.2706 Duty to Comply with Equal Employment Opportunity Plan

A contractor for whom an Equal Employment Opportunity Plan has been approved by the City shall use best efforts to comply with that Equal Employment Opportunity Plan.

§ 22.2707 Reviews

(a) The Program Manager shall conduct periodic reviews of contractors to ensure that unlawful discrimination is not being practiced and Equal Employment Opportunity Plans are implemented.

(b) If the City Manager determines, after review, that the contractor has not implemented their Equal Employment Opportunity Plan and/or practices unlawful discrimination and corrective action has not occurred by the contractor after sufficient notice, the City Manager may recommend termination of the contract and debarment to the City Council.

EQUAL OPPORTUNITY AGREEMENT

NON-DISCRIMINATION CLAUSE: Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Contractor shall ensure that its subcontractors comply with the City of San Diego's Equal Employment Opportunity Program.

EQUAL EMPLOYMENT OPPORTUNITY (EEO): Contractor has received, read, understands and agrees to be bound by the City of San Diego *Municipal Code*, Chapter II, Article 2, Division 27 (Equal Employment Opportunity Program) provided with the proposal package.

Contractor has submitted either a *Work Force Report* or an *Equal Employment Opportunity Plan* as required by Section 22.2705 of the City of San Diego *Municipal Code*.

City and Contractor agree that compliance with EEO provisions will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program (EOCP) staff.

EQUAL OPPORTUNITY CONTRACTING: Contractor has received, read, understands and agrees to be bound by the Equal Opportunity Contracting Program requirements described in the proposal package.

If requested, Contractor shall submit the *Outreach and Teaming Survey*. Contractor agrees to provide updated reports as requested by the City. Contractor agrees to insert equal opportunity compliance language in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor.

Project Name: _____ *Bid No.:* _____

Company Name: _____ *Date:* _____

Authorized Signature

Print Authorized Signature Name

(Revised 2/98)

WORK FORCE REPORT - Page 2

NAME OF FIRM: _____ DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force.

Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) African-American, Black
- (2) Latino, Hispanic, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) Caucasian
- (7) Other Ethnicities; not falling into other groups

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial														
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														
*Construction labors and other field employees are not to be included on this page														
TOTALS EACH COLUMN														
GRAND TOTAL ALL EMPLOYEES														
INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:														
DISABLED														
NON-PROFIT ORGANIZATIONS ONLY:														
BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

OUTREACH AND TEAMING SURVEY
CONSULTANTS

<p>Prime:</p> <p>Project Title:</p> <p>Original Contract: <input type="checkbox"/>Yes <input type="checkbox"/>No Amendment No: ____ Change Order No:</p> <p>Job Order No: _____ Bid No:</p>
--

Submit this *Outreach and Teaming Survey* within five (5) working days after date of notification of your firm’s selection and return to:

City of San Diego, Equal Opportunity Contracting Program (EOCP)
1010 Second Avenue, Suite 500
San Diego, CA 92101
FAX: (619) 533-4474

The City of San Diego encourages sub-consulting activity at levels reflecting the diversity of the City’s population. Information from this survey will be used by EOCP staff to monitor successful outreach and teaming strategies used by consultants to ensure non-discrimination on City projects. Levels of participation shall not impact a consultant’s ability to receive this contract or submit proposals for future contracts.

Please respond to the following questions (if necessary, attach additional pages):

1. Did your firm identify a need to utilize sub-consultants on this project? If so, which specific scopes of work were targeted for sub-consulting?

2. Describe your firm's overall strategy to outreach and team on this project. Did you negotiate? Did you invite bids? Did you make the project plans and specifications available?

OUTREACH AND TEAMING SURVEY (continued)

- 3. If you invited sub-bids, identify each of the sub-bidders by scope of work and their bid amounts. How much time were sub-bidders given to respond?

- 4. Did your firm advertise the sub-consulting opportunities of this project in any publication? Which publications? What dates? Attach copies of published ads. What other outreach efforts did you employ?

- 5. Did you use any type of directory or database to identify potential sub-consultants? If so, which ones?

This survey will be submitted as part of the contract award evaluation package to the San Diego City Council. Failure to complete, sign and submit this form or a facsimile **within the five (5) day period** after date of notification may result in a loss of the contract based upon non-responsiveness.

As an authorized officer of this company, I certify that information contained in this report is true and accurate to the best of my knowledge.

Company Name

Name

Title

Signature

Date

<p>****FOR OFFICIAL USE**** (To Be Completed By City Staff Only)</p>			
Total: \$ _____	M/W/DBE: \$ _____	_____ %	DVBE: \$ _____
			_____ %
			OBE: \$ _____
			_____ %

ATTACHMENT D-6

CONTRACT ACTIVITY REPORT

Consultants are required by contract to report sub-consultant activity in this format. Reports shall be submitted via the Project Manager to the *Equal Opportunity Contracting Program (EOCP)* no later than thirty (30) days after the close of each quarter.

PROJECT: _____

PRIME CONSULTANT: _____

CONTRACT AMOUNT: _____

INVOICE PERIOD: _____

DATE: _____

Include Additional Services Not-To-Exceed Amount

Sub-consultant	Indicate MBE, WBE, DBE, DVBE or OBE	Current Period		Paid to Date		Original Commitment	
		Dollar Amount	% of Contract	Dollar Amount	% of Contract	Dollar Amount	% of Contract
Prime Consultant Total:							
Contract Total:							

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE:

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

Name under which business is conducted

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the Sub-consultants agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed _____
Printed Name _____
Title _____
Date _____

EXHIBIT E

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO

Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to provide services and administer programs, and which receive funding from or through the City. Officers, directors, members, committee members, staff and volunteers of these nonprofit organizations shall avoid taking actions that give the appearance of being motivated by private gain. The appearance of a conflict of interest is created by the selection, recommendation, or specification of a product, supplier or subcontractor with whom the representative of the nonprofit has a direct or indirect financial, organizational or family interest or relationship. It is the intent of the City to incorporate this policy governing conflicts of interest and procurement of goods and services into the City's contracts with such associations, and to require compliance with this policy as a contract obligation.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects. Associations receiving Community Development Block Grant (CDBG) funds, or other funds from the Department of Housing and Urban Development, are subject to federal authorities governing the receipt of those funds.

Contracts or Transactions Involving CDBG Funds

In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development.

Economic Disclosure

Upon request by the City, a director or voting member of a nonprofit corporation contracting with the City shall disclose information to the City about his or her financial interests and business affiliations which may be affected by decisions of the corporation related to the corporation's contract with the City.

Board Roster

All nonprofit corporations contracting with the City shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the corporation shall provide the City with an updated list.

Procedures for Procurement of Goods and Services

All procurement of goods and services by non-profit associations contracting with the City for administration of a Maintenance Assessment District shall comply with the requirements set forth in Section 65.0214 of the San Diego Municipal Code.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and unenforceable, and shall not entitle the corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract.

EXHIBIT F: EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



For additional information, contact:
CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
 202 C Street, MS 9A, San Diego, CA 92101
 Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name:	Contact Name:
Company Address:	Contact Phone:
	Contact Email:

CONTRACT INFORMATION

Contract Title:	Start Date:
Contract Number (if no number, state location):	End Date:

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
 - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.
 - Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.
- Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.
- Contractor shall submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at www.sandiego.gov/administration.

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.

- I affirm **compliance** with the EBO because my firm (*contractor must select one reason*):
- Provides equal benefits to spouses and domestic partners.
 - Provides no benefits to spouses or domestic partners.
 - Has no employees.
 - Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.
- I request the City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]. Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.

Name/Title of Signatory

Signature

Date

FOR OFFICIAL CITY USE ONLY

Receipt Date: _____ EBO Analyst: _____ Approved Not Approved – Reason: _____