

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

This third amendment (“Third Amendment”) is made to the Maintenance Agreement between the City of San Diego, a municipal corporation (“City”), and Bird Rock Development Corporation (“Contractor”) for the operation and management of the Bird Rock Maintenance Assessment District (“District”).

RECITALS

WHEREAS, the Maintenance Assessment District Ordinance, codified at San Diego Municipal Code section 65.0201 et seq., authorizes a non-profit corporation to administer Contracts for Goods and Contracts for Services for a Maintenance Assessment District (MAD); and

WHEREAS, on August 4, 2011, by Resolution No. R-306954, the City Council authorized the Mayor to execute a maintenance agreement with Contractor for the provision of goods and services within the District for a one year period beginning July 1, 2011 through June 30, 2012 (“Agreement”), and authorized the Mayor to execute four one-year extensions of the Agreement with Contractor; and

WHEREAS, on August 10, 2012, by Resolution No. R-307663, the City Council approved the annual update to the assessment engineer reports and the district budgets for the self-managed MADs and authorized the levy and collection of assessments for the period of July 1, 2012 through June 30, 2013 (“Fiscal Year 2013”); and

WHEREAS, the City and Contractor renewed the Agreement and fully executed a first amendment to the Agreement on October 17, 2012, in order to provide the maintenance standards described in the District budget and assessment engineer report for Fiscal Year 2013; and

WHEREAS, on July 16, 2013, by Resolution No. R-308364, the City Council approved the annual update to the assessment engineer reports and the district budgets for the self-managed MADs and authorized the levy and collection of assessments for the period of July 1, 2013 through June 30, 2014 (“Fiscal Year 2014”); and

WHEREAS, the City and Contractor renewed the Agreement and fully executed a second amendment to the Agreement on September 13, 2013, in order to provide the maintenance standards described in the District budget and updated assessment engineer report for Fiscal Year 2014; and

WHEREAS, on July 30, 2014, by Resolution No. R-309181, the City Council approved the annual update to the assessment engineer reports and the district budgets for the self-managed MADs and authorized the levy and collection of assessments for the period of July 1, 2014 through June 30, 2015 (“Fiscal Year 2015”); and

WHEREAS, on August 3, 2015, by Resolution No. R-309867, the City Council approved the annual update to the assessment engineer reports and the district budgets for the self-managed MADs and authorized the levy and collection of assessments for the period of July 1, 2015 through June 30, 2016 (“Fiscal Year 2016”); and

WHEREAS, this Third Amendment is necessary to allow for Contractor to administer the Contracts for Goods and Contracts for Services in order to provide the maintenance standards described in the District budget and updated assessment engineer report for Fiscal Year 2016; and

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in the original Agreement, the First Amendment, the Second Amendment, and this Third Amendment, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Contractor agree to amend the Agreement as follows:

1. Insert the following paragraphs under article IV of the Agreement (“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 until June 30, 2016 [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. In no event shall the term of this Agreement extend beyond June 30, 2016.

2. Remove the Second Amended Exhibit A of the Agreement (“Scope of Services”) and replace it with the Third Amended Exhibit A attached hereto. All references to Exhibit A in the Agreement shall be understood to refer to the attached Third Amended Exhibit A.
3. Remove the Second Amended Exhibit B of the Agreement (“District Budget”) and replace it with the Third Amended Exhibit B attached hereto. All references to Exhibit B in the Agreement shall be understood to refer to the attached Third Amended Exhibit B.
4. All other provisions of the Agreement shall remain in full force and effect, unless otherwise amended as set forth herein.

IN WITNESS WHEREOF, this Third Amendment is executed by the City of San Diego, acting by and through the Mayor, pursuant to Resolution No. R-306954 and by Contractor.

CITY OF SAN DIEGO

CONTRACTOR

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

I HEREBY APPROVE the form and legality of the foregoing Second Amendment this _____ day of _____, 2015.

JAN I. GOLDSMITH, City Attorney

By _____

Adam Wander
Deputy City Attorney

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FISCAL YEAR 2016

LIST OF EXHIBITS:

- A. Third Amended Scope of Services
- B. Third Amended Budget

THIRD AMENDED 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.

THIRD AMENDED EXHIBIT B

Park and Recreation Department - Open Space Division
 Maintenance Assessment Districts Program
 Summary of Fiscal Year 2016 (07-01-15 to 06-30-16) Budget
 Bird Rock Maintenance Assessment District
 SAP Fund 200103

	FY 2014 Estimated Actuals	FY 2015 Estimate	FY 2016
Full-Time Equivalent/Grounds Maintenance Manager	N/A	N/A	N/A
District Personnel Costs			
Total Labor & Fringe	\$ -	\$ -	\$ -
District Non-Personnel Costs			
Contract Services			
Landscape Services (512134)	\$ 89,181.76	\$ 100,000.00	\$ 108,000.00
Bird Rock Community Development Corp. (Administrative Overhead - Manager) (512059A)	\$ 16,765.07	\$ 18,000.00	\$ 20,000.00
Postal/Storage Services (512059B)	\$ 137.50	\$ 150.00	\$ 300.00
Security Services (512059E)	\$ 1,320.00	\$ 1,320.00	\$ 1,320.00
Accounting Services (Financial Statement Audit) (512059C)	\$ 4,475.00	\$ 4,400.00	\$ 5,000.00
Caran L. Hardy (Bookkeeping) (512059D)	\$ 825.00	\$ 1,000.00	\$ 1,100.00
Quick Books (Bird Rock Community Development Corp.) (512059D)	\$ 129.24	\$ 130.00	\$ 155.00
Arborist (512059E)	\$ -	\$ 3,000.00	\$ 3,000.00
Guard Rail Replacement/Repair (512059F) ⁽¹⁾	\$ -	\$ -	\$ 17,000.00
Insurance (512045)	\$ 3,981.39	\$ 4,000.00	\$ 5,000.00
Other Supplies and Services			
Postage/Mailing , Photo Copy Svcs., Parking Reimbursement, Office Supplies (511010, 511011, 512059G, 512077, 51208)	\$ 120.46	\$ 560.00	\$ 1,250.00
Unclassified Materials & Supplies	\$ 77.77	\$ 150.00	\$ 500.00
Garden Nursery Stock (511028)	\$ 19,554.56	\$ 20,000.00	\$ 20,000.00
Seasonal Decorations (511041)	\$ 7,278.37	\$ 7,500.00	\$ 7,500.00
Special Districts Administration (510024)	\$ 7,334.00	\$ 6,736.00	\$ 6,736.00
Utilities: Water / Storm Drain / Electrical	\$ 17,016.40	\$ 17,531.00	\$ 18,331.00
Subtotal Non-Personnel Costs	\$ 168,196.52	\$ 184,477.00	\$ 215,192.00
Reimbursement Agreement - Cash Advance (512066)	\$ -	\$ -	\$ -
TOTAL	\$ 168,196.52	\$ 184,477.00	\$ 215,192.00
District Revenues			
Special Assessments (411005 - 412001)	\$ 142,744.73	\$ 164,976.00	\$ 164,976.00
Interest Earnings	\$ 273.70	\$ 340.00	\$ 300.00
City Contributions ⁽²⁾			
Gas Tax Fund (424070)	\$ 9,458.00	\$ 9,941.00	\$ 10,273.00
General Benefit Offset (15.5%) (424072)	\$ -	\$ 30,390.39	\$ 27,047.00
TOTAL	\$ 152,476.43	\$ 205,647.39	\$ 202,596.00
District Reserves			
Beginning Fund Balance	\$ 99,881.95	\$ 84,161.86	\$ 105,332.25
Change in Fund Balance	\$ (15,720.09)	\$ 21,170.39	\$ (12,596.00)
Year End Operating Reserves	\$ 84,161.86	\$ 105,332.25	\$ 92,736.25
Target Reserves			
Minimum Reserve: 10% of Operating Budget	\$ 16,820.00	\$ 18,448.00	\$ 21,519.00
Maximum Reserve: Six Months Operating Budget	\$ 84,098.00	\$ 92,239.00	\$ 107,596.00

⁽¹⁾ The Guard Rail Replacement Project will take place within the Bird Rock MAD at the following locations: 1) La Jolla Blvd. & Bird Rock Ave. (southwest and northeast corners)

2) La Jolla Blvd. & Forward St. (southwest and northeast corners) 3) La Jolla Blvd. & Midway St. (southeast and northeast corners).

⁽²⁾ City Contributions are subject to change each year pending City Council's approval of new rate per square foot/acreage.

Assessment Rate	\$78.00	\$90.00	\$90.00
Number of Equivalent Benefit Units	1,833.07	1,833.07	1,833.07
Maximum Authorized Assessment Rate ⁽³⁾	\$136.18	\$142.59	\$148.70

Estimated 2% CPI Plus
3%
Increase

⁽³⁾ Maximum Authorized Assessment Rate is increased by CPI plus an additional 3% as authorized in the Bird Rock Assessment Engineer's Report.

Capital Improvement Project Budget Preparation

If a new capital improvement project is proposed through the budget development process for the Bird Rock MAD, the Contractor shall provide basic project information by answering the following questions to the Park and Recreation Department, including but not limited to the following questions:

1. Project Scope

- a. What is the proposed project title?
- b. What are the need for and objective of the project?
- c. What is to be built?
- d. Has the community been notified of this intended project? By what method?
- e. Has the City Council or its representatives been notified of this intended project?
- f. Does this project require property acquisition?
- g. Was the project conceived by the Contractor? If not, then by whom?
- h. Were there any studies performed for this project?
- i. Is this project in compliance with the La Jolla Community Plan?
- j. What is the anticipated annual cost to maintain the improvement after project completion?
- k. If not the Contractor, has the group responsible for the maintenance been notified of this intended project?
- l. Are there any known environmental, historical, or accessibility issues associated with the proposed project?

2. Project Location

- a. Where will this project be located? Provide maps, cross streets, etc. as available.
- b. Which Council District(s) and community planning areas will benefit from the project?

3. Project Budget

- a. What is the anticipated project cost, including design, construction, and project administration?
- b. What funding source(s) will be used for the project?
- c. Are the funds currently available or will they be available in a future year?
- d. Is a formal cost estimate or bid available for any aspect of the proposed project?

4. Project Schedule

- a. What is the desired target construction completion date?
- b. What are the schedule constraints? Are there specific milestones/goals and dates?
- c. What is the consequence of the project not being completed by desired date?