

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

This first amendment (First 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 8, 2011, by Resolution No. R-306957, 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 fiscal year 2013; and

WHEREAS, this First 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 2013;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in the original Agreement and this First 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, 2013

[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 Exhibit A of the Agreement ("Scope of Services") and replace it with the First Amended Exhibit A attached hereto. All references to Exhibit A in the Agreement, shall be understood to refer to the attached First Amended Exhibit A.
3. Remove Exhibit B of the Agreement ("District Budget") and replace it with the First Amended Exhibit B attached hereto. All references to Exhibit B in the Agreement, shall be understood to refer to the attached First 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 First Amendment is executed by the City of San Diego, acting by and through the Mayor, pursuant to Resolution No. R-306957, and by Contractor:

CITY OF SAN DIEGO

CONTRACTOR

By: Ed Plank

By: Joseph M. Parker

Name: Ed Plank

Name: Joseph M. Parker

Title: Interim Purchasing + Contracting Director

Title: President + BRCC

Date: 10/17/12

Date: 10/12/12

I HEREBY APPROVE the form and legality of the foregoing First Amendment this 25TH day of OCTOBER, 2012.

JAN I. GOLDSMITH, City Attorney

By: Adam Wander

Adam Wander
Deputy City Attorney

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LIST OF EXHIBITS:

- A. Scope of Services
- B. Budget Submission Format

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)
PARK AND RECREATION DEPARTMENT – OPEN SPACE DIVISION
BIRD ROCK MAINTENANCE ASSESSMENT DISTRICT
SAP Fund 200103/Cost Center 1714151648
Fiscal Year 2014 Proposed Budget

SAP Account	Program Element/Description	FY 12 Final Budget	FY 12 Unaudited Actuals	FY 13 Final Budget	FY 13 Estimate	FY 14 Proposed Budget
Expenditures:						
City Forces/Personnel (Salary & Wages and Fringe Benefits):						
50xxxx	Salary & Fringe – CIP: S11007 – Bird Rock Median Lighting Project/La Jolla Blvd	\$0.00	\$0.00	\$0.00		
	Total Salary & Fringe	\$0.00	\$0.00	\$0.00		
Supplies:						
511010	Office Supplies (Equip & Supplies)	\$250.00	\$190.06	\$250.00		
511011	Postage/ Mailing	\$1,000.00	\$856.33	\$1,000.00		
511026	Soil & Conditioner	\$0.00	\$0.00	\$0.00		
511027	Garden Nursery Containers	\$0.00	\$0.00	\$0.00		
511028	Garden Nursery Stock	\$28,000.00	\$26,244.04	\$28,000.00		
511029	Trash Containers	\$0.00	\$0.00	\$0.00		
511041	Dry Goods/Wearing Apparel (Includes Seasonal Decorations)	\$5,000.00	\$4,238.61	\$1,500.00		
511069	Unclassified Materials and Supplies (Includes Computers,	\$0.00	\$0.00	\$3,500.00		

SAP Account	Program Element/Description	FY 12 Final Budget	FY 12 Unaudited Actuals	FY 13 Final Budget	FY 13 Estimate	FY 14 Proposed Budget
	Software)					
	Total Supplies	\$34,250.00	\$31,529.04	\$34,250.00		
Services:						
512048	Insurance	\$4,500.00	\$4,169.30	\$4,500.00		
512059	Miscellaneous Professional and Technical Services:	\$0.00	\$28,238.17	\$0.00		
512059A	BRDC Administrative Overhead	\$21,000.00		\$18,000.00		
512059B	Security Services	\$880.00		\$1,320.00		
512059C	Accounting Services (Integro Business Consulting Accounting & Tax)	\$5,000.00		\$5,830.00		
512059D	Bookkeeping Services (Caran Hardy Bookkeeping)	\$0.00		\$0.00		
512059E	Arborist Services	\$0.00		\$3,000.00		
512066	Reimbursement Agreement (Three-Month Cash Advance)	\$0.00	\$19,300.00	\$47,988.00		
512077	Photocopy Services	\$1,000.00	\$134.69	\$1,000.00		
512080	Print Shop Services	\$0.00	\$107.92	\$0.00		
512084	Photo and Blueprint	\$0.00	\$0.00	\$0.00		
512084	Photocopy and Xerox	\$0.00	\$0.00	\$0.00		
512114	City Services Billed	\$0.00	\$0.00	\$0.00		
512155	Overhead Billed	\$0.00	\$0.00	\$0.00		
512117	Undistributed Budget	\$0.00	\$0.00	\$0.00		
512412	Other Non-Personnel Expenses (Computers, Software)	\$0.00	\$0.00	\$0.00		

SAP Account	Program Element/Description	FY 12 Final Budget	FY 12 Unaudited Actuals	FY 13 Final Budget	FY 13 Estimate	FY 14 Proposed Budget
512134	Landscaping Services (Brewer Lawn Care)	\$104,800.00	\$118,697.80	\$104,800.00		
512138	Advertising	\$0.00	\$0.00	\$0.00		
512048	Other Insurance	\$0.00	\$0.00	\$0.00		
516014	Transfers - Cash	\$0.00	\$0.00	\$0.00		
516024	Special Districts Administration	\$7,334.00	\$7,334.00	\$7,334.00		
	Total Services	\$144,514.00	\$177,981.88	\$193,772.00		
Capital Improvements Program (CIP):						
516014; 516027	Transfer Out - Capital Improvements Program	\$0.00	\$0.00	\$0.00		
	Total CIP Transfer Out	\$0.00	\$0.00	\$0.00		
Utilities:						
514006	Storm Drain Charge	\$0.00	\$0.00	\$0.00		
514100	Electric Services	\$151.00	\$127.59	\$141.00		
514103	Special District Street Lighting	\$0.00	\$0.00	\$0.00		
514104	Water Service Including Water Hydrant Rental	\$11,630.00	\$15,075.60	\$10,957.00		
514105	Sewer Service Charge and Storm Drain Fee	\$130.00	\$201.57	\$144.00		
	Total Utilities	\$11,911.00	\$15,404.76	\$11,242.00		
TOTAL COSTS AND APPROPRIATIONS:		\$190,675.00	\$224,915.68	\$239,264.00		
512133	Fund Balance (Contingency Reserve) Budgeted	\$90,105.00	\$0.00	\$62,744.00		
GRAND TOTAL, EXPENDITURES AND BUDGETED FUND BALANCE:		\$280,780.00	\$224,915.68	\$302,008.00		

SAP Account	Program Element/Description	FY 12 Final Budget	FY 12 Unaudited Actuals	FY 13 Final Budget	FY 13 Estimate	FY 14 Proposed Budget
Revenue/Income:						
411005	Real and Secured Property Taxes (Special Assessments) Collected	\$143,255.00	\$138,112.56	\$142,979.00		
411007	Secured Prior Year Special Assessments Collected – July Only	\$0.00	\$743.44	\$0.00		
411008	Unsecured Prior Year Special Assessments Collected – July Only	\$0.00	\$0.00	\$0.00		
411009	Delinquent Secured Property Taxes (Special Assessments)	\$0.00	\$1,987.74	\$0.00		
411011	Delinquent Secured Property Taxes (Special Assessments)	\$0.00	\$444.69	\$0.00		
411028	Delinquent Secured Property Taxes (Special Assessments) – Penalties and Interest	\$0.00	\$34.73	\$0.00		
412001	Special Assessments Collected (Non Taxable Entities)	\$0.00	\$1,352.50	\$0.00		
412005	Miscellaneous Revenue (Transfer to “Special Districts Delinquency Fund 79900 (Ordinance O-17882, 12/08/1992)”)	\$0.00	(\$444.69)	\$0.00		
418001	Interest On Pool Invest	\$1,600.00	\$2,493.31	\$650.00		
422031	Misc. Revenue (Transfer to “Special Districts Delinquency Fund 79900 (Ordinance O-17882, 12/08/1992)”)	\$0.00	\$0.00	\$0.00		
423128	Other Damages Recovered	\$0.00	\$0.00	\$0.00		
424077	City Contributions (Gas Tax)	\$11,232.00	\$0.00	\$0.00		
424088	City Contributions (Fund 200118 - Gas Tax Fund)	\$0.00	\$11,232.00	\$11,232.00		
	Total Revenue:	\$156,087.00	\$155,956.28	\$154,861.00		

SAP Account	Program Element/Description	FY 12 Final Budget	FY 12 Unaudited Actuals	FY 13 Final Budget	FY 13 Estimate	FY 14 Proposed Budget
Fund Balance (Reserve/Carryover) Calculation:						
	Beginning Fund Balance	\$185,829.18	\$185,829.18	\$115,443.82		
	+ Prior Year Encumbrances (part of the Fund Balance)	\$0.00	\$0.00	\$0.00		
	+ Total Revenue	\$156,087.00	\$155,956.28	\$154,861.00		
	- Total Expenditures	\$190,675.00	\$224,915.68	\$239,264.00		
	= Closing Fund Balance	\$151,241.18	\$116,869.78	\$31,040.82		
	Change in Fund Balance: Increase/(Decrease)	(\$34,588.00)	(\$68,959.40)	(\$84,403.00)		
Target Fund Balance (Based on Minimum/Maximum Allowable):						
	10% of Operating Expenditures (Minimum per City Comptroller)	\$19,068.00	\$22,492.00	\$23,926.00		
	Six Months of Operating Expenditures (Maximum per State Streets & Highways Code)	\$95,338.00	\$112,458.00	\$119,632.00		
Assessment and EBU Calculation:						
	Assessment Rate Change between Prior and Current Fiscal Year	No change	No change	No change	No change	
	Assessment Rate per Equivalent Benefit Unit (EBU)	\$78.00	\$78.00	\$78.00	\$78.00	
	Number of EBUs	1,833.07	1,833.07	1,833.07	1,833.07	
	Total Assessment Revenue	\$142,979.46	\$142,979.46	\$142,979.46	\$142,979.46	

SAP Account	Program Element/Description	FY 12 Final Budget	FY 12 Unaudited Actuals	FY 13 Final Budget	FY 13 Estimate	FY 14 Proposed Budget
Maximum Authorized Assessment Rate						
	Increase to Maximum Authorized Assessment (formula per Engineer's Report is SDCPI-U Plus 3%)	4.24%	4.24%	5.71%		
	Maximum Permitted Assessment Rate per EBU in Fiscal Year	\$118.20	\$123.21	\$130.25		
	Number of Equivalent Benefit Units (EBU) per Engineer's Report	1,833.07	1,833.07	1,833.07		
	Total Maximum Assessment Revenue Allowable	\$216,668.87	\$225,852.55	\$238,757.37		
Inflation Factor:						
	Is the Consumer Price Index (CPI) Authorized by the Assessment Engineer's Report (Yes/No)?	Yes	Yes	Yes		
	Maximum Allowable Increase based on San Diego Consumer Price Index - All Urban (SDCPI-U) in Fiscal Year	1.24%	1.24%	2.71%		
	Maximum Allowable Increase based on San Diego Consumer Price Index - All Urban (SDCPI-U) plus 3% as authorized by Engineer's Report in Fiscal Year	4.24%	4.24%	5.71%		

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?

PURCHASING & CONTRACTING DEPARTMENT
CONSULTANT/AGENCY/NON-PROFIT AGREEMENT
SUBMITTAL FORM

Attn: Pam Glover for processing and signature

Date: 10/17/12 Requisition Number: _____
Contact Person/Department: ROSA Lopez (Park N Rec) Phone Number: X 685-1310
Consultant/Agency/ Vendor Name: BIRD ROCK Development Corporation
Type of Agreement: Amendment NO.1 - Maintenance Agreement
BETWEEN CITY OF SD AND BIRD ROCK Development Corporation
Competitive Process:
☐ Consultant Selection Form (Attached) or
☐ Bid/RFP No. _____ or MAD
☐ Sole Source No. _____

Supporting Documentation Attached: ☐ 1544 or ☐ 1472 or ☐ Ordinance

Submittals Attached:

- ☒ Drug Free Workplace
☒ EOCP documents
☒ BTC or Non-Profit Status (NONPROFIT)

Insurance Certificates:

- | | | |
|---|--------------------------------------|---------------|
| <input type="checkbox"/> Auto \$1 million | <input type="checkbox"/> Endorsement | Expires _____ |
| <input type="checkbox"/> GL \$1 million/\$2 million aggregate | <input type="checkbox"/> Endorsement | Expires _____ |
| <input type="checkbox"/> WC & waiver of subrogation or | <input type="checkbox"/> Declaration | Expires _____ |
| <input type="checkbox"/> Other: _____ | | Expires _____ |

Insurance Coordinator Signoff: _____ Date: _____

Proper City authorized template used: ☒ Yes ☐ No
All required attachments and insurance verified: ☒ Yes ☐ No

Procurement Specialist Approved: Pam Glover Date: 10/17/12