

EXHIBIT A

**EQUAL OPPORTUNITY CONTRACTING PROGRAM [EOCP]
CONSULTANT REQUIREMENTS**

CONTENTS:

- A. City's Equal Opportunity Commitment
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- 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 subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.
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 subconsultants 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 subconsultants, consultant Association's and other business Association's;
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 Association's 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 Subconsultants

1. Proposer shall submit a *Subconsultants List* [see Attachment 4] indicating Scope of Services, percentage of contract, dollar amount of contract, certification status, and where certified.
2. Subconsultants and vendors must be named on the *Subconsultants 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 subconsultant commitment letters on subconsultant letterhead, no more than one page each, from all proposed subconsultants to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

F. Subconsultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary subconsultant 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% subconsultant 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 subconsultant 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 subconsultants.

ATTACHMENTS:

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

**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 Association's 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's Mayor.

(d) Emergency contracts, if a written partial or full waiver is granted by the City's Mayor 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's Mayor 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's Mayor 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's Mayor 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's Mayor may recommend termination of the contract and debarment to the City Council.

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)



THE CITY OF SAN DIEGO

EQUAL OPPORTUNITY CONTRACTING PROGRAM

1010 SECOND AVENUE • SUITE 500 • SAN DIEGO, CA 92101

(619) 533-4464 • FAX: 533-4474

WORK FORCE REPORT

The objective of the Equal Employment Opportunity Program is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and 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.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

Type of Contractor: Construction Vendor/Supplier Financial Institution
 Consultant Grant Recipient Insurance Company

Lesse

Other

Name of Company: College Area Economic Development Corporation

AKA/DBA: College Area Business District

Address (Corporate Headquarters, where applicable): P.O. Box 151176

City San Diego

County San Diego

State CA

92175

Zip

Telephone Number: (619) 582-1093

FAX Number: (619) 582-1293

Name of Company CEO: Jennifer R. Finnegan

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address:

City

County

State

Zip

Telephone Number: ()

FAX Number: ()

Type of Business: 501(c)3 Corporation

Type of License:

The Company has appointed: Jennifer R. Finnegan

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address:

Telephone Number: (619) 582-1093

FAX Number: (619) 582-1293

For Firm's: San Diego Work Force and/or Managing Office Work Force

I, the undersigned representative of College Area Economic Development Corporation (Firm Name)

San Diego

(County)

CA

(State)

hereby certify that information provided herein is true and correct. This document was executed on this 30th

day of MAY, 2008

Jennifer R. Finnegan
(Authorized Signature)

Jennifer R. Finnegan
(Print Authorized Signature Name)

000769

WORK FORCE REPORT - Page 2

NAME OF FIRM: College Area Economic Development Corporation

DATE: 5/30/2008

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												1		
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical			1									1		
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Nonconstruction Laborers*														
*Construction labors and other field employees are not to be included on this page														
TOTALS EACH COLUMN			1									1	1	
GRAND TOTAL ALL EMPLOYEES			3											
INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:														
DISABLED														
NON-PROFIT ORGANIZATIONS ONLY:														
BOARD OF DIRECTORS			1									7	8	1
VOLUNTEERS														
ARTISTS														

SUBCONSULTANTS LIST

ATTACHMENT (4)

INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:

Proposal shall include name and complete address of all Subconsultants who will receive more than one-half of one percent (0.5%) of the contract amount or in excess of \$10,000.

Subconsultants shall be used for Scope of Services listed. No changes to this Subconsultants List will be allowed without prior written City approval.

Proposer shall also submit subconsultant commitment letters on subconsultant letterhead, no more than one page each, from subconsultants listed below to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

NAME AND ADDRESS SUBCONSULTANTS AND VENDORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	① MBE/ WBE/DBE/ DVBE/OBE	② WHERE CERTIFIED
CAM Services	Sidewalk Maintenance	40%	\$ 115,000		
Valdez Landscape Company	Landscape	31%	\$ 90,000		

① For information only. As appropriate, Proposer shall identify Subconsultants as:

- Certified Minority Business Enterprise MBE
- Certified Woman Business Enterprise WBE
- Certified Disadvantaged Business Enterprise DBE
- Certified Disabled Veteran Business Enterprise DVBE
- Other Business Enterprise OBE

② For information only. As appropriate, Proposer shall indicate if Subconsultant is certified by:

- City of San Diego CITY
- State of California Department of Transportation CALTRANS
- San Diego Joint Agencies Contracting Opportunity Task Force JACO

**OUTREACH AND TEAMING SURVEY
CONSULTANTS****Prime:****Project Title:****Original Contract:** Yes No **Amendment No:** ____ **Change Order No:****Job Order No:** _____ **Bid No:**

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 subconsulting 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 subconsultants on this project? If so, which specific scopes of work were targeted for subconsulting?
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 subconsulting 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 subconsultants? 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

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

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 Subconsultants 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 _____

000775

ATTACHMENT a

CONSULTANT EVALUATION FORM

§43.0301 Purpose and Intent

The purposes of this Division are to further ensure the health, safety and general welfare of the citizens of the City of San Diego by controlling Non-Storm Water Discharges to the Storm Water Conveyance System; by eliminating discharges to the Storm Water Conveyance System from spills, dumping, or disposal of materials other than Storm Water; and by reducing Pollutants in urban Storm Water discharges to the maximum extent practicable. The intent of this Division is to protect and enhance the water quality of our watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Water Pollution Control Act [Clean Water Act, 33 U.S.C. section 1251 et seq.] and National Pollutant Discharge Elimination System [NPDES] Permit No. CA0108758, as amended.

**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. They should perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interests of persons who have supported them. 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.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
2. All of the following conditions are met:
 - (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.
 - (b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.
 - (c) Any membership owned by the interested party abstains from voting on the matter.

- (d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.
 - (e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.
 - (f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.
3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving Transient Occupancy Tax (TOT) Funds

In the case of contracts or transactions involving TOT 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 contract administrator.

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, their business affiliations, and a signed acknowledgment form indicating that they have received a copy of the Conflict of Interest Policy and that they have read and understand the Policy. In the event that the board membership changes, the corporation shall provide the City with an updated list and a signed acknowledgment, within 30 days of the change.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than \$5000 from a single contractor in a 12 month period:
 - ▶ No competitive procurement process is required.

2. Expenditures of between \$5000 and \$25,000 from a single contractor in a 12 month period:
 - ▶ Obtain three written price proposals or demonstrate why three bids could not be obtained.
 - ▶ Present price proposal information to full board for approval of contract or transaction.
 - ▶ Record the action taken in the meeting minutes, and keep the written price proposals on file.

3. Expenditures of more than \$25,000 for goods and/or services from a single contractor in a 12 month period:
 - ▶ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
 - ▶ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
 - ▶ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
 - ▶ Record action taken by the board in meeting minutes and keep the proposals received on file.
 - ▶ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's agreement with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. A agreement, 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. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.

**MAINTENANCE AGREEMENT BETWEEN THE
CITY OF SAN DIEGO AND THE GREATER GOLDEN
HILL COMMUNITY DEVELOPMENT CORPORATION**

THIS MAINTENANCE AGREEMENT "Agreement" is made and entered into by and between the City of San Diego, a municipal corporation ("City"), and the Greater Golden Hill Community Development Corporation, a non-profit corporation, ("GGHCDC").

RECITALS

WHEREAS, the City desires to retain the services of GGHCDC to provide administration of the maintenance services to Greater Golden Hill Maintenance Assessment District, ("District"); and

WHEREAS, the boundaries of the District are generally defined as follows: within the area bordered by Juniper street on the north, Balboa Park and I-5 on the west, Martin Luther King Freeway(SR 94) on the south and Escondido Freeway (I-15) and 34th Street north of Beech Street on the east; and

WHEREAS, the GGHCDC has provided a petition to the City representing at least a majority of the property owners in the District, weighted by the dollar amount of their assessments in the District, in support of the GGHCDC'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 for a period of one year in accordance with the San Diego Municipal Code Section 65.0212; and

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

ARTICLE I

SCOPE OF SERVICES

A. GENERAL SERVICES

1. The GGHCDC shall provide: administration of the Contracts for Goods and Contracts for Services and prepare financial statements for the District in connection with provisions of the "Maintenance Assessment Districts Ordinance" (being Division 2, Article 5, Chapter VI, beginning at Section 65.0201 of the San Diego Municipal Code), and the provisions of the "Landscaping and Lighting Act of 1972" (being Part 2 of Division 15 of the California Streets and Highways Code), for services to the District as set forth in the engineer's report ("Engineer's Report") for the District.
2. The GGHCDC shall perform all duties and services specifically set forth herein as reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standards outlined in this Agreement.

B. SPECIFIC REQUIREMENTS

1. The GGHCDC at a minimum, shall provide the following special benefit maintenance standards within the boundaries of the District as described for each Zone in the Engineer's Report and to the extent that such standards are consistent with the budget afforded for such maintenance services:
 - (a) Debris and Litter Control
Remove litter, trimmings, debris, rubbish and other solid waste 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
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, cultivation, irrigation, trimming, spraying, collection and disposal of fallen branches, tree and bush trimming, fertilizing, or treating for disease or injury. All tree trimming and tree replacement shall be conducted by a certified arborist and pest applications shall be conducted by certified professional applicators.
 - (c) Basic Landscape Services
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. 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
All graffiti shall be removed from the public right-of-way by cleaning, sandblasting, and and/or painting of walls, and other improvements to remove or cover graffiti. All graffiti observed on private property shall be reported for repair within twenty-four (24) hours to the GGHCDC, the City, Neighborhood Services, Planning and Development Business Center, or Neighborhood Code Compliance Department/Graffiti Control Program (619-525-8522).
 - (e) Sidewalk Safety Hazards
All sidewalk safety hazards which are observed in the course of providing enhanced maintenance services, as described in this Agreement (including damaged meter boxes and street vaults), shall be barricaded immediately and then, immediately following barricading, reported for repair to the City's General Services Department: Street Division. 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 GGHCDC 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 GGHCDC, its employees or agents or if the observed condition is not immediately barricaded and reported as required in this provision.

- (f) Sidewalk Sweeping and Power Washing
Ongoing inspection and repairs of gutter and sidewalk cleaning and sweeping.
 - (g) Lighting Service
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, Transportation Department/Electrical Section, General Information and Service Requests, Street Light and Traffic Signal Maintenance (619-527-8056).
 - (h) Large Bulk Item Pickup and removal of illegal dumping
All large bulk items and illegal dumps of trash and personal property in the public right-of-way will be removed within three days of notification to City.
 - (i) Enhanced Trash Receptacles and Recycling
Empty public trash receptacles as designated in the streetscape manual, located on public sidewalks throughout District, pursuant to a schedule developed in coordination with the City’s schedule.
 - (j) Decorations and Banner Installation
 - (k) Trail and Canyon Beautification
2. The GGHCDC shall conduct on-site inspections of all work done in the District and shall submit a report to the City indicating that such on-site inspections have been completed.
 3. City staff shall conduct four District inspections per year to evaluate compliance with the above referenced maintenance standards. A City inspection report shall be supplied to the GGHCDC requiring less than thirty (30) calendar days to correct any deficient standard reported. The inspections will be completed by City staff every three months.

4. The GGHCDC shall be responsible for responding, in writing, to the City regarding District maintenance complaints received by the City.
5. The GGHCDC 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 property owners within the District. The regular 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 the GGHCDC regarding the improvements and regular maintenance as described in the Engineer's Report for the District. With respect to the regular meeting, the GGHCDC 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. The GGHCDC shall submit to the City no later than March 1 of each year a District approved, line-item budget for the upcoming Fiscal Year. This proposed budget for services in the District will be included in the Greater Golden Hill Maintenance Assessment District Engineer's Report each year.
7. The GGHCDC shall maintain a separate set of books and records for costs associated with the GGHCDC's responsibilities under this Agreement for annual audit at the expense of the District. All records shall be made available for inspection and photocopying by the City upon reasonable notice. The City's rights with respect to such records are further governed by the provisions of Article V of this Agreement. The GGHCDC shall maintain such books and records for a period of three years following completion of this Agreement.

ARTICLE II

SERVICES PROVIDED BY THE CITY

A. BUDGET

1. The City shall carry out all actions reasonably necessary for processing the annual budget for maintenance of the District.
2. The City shall review the GGHCDC's proposed maintenance operations in processing the annual budget for the District.
3. The City may amend line items in the annual budget upon a written request from the GGHCDC, as long as the amendments would not increase the total amount authorized for reimbursement to the GGHCDC.

B. SERVICES

1. The City shall conduct at least four on-site inspections of the District during the period of this Agreement. In the event the City determines from such inspections that the District is not being properly administered by the GGHCDC, a report of such findings will be presented first to the GGHCDC, and if not satisfactorily corrected within thirty calendar days will then be presented to the City Council. 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 shall reserve 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 shall coordinate the collection of assessments with the County of San Diego and provide administrative services, general assistance and information to the GGHCDC.

ARTICLE III**COMPENSATION AND REIMBURSEMENT****A. INVOICES**

1. The GGHCDC shall submit monthly reimbursement requests to the City. The City shall reimburse the GGHCDC from District funds within thirty working 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 approved District budget.
2. 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.

B. COMPENSATION

1. The GGHCDC shall be compensated for its services pursuant to this Agreement solely by the terms of this Section III(B). The GGHCDC shall be authorized to add to the reimbursement requests made under this Article III an additional \$60,000 of the total amount actually expended by the GGHCDC for the wages, salaries and benefits of employees only to the extent such salaries compensate for activities directly undertaken for the administration of the District, as "Administrative Overhead." The GGHCDC shall not be authorized to include charges for Administrative Overhead in connection with any of the following expenses: (1) monies expended for the purchase of goods or supplies; (2) sums paid to third party contractors for the preparation of the assessment Engineer's

Report; and/or (3) general business expenses such as office rent, office equipment, accounting and auditing expenses, insurance premiums, copying, printing, or postage fees. The GGHCDC shall not be authorized to include charges for Administrative Overhead on any amounts paid by the GGHCDC that contain any administrative charges by the billing entity. If the GGHCDC enters into any contracts with third parties for the performance of any of GGHCDC's duties under this Agreement and any such contract includes an administrative charge, the GGHCDC shall not be entitled to receive Administrative Overhead reimbursements for its own administration activities related to the work performed by third party contractors.

2. Administrative overhead reimbursement to the GGHCDC shall be limited to \$60,000 (or \$5,000 per month) over the life of this Agreement.
3. The City shall be reimbursed the greater of \$19,560 or 4% (four percent) of annual assessments 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.

C. ADVANCES

1. Upon a written request from the GGHCDC, the City may make a cash advance of two months of working capital to the GGHCDC based on the District's monthly cash flow budget requirements related to the approved 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 the GGHCDC.

D. SUSPENSION OF PAYMENT

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

ARTICLE IV**EFFECTIVE DATE AND TERM**

This Agreement shall be effective from July 31, 2008 through June 30, 2009, and continue until completion of the scope of services, or upon written notice of cancellation, but in no event shall it exceed one year. This Agreement may be renewed each year at the City's sole option.

ARTICLE V**DOCUMENTS, RECORDS AND REPORTS****A. OWNERSHIP OF DOCUMENTS**

1. Once the GGHCDC 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. Article V, Section 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, the GGHCDC shall have the right, at its sole cost, to make 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, the GGHCDC and any or all subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all data and records relating to all matters covered by this Agreement. The GGHCDC 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. The GGHCDC 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, canceled checks, and other evidence of payments for which the GGHCDC is reimbursed by the City pursuant to this Agreement, the GGHCDC 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 other records covered by this Article V, Section B, if the GGHCDC does not make them available within the City of San Diego, then the GGHCDC shall pay all

City's travel related costs to audit records associated with this Agreement where records are maintained.

C. FINANCIAL REPORTS

The GGHCDC shall provide an audited financial statement of the District within ninety days after the end of its fiscal year. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles 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's final budget and show a comparison to the budget amounts, and a Statement of Compliance with the terms of this Agreement signed by the GGHCDC. 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 the GGHCDC fails to perform or adequately perform any obligation required by this Agreement, the GGHCDC's failure shall constitute a default. The City's Mayor or designee shall promptly give the GGHCDC written notice of the occurrence of the default, and shall allow the GGHCDC 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, the GGHCDC shall cure the default within twenty-four hours of receipt of notice of the default and application of this Article VI, Section A of the Agreement. If the GGHCDC fails to actually 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 the GGHCDC at any time provided:
 - (a) a public hearing is held on the City's intention to terminate this Agreement with the GGHCDC;

- (b) the GGHCDC 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 the GGHCDC.
2. Upon termination of this Agreement, the City shall resume administration of Contracts for Goods and Contracts for Services for the District as defined in San Diego Municipal Code Section 65.0202. The GGHCDC 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, the GGHCDC 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. The GGHCDC 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 the GGHCDC 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 the GGHCDC, immediately cancel and/or terminate this Agreement, and terminate each and every right of the GGHCDC, and any person claiming any rights by or through the GGHCDC 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 the GGHCDC.

E. GGHCDC'S RIGHT TO TERMINATE

If the GGHCDC wishes to terminate this agreement, a written notice of termination must be issued within ninety calendar days. The GGHCDC 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, the GGHCDC 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. The GGHCDC may be entitled to permitted costs during such period as set forth in Article III.

ARTICLE VII

INDEPENDENT CONTRACTOR AND DISTRICT MANAGEMENT

A. DELEGATION OF DUTIES

The GGHCDC is an independent contractor representing the owners of properties in the District. The GGHCDC will oversee the administration of the District activity through the engagement of one or more contractors to provide routine maintenance services to include trash collection and disposal, graffiti removal, repair, landscaping and lighting improvements. Accordingly, the GGHCDC duties specified in this Agreement may not be delegated by the GGHCDC without the prior written consent of the City.

B. PRINCIPAL

1. The GGHCDC agrees that one of its designated officers shall be the primary contact for the purposes of this Agreement. GGHCDC shall coordinate the GGHCDC's activities for the engagement and shall participate in all phases of the engagement. In order to simplify invoice processing, it is agreed by the GGHCDC that the designated officer will act as billing agent for work provided by the GGHCDC.
2. The GGHCDC'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 GGHCDC to inform the City on a regular basis of any changes in the Officers of the GGHCDC and of the identity of its subcontractors and their areas of responsibility.

ARTICLE VIII

COVENANTS AND CONDITIONS

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

ARTICLE IX

COMPLIANCE WITH CONTROLLING LAW

The GGHCDC 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, the GGHCDC shall comply immediately with

any and all directives issued by the City or its authorized representatives under authority of any laws, rules, regulations, ordinances, or regulations. 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 and the manner of performance, the interpretation of instructions to the GGHCDC, the acceptable completion of this Agreement, and the amount of compensation due. In the event the GGHCDC believes that any requirement of the City interferes with or affects the independence of the GGHCDC, the GGHCDC shall confer with the City in order to resolve any possible conflict. In the event the GGHCDC and the City cannot agree as to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the GGHCDC in this Agreement, the City or the GGHCDC shall give to the other written notice thereof. No later than ten calendar days thereafter, the GGHCDC and the City shall each prepare a written report that supports their position and file the same with the City and 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 the GGHCDC. *This is not intended to be in any arbitration dispute between the parties of this Agreement.*

ARTICLE XI

INFORMAL DISPUTE RESOLUTION

If the GGHCDC 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 principals. 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

The GGHCDC 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 the GGHCDC'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 the GGHCDC, 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 GGHCDC's performance of its obligations and/or duties under this Agreement, GGHCDC 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. GGHCDC shall not allow any subcontractor to commence work on a subcontract in connection with this Agreement, 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, GGHCDC 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 \$1,000,000 per occurrence, subject to an annual aggregate of \$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 cancelled 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, GGHCDC shall maintain in full force and effect Commercial Automobile Liability Insurance for all of GGHCDC's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence.
2. The policy shall expressly provide that the policy cannot be cancelled 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, GGHCDC shall maintain in full force and effect Workers' Compensation Insurance for all of GGHCDC'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 cancelled 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 CORPORATION'S INSURANCE POLICIES

The City reserves its right to request, and GGHCDC 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, GGHCDC'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 GGHCDC shall amend this Agreement to adjust such insurance coverage, limits, deductibles, and/or self-insured retentions to a level acceptable to the City, and GGHCDC 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 GGHCDC, and shall be disclosed on the insurance certificates and acceptable to the City.

I. GGHCDC'S LIABILITY NOT LIMITED TO INSURANCE COVERAGE

GGHCDC's liability, including, but not limited to, GGHCDC'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

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

K. ADDITIONAL INSURANCE

GGHCDC 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, GGHCDC 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

GGHCDC's 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 GGHCDC 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.** The GGHCDC 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, the GGHCDC 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, the GGHCDC shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the GGHCDC's relevant financial interests.
- C.** Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The GGHCDC shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the GGHCDC is subject to a conflict of interest code. The GGHCDC shall also file a Form 700 (Annual Statement) on or before April 1, 2008 disclosing any financial interests held during the previous calendar year for which the GGHCDC was subject to a conflict of interest code.

- D. If the City requires the GGHCDC to file a Statement of Economic Interests as a result of the Professional Services performed, the Consultant 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.
- E. The GGHCDC 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 the GGHCDC violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the GGHCDC 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., and Sections 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. The GGHCDC agrees to abide with Sections 87100, et. seq., of the California Government Code during the term of the Agreement. The City may determine that the GGHCDC 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, the GGHCDC shall submit the necessary documentation.
- F. The GGHCDC'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. The GGHCDC shall not recommend or specify any product, supplier, or contractor with whom the GGHCDC has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- G. If the GGHCDC violates any conflict of interest law, or any of the provisions of Article XIV of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit C. Further, any such violation shall subject the GGHCDC 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

NOTICES

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. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to the City shall be addressed to City of San Diego, City Planning and Community Investment, Economic Development Division, 1200 Third Avenue, Suite 1400, MS-56D, San Diego, California 92101. Notice to the GGHCDC shall be addressed to Kathy Vandenneuval, Greater Golden Hill Community Development Corporation, 1235 28th Street, San Diego, CA 92102. 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 GGHCDC

The GGHCDC 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

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

B. NON-DISCRIMINATION ORDINANCE

The GGHCDC 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. The GGHCDC shall provide equal

opportunity for subcontractors to participate in subcontracting opportunities. The GGHCDC 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 the GGHCDC and any subcontractors, vendors and suppliers.

C. COMPLIANCE INVESTIGATIONS

Upon the City's request, the GGHCDC agrees to provide to the City, within 60 calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the GGHCDC 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 GGHCDC for each subcontract or supply contract. The GGHCDC 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.)** The GGHCDC 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 the GGHCDC up to and including contract termination, debarment, and other sanctions for violation of the provisions of the **NONDISCRIMINATION IN CONTRACTING ORDINANCE**. The GGHCDC further understands and agrees that the procedures, remedies and sanctions provided for in the **NONDISCRIMINATION ORDINANCE** apply only to violations of said **NONDISCRIMINATION ORDINANCE**.

ARTICLE XIX

STORM WATER POLLUTION PREVENTION

The GGHCDC and each of its Subcontractors shall comply with the Storm Water Management And Discharge Control ordinance, San Diego Municipal Code Section 43.0301, which is attached hereto as Exhibit B and incorporated herein by this reference, in performing or delivering services in the District regardless of location.

ARTICLE XX

DRUG-FREE WORKPLACE

The GGHCDC agrees to comply with the City's Drug Free Workplace requirements. Every person or organization awarded a contract by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace. Any subcontract entered into by the GGHCDC pursuant to this Agreement shall contain this provision.

ARTICLE XXI

AMERICANS WITH DISABILITIES ACT

Every person or organization awarded a contract, lease, or grant by the City of San Diego acknowledges and agrees that it is aware of and will comply with Council Policy 100-04, adopted by Resolution No. 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

EMPLOYMENT OF CITY STAFF

This Agreement may be unilaterally and immediately terminated by the City if the GGHCDC an individual, who, within 12 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 the GGHCDC for this project.

ARTICLE XXIII

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. The GGHCDC 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 the GGHCDC.

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 its City's Mayor and by the GGHCDC pursuant to Resolution No. _____.

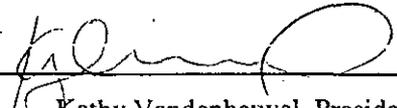
Dated the _____ day of _____, 2008.

THE CITY OF SAN DIEGO

By: _____
Mayor or Designee
City of San Diego

Date: _____

GREATER GOLDEN HILL COMMUNITY DEVELOPMENT CORPORATION

By: 
Kathy Vandeneuvel, President

Date: 6/17/08

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2008.

MICHAEL J. AGUIRRE, City Attorney

By: _____
Kimberly Kaelin
Deputy City Attorney

LIST OF EXHIBITS

- A. Equal Opportunity Contracting Program [EOCP] Consultant Requirements
- B. Storm Water Prevention Program
- C. Conflict of Interest and Procurement Policy for Nonprofit Corporations Contracting with the City of San Diego

EXHIBIT A

**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 Subconsultants
 - 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 subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.
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 subconsultants 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 subconsultants, consultant Association's and other business Association's;
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 Association's 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 Subconsultants

1. Proposer shall submit a *Subconsultants List* [see Attachment 4] indicating Scope of Services, percentage of contract, dollar amount of contract, certification status, and where certified.
2. Subconsultants and vendors must be named on the *Subconsultants 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 subconsultant commitment letters on subconsultant letterhead, no more than one page each, from all proposed subconsultants to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

F. Subconsultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary subconsultant 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% subconsultant 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 subconsultant 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 subconsultants.

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ATTACHMENTS:

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

**DIVISION 27
EQUAL EMPLOYMENT OPPORTUNITY
OUTREACH PROGRAM**

ATTACHMENT (1)

§ 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 Association's 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's Mayor.

(d) Emergency contracts, if a written partial or full waiver is granted by the City's Mayor 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's Mayor 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's Mayor 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's Mayor 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's Mayor may recommend termination of the contract and debarment to the City Council.

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)

000810



THE CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM
1010 SECOND AVENUE - SUITE 500 - SAN DIEGO, CA 92101
(619) 533-4464 • FAX: 533-4474

WORK FORCE REPORT

The objective of the Equal Employment Opportunity Program is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and 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.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: Greater Golden Hill Community Development Corporation

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): 1235 28th Street

City San Diego County San Diego State California Zip 92102

Telephone Number: (619) 696-9992 FAX Number: (619) 696-6048

Name of Company CEO: Rosemary Downing

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

City _____ County _____ State _____ Zip _____

Telephone Number: _____ FAX Number: () _____

Type of Business: _____ Type of License: _____

The Company has appointed: Shalisa Olmeda

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 1235 28th Street

Telephone Number: (619) 696-9992 FAX Number: (619) 696-6048

For Firm's: San Diego Work Force and/or Managing Office Work Force

I, the undersigned representative of Greater Golden Hill Community Development Corporation

(Organization Name)

San Diego California

(County)

(State)

hereby certify that information provided herein is true and correct. This document was executed on this day of June 2, 2008.

Rosemary Downing
(Authorized Signature)

Rosemary Downing
(Print Authorized Signature Name)

(Revised 12/01)

000811

WORK FORCE REPORT - PART 2

NAME OF COMPANY: Greater Golden Hill Community Development Corporation

DATE: June 2, 2008

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													2	
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 laborers and other field employees are not to be included on this page

TOTAL EACH COLUMN	1	0	0	1	0	0	0	0	0	0	0	2	0	0
-------------------	---	---	---	---	---	---	---	---	---	---	---	---	---	---

GRAND TOTAL ALL EMPLOYEES	4
---------------------------	---

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATION ONLY

BOARD OF DIRECTORS											5	7		
VOLUNTEERS			1		1	1							1	
ARTISTS														

**OUTREACH AND TEAMING SURVEY
CONSULTANTS**

Prime:

Project Title:

Original Contract: Yes No **Amendment No:** ____ **Change Order No:**

Job Order No: _____ **Bid No:**

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 subconsulting 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 subconsultants on this project? If so, which specific scopes of work were targeted for subconsulting?

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 subconsulting 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 subconsultants? 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: \$	

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 Subconsultants 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 _____

000817

ATTACHMENT a

CONSULTANT EVALUATION FORM

§43.0301 Purpose and Intent

The purposes of this Division are to further ensure the health, safety and general welfare of the citizens of the City of San Diego by controlling Non-Storm Water Discharges to the Storm Water Conveyance System; by eliminating discharges to the Storm Water Conveyance System from spills, dumping, or disposal of materials other than Storm Water; and by reducing Pollutants in urban Storm Water discharges to the maximum extent practicable. The intent of this Division is to protect and enhance the water quality of our watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Water Pollution Control Act [Clean Water Act, 33 U.S.C. section 1251 et seq.] and National Pollutant Discharge Elimination System [NPDES] Permit No. CA0108758, as amended.

**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. They should perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interests of persons who have supported them. 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.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
2. All of the following conditions are met:
 - (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.
 - (b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.
 - (c) Any membership owned by the interested party abstains from voting on the matter.

- (d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.
 - (e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.
 - (f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.
3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving Transient Occupancy Tax (TOT) Funds

In the case of contracts or transactions involving TOT 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 contract administrator.

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, their business affiliations, and a signed acknowledgment form indicating that they have received a copy of the Conflict of Interest Policy and the they have read and understand the Policy. In the event that the board membership changes, the corporation shall provide the City with an updated list and a signed acknowledgment, within 30 days of the change.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

- 1. Expenditures less than \$5000 from a single contractor in a 12 month period:
 - ▶ No competitive procurement process is required.

2. Expenditures of between \$5000 and \$25,000 from a single contractor in a 12 month period:
 - ▶ Obtain three written price proposals or demonstrate why three bids could not be obtained.
 - ▶ Present price proposal information to full board for approval of contract or transaction.
 - ▶ Record the action taken in the meeting minutes, and keep the written price proposals on file.

3. Expenditures of more than \$25,000 for goods and/or services from a single contractor in a 12 month period:
 - ▶ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
 - ▶ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
 - ▶ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
 - ▶ Record action taken by the board in meeting minutes and keep the proposals received on file.
 - ▶ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's agreement with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. A agreement, 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. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.

**MAINTENANCE AGREEMENT BETWEEN THE CITY OF SAN DIEGO
AND THE HILLCREST BUSINESS IMPROVEMENT ASSOCIATION**

THIS MAINTENANCE AGREEMENT "Agreement" is made and entered into by and between the City of San Diego, a municipal corporation, herein called "City", and the Hillcrest Business Improvement Association Inc. a non-profit corporation, herein called "Association".

RECITALS

WHEREAS, the City desires to retain the services of the Association to provide administration of the maintenance services to Hillcrest Commercial Core Maintenance Assessment District, herein called "District"; and

WHEREAS, the boundaries of the District are generally defined as follows: along University Ave corridor from 1st Avenue to 6th Avenue; and along 5th Ave corridor from Washington St and Pennsylvania St. Short segments of 6th Ave corridor from Robinson St. to Pennsylvania St. are also included in the proposed District;

WHEREAS, the Association has provided a petition to the City representing at least a majority of the property owners in the District, weighted by the dollar amount of their assessments in the District, in support of the Association'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 for a period of one year in accordance with the San Diego Municipal Code section 65.0212.

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

ARTICLE I - SCOPE OF SERVICES

A. GENERAL SERVICES

1. The Association shall provide: administration of the Contracts for Goods and Contracts for Services and prepare financial statements for the District in connection with provisions of the "Maintenance Assessment Districts Ordinance" (being Division 2, Article 5, Chapter VI, beginning at section 65.0201 of the San Diego Municipal Code), and the provisions of the "Landscaping and Lighting Act of 1972" (being Part 2 of Division 15 of the California Streets and Highways Code), for services to the District as set forth in the engineer's report "Engineer's Report" for the District.
2. The Association shall perform all duties and services specifically set forth herein as reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standards outlined in this Agreement.

B. SPECIFIC REQUIREMENTS

1. The Association at a minimum, shall provide the following maintenance standards within the boundaries of the District as described for each Zone in the Engineer's Report and to the extent that such standards are consistent with the budget afforded for such maintenance services:
 - (a) Sidewalk Sweeping and Litter Control. All litter will be removed from right-of-way sidewalks, curbs, gutters and landscaped areas. All trash removed will be picked up by a commercial trash disposal company or be disposed of at a City-approved waste site. All sidewalks within the district shall be swept, and washed in manner and frequency described in the engineer's report for the Hillcrest Commercial Core Maintenance Assessment District.
 - (b) Public Health and Sanitation. Any conditions which pose health and sanitation hazards will be removed within twenty four (24) hours after discovery in the District's public rights-of-way.
 - (c) Illegal Dumps. All illegal dumps of trash and personal property in the public right-of-way will be removed within three (3) days after discovery.
 - (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 (including damaged meter boxes and street vaults), shall be barricaded immediately and then, immediately following barricading, reported for repair to the City's General Services Department: Street Division. 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 Corporation 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 Corporation, its employees or agents or if the observed condition is not immediately barricaded and reported as required in this provision.
 - (f) Lighting Service. All street light lamps observed to be out or street light poles which have been damaged will be reported immediately upon discovery for repair to the City's Transportation Department/Electrical Section, General Information and Service Requests, Street Light and Traffic Signal Maintenance (619-527-8056).

- (g) Tree Maintenance. The Corporation shall provide notice to the City of any planting of trees with Maintenance Assessment District funds, together with the specific location of such trees and the date of planting, and will thereafter maintain such trees in a manner which promotes healthy tree growth, including, but limited not to, watering, trimming and fertilization. Any such trees that present an immediate safety hazard or have potential for private property damage shall be trimmed or removed upon discovery.
 - (h) Security. The Corporation shall provide enhanced security services as described in the engineer's report for the Hillcrest Commercial Core Maintenance Assessment District.
2. The Association shall conduct on-site inspections of all work done in the District and shall submit a report to the City indicating that such on-site inspections have been completed.
 3. City staff shall conduct four (4) District inspections per year to evaluate compliance with the above referenced maintenance standards. A City inspection report shall be supplied to the Association requiring less than thirty (30) calendar days to correct any deficient standard reported. The inspections will be completed by City staff every 3 months.
 4. The Association shall be responsible for responding, in writing, to the City regarding District maintenance complaints received by the City.
 5. The Association shall provide at least one (1) noticed meeting with the property owners within the District annually and attempt to meet on a regular basis with the relevant planning group or property owners within the District. The regular 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 the Association regarding the improvements and regular maintenance as described in the Engineer's Report for the District. For the regular meeting, the Association 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 community newspapers, if available.
 6. The Association shall submit to the City no later than March 1 of each year a District approved, line-item budget for the upcoming Fiscal Year. This proposed budget for services in the District will be included in the Newport Avenue Maintenance Assessment District Engineer's Report each year.
 7. The Association shall maintain a separate set of books and records for costs associated with the Association's responsibilities under this Agreement for annual audit at the expense of the District. All records shall be made available for

inspection and photocopying by the City upon reasonable notice. The City's rights with respect to such records are further governed by the provisions of Article V of this Agreement. The Association shall maintain such books and records for a period of three (3) years following completion of this Agreement.

ARTICLE II - SERVICES PROVIDED BY THE CITY

A. BUDGET

1. The City shall carry out all actions reasonably necessary for processing the annual budget for maintenance of the District.
2. The City shall review the Association's proposed maintenance operations in processing the annual budget for the District.
3. The City may amend line items in the annual budget upon a written request from the Association, as long as the amendments would not increase the total amount authorized for reimbursement to the Association.

B. SERVICES

1. The City shall conduct at least four (4) on-site inspections of the District during the period of this Agreement. In the event the City determines from such inspections that the District is not being properly administered by the Association, a report of such findings will be presented first to the Association, and, if not satisfactorily corrected within thirty (30) calendar days will then be presented to the City Council.
2. The City shall reserve 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 shall coordinate the collection of assessments with the County of San Diego and provide administrative services, general assistance and information to the Association.

ARTICLE III - COMPENSATION AND REIMBURSEMENT

A. INVOICES

1. The Association shall submit monthly reimbursement requests to the City. The City shall reimburse the Association from District funds within thirty (30) working 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 approved District budget.

2. 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.

B. COMPENSATION

1. The Association shall be compensated for its services pursuant to this Agreement solely by the terms of this Section 3 (B). The Association shall be authorized to add to the reimbursement requests made under this Article III an additional fifteen percent (15%) of the total amount actually expended by the Association for the wages, salaries and benefits of employees only to the extent such salaries compensate for activities directly undertaken for the administration of the District, as "Administrative Overhead." The Association shall not be authorized to include charges for Administrative Overhead in connection with any of the following expenses: (1) monies expended for the purchase of goods or supplies; (2) sums paid to third party contractors for the preparation of the assessment Engineer's Report; (3) general business expenses such as office rent, office equipment, accounting and auditing expenses, insurance premiums, copying, printing, or postage fees. The Association shall not be authorized to include charges for Administrative Overhead on any amounts paid by the Association that contain any administrative charges by the billing entity. If the Association enters into any contracts with third parties for the performance of any of Association's duties under this Agreement and any such contract includes an administrative charge, the Association shall not be entitled to receive Administrative Overhead reimbursements for their own administration activities related to the work performed by third party contractors.
2. Administrative overhead reimbursement to the Association shall be limited to the lesser of (1) \$13,492 (or \$1,112.33 per month) over the life of this Agreement, or (2) 15 percent (15%) of the estimated assessment revenues in the District, which ever amount is smaller.
3. The City shall be reimbursed the greater of \$3,598 or four percent (4%) of annual assessments 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.

C. ADVANCES

1. Upon a written request from the Association, the City may make a cash advance of two months of working capital to the Association based on the District's monthly cash flow budget requirements related to the approved 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 the Association.

D. SUSPENSION OF PAYMENT.

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

ARTICLE IV - EFFECTIVE DATE AND TERM

This Agreement shall be effective from July 1, 2008 through June 30, 2009, and continue until completion of the scope of services, or upon written notice of cancellation, but in no event shall it exceed one (1) year. This Agreement may be renewed each year at the City's sole option.

ARTICLE V - DOCUMENTS, RECORDS AND REPORTS

A. OWNERSHIP OF DOCUMENTS

- 1. Once the Association 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. Article V, Section 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 other provisions of this Agreement.
- 4. Notwithstanding the foregoing, the Association shall have the right, at its sole cost, to make 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, the Association and any or all subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all data and records relating to all matters covered by this Agreement. The Association 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. The Association and subcontractors shall maintain such data and records for a period of three (3) years following receipt of the final payment of this Agreement. With respect to receipts, canceled checks, and other evidence of payments for which the Association is reimbursed by the City pursuant to this Agreement, the Association 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 other records covered by this Article V, Section B, if the Association does not make them available within the City of San Diego, then the Association shall pay all City's travel related costs to audit records associated with this Agreement where records are maintained.

C. FINANCIAL REPORTS

The Association shall provide an audited financial statement of the District within ninety (90) days after the end of its fiscal year. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles 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's final budget and show a comparison to the budget amounts, and a Statement of Compliance with the terms of this Agreement signed by the Association. 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 the Association fails to perform or adequately perform any obligation required by this Agreement, the Association's failure shall constitute a default. The City's Mayor or designee shall promptly give the Association written notice of the occurrence of the default, and shall allow the Association thirty (30) 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, the Association shall cure the default within twenty-four (24) hours of receipt of notice of the default and application of this Article IV, Section A of the Agreement. If the Association fails to actually 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 the Association at any time provided:
 - (a) a public hearing is held on the City's intention to terminate this Agreement with the Association;
 - (b) the Association is provided thirty (30) 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 (15) 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 the Association.
2. Upon termination of this Agreement, the City shall resume administration of Contracts for Goods and Contracts for Services for the District as defined in San Diego Municipal Code section 65.0202. The Association shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than thirty (30) calendar days after receipt of written notice of termination. Until the actual transfer of these assets is complete, the Association 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. The Association 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 the Association 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 the Association, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Association, and any person claiming any rights by or through the Association 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 the Association.

E. ASSOCIATION'S RIGHT TO TERMINATE

If the Association wishes to terminate this agreement, a written notice of termination must be issued within ninety calendar days (90). The Association shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than ninety (90) calendar days of issuance of written notice of termination. Until the actual transfer of these assets is complete, the Association 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. The Association may be entitled to permitted costs during such period as set forth in Article III

ARTICLE VII - INDEPENDENT CONTRACTOR AND DISTRICT MANAGEMENT**A. DELEGATION OF DUTIES**

The Association is an independent contractor representing the owners of properties in the District. The Association will oversee the administration of the District activity through the engagement of one or more contractors to provide routine maintenance services to include trash collection and disposal, graffiti removal, repair, landscaping and lighting improvements. Accordingly, the Association duties specified in this Agreement may not be delegated by the Association without the prior written consent of the City.

B. PRINCIPAL

1. The Association agrees that one of its designated officers shall be the primary contact for the purposes of this Agreement. Association shall coordinate the Association's activities for the engagement and shall participate in all phases of the engagement. In order to simplify invoice processing, it is agreed by the Association that the Associations designated officer will act as billing agent for work provided by the Association.
2. The Association'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 Association to inform the City on a regular basis of any changes in the Officers of the Association and of the identity of its subcontractors and their areas of responsibility.

ARTICLE VIII - COVENANTS AND CONDITIONS

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

ARTICLE IX - COMPLIANCE WITH CONTROLLING LAW

The Association 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, the Association shall comply immediately with any and all directives issued by the City or its authorized representatives under authority of any laws, rules, regulations, ordinances, or regulations. 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 and the manner of performance, the interpretation of instructions to the Association, the acceptable completion of this Agreement, and the amount of compensation due. In the event the Association believes that any requirement of the City interferes with or affects the independence of the Association, the Association shall confer with the City in order to resolve any possible conflict. In the event the Association and the City cannot agree as to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the Association in this Agreement, the City or the Association shall give to the other written notice thereof. No later than ten (10) calendar days thereafter, the Association and the City shall each prepare a written report that supports its position and file the same with the City and 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 the Association. This is not intended to be in any arbitration dispute between the parties of this Agreement.

ARTICLE XI - INFORMAL DISPUTE RESOLUTION

If the Association 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 principals. Within five (5) 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 (5) days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

ARTICLE XII - INDEMNIFICATION

The Association 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 the Association'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 the Association, 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 Association's performance of its obligations and/or duties under this Agreement, Association 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 13(C); 13(D); and 13(E), below;
 - (c) obtain, and provide to the City, insurance certificates evidencing all insurance coverage required in Sections 13(C); 13(D); and 13(E), below; and
 - (d) confirm that all insurance policies and insurance certificates contain the specific provisions required by Sections 13(C); 13(D); and 13(E), below.
2. Association shall not allow any subcontractor to commence work on a subcontract in connection with this Agreement, unless and until all insurance required of the subcontractor, as described in Sections 13(C), 13(D), and 13(E), below, has been obtained.

- ### B. INSURANCE COMPANIES. All insurance coverage required in Sections 13(C), 13(D), and 13(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, Association 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 \$1,000,000 per occurrence, subject to an annual aggregate of \$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 cancelled 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 vs. insured claims, or for contractual liability.

D. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.

1. At all times during the term of this Agreement, Association shall maintain in full force and effect Commercial Automobile Liability Insurance for all of Association's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence.
2. The policy shall expressly provide that the policy cannot be cancelled 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, Association shall maintain in full force and effect Workers' Compensation Insurance for all of Association'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 cancelled 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 13(C), 13(D), and 13(E) above shall be in full force and effect for the entire term of this Agreement.

- G. CITY'S RIGHT TO REQUEST AND REVIEW ASSOCIATION'S INSURANCE POLICIES.** The City reserves its right to request, and Association shall immediately submit to the City upon the City's request, copies of any policy required in Sections 13(C), 13(D), and 13(E) above, and its right to review, at any time, Association'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 Association shall amend this Agreement to adjust such insurance coverage, limits, deductibles, and/or self-insured retentions to a level acceptable to the City, and Association 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 Association, and shall be disclosed on the insurance certificates and acceptable to the City.

- I. ASSOCIATION'S LIABILITY NOT LIMITED TO INSURANCE COVERAGE.** Association's liability, including, but not limited to, Association'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.** Association shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of this Agreement.

- K. **ADDITIONAL INSURANCE.** Association 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, Association 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.** Association's maintenance of the insurance coverage required in Sections 13(C), 13(D), and 13(E) above is a material provision of this Agreement. Any failure by Association 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. The Association 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, the Association 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, the Association shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Association's relevant financial interests.
- C. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Association shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Association is subject to a conflict of interest code. The Association 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 the Association was subject to a conflict of interest code.
- D. If the City requires the Association to file a Statement of Economic Interests as a result of the Professional Services performed, the Consultant 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.
- E. The Association 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 the Association violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Association 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. and sections 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. The Association agrees to abide with sections 87100 et. seq. of the California Government Code during the term of the Agreement. The City may determine that the Association 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, the Association shall submit the necessary documentation.

- F. The Association'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. The Association shall not recommend or specify any product, supplier, or contractor with whom the Association has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- G. If the Association violates any conflict of interest law, or any of the provisions of Article XIV of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit C. Further, any such violation shall subject the Association 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 - NOTICES

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. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to the City shall be addressed to City of San Diego, City Planning and

Community Investment, Economic, Economic Development Division, 1200 3rd Ave, 14th Floor, MS-56D, San Diego, California 92101. Notice to the Association shall be addressed to Hillcrest Business Improvement Association Inc., 3737 Fifth Avenue, Suite 202, San Diego, CA 92101. 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 ASSOCIATION

The Association 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

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

B. NON-DISCRIMINATION ORDINANCE

The Association 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. The Association shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. The Association 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 the Association and any subcontractors, vendors and suppliers.

C. COMPLIANCE INVESTIGATIONS

Upon the City's request, the Association 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 the Association 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 Association for each subcontract or supply contract. The Association 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.) The Association 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 the Association up to and including contract termination, debarment, and other sanctions for violation of the provisions of the NONDISCRIMINATION IN CONTRACTING ORDINANCE. The Association further understands and agrees that

the procedures, remedies and sanctions provided for in the NONDISCRIMINATION ORDINANCE apply only to violations of said NONDISCRIMINATION ORDINANCE.

ARTICLE XIX - STORM WATER POLLUTION PREVENTION

The Corporation and each of its Subcontractors shall comply with the Storm Water Management And Discharge Control ordinance, San Diego Municipal Code section 43.0301, which is attached hereto as Exhibit B and incorporated herein by this reference, in performing or delivering services in the District regardless of location.

ARTICLE XX - DRUG-FREE WORKPLACE

The Association agrees to comply with the City's Drug Free Workplace requirements. Every person or organization awarded a contract by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace. Any subcontract entered into by the Association pursuant to this Agreement shall contain this provision.

ARTICLE XXI - AMERICANS WITH DISABILITIES ACT

Every person or organization awarded a contract, lease, or grant by the City of San Diego acknowledges and agrees that it is aware of and will comply with Council Policy 100-04, adopted by Resolution No. 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 - EMPLOYMENT OF CITY STAFF

This Agreement may be unilaterally and immediately terminated by the City if the Association an individual, who, within twelve (12) 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 the Association for this project.

ARTICLE XXIII - 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. The Association 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 the Association.

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 its City's Mayor or designee and by the Association pursuant to Resolution No. _____.

Dated the _____ day of _____, 2008.

THE CITY OF SAN DIEGO

By: _____
Mayor or Designee
City of San Diego

Date: _____

HILLCREST BUSINESS IMPROVEMENT
ASSOCIATION INC.

By: Michael Wright
Michael Wright, President

Date: 5-29-08

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2008.

MICHAEL J. AGUIRRE, City Attorney

By: _____

Kimbery Kaelin
Deputy City Attorney

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LIST OF EXHIBITS

- A. Equal Opportunity Contracting Program [EOCP] Consultant Requirements
- B. Storm Water Prevention Program
- C. Conflict of Interest and Procurement Policy for Nonprofit Corporations Contracting with the City of San Diego

EXHIBIT A

**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 Subconsultants
- 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 subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.
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;

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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 subconsultants 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 subconsultants, consultant Association's and other business Association's;
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 Association's 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 Subconsultants

1. Proposer shall submit a *Subconsultants List* [see Attachment 4] indicating Scope of Services, percentage of contract, dollar amount of contract, certification status, and where certified.
2. Subconsultants and vendors must be named on the *Subconsultants 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 subconsultant commitment letters on subconsultant letterhead, no more than one page each, from all proposed subconsultants to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

F. Subconsultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary subconsultant 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% subconsultant 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 subconsultant 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 subconsultants.

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ATTACHMENTS:

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

**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 Association's 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's Mayor.

(d) Emergency contracts, if a written partial or full waiver is granted by the City's Mayor, 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's Mayor 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's Mayor 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's Mayor 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's Mayor may recommend termination of the contract and debarment to the City Council.

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)

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THE CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM
1616 SECOND AVENUE - SUITE 500 - SAN DIEGO, CA 92101
(619) 533-4464 • FAX: 533-4474

[MAD]

WORK FORCE REPORT

The objective of the Equal Employment Opportunity Program is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and 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.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

Type of Contractor: [] Construction [] Vendor/Supplier [] Financial Institution [] Lessee/Lessor

[] Consultant [] Grant Recipient [] Insurance Company [X] Other

Name of Company: HILLCREST BUSINESS IMPROVEMENT ASSOCIATION INC

AKA/DBA:

Address (Corporate Headquarters, where applicable): 3737 5TH AVE

City SAN DIEGO County SAN DIEGO State CA Zip 92103

Telephone Number: 619 299-3330 FAX Number: 619 299-4230

Name of Company (EEO) WARREN J SIMON

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

City County State Zip

Telephone Number: FAX Number:

Type of Business: MEMBERSHIP - BID Type of License: NON PROFIT

The Company has appointed WARREN J SIMON

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 3737 5TH AVE #202 SAN DIEGO CA 92103

Telephone Number: 619-299-3330 FAX Number: 619-299-4230

For Firm's: [] San Diego Work Force and/or [X] Managing Office Work Force

I, the undersigned representative of HILLCREST BUSINESS IMPROVEMENT ASSOCIATION INC (Organization Name)

SAN DIEGO

(County)

CA

(State)

hereby certify that information provided herein is true and correct. This document was executed on this day of 3 JUNE 2008, 2003.

Warren J Simon

(Authorized Signature)

WARREN J SIMON

(Print Authorized Signature Name)

000851

WORK FORCE REPORT - PART 2

NAME OF COMPANY: HILLCREST BUSINESS IMPROVEMENT ASSOCIATION DATE: JUNE 3, 2008 INC

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 Islands
- (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, Managers											1	1		
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support, Clerical												1		
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-constructor Laborers														

*Construction laborers and other field employees are not to be included on this page

TOTAL EACH COLUMN	0	0	0	0	0	0	0	0	0	0	1.0	2.0	0	0
-------------------	---	---	---	---	---	---	---	---	---	---	-----	-----	---	---

GRAND TOTAL ALL EMPLOYEES 3

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED

DISABLED:											1	1		
-----------	--	--	--	--	--	--	--	--	--	--	---	---	--	--

NON-PROFIT OR ORGANIZATION ONLY

BOARD OF DIRECTORS			1								9	7		
VOLUNTEERS											10	10		
ARTISTS											2	1		

SUBCONSULTANTS LIST

ATTACHMENT (4)

INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:

Proposal shall include name and complete address of all Subconsultants who will receive more than one-half of one percent (0.5%) of the contract amount or in excess of \$10,000.

Subconsultants shall be used for Scope of Services listed. No changes to this Subconsultants List will be allowed without prior written City approval.

Proposer shall also submit subconsultant commitment letters on subconsultant letterhead, no more than one page each, from subconsultants listed below to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

NAME AND ADDRESS SUBCONSULTANTS AND VENDORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	① MBE/ WBE/DBE/ DVBE/OBE	② WHERE CERTIFIED

① For information only. As appropriate, Proposer shall identify Subconsultants as:

- Certified Minority Business Enterprise MBE
- Certified Woman Business Enterprise WBE
- Certified Disadvantaged Business Enterprise DBE
- Certified Disabled Veteran Business Enterprise DVBE
- Other Business Enterprise OBE

② For information only. As appropriate, Proposer shall indicate if Subconsultant is certified by:

- City of San Diego CITY
- State of California Department of Transportation CALTRANS
- San Diego Joint Agencies Contracting Opportunity Task Force JACO

**OUTREACH AND TEAMING SURVEY
CONSULTANTS**

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

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 subconsulting 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 subconsultants on this project? If so, which specific scopes of work were targeted for subconsulting?

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 subconsulting 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 subconsultants? 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

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

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 Subconsultants 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 _____

000857

ATTACHMENT a

CONSULTANT EVALUATION FORM

§43.0301 Purpose and Intent

The purposes of this Division are to further ensure the health, safety and general welfare of the citizens of the City of San Diego by controlling Non-Storm Water Discharges to the Storm Water Conveyance System; by eliminating discharges to the Storm Water Conveyance System from spills, dumping, or disposal of materials other than Storm Water; and by reducing Pollutants in urban Storm Water discharges to the maximum extent practicable. The intent of this Division is to protect and enhance the water quality of our watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Water Pollution Control Act [Clean Water Act, 33 U.S.C. section 1251 et seq.] and National Pollutant Discharge Elimination System [NPDES] Permit No. CA0108758, as amended.

**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. They should perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interests of persons who have supported them. 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.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
2. All of the following conditions are met:
 - (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.
 - (b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.
 - (c) Any membership owned by the interested party abstains from voting on the matter.

- (d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.
 - (e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.
 - (f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.
3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving Transient Occupancy Tax (TOT) Funds

In the case of contracts or transactions involving TOT 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 contract administrator.

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, their business affiliations, and a signed acknowledgment form indicating that they have received a copy of the Conflict of Interest Policy and that they have read and understand the Policy. In the event that the board membership changes, the corporation shall provide the City with an updated list and a signed acknowledgment, within 30 days of the change.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than \$5000 from a single contractor in a 12 month period:
 - ▶ No competitive procurement process is required.

2. Expenditures of between \$5000 and \$25,000 from a single contractor in a 12 month period:
 - ▶ Obtain three written price proposals or demonstrate why three bids could not be obtained.
 - ▶ Present price proposal information to full board for approval of contract or transaction.
 - ▶ Record the action taken in the meeting minutes, and keep the written price proposals on file.

3. Expenditures of more than \$25,000 for goods and/or services from a single contractor in a 12 month period:
 - ▶ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
 - ▶ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
 - ▶ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
 - ▶ Record action taken by the board in meeting minutes and keep the proposals received on file.
 - ▶ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's agreement with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. A agreement, 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. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.

**MAINTENANCE AGREEMENT BETWEEN THE CITY OF SAN DIEGO
AND THE LITTLE ITALY ASSOCIATION**

THIS MAINTENANCE AGREEMENT "Agreement" is made and entered into by and between the City of San Diego, a municipal corporation, herein called "City", and the Little Italy Association of San Diego, a non-profit corporation, herein called "Association".

RECITALS

WHEREAS, the City desires to retain the services of the Association to provide administration of the maintenance services to Little Italy Maintenance Assessment District, herein called "District"; and

WHEREAS, the boundaries of the District are generally defined as follows: North are the southern curbs of Laurel Street, South are the northern curbs of West Ash Street, East are the western curbs of Front Street and West are the eastern curbs of Pacific Highway (excluding the Burlington Northern & Santa Fe Railway right-of-way);

WHEREAS, the Association has provided a petition to the City representing at least a majority of the property owners in the District, weighted by the dollar amount of their assessments in the District, in support of the Association'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 for a period of one year in accordance with the San Diego Municipal Code section 65.0212.

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

ARTICLE I - SCOPE OF SERVICES

A. GENERAL SERVICES

1. The Association shall provide: administration of the Contracts for Goods and Contracts for Services and prepare financial statements for the District in connection with provisions of the "Maintenance Assessment Districts Ordinance" (being Division 2, Article 5, Chapter VI, beginning at section 65.0201 of the San Diego Municipal Code), and the provisions of the "Landscaping and Lighting Act of 1972" (being Part 2 of Division 15 of the California Streets and Highways Code), for services to the District as set forth in the engineer's report "Engineer's Report" for the District.
2. The Association shall perform all duties and services specifically set forth herein as reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standards outlined in this Agreement.

B. SPECIFIC REQUIREMENTS

1. The Association at a minimum, shall provide the following maintenance standards within the boundaries of the District as described for each Zone in the Engineer's Report and to the extent that such standards are consistent with the budget afforded for such maintenance services:
 - (a) Litter Control (frequencies per week vary by zone). All litter will be removed from right-of-way sidewalks, curbs, gutters and landscaped areas. All trash removed will be disposed of at a City-approved waste site.
 - (b) Public Health and Sanitation. Any conditions which pose health and sanitation hazards will be immediately remove from Districts public rights-of-way.
 - (c) Illegal Dumps. All illegal dumps of trash and personal property in the public right-of-way will be removed within twenty-four (24) hours.
 - (d) Graffiti Control (As needed). All graffiti shall be promptly covered or removed from the public right-of-way. Being mindful of the importance of quick removal as a means of discouraging repetition of graffiti the Association will use its best efforts to act within twenty-four (24) hours of discovery. All lighting and sign fixtures in the public right-of-way shall be coated to prevent graffiti. All graffiti observed on private property shall be reported for removal to the City's 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 (including damaged meter boxes and street vaults), shall be barricaded immediately and then, immediately following barricading, reported for repair to the City's General Services Department: Street Division. 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 Association 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 Association, its employees or agents or if the observed condition is not immediately barricaded and reported as required in this provision.

- (f) Lighting Service (Ongoing). All street light lamps observed to be out or street light poles which have been damaged will be immediately reported for repair to the City's Transportation Department / Electrical Section, General Information and Service Requests, Street Light and Traffic Signal Maintenance (619-527-8056).
 - (g) Tree Maintenance (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, watering, trimming and fertilization. Trees that present an immediate safety hazard or have potential for private property damage shall be corrected immediately.
2. The Association shall conduct on-site inspections of all work done in the District and shall submit a report to the City indicating that such on-site inspections have been completed.
 3. City staff shall conduct four (4) District inspections per year to evaluate compliance with the above referenced maintenance standards. A City inspection report shall be supplied to the Association requiring less than thirty (30) calendar days to correct any deficient standard reported. The inspections will be completed by City staff every three months.
 4. The Association shall be responsible for responding, in writing, to the City regarding District maintenance complaints received by the City.
 5. The Association shall provide at least one (1) noticed meeting with the property owners within the District annually and attempt to meet on a regular basis with the relevant planning group or property owners within the District. The regular 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 the Association regarding the improvements and regular maintenance as described in the Engineer's Report for the District. For the regular meeting, the Association 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 community newspapers, if available.
 6. The Association shall submit to the City no later than March 1 of each year a District approved, line-item budget for the upcoming Fiscal Year. This proposed budget for services in the District will be included in the Little Italy Maintenance Assessment District Engineer's Report each year.
 7. The Association shall maintain a separate set of books and records for costs associated with the Association's responsibilities under this Agreement for annual audit at the expense of the District. All records shall be made available for inspection and photocopying by the City upon reasonable notice. The City's rights with respect to such records are further governed by the provisions of Article V of

this Agreement. The Association shall maintain such books and records for a period of three (3) years following completion of this Agreement.

ARTICLE II - SERVICES PROVIDED BY THE CITY

A. BUDGET

1. The City shall carry out all actions reasonably necessary for processing the annual budget for maintenance of the District.
2. The City shall review the Association's proposed maintenance operations in processing the annual budget for the District.
3. The City may amend line items in the annual budget upon a written request from the Association, as long as the amendments would not increase the total amount authorized for reimbursement to the Association.

B. SERVICES

1. The City shall conduct at least four (4) on-site inspections of the District during the period of this Agreement. In the event the City determines from such inspections that the District is not being properly administered by the Association, a report of such findings will be presented first to the Association, and, if not satisfactorily corrected within thirty (30) calendar days will then be presented to the City Council.
2. The City shall reserve 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 shall coordinate the collection of assessments with the County of San Diego and provide administrative services, general assistance and information to the Association.

ARTICLE III - COMPENSATION AND REIMBURSEMENT

A. INVOICES

1. The Association shall submit monthly reimbursement requests to the City. The City shall reimburse the Association from District funds within thirty (30) working 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 approved District budget.

2. 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.

B. COMPENSATION

1. The Association shall be compensated for its services pursuant to this Agreement solely by the terms of this Section 3 (B). The Association shall be authorized to add to the reimbursement requests made under this Article III an additional fifteen percent (15%) of the total amount actually expended by the Association for the wages, salaries and benefits of employees only to the extent such salaries compensate for activities directly undertaken for the administration of the District, as "Administrative Overhead." The Association shall not be authorized to include charges for Administrative Overhead in connection with any of the following expenses: (1) monies expended for the purchase of goods or supplies; (2) sums paid to third party contractors for the preparation of the assessment Engineer's Report; (3) general business expenses such as office rent, office equipment, accounting and auditing expenses, insurance premiums, copying, printing, or postage fees. The Association shall not be authorized to include charges for Administrative Overhead on any amounts paid by the Association that contain any administrative charges by the billing entity. If the Association enters into any contracts with third parties for the performance of any of Association's duties under this Agreement and any such contract includes an administrative charge, the Association shall not be entitled to receive Administrative Overhead reimbursements for their own administration activities related to the work performed by third party contractors.
2. Administrative overhead reimbursement to the Association shall be limited to the lesser of (1) \$111,939 (\$9,328.25 per month) over the life of this Agreement, or (2) 15 percent (15%) of the estimated assessment revenues in the District, which ever amount is smaller.
3. The City shall be reimbursed the greater of \$29,850 or four percent (4%) of annual assessments 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.

C. ADVANCES

1. Upon a written request from the Association, the City may make a cash advance of two months of working capital to the Association based on the District's monthly cash flow budget requirements related to the approved 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 the Association.

D. SUSPENSION OF PAYMENT.

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

ARTICLE IV - EFFECTIVE DATE AND TERM

This Agreement shall be effective from July 1, 2008 through June 30, 2009, and continue until completion of the scope of services, or upon written notice of cancellation, but in no event shall it exceed one (1) year. This Agreement may be renewed each year at the City's sole option.

ARTICLE V - DOCUMENTS, RECORDS AND REPORTS

A. OWNERSHIP OF DOCUMENTS

1. Once the Association 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. Article V, Section 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 other provisions of this Agreement.
4. Notwithstanding the foregoing, the Association shall have the right, at its sole cost, to make 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, the Association and any or all subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all data and records relating to all matters covered by this Agreement. The Association 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. The Association and subcontractors shall maintain such data and records for a period of three (3) years following receipt of the final payment of this Agreement. With respect to receipts, canceled checks, and other evidence of payments for which the Association is reimbursed by the City pursuant to this Agreement, the Association 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 other records covered by this Article V, Section B, if the Association does not make them available within the City of San Diego, then the Association shall pay all City's travel related costs to audit records associated with this Agreement where records are maintained.

C. FINANCIAL REPORTS

The Association shall provide an audited financial statement of the District within ninety (90) days after the end of its fiscal year. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles 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's final budget and show a comparison to the budget amounts, and a Statement of Compliance with the terms of this Agreement signed by the Association. 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 the Association fails to perform or adequately perform any obligation required by this Agreement, the Association's failure shall constitute a default. The City's Mayor or designee shall promptly give the Association written notice of the occurrence of the default, and shall allow the Association thirty (30) 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, the Association shall cure the default within twenty-four (24) hours of receipt of notice of the default and application of this Article IV, Section A of the Agreement. If the Association fails to actually 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 the Association at any time provided:
 - (a) a public hearing is held on the City's intention to terminate this Agreement with the Association;
 - (b) the Association is provided thirty (30) 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 (15) 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 the Association.
2. Upon termination of this Agreement, the City shall resume administration of Contracts for Goods and Contracts for Services for the District as defined in San Diego Municipal Code section 65.0202. The Association shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than thirty (30) calendar days after receipt of written notice of termination. Until the actual transfer of these assets is complete, the Association 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. The Association 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 the Association 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 the Association, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Association, and any person claiming any rights by or through the Association 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 the Association.

E. ASSOCIATION'S RIGHT TO TERMINATE

If the Association wishes to terminate this agreement, a written notice of termination must be issued within ninety calendar days (90). The Association shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than ninety (90) calendar days of issuance of written notice of termination. Until the actual transfer of these assets is complete, the Association 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. The Association may be entitled to permitted costs during such period as set forth in Article III.

ARTICLE VII - INDEPENDENT CONTRACTOR AND DISTRICT MANAGEMENT**A. DELEGATION OF DUTIES**

The Association is an independent contractor representing the owners of properties in the District. The Association will oversee the administration of the District activity through the engagement of one or more contractors to provide routine maintenance services to include trash collection and disposal, graffiti removal, repair, landscaping and lighting improvements. Accordingly, the Association duties specified in this Agreement may not be delegated by the Association without the prior written consent of the City.

B. PRINCIPAL

1. The Association agrees that one of its designated officers shall be the primary contact for the purposes of this Agreement. Association shall coordinate the Association's activities for the engagement and shall participate in all phases of the engagement. In order to simplify invoice processing, it is agreed by the Association that the Association's designated officer will act as billing agent for work provided by the Association.

2. The Association'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 Association to inform the City on a regular basis of any changes in the Officers of the Association and of the identity of its subcontractors and their areas of responsibility.

ARTICLE VIII - COVENANTS AND CONDITIONS

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

ARTICLE IX - COMPLIANCE WITH CONTROLLING LAW

The Association 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, the Association shall comply immediately with any and all directives issued by the City or its authorized representatives under authority of any laws, rules, regulations, ordinances, or regulations. 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 and the manner of performance, the interpretation of instructions to the Association, the acceptable completion of this Agreement, and the amount of compensation due. In the event the Association believes that any requirement of the City interferes with or affects the independence of the Association, the Association shall confer with the City in order to resolve any possible conflict. In the event the Association and the City cannot agree as to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the Association in this Agreement, the City or the Association shall give to the other written notice thereof. No later than ten (10) calendar days thereafter, the Association and the City shall each prepare a written report that supports its position and file the same with the City and 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 the Association. This is not intended to be in any arbitration dispute between the parties of this Agreement.

ARTICLE XI - INFORMAL DISPUTE RESOLUTION

If the Association 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 principals. Within five (5) 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 (5) days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

ARTICLE XII - INDEMNIFICATION

The Association 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 the Association'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 the Association, 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 Association's performance of its obligations and/or duties under this Agreement, Association 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 13(C); 13(D); and 13(E), below;
 - (c) obtain, and provide to the City, insurance certificates evidencing all insurance coverage required in Sections 13(C); 13(D); and 13(E), below; and
 - (d) confirm that all insurance policies and insurance certificates contain the specific provisions required by Sections 13(C); 13(D); and 13(E), below.
2. Association shall not allow any subcontractor to commence work on a subcontract in connection with this Agreement, unless and until all insurance required of the subcontractor, as described in Sections 13(C), 13(D), and 13(E), below, has been obtained.

- B. INSURANCE COMPANIES. All insurance coverage required in Sections 13(C), 13(D), and 13(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, Association 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 \$1,000,000 per occurrence, subject to an annual aggregate of \$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 cancelled 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 vs. insured claims, or for contractual liability.

D. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.

1. At all times during the term of this Agreement, Association shall maintain in full force and effect Commercial Automobile Liability Insurance for all of Association's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence.
2. The policy shall expressly provide that the policy cannot be cancelled 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, Association shall maintain in full force and effect Workers' Compensation Insurance for all of Association'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 cancelled 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 13(C), 13(D), and 13(E) above shall be in full force and effect for the entire term of this Agreement.

- G. CITY'S RIGHT TO REQUEST AND REVIEW ASSOCIATION'S INSURANCE POLICIES.** The City reserves its right to request, and Association shall immediately submit to the City upon the City's request, copies of any policy required in Sections 13(C), 13(D), and 13(E) above, and its right to review, at any time, Association'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 Association shall amend this Agreement to adjust such insurance coverage, limits, deductibles, and/or self-insured retentions to a level acceptable to the City, and Association 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 Association, and shall be disclosed on the insurance certificates and acceptable to the City.

- I. ASSOCIATION'S LIABILITY NOT LIMITED TO INSURANCE COVERAGE.** Association's liability, including, but not limited to, Association'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.** Association shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of this Agreement.
- K. ADDITIONAL INSURANCE.** Association 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, Association 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.** Association's maintenance of the insurance coverage required in Sections 13(C), 13(D), and 13(E) above is a material provision of this Agreement. Any failure by Association 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.** The Association 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, the Association 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, the Association shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Association's relevant financial interests.
- C.** Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Association shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Association is subject to a conflict of interest code. The Association 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 the Association was subject to a conflict of interest code.
- D.** If the City requires the Association to file a Statement of Economic Interests as a result of the Professional Services performed, the Consultant 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.

- E. The Association 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 the Association violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Association 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. and sections 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. The Association agrees to abide with sections 87100 et. seq. of the California Government Code during the term of the Agreement. The City may determine that the Association 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, the Association shall submit the necessary documentation.
- F. The Association'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. The Association shall not recommend or specify any product, supplier, or contractor with whom the Association has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- G. If the Association violates any conflict of interest law, or any of the provisions of Article XIV of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit C. Further, any such violation shall subject the Association 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 - NOTICES

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. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to the City shall be addressed to City of San Diego, City Planning and Community Investment, Economic Development Division, 600 B Street, 4th Floor, MS-904, San Diego, California 92101. Notice to the Association shall be addressed to Little Italy Association of San Diego, 1830 Columbia Street, San Diego, CA 92101. 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 ASSOCIATION

The Association 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

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

B. NON-DISCRIMINATION ORDINANCE

The Association 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. The Association shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. The Association 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 the Association and any subcontractors, vendors and suppliers.

C. COMPLIANCE INVESTIGATIONS

Upon the City's request, the Association 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 the Association 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 Association for each subcontract or supply contract. The Association 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.) The Association 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 the Association up to and including contract termination, debarment, and other sanctions for violation of the provisions of the NONDISCRIMINATION IN CONTRACTING ORDINANCE. The Association further understands and agrees that the procedures, remedies and sanctions provided for in the NONDISCRIMINATION ORDINANCE apply only to violations of said NONDISCRIMINATION ORDINANCE.

ARTICLE XIX - STORM WATER POLLUTION PREVENTION

The Corporation and each of its Subcontractors shall comply with the Storm Water Management And Discharge Control ordinance, San Diego Municipal Code section 43.0301, which is attached hereto as Exhibit B and incorporated herein by this reference, in performing or delivering services in the District regardless of location.

ARTICLE XX - DRUG-FREE WORKPLACE

The Association agrees to comply with the City's Drug Free Workplace requirements. Every person or organization awarded a contract by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace. Any subcontract entered into by the Association pursuant to this Agreement shall contain this provision.

ARTICLE XXI - AMERICANS WITH DISABILITIES ACT

Every person or organization awarded a contract, lease, or grant by the City of San Diego acknowledges and agrees that it is aware of and will comply with Council Policy 100-04, adopted by Resolution No. 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 - EMPLOYMENT OF CITY STAFF

This Agreement may be unilaterally and immediately terminated by the City if the Association an individual, who, within twelve (12) 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 the Association for this project.

ARTICLE XXIII - 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. The Association 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 the Association.

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 its City's Mayor or designee and by the Association pursuant to Resolution No. _____.

Dated the _____ day of _____, 2008.

THE CITY OF SAN DIEGO

By: _____
Mayor or Designee
City of San Diego

Date: _____

LITTLE ITALY ASSOCIATION

By: Steve Galasso
Steve Galasso, President

Date: 6/7/08

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2008.

MICHAEL J. AGUIRRE, City Attorney

By: _____
Kimberly Kaelin
Deputy City Attorney

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LIST OF EXHIBITS

- A. Equal Opportunity Contracting Program [EOCP] Consultant Requirements
- B. Storm Water Prevention Program
- C. Conflict of Interest and Procurement Policy for Nonprofit Corporations Contracting with the City of San Diego

EXHIBIT A

**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 Subconsultants
 - 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 subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.
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 subconsultants 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 subconsultants, consultant Association's and other business Association's;
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;

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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 Association's 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 Subconsultants

1. Proposer shall submit a *Subconsultants List* [see Attachment 4] indicating Scope of Services, percentage of contract, dollar amount of contract, certification status, and where certified.
2. Subconsultants and vendors must be named on the *Subconsultants 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 subconsultant commitment letters on subconsultant letterhead, no more than one page each, from all proposed subconsultants to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

F. Subconsultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary subconsultant 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% subconsultant 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 subconsultant 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.

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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 subconsultants.

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ATTACHMENTS:

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

**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 Association's 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's Mayor.

(d) Emergency contracts, if a written partial or full waiver is granted by the City's Mayor 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's Mayor 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's Mayor 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's Mayor 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's Mayor may recommend termination of the contract and debarment to the City Council.

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.

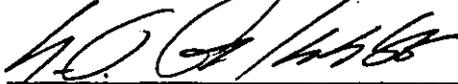
EQUAL OPPORTUNITY CONTRACTING: Contractor has received, read, understands and agrees to be bound by the Equal Opportunity Contracting Program requirements described in the proposal package.

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: Little Italy Assn Date: 6/3/08





Authorized Signature

Print Authorized Signature Name

(Revised 2/98)

WORK FORCE REPORT - PART 2

NAME OF COMPANY: Little Italy Association of San Diego

DATE: June 3, 2008

000892

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	5		5								2			1
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

TOTAL EACH COLUMN	0	0	0	0	0	0	0	0	0	0	0	0	0	0
-------------------	---	---	---	---	---	---	---	---	---	---	---	---	---	---

GRAND TOTAL ALL EMPLOYEES

13

INDICATE BY GENDER AND ENTHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATION ONLY:

BOARD OF DIRECTORS											21	7		
VOLUNTEERS														
ARTISTS														

SUBCONSULTANTS LIST

ATTACHMENT (4)

INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:

Proposal shall include name and complete address of all Subconsultants who will receive more than one-half of one percent (0.5%) of the contract amount or in excess of \$10,000.

Subconsultants shall be used for Scope of Services listed. No changes to this Subconsultants List will be allowed without prior written City approval.

Proposer shall also submit subconsultant commitment letters on subconsultant letterhead, no more than one page each, from subconsultants listed below to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

NAME AND ADDRESS SUBCONSULTANTS AND VENDORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	MBE/ WBE/DBE/ DVBE/OBE	WHERE CERTIFIED
New City America	Staff Admin	15%	112,500.00		

① For information only. As appropriate, Proposer shall identify Subconsultants as:

- Certified Minority Business Enterprise MBE
- Certified Woman Business Enterprise WBE
- Certified Disadvantaged Business Enterprise DBE
- Certified Disabled Veteran Business Enterprise DVBE
- Other Business Enterprise OBE

② For information only. As appropriate, Proposer shall indicate if Subconsultant is certified by:

- City of San Diego CITY
- State of California Department of Transportation CALTRANS
- San Diego Joint Agencies Contracting Opportunity Task Force JACO

**OUTREACH AND TEAMING SURVEY
CONSULTANTS**

Prime:	N/A
Project Title:	
Original Contract: <input type="checkbox"/> Yes <input type="checkbox"/> No	Amendment No: ____ Change Order No:
Job Order No: <u> N/A </u>	Bid No:

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 subconsulting 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 subconsultants on this project? If so, which specific scopes of work were targeted for subconsulting?

NO

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?

N/A

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 subconsulting 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 subconsultants? 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.

Little Italy Association

Company Name

Steve Galasso

Name

President

Title

[Handwritten Signature]

Signature

6/3/08

Date

****FOR OFFICIAL USE****
(To Be Completed By City Staff Only)

Total: \$ _____ M/W/DBE: \$ _____ % DVBE: \$ _____ % OBE: \$ _____ %

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

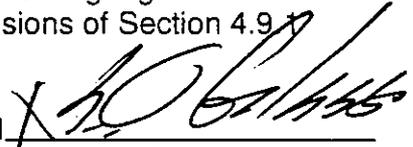
PROJECT TITLE:

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:

Little Italy Association

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 Subconsultants agreement to abide by the provisions of Section 4.9 subdivisions A through C of the policy as outlined.

Signed 
Printed Name Steve Galasso
Title President
Date 6/3/08

000898

ATTACHMENT a

CONSULTANT EVALUATION FORM

§43.0301 Purpose and Intent

The purposes of this Division are to further ensure the health, safety and general welfare of the citizens of the City of San Diego by controlling Non-Storm Water Discharges to the Storm Water Conveyance System; by eliminating discharges to the Storm Water Conveyance System from spills, dumping, or disposal of materials other than Storm Water; and by reducing Pollutants in urban Storm Water discharges to the maximum extent practicable. The intent of this Division is to protect and enhance the water quality of our watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Water Pollution Control Act [Clean Water Act, 33 U.S.C. section 1251 et seq.] and National Pollutant Discharge Elimination System [NPDES] Permit No. CA0108758, as amended.

**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. They should perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interests of persons who have supported them. 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.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
2. All of the following conditions are met:
 - (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.
 - (b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.
 - (c) Any membership owned by the interested party abstains from voting on the matter.
 - (d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.

- (e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.
 - (f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.
3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving Transient Occupancy Tax (TOT) Funds

In the case of contracts or transactions involving TOT 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 contract administrator.

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, their business affiliations, and a signed acknowledgment form indicating that they have received a copy of the Conflict of Interest Policy and the they have read and understand the Policy. In the event that the board membership changes, the corporation shall provide the City with an updated list and a signed acknowledgment, within 30 days of the change.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than \$5000 from a single contractor in a 12 month period:
 - ▶ No competitive procurement process is required.
2. Expenditures of between \$5000 and \$25,000 from a single contractor in a 12 month period:
 - ▶ Obtain three written price proposals or demonstrate why three bids could not be obtained.

- ▶ Present price proposal information to full board for approval of contract or transaction.
 - ▶ Record the action taken in the meeting minutes, and keep the written price proposals on file.
3. Expenditures of more than \$25,000 for goods and/or services from a single contractor in a 12 month period:
- ▶ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
 - ▶ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
 - ▶ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
 - ▶ Record action taken by the board in meeting minutes and keep the proposals received on file.
 - ▶ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's agreement with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. A agreement, 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. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.

**MAINTENANCE AGREEMENT BETWEEN THE CITY OF SAN DIEGO
AND THE OCEAN BEACH MAINSTREET ASSOCIATION**

THIS MAINTENANCE AGREEMENT "Agreement" is made and entered by and between the City of San Diego, a municipal corporation, herein called "City", and the Ocean Beach Main Street Association of San Diego a non-profit corporation, herein called "Association".

RECITALS

WHEREAS, the City desires to retain the services of the Association to provide administration of the maintenance services to Newport Avenue Maintenance Assessment District, herein called "District"; and

WHEREAS, the boundaries of the District are generally defined as follows: along Newport Avenue between Sunset Cliffs Boulevard and Abbott Street to include the corner wrap around at Bacon and Cable Street intersections;

WHEREAS, the Association has provided a petition to the City representing at least a majority of the property owners in the District, weighted by the dollar amount of their assessments in the District, in support of the Association'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 for a period of one year in accordance with the San Diego Municipal Code section 65.0212.

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

ARTICLE I - SCOPE OF SERVICES

A. GENERAL SERVICES

1. The Association shall provide: administration of the Contracts for Goods and Contracts for Services and prepare financial statements for the District in connection with provisions of the "Maintenance Assessment Districts Ordinance" (being Division 2, Article 5, Chapter VI, beginning at section 65.0201 of the San Diego Municipal Code), and the provisions of the "Landscaping and Lighting Act of 1972" (being Part 2 of Division 15 of the California Streets and Highways Code), for services to the District as set forth in the engineer's report "Engineer's Report" for the District.
2. The Association shall perform all duties and services specifically set forth herein as reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standards outlined in this Agreement.

B. SPECIFIC REQUIREMENTS

1. The Association at a minimum, shall provide the following maintenance standards within the boundaries of the District as described for each Zone in the Engineer's Report and to the extent that such standards are consistent with the budget afforded for such maintenance services:
 - (a) Litter Control (Three (3) days per week: Monday, Wednesday and Friday)
All litter will be removed 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 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. 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)
All graffiti shall be removed from the public right-of-way within twenty-four (24) hours. All graffiti observed on private property shall be reported for repair within twenty-four (24) hours to the Association, the City, Neighborhood Services, Planning and Development Business Center, or Neighborhood Code Compliance Department / Graffiti Control Program (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 (including damaged meter boxes and street vaults), shall be barricaded immediately and then, immediately following barricading, reported for repair to the City's General Services Department: Street Division. 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 Association 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 Association, 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, Transportation Department / Electrical Section, General Information and Service Requests, Street Light and Traffic Signal Maintenance (527-8056).

2. The Association shall conduct on-site inspections of all work done in the District and shall submit a report to the City indicating that such on-site inspections have been completed.
3. City staff shall conduct four (4) District inspections per year to evaluate compliance with the above referenced maintenance standards. A City inspection report shall be supplied to the Association requiring less than thirty (30) calendar days to correct any deficient standard reported. The inspections will be completed by City staff every 3 months.
4. The Association shall be responsible for responding, in writing, to the City regarding District maintenance complaints received by the City.
5. The Association shall provide at least one (1) noticed meeting with the property owners within the District annually and attempt to meet on a regular basis with the relevant planning group or property owners within the District. The regular 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 the Association regarding the improvements and regular maintenance as described in the Engineer’s Report for the District. For the regular meeting, the Association 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 community newspapers, if available.
6. The Association shall submit to the City no later than March 1 of each year a District approved, line-item budget for the upcoming Fiscal Year. This proposed

budget for services in the District will be included in the Newport Avenue Maintenance Assessment District Engineer's Report each year.

7. The Association shall maintain a separate set of books and records for costs associated with the Association's responsibilities under this Agreement for annual audit at the expense of the District. All records shall be made available for inspection and photocopying by the City upon reasonable notice. The City's rights with respect to such records are further governed by the provisions of Article V of this Agreement. The Association shall maintain such books and records for a period of three (3) years following completion of this Agreement.

ARTICLE II - SERVICES PROVIDED BY THE CITY

A. BUDGET

1. The City shall carry out all actions reasonably necessary for processing the annual budget for maintenance of the District.
2. The City shall review the Association's proposed maintenance operations in processing the annual budget for the District.
3. The City may amend line items in the annual budget upon a written request from the Association, as long as the amendments would not increase the total amount authorized for reimbursement to the Association.

B. SERVICES

1. The City shall conduct at least four (4) on-site inspections of the District during the period of this Agreement. In the event the City determines from such inspections that the District is not being properly administered by the Association, a report of such findings will be presented first to the Association, and, if not satisfactorily corrected within thirty (30) calendar days will then be presented to the City Council.
2. The City shall reserve 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 shall coordinate the collection of assessments with the County of San Diego and provide administrative services, general assistance and information to the Association.

ARTICLE III - COMPENSATION AND REIMBURSEMENT**A. INVOICES**

1. The Association shall submit monthly reimbursement requests to the City. The City shall reimburse the Association from District funds within thirty (30) working 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 approved District budget.
2. 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.

B. COMPENSATION

1. The Association shall be compensated for its services pursuant to this Agreement solely by the terms of this Section 3 (B). The Association shall be authorized to add to the reimbursement requests made under this Article III an additional fifteen percent (15%) of the total amount actually expended by the Association for the wages, salaries and benefits of employees only to the extent such salaries compensate for activities directly undertaken for the administration of the District, as "Administrative Overhead." The Association shall not be authorized to include charges for Administrative Overhead in connection with any of the following expenses: (1) monies expended for the purchase of goods or supplies; (2) sums paid to third party contractors for the preparation of the assessment Engineer's Report; (3) general business expenses such as office rent, office equipment, accounting and auditing expenses, insurance premiums, copying, printing, or postage fees. The Association shall not be authorized to include charges for Administrative Overhead on any amounts paid by the Association that contain any administrative charges by the billing entity. If the Association enters into any contracts with third parties for the performance of any of Association's duties under this Agreement and any such contract includes an administrative charge, the Association shall not be entitled to receive Administrative Overhead reimbursements for their own administration activities related to the work performed by third party contractors.
2. Administrative overhead reimbursement to the Association shall be limited to the lesser of (1) \$8,565 (or \$713.75 per month) over the life of this Agreement, or (2) 15 percent (15%) of the estimated assessment revenues in the District, which ever amount is smaller.
3. The City shall be reimbursed the greater of \$3,500 or four percent (4%) of annual assessments 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.

C. ADVANCES

1. Upon a written request from the Association, the City may make a cash advance of two months of working capital to the Association based on the District's monthly cash flow budget requirements related to the approved 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 the Association.

D. SUSPENSION OF PAYMENT.

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

ARTICLE IV - EFFECTIVE DATE AND TERM

This Agreement shall be effective from July 1, 2008 through June 30, 2009, and continue until completion of the scope of services, or upon written notice of cancellation, but in no event shall it exceed one (1) year. This Agreement may be renewed each year at the City's sole option.

ARTICLE V - DOCUMENTS, RECORDS AND REPORTS

A. OWNERSHIP OF DOCUMENTS

1. Once the Association 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. Article V, Section 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 other provisions of this Agreement.
4. Notwithstanding the foregoing, the Association shall have the right, at its sole cost, to make 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, the Association and any or all subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all data and records relating to all matters covered by this Agreement. The Association 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. The Association and subcontractors shall maintain such data and records for a period of three (3) years following receipt of the final payment of this Agreement. With respect to receipts, canceled checks, and other evidence of payments for which the Association is reimbursed by the City pursuant to this Agreement, the Association 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 other records covered by this Article V, Section B, if the Association does not make them available within the City of San Diego, then the Association shall pay all City's travel related costs to audit records associated with this Agreement where records are maintained.

C. FINANCIAL REPORTS

The Association shall provide an audited financial statement of the District within ninety (90) days after the end of its fiscal year. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles 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's final budget and show a comparison to the budget amounts, and a Statement of Compliance with the terms of this Agreement signed by the Association. 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 the Association fails to perform or adequately perform any obligation required by this Agreement, the Association's failure shall constitute a default. The City's Mayor or designee shall promptly give the Association written notice of the occurrence of the default, and shall allow the Association thirty (30) 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, the Association shall cure the default within twenty-four (24) hours of receipt of notice of the default and application of this Article IV, Section A of the Agreement. If the Association fails to actually 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 the Association at any time provided:
 - (a) a public hearing is held on the City's intention to terminate this Agreement with the Association;
 - (b) the Association is provided thirty (30) 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 (15) 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 the Association.
2. Upon termination of this Agreement, the City shall resume administration of Contracts for Goods and Contracts for Services for the District as defined in San Diego Municipal Code section 65.0202. The Association shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than thirty (30) calendar days after receipt of written notice of termination. Until the actual transfer of these assets is complete, the Association 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. The Association 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 the Association 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 the Association, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Association, and any person claiming any rights by or through the Association 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 the Association.

E. ASSOCIATION'S RIGHT TO TERMINATE

If the Association wishes to terminate this agreement, a written notice of termination must be issued within ninety calendar days (90). The Association shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than ninety (90) calendar days of issuance of written notice of termination. Until the actual transfer of these assets is complete, the Association 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. The Association may be entitled to permitted costs during such period as set forth in Article III.

ARTICLE VII - INDEPENDENT CONTRACTOR AND DISTRICT MANAGEMENT

A. DELEGATION OF DUTIES

The Association is an independent contractor representing the owners of properties in the District. The Association will oversee the administration of the District activity through the engagement of one or more contractors to provide routine maintenance services to include trash collection and disposal, graffiti removal, repair, landscaping and lighting improvements. Accordingly, the Association duties specified in this Agreement may not be delegated by the Association without the prior written consent of the City.

B. PRINCIPAL

1. The Association agrees that one of its designated officers shall be the primary contact for the purposes of this Agreement. Association shall coordinate the

Association's activities for the engagement and shall participate in all phases of the engagement. In order to simplify invoice processing, it is agreed by the Association that the designated officer will act as billing agent for work provided by the Association.

2. The Association'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 Association to inform the City on a regular basis of any changes in the Officers of the Association and of the identity of its subcontractors and their areas of responsibility.

ARTICLE VIII - COVENANTS AND CONDITIONS

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

ARTICLE IX - COMPLIANCE WITH CONTROLLING LAW

The Association 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, the Association shall comply immediately with any and all directives issued by the City or its authorized representatives under authority of any laws, rules, regulations, ordinances, or regulations. 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 and the manner of performance, the interpretation of instructions to the Association, the acceptable completion of this Agreement, and the amount of compensation due. In the event the Association believes that any requirement of the City interferes with or affects the independence of the Association, the Association shall confer with the City in order to resolve any possible conflict. In the event the Association and the City cannot agree as to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the Association in this Agreement, the City or the Association shall give to the other written notice thereof. No later than ten (10) calendar days thereafter, the Association and the City shall each prepare a written report that supports its position and file the same with the City and 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 the Association. This is not intended to be in any arbitration dispute between the parties of this Agreement.

ARTICLE XI - INFORMAL DISPUTE RESOLUTION

If the Association 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 principals. Within five (5) 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 (5) days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

ARTICLE XII - INDEMNIFICATION

The Association 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 the Association'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 the Association, 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 Association's performance of its obligations and/or duties under this Agreement, Association 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 13(C); 13(D); and 13(E), below;
 - (c) obtain, and provide to the City, insurance certificates evidencing all insurance coverage required in Sections 13(C); 13(D); and 13(E), below; and
 - (d) confirm that all insurance policies and insurance certificates contain the specific provisions required by Sections 13(C); 13(D); and 13(E), below.

2. Association shall not allow any subcontractor to commence work on a subcontract in connection with this Agreement, unless and until all insurance required of the subcontractor, as described in Sections 13(C), 13(D), and 13(E), below, has been obtained.

B. INSURANCE COMPANIES. All insurance coverage required in Sections 13(C), 13(D), and 13(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, Association 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 \$1,000,000 per occurrence, subject to an annual aggregate of \$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 cancelled 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 vs. insured claims, or for contractual liability.*

D. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.

1. At all times during the term of this Agreement, Association shall maintain in full force and effect Commercial Automobile Liability Insurance for all of Association's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this

form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence.

2. The policy shall expressly provide that the policy cannot be cancelled 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, Association shall maintain in full force and effect Workers' Compensation Insurance for all of Association'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 cancelled 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 13(C), 13(D), and 13(E) above shall be in full force and effect for the entire term of this Agreement.

G. CITY'S RIGHT TO REQUEST AND REVIEW ASSOCIATION'S INSURANCE POLICIES. The City reserves its right to request, and Association shall immediately submit to the City upon the City's request, copies of any policy required in Sections 13(C), 13(D), and 13(E) above, and its right to review, at any time, Association'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 Association shall amend this Agreement to adjust such insurance coverage, limits, deductibles, and/or self-insured retentions to a level acceptable to the City, and Association 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 Association, and shall be disclosed on the insurance certificates and acceptable to the City.

- I. **ASSOCIATION'S LIABILITY NOT LIMITED TO INSURANCE COVERAGE.** Association's liability, including, but not limited to, Association'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.** Association shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of this Agreement.
- K. **ADDITIONAL INSURANCE.** Association 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, Association 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.** Association's maintenance of the insurance coverage required in Sections 13(C), 13(D), and 13(E) above is a material provision of this Agreement. Any failure by Association 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. The Association 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, the Association 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, the Association shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Association's relevant financial interests.
- C. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Association shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Association is subject to a conflict of interest code. The Association 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 the Association was subject to a conflict of interest code.

- D. If the City requires the Association to file a Statement of Economic Interests as a result of the Professional Services performed, the Consultant 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.
- E. The Association 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 the Association violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Association 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. and sections 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. The Association agrees to abide with sections 87100 et. seq. of the California Government Code during the term of the Agreement. The City may determine that the Association 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, the Association shall submit the necessary documentation.
- F. The Association'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. The Association shall not recommend or specify any product, supplier, or contractor with whom the Association has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- G. If the Association violates any conflict of interest law, or any of the provisions of Article XIV of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit C. Further, any such violation shall subject the Association 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 - NOTICES

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. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to the City shall be addressed to City of San Diego, City Planning and Community Investment, Economic, Economic Development Division, 1200 Third Avenue, Suite 1400, MS-56D San Diego, California 92101. Notice to the Association shall be addressed to Ocean Beach Main Street Association of San Diego, 1868 Bacon St. #A, San Diego, CA 92107. 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 ASSOCIATION

The Association 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

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

B. NON-DISCRIMINATION ORDINANCE

The Association 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. The Association shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. The Association 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 the Association and any subcontractors, vendors and suppliers.

C. COMPLIANCE INVESTIGATIONS

Upon the City's request, the Association 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 the Association 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 Association for each subcontract or supply contract. The Association 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.) The Association 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 the Association up to and including contract termination, debarment, and other sanctions for violation of the provisions of the NONDISCRIMINATION IN CONTRACTING ORDINANCE. The Association further understands and agrees that the procedures, remedies and sanctions provided for in the NONDISCRIMINATION ORDINANCE apply only to violations of said NONDISCRIMINATION ORDINANCE.

ARTICLE XIX - STORM WATER POLLUTION PREVENTION

The Corporation and each of its Subcontractors shall comply with the Storm Water Management And Discharge Control ordinance, San Diego Municipal Code section 43.0301, which is attached hereto as Exhibit B and incorporated herein by this reference, in performing or delivering services in the District regardless of location.

ARTICLE XX - DRUG-FREE WORKPLACE

The Association agrees to comply with the City's Drug Free Workplace requirements. Every person or organization awarded a contract by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace. Any subcontract entered into by the Association pursuant to this Agreement shall contain this provision.

ARTICLE XXI - AMERICANS WITH DISABILITIES ACT

Every person or organization awarded a contract, lease, or grant by the City of San Diego acknowledges and agrees that it is aware of and will comply with Council Policy 100-04, adopted by Resolution No. 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 - EMPLOYMENT OF CITY STAFF

This Agreement may be unilaterally and immediately terminated by the City if the Association an individual, who, within twelve (12) 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 the Association for this project.

ARTICLE XXIII - 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. The Association 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 the Association.

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 its City's Mayor or designee and by the Association pursuant to Resolution No. _____.

Dated the _____ day of _____, 2008.

THE CITY OF SAN DIEGO

By: _____
Mayor or Designee
City of San Diego

Date: _____

OCEAN BEACH MAINSTREET ASSOCIATION

By: Mike Akey
Mike Akey, President

Date: 6-3-08

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2008.

MICHAEL J. AGUIRRE, City Attorney

By: _____
Kimberly Kaelin
Deputy City Attorney

000923

LIST OF EXHIBITS

- A. Equal Opportunity Contracting Program [EOCP] Consultant Requirements
- B. Storm Water Prevention Program
- C. Conflict of Interest and Procurement Policy for Nonprofit Corporations Contracting with the City of San Diego

EXHIBIT A

**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 Subconsultants
- 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 subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.
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 subconsultants 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 subconsultants, consultant Association's and other business Association's;
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 Association's 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 Subconsultants

1. Proposer shall submit a *Subconsultants List* [see Attachment 4] indicating Scope of Services, percentage of contract, dollar amount of contract, certification status, and where certified.
2. Subconsultants and vendors must be named on the *Subconsultants 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 subconsultant commitment letters on subconsultant letterhead, no more than one page each, from all proposed subconsultants to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

F. Subconsultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary subconsultant 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% subconsultant 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 subconsultant 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 subconsultants.

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ATTACHMENTS:

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

§ 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 Association's 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's Mayor.

(d) Emergency contracts, if a written partial or full waiver is granted by the City's Mayor 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's Mayor 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's Mayor 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's Mayor 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's Mayor may recommend termination of the contract and debarment to the City Council.

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)



THE CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM
1868 SECOND AVENUE - SUITE 500 - SAN DIEGO, CA 92101
(619) 512-4464 • FAX: 533-4474

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WORK FORCE REPORT

The objective of the Equal Employment Opportunity Program is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and 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, or terms, pay, or other forms of compensation, and selection for training, including Apprenticeship.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: Ocean Beach Merchants Association, Inc.

AKA/DBA: Ocean Beach Merchants Association

Address (Corporate Headquarters - where applicable): 1868 Bacon Street Suite A,

City San Diego County US State CA Zip 92107

Telephone Number: () 224-4976 FAX Number: (61) 224-4976

Name of Company CEO: Michael W. Akoy, President

Address(es), phone and fax number of all company facilities located in San Diego County (if different from above):

City _____ County _____ State _____ Zip _____

Telephone Number: _____ FAX Number: () _____

Type of Business: _____ Type of License: _____

The Company has appointed: Michael W. Akoy

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 1868 Bacon Street San Diego, CA 92107

Telephone Number: (619) 224-4976 FAX Number: 619-224-4976

for firm's: San Diego Work Force and/or Managing Office Work Force

I, the undersigned representative of The Ocean Beach Merchant's Association

(Organization Name)

San Diego California

(City)

(State)

hereby certify that information provided herein is true and correct. This document was executed on this day of June 3, 2003.

[Signature]
(Authorized Signature)

Michael W. Akoy
(Print Authorized Signature Name)

(Revised 12/00)

00-933

WORK FORCE REPORT - PART 2

NAME OF COMPANY: Ocean Beach Merchants Association, Inc.

DATE: June 3, 2008

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, Cuban, 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												1	1		
Professional Specialty															
Engineers-Architects															
Technicians and Related Support															
Sales															
Administrative Support-Clerical													2		
Services															
Precision Production, Craft and Repair															
Machine Operators, Assemblers, Inspectors															
Transportation and Material Moving															
Handlers, Equipment Cleaners, Maintenance, Non-construction Laborers												2			

*Construction labor and other field work should not be included on this page

TOTAL EACH COLUMN	0	0	0	0	0	0	0	0	0	0	0	3	3	0	0
-------------------	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

GRAND TOTAL ALL EMPLOYEES: 6

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED																
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATION ONLY

BOARD OF DIRECTORS												7	7		
VOLUNTEERS															
ARTISTS															

ATTACHMENT (5)

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 subconsulting 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 subconsultants on this project? If so, which specific scopes of work were targeted for subconsulting?

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 subconsulting 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 subconsultants? 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

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

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 Subconsultants 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 _____

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ATTACHMENT a

CONSULTANT EVALUATION FORM

§43.0301 Purpose and Intent

The purposes of this Division are to further ensure the health, safety and general welfare of the citizens of the City of San Diego by controlling Non-Storm Water Discharges to the Storm Water Conveyance System; by eliminating discharges to the Storm Water Conveyance System from spills, dumping, or disposal of materials other than Storm Water; and by reducing Pollutants in urban Storm Water discharges to the maximum extent practicable. The intent of this Division is to protect and enhance the water quality of our watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Water Pollution Control Act [Clean Water Act, 33 U.S.C. section 1251 et seq.] and National Pollutant Discharge Elimination System [NPDES] Permit No. CA0108758, as amended.

**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. They should perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interests of persons who have supported them. 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.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
2. All of the following conditions are met:
 - (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.
 - (b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.
 - (c) Any membership owned by the interested party abstains from voting on the matter.

- (d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.
 - (e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.
 - (f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.
3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving Transient Occupancy Tax (TOT) Funds

In the case of contracts or transactions involving TOT 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 contract administrator.

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, their business affiliations, and a signed acknowledgment form indicating that they have received a copy of the Conflict of Interest Policy and the they have read and understand the Policy. In the event that the board membership changes, the corporation shall provide the City with an updated list and a signed acknowledgment, within 30 days of the change.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

- 1. Expenditures less than \$5000 from a single contractor in a 12 month period:
 - ▶ No competitive procurement process is required.

2. Expenditures of between \$5000 and \$25,000 from a single contractor in a 12 month period:
 - ▶ Obtain three written price proposals or demonstrate why three bids could not be obtained.
 - ▶ Present price proposal information to full board for approval of contract or transaction.
 - ▶ Record the action taken in the meeting minutes, and keep the written price proposals on file.

3. Expenditures of more than \$25,000 for goods and/or services from a single contractor in a 12 month period:
 - ▶ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
 - ▶ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
 - ▶ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
 - ▶ Record action taken by the board in meeting minutes and keep the proposals received on file.
 - ▶ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's agreement with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. A agreement, 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. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.