

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Blvd., 11th Floor
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 CONSULTANT AGREEMENT

2 **29539**

3 THIS AGREEMENT is made and entered, in duplicate, as of January 1,
4 2006, for reference purposes only, pursuant to a minute order adopted by the City
5 Council of the City of Long Beach at its meeting held on September 20, 2005, by and
6 between BONTERRA CONSULTING, a California corporation, with a place of business
7 at 151 Kalmus Drive, Costa Mesa, CA 92626 ("Consultant"), and the CITY OF LONG
8 BEACH, a municipal corporation ("City").

9 WHEREAS, the City requires services requiring unique skills to be
10 performed in connection with environmental review on an "as-needed" basis ("Project");
11 and

12 WHEREAS, City has selected Consultant in accordance with City's
13 administrative procedures and City has ascertained that Consultant and its employees
14 are qualified, licensed, if so required, and experienced in performing such as-needed
15 specialized services; and

16 WHEREAS, City desires to have Consultant perform said as-needed
17 services, and Consultant is willing and able to do so on the terms herein;

18 NOW, THEREFORE, in consideration of the mutual terms and conditions
19 in this Agreement, the parties agree as follows:

20 1. SCOPE OF WORK OR SERVICES.

21 A. Consultant shall furnish services more particularly set forth in Exhibit
22 "A", attached hereto and incorporated herein by this reference, in accordance with the
23 standards of the profession, and City shall pay for said services in the manner
24 described below, at the rates shown on Exhibit "A", not to exceed \$750,000.00. By
25 entering into this agreement, the City does not guarantee or promise that the City will
26 engage the services of Consultant for a specific project or projects. The City will
27 request the services of Consultant only as and if the City needs and requires those
28 services.

1 B. Consultant may select the time and place of performance provided,
2 however, that access to City documents, records, and the like, if needed by Consultant,
3 shall be available only during City's normal business hours and provided that
4 milestones for performance, if any, are met.

5 C. Consultant has requested to receive regular payments. City shall pay
6 Consultant in due course of payments following receipt from Consultant and approval
7 by City of invoices showing the services or task performed, the time expended (if billing
8 is hourly), and the name of the Project. Consultant shall certify on the invoices that
9 Consultant has performed the services in full conformance with this Agreement and is
10 entitled to receive payment. Each invoice shall be accompanied by a progress report
11 indicating the progress to date of services performed and covered by said invoice,
12 including a brief statement of any Project problems and potential causes of delay in
13 performance, and listing those services that are projected for performance by
14 Consultant during the next invoice cycle. Where billing is done and payment is made
15 on an hourly basis, the parties acknowledge that such arrangement is either customary
16 practice for Consultant's profession, industry, or business, or is necessary to satisfy
17 audit and legal requirements which may arise due to the fact that City is a municipality.

18 D. Consultant represents that Consultant has obtained all necessary
19 information on conditions and circumstances that may affect performance hereunder
20 and has conducted site visits, if necessary.

21 2. TERM AND TERMINATION.

22 A. The term of this Agreement shall commence at midnight on January 1,
23 2006, and shall terminate at 11:59 p.m. on December 31, 2008, unless sooner
24 terminated as provided in this Agreement, or unless the services to be performed
25 hereunder or the Project is completed sooner.

26 B. Either party shall have the right to terminate this Agreement for any
27 reason or no reason at any time by giving fifteen (15) calendar days' prior notice to the
28 other party. In the event of termination under this Section, City shall pay Consultant for

1 services satisfactorily performed and costs incurred up to the effective date of
2 termination for which Consultant has not been previously paid. The procedures for
3 payment in Section 1.C with regard to invoices shall apply. On the effective date of
4 termination, Consultant shall deliver to City all Data developed or accumulated in the
5 performance of this Agreement, whether in draft or final form, or in process. And,
6 Consultant acknowledges and agrees that City's obligation to make final payment is
7 conditioned on Consultant's delivery of the Data to the City.

8 **3. COORDINATION AND ORGANIZATION.**

9 A. Consultant shall coordinate performance hereunder with City's
10 representative, **Angela Reynolds**. Consultant shall advise and inform City's
11 representative of the work in progress on the Project in sufficient detail so as to assist
12 City's representative in making presentations and in holding meetings for the exchange
13 of information. City shall furnish to Consultant information or materials, if any,
14 described in Exhibit "B" attached hereto and incorporated herein by this reference, and
15 shall perform any other tasks described therein.

16 B. The parties acknowledge that a substantial inducement to City for
17 entering this Agreement was and is the reputation and skill of Consultant's key
18 employee **Kathleen Brady**. City shall have the right to approve any person proposed
19 by Consultant to replace that key employee.

20 **4. INDEPENDENT CONTRACTOR.** In performing services hereunder,
21 Consultant is and shall act as an independent contractor and not an employee,
22 representative, or agent of City. Consultant shall have control of Consultant's work and
23 the manner in which it is performed. Consultant shall be free to contract for similar
24 services to be performed for others during this Agreement provided, however, that
25 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.
26 Consultant acknowledges and agrees that a) City will not withhold taxes of any kind
27 from Consultant's compensation, b) City will not secure workers' compensation or pay
28 unemployment insurance to, for or on Consultant's behalf, and c) City will not provide

1 and Consultant is not entitled to any of the usual and customary rights, benefits or
2 privileges of City employees. Consultant expressly warrants that neither Consultant nor
3 any of Consultant's employees or agents shall represent themselves to be employees
4 or agents of City.

5 5. INSURANCE. As a condition precedent to the effectiveness of this
6 Agreement, Consultant shall procure and maintain at Consultant's expense for the
7 duration of this Agreement from insurance companies that are admitted to write
8 insurance in California or from authorized non-admitted insurance companies that have
9 ratings of or equivalent to A:VIII by A.M. Best Company the following insurance:

10 (a) Commercial general liability insurance (equivalent in scope to
11 ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than
12 One Million Dollars (\$1,000,000) per each occurrence and Two Million
13 Dollars (\$2,000,000) general aggregate. Such coverage shall include but
14 not be limited to broad form contractual liability, cross liability,
15 independent contractors liability, and products and completed operations
16 liability. The City, its officials, employees and agents shall be named as
17 additional insureds by endorsement (on City's endorsement form or on an
18 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20
19 26 11 85), and this insurance shall contain no special limitations on the
20 scope of protection given to the City, its officials, employees and agents.

21 (b) Workers' Compensation insurance as required by the Labor
22 Code of the State of California and employer's liability insurance in an
23 amount not less than One Million Dollars (\$1,000,000).

24 (c) Professional liability or errors and omissions insurance in an
25 amount not less than One Million Dollars (\$1,000,000) per claim.

26 (d) Commercial automobile liability insurance (equivalent in scope
27 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an
28 amount not less than Five Hundred Thousand Dollars (\$500,000)

1 combined single limit per accident.

2 Any self-insurance program, self-insured retention, or deductible must be
3 separately approved in writing by City's Risk Manager or designee and shall protect
4 City, its officials, employees and agents in the same manner and to the same extent as
5 they would have been protected had the policy or policies not contained retention or
6 deductible provisions. Each insurance policy shall be endorsed to state that coverage
7 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior
8 written notice to City, and shall be primary and not contributing to any other insurance
9 or self-insurance maintained by City. Consultant shall notify the City in writing within
10 five (5) days after any insurance required herein has been voided by the insurer or
11 cancelled by the insured.

12 Consultant shall require that all contractors and subcontractors which
13 Consultant uses in the performance of services hereunder maintain insurance in
14 compliance with this Section unless otherwise agreed in writing by City's Risk Manager
15 or designee.

16 Prior to the start of performance, Consultant shall deliver to City
17 certificates of insurance and required endorsements for approval as to sufficiency and
18 form. The certificate and endorsements for each insurance policy shall contain the
19 original signature of a person authorized by that insurer to bind coverage on its behalf.
20 In addition, Consultant, shall, within thirty (30) days prior to expiration of the insurance
21 required herein, furnish to City certificates of insurance and endorsements evidencing
22 renewal of such insurance. City reserves the right to require complete certified copies
23 of all policies of Consultant and Consultant's contractors and subcontractors, at any
24 time. Consultant shall make available to City's Risk Manager or designee all books,
25 records and other information relating to the insurance coverage required herein, during
26 normal business hours.

27 Any modification or waiver of the insurance requirements herein shall only
28 be made with the approval of City's Risk Manager or designee. Not more frequently

1 than once a year, the City's Risk Manager or designee may require that Consultant,
2 Consultant's contractors and subcontractors change the amount, scope or types of
3 coverages required herein if, in his or her sole opinion, the amount, scope, or types of
4 coverages herein are not adequate.

5 The procuring or existence of insurance shall not be construed or deemed
6 as a limitation on liability relating to Consultant's performance or as full performance of
7 or compliance with the indemnification provisions of this Agreement.

8 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
9 contemplates the personal services of Consultant and Consultant's employees, and the
10 parties acknowledge that a substantial inducement to City for entering this Agreement
11 was and is the professional reputation and competence of Consultant and Consultant's
12 employees. Consultant shall not assign its rights or delegate its duties hereunder, or
13 any interest herein, or any portion hereof, without the prior approval of City, except that
14 Consultant may with the prior approval of the City Manager of City, assign any moneys
15 due or to become due the Consultant hereunder. Any attempted assignment or
16 delegation shall be void, and any assignee or delegate shall acquire no right or interest
17 by reason of such attempted assignment or delegation. Furthermore, Consultant shall
18 not subcontract any portion of the performance required hereunder without the prior
19 approval of the City Manager or designee, nor substitute an approved subcontractor
20 without said prior approval to the substitution. Nothing stated in this Section 6 shall
21 prevent Consultant from employing as many employees as Consultant deems
22 necessary for performance of this Agreement.

23 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
24 certifies and shall obtain similar certifications from Consultant's employees and
25 approved subcontractors that, at the time Consultant executes this Agreement and for
26 its duration, Consultant does not and will not perform services for any other client which
27 would create a conflict, whether monetary or otherwise, as between the interests of City
28 hereunder and the interests of such other client.

1 8. MATERIALS. Consultant shall furnish all labor and supervision,
2 supplies, materials, tools, machinery, equipment, appliances, transportation, and
3 services necessary to or used in the performance of Consultant's obligations
4 hereunder, except as stated in Exhibit "B".

5 9. OWNERSHIP OF DATA. All materials, information and data prepared,
6 developed, or assembled by Consultant or furnished to Consultant in connection with
7 this Agreement, including but not limited to documents, estimates, calculations, studies,
8 maps, graphs, charts, computer disks, computer source documentation, samples,
9 models, reports, summaries, drawings, designs, notes, plans, information, material, and
10 memorandum ("Data") shall be the exclusive property of City. Data shall be given to
11 City, and City shall have the unrestricted right to use and disclose the Data in any
12 manner and for any purpose without payment of further compensation to Consultant.
13 Copies of Data may be retained by Consultant but Consultant warrants that Data shall
14 not be made available to any person or entity for use without the prior approval of City.
15 Said warranty shall survive termination of this Agreement for five (5) years.

16 10. CONFIDENTIALITY. Consultant shall keep the Data confidential and
17 shall not disclose the Data or use the Data directly or indirectly other than in the course
18 of services provided hereunder during the term of this Agreement and for five (5) years
19 following expiration or termination of this Agreement. In addition, Consultant shall keep
20 confidential all information, whether written, oral, or visual, obtained by any means
21 whatsoever in the course of Consultant's performance hereunder for the same period of
22 time. Consultant shall not disclose any or all of the Data to any third party, nor use it for
23 Consultant's own benefit or the benefit of others except for the purpose of this
24 Agreement.

25 11. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for a
26 breach of confidentiality with respect to Data that: (a) Consultant demonstrates
27 Consultant knew prior to the time City disclosed it; or (b) Is or becomes publicly
28 available without breach of this Agreement by Consultant; or (c) A third party who has

1 a right to disclose does so to Consultant without restrictions on further disclosure; or (d)
2 Must be disclosed pursuant to subpoena or court order.

3 12. AMENDMENT. This Agreement, including all Exhibits, shall not be
4 amended, nor any provision or breach hereof waived, except in writing signed by the
5 parties which expressly refers to this Agreement.

6 13. LAW. This Agreement shall be governed by and construed pursuant
7 to the laws of the State of California (except those provisions of California law
8 pertaining to conflicts of laws). Consultant shall comply with all laws, ordinances, rules
9 and regulations of and obtain such permits, licenses, and certificates required by all
10 federal, state and local governmental authorities.

11 14. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
12 constitutes the entire understanding between the parties and supersedes all other
13 agreements, oral or written, with respect to the subject matter herein.

14 15. INDEMNITY. Consultant shall, with respect to services performed in
15 connection with this Agreement, indemnify and hold harmless the City, its Boards,
16 Commissions, and their officials, employees and agents (collectively in this Section,
17 "City") from and against any and all liability, claims, demands, damage, loss, causes of
18 action, proceedings, penalties, costs and expenses (including attorney's fees, court
19 costs, and expert and witness fees)(collectively "Claims" or individually "Claim"). Claims
20 include allegations and Claims for property damage, personal injury or death arising in
21 whole or in part from any negligent act or omission of Consultant, its officers,
22 employees, agents, sub-consultants, or anyone under Consultant's control (collectively
23 "Indemnitor"); Consultant's breach of this Agreement; misrepresentation; willful
24 misconduct; and Claims by any employee of Indemnitor relating in any way to worker's
25 compensation. Independent of the duty to indemnify and as a free-standing duty on the
26 part of Consultant, Consultant shall defend City and shall continue such defense until
27 the Claim is resolved, whether by settlement, judgment or otherwise. No finding or
28 judgment of negligence, fault, breach, or the like on the part of Indemnitor shall be

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1 required for the duty to defend to arise. Consultant shall notify the City of any claim
2 within ten (10) days. Likewise, City shall notify Consultant of any claim, shall tender the
3 defense of such claim to Consultant, and shall assist Consultant, as may be reasonably
4 requested, in such defense.

5 16. AMBIGUITY. In the event of any conflict or ambiguity between this
6 Agreement and any Exhibit, the provisions of this Agreement shall govern.

7 17. COSTS. If there is any legal proceeding between the parties to
8 enforce or interpret this Agreement or to protect or establish any rights or remedies
9 hereunder, the prevailing party shall be entitled to its costs and expenses, including
10 reasonable attorneys' fees and court costs (including appeals).

11 18. NONDISCRIMINATION. In connection with performance of this
12 Agreement and subject to federal and state laws, rules and regulations, Consultant
13 shall not discriminate in employment or in the performance of this Agreement on the
14 basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV
15 status, handicap, or disability.

16 It is the policy of City to encourage the participation of Disadvantaged,
17 Minority and Women-owned Business Enterprises in City's procurement process, and
18 Consultant agrees to use its best efforts to carry out this policy in the award of all
19 approved subcontracts to the fullest extent consistent with the efficient performance of
20 this Agreement. Consultant may rely on written representations by subcontractors
21 regarding their status. City's policy is attached as Exhibit "C hereto. Consultant shall
22 report to City in March and in September or, in the case of short-term agreements, prior
23 to invoicing for final payment, the names of all sub-consultants engaged by Consultant
24 for this Project and information on whether or not they are a Disadvantaged, Minority or
25 Women-Owned Business Enterprise, as defined in Section 8 of the Small Business Act
26 (15 U.S.C. Sec. 637).

27 19. NOTICES. Any notice or approval required hereunder by either party
28 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first

1 class, postage prepaid, addressed to Consultant at the address first stated herein, and
2 to the City at 333 West Ocean Boulevard, Long Beach, California 90802, Attention:
3 City Manager. Consultant shall also send a copy to the City Engineer at the same
4 address but, for purposes of satisfying the requirement for notice under this Section,
5 notice to the City Manager shall be sufficient. Notice of change of address shall be
6 given in the same manner as stated herein for other notices. Notice shall be deemed
7 given on the date deposited in the mail or on the date personal delivery is made,
8 whichever first occurs.

9 20. REDESIGN. If the Project involves construction and the scope of
10 work or services requires Consultant to prepare plans and specifications with an
11 estimate of the cost of construction, then Consultant may be required to modify the
12 plans and specifications, any construction documents relating thereto, and Consultant's
13 estimate, at no cost to City, when the lowest bid for construction received by City
14 exceeds by more than ten percent (10%) Consultant's estimate. Said modification shall
15 be submitted in a timely fashion to allow City to receive new bids within four (4) months
16 of the date on which the original plans and specifications were submitted by Consultant.

17 21. COPYRIGHTS AND PATENT RIGHTS. A. Consultant shall place
18 the following copyright protection on all Data: © City of Long Beach, California ____,
19 inserting the appropriate year.

20 B. City reserves the exclusive right to seek and obtain a patent or
21 copyright registration on any Data or other result arising from Consultant's performance
22 of this Agreement. By executing this Agreement, Consultant assigns any ownership
23 interest Consultant may have in the Data to the City.

24 C. Consultant warrants that the Data does not violate or infringe any
25 patent, copyright, trade secret or other proprietary right of any other party. Consultant
26 agrees to and shall protect, defend, indemnify and hold City, its officials and employees
27 harmless from any and all claims, demands, damages, loss, liability, causes of action,
28 costs or expenses (including reasonable attorneys' fees) whether or not reduced to

1 judgment, arising from any breach or alleged breach of this warranty.

2 22. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
3 that Consultant has not employed or retained any entity or person to solicit or obtain
4 this Agreement and that Consultant has not paid or agreed to pay any entity or person
5 any fee, commission, or other monies based on or from the award of this Agreement. If
6 Consultant breaches this warranty, City shall have the right to terminate this Agreement
7 immediately notwithstanding the provisions of Section 10 hereof or, in its discretion, to
8 deduct from payments due under this Agreement or otherwise recover the full amount
9 of such fee, commission, or other monies.

10 23. WAIVER. The acceptance of any services or the payment of any
11 money by City shall not operate as a waiver of any provision of this Agreement, or of
12 any right to damages or indemnity stated in this Agreement. The waiver of any breach
13 of this Agreement shall not constitute a waiver of any other or subsequent breach of
14 this Agreement.

15 24. CONTINUATION. Termination or expiration of this Agreement shall
16 not affect rights or liabilities of the parties which accrued prior to termination or
17 expiration of this Agreement, and shall not extinguish any warranties hereunder.

18 25. TAX REPORTING. As required by federal and state law, City is
19 obligated to and will report the payment of compensation to Consultant on Form 1099-
20 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
21 resulting from payments under this Agreement.

22 26. ADVERTISING. Consultant shall not use the name of City, its
23 officials or employees in any advertising or solicitation for business, nor as a reference,
24 without the prior approval of the City Manager or designee.

25 27. AUDIT. City shall have the right at all reasonable times during the
26 term of this Agreement and for a period of five (5) years after termination or expiration
27 of this Agreement to examine, audit, inspect, review, extract information from, and copy
28 all books, records, accounts, and other documents of Consultant relating to this

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1 Agreement.

2 28. THIRD PARTY BENEFICIARY. This Agreement is not intended or
3 designed to or entered for the purpose of creating any benefit or right for any person or
4 entity of any kind that is not a party to this Agreement.

5 IN WITNESS WHEREOF, the parties have caused this document to be
6 duly executed with all formalities required by law as of the date first stated herein.

7 BONTERRA CONSULTING, a California
8 corporation

9 March 8, 2006

10 By Joan P Kelly
Joan Kelly, Principal

11 March 8, 2006

12 By Kathleen Brady
Kathleen Brady, Principal

13 "Consultant"

14 CITY OF LONG BEACH, a municipal
15 corporation

16 3/14, 2006

17 By Maureen Stuever
City Manager

18 "City"

19
20
21 This Agreement is approved as to form on MARCH 14, 2006.

22 ROBERT E. SHANNON, City Attorney

23
24 By Maureen Stuever
Assistant City Attorney

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27 MJM:kjm 2/21/06 #06-00521

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- 1 Exhibit A SCOPE OF WORK OR SERVICES.
- 2 Exhibit B City shall furnish to Consultant information or materials (Section 3)
- 3 Exhibit C City's Policy re Disadvantaged, Minority and Women-owned Business Enterprises
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EXHIBIT “A”

Services to be rendered:

As-needed environmental services include, but are not limited to, the following services or documents:

- Background Data Reviews
- Notices of Exemption
- Initial Studies
- Negative Declarations and Mitigated Negative Declarations
- Environmental Impact Reports
- Mitigation Monitoring and Reporting Programs
- Environmental Assessments
- Findings of No Significant Impact
- Environmental Impact Statements and
- Other environmental documentation as required.

Prepare the above environmental documents in accordance with all applicable federal, state and local environmental laws, regulations, and guidelines, including but not limited to the following:

- California Environmental Quality Act (Statutes and Guidelines)
- National Environmental Policy Act
- Council on Environmental Quality Regulations
- Clean Water Act
- Clean Air Act
- National Historic Preservation Act
- Resource Conservation and Recovery Act
- Endangered Species Act and
- Archaeological and Historic Preservation Act.

Interface with City and Agency and represent the City and Agency in meetings with other agencies for the purpose of developing, managing and implementing all actions required for the preparation of the environmental documents in order to support certification of the environmental documents and approval of the associated redevelopment projects. Participate in community meetings, as required by City and Agency.

Specific tasks to be performed on behalf of the City and Agency include:

- Project Planning
- Community Meeting Support
- CEQA/NEPA Document Preparation
- Schedule Development
- Document Formatting Requirements
- Meetings.



4.0 SAMPLE FEE PROPOSAL



BONTERRA CONSULTING 2005 FEE SCHEDULE

<u>PROFESSIONAL CLASSIFICATION</u>	<u>HOURLY BILLING RATE</u>
Principal	\$140-200
Associate Principal	120-150
Biological/Environmental Manager	110-140
Senior Planner/Senior Project Manager	105-135
Senior Ecologist/Senior Restoration Ecologist	95-115
Project Manager	90-105
Cultural Resources Manager	95-110
Senior Biologist/Biological Project Manager	80-100
GIS Specialist	85-90
Planner/Assistant Project Manager	60-95
Field Monitor	65-95
Ecologist	65-85
Graphic Artist	65-85
Project Assistant	60-75
Administrative Assistant	65-70
 <u>Reimbursable Costs</u>	
Mileage	\$ 0.38 per mile
Copying/Reprographics	cost plus 10%
Delivery/Overnight Mail	cost plus 10%
Other out-of-pocket expenses	cost plus 10%
Subconsultants	cost plus 10%

EXHIBIT "B"

There is no Exhibit "C" to this Agreement

B
K. B. [Signature]

CITY'S POLICY FOR DISADVANTAGED, MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

The City of Long Beach is an equal opportunity employer and requires all Consultants to comply with policies and regulations concerning equal employment opportunity.

The City of Long Beach subscribes to the following goals concerning awards for equipment, material, supplies, and services.

Fifteen percent (15%) DBE/MBE Participation
Fifteen percent (15%) WBE Participation

Whenever possible, the CONSULTANT should seek to accomplish these goals.

MINORITY OUTREACH PROGRAM

To assist the Purchasing Bureau in maintaining records of the City's outreach to Minority-owned and/or Women-owned Business Enterprises (MBE/WBE), Consultants are requested to provide the following information. Answers are optional, and failure to answer will not disqualify the proposal.

Composition of Ownership (MORE THAN 51%)

Ethnic Factors of Ownership:

Black	()	American Indian	()
Hispanic	()	Other Non-white	()
Asian	()	Caucasian	(✓)

Non-ethnic Factors of Ownership:

Male	()	Female	(✓)
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Has firm previously been certified as a Minority-owned or Woman-owned Business by any other agency:

Yes	(✓)	No	()
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If yes, name of certifying agency:

_____ CITY OF LOS ANGELES _____

Certification valid through:

_____ 6/2006 _____

EXHIBIT "C"