



CITY *of* BRISBANE

Baylands Subcommittee Agenda

Monday, March 7th, 2022 at 11:00 AM • Virtual Meeting

This meeting is compliant with the Ralph M. Brown act as amended by California Assembly Bill No. 361 effective September 16, 2021 providing for a public health emergency exception to the standard teleconference rules required by the Brown Act. The purpose of this is to provide a safe environment for the public, staff, and the Subcommittee, while allowing for public participation. The public may address the Subcommittee using exclusively remote public comment options. The Subcommittee may take action on any item listed in the agenda.

TO ADDRESS THE SUBCOMMITTEE

The meeting will be an exclusively virtual meeting. The agenda materials may be viewed online at www.brisbaneca.org at least 72 hours prior to the meeting.

REMOTE PUBLIC COMMENTS

Meeting participants are encouraged to submit public comments in writing in advance of the meeting. Aside from commenting while in the Zoom meeting, the following email and text line will be monitored during the meeting, and public comments received will be noted for the record during Public Comment or during an Item.

Email: aibarra@brisbaneca.org

Text: 415-407-2675

Call-in number for oral communications if not using Computer Audio: 1-669-900-9128

After entering the meeting ID and pressing #, simply press # a second time to enter the meeting waiting room. No participant code is required. Please wait on the call until a Subcommittee or Staff Member announces that the phone line is open. Dial *9 to “raise hand” and dial *6 to mute/unmute.

JOINING MEETING

Public Meetings may be viewed live by joining the Zoom Meeting listed below.

Join Zoom: <https://us06web.zoom.us/j/87854062916?pwd=M1NUZ01GQj9VSDNTSk01TGZsd3pqZz09>

Meeting ID: 878 5406 2916

Passcode: 123456

SPECIAL ASSISTANCE

If you need special assistance to participate in this meeting, please contact Angel Ibarra at (415) 508-2109. Notification in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

SUBCOMMITTEE MEMBERS:

Councilmember Cunningham, Councilmember O'Connell

PRESENTATIONS AND DISCUSSION ITEMS

A. Discuss Proposed Grant Application-Baylands Remediation

PUBLIC COMMENT

ADJOURNMENT

A.

File Attachments for Item:

A. Discuss Proposed Grant Application-Baylands Remediation



MEMORANDUM

DATE: March 7, 2022

TO: City Council Baylands Subcommittee

FROM: Clay Holstine
City Manager

SUBJECT: Proposed Grant Application-Baylands Remediation

BACKGROUND/DISCUSSION

On February 17 the subcommittee considered a request that the City apply for a state grant for remediation activities at the Baylands. While the City would obtain the grant, the property owner (BDI) would perform the actual work funded by the grant.

While the subcommittee was conceptually supportive of the idea, the subcommittee raised concerns regarding potential city liability and financial responsibility. The subcommittee also questioned the scope of work proposed to be completed under the grant.

In response to the liability and financial concerns, City legal counsel has drafted the attached Reimbursement and Indemnification Agreement which would need to be executed between the develop and the City. In regard to the proposed scope of work, BDI has clarified the grant proposal is for a Site Specific Environmental Investigation Grant in the amount of 3 million dollars. The grant would fund further site remediation plans for OU-2, which are a necessary next step before cleanup activities may commence. No physical activity would be funded through the grant being requested.

If the City is going to proceed with the grant application, by the early April submittal deadline, this matter will be placed on the March 17 City Council agenda. The recommendation would be for the City Council to authorize the City Manager to file the grant application.

Attachment:

1. Draft Reimbursement and Indemnification Agreement

REIMBURSEMENT AND INDEMNIFICATION AGREEMENT

THIS REIMBURSEMENT AND INDEMNIFICATION AGREEMENT is made _____, 2022 between the City of Brisbane ("City") and _____ ("BDI") with respect to the following:

- A. The State of California has allocated funding for the clean up of contaminated sites through the Equitable Communities Revitalization Grant ("ECRG") Program.
- B. Public entities that do not own land that needs environmental clean up are eligible to apply for such grants.
- C. BDI owns land within the City of Brisbane, designated as Operational Unit 2 ("OU-2"), approximately 130 acres in size, that is being cleaned up and redeveloped under the jurisdiction of the California Department of Toxic Substance Control and the San Francisco Regional Water Quality Control Board ("Water Board").
- D. Concerning OU-2, the City is eligible to apply for an ECRG in order to obtain funding to assist in the review of the remedial documents that will implement the environmental design work established under the Feasibility Study/Remedial Action Plan that is being developed by the Water Board.
- E. It is in the interest of the City and the community for the City to apply for such ECRG to ensure the City's requirements concerning the clean up of OU-2 are fully incorporated in the Remedial Design Implementation Plan and other associated clean up documents.
- F. If the City is successful in obtaining such ECRG, the City may incur costs to administer the ECRG over and above the funding the ECRG provides for administration and City wants assurances that BDI will reimburse the City for any costs the City incurs in administering the ECRG over and above the funding the ECRG itself provides.
- G. The City also wants assurances that its submitting an application for the ECRG, its receipt of such ECRG, and its administering the ECRG do not in any way cause or contribute to the City's having any financial responsibility or liability concerning the environmental clean up of OU-2.
- H. BDI is willing to reimburse the City for its administrative costs and to provide assurances concerning the City's financial responsibilities or liability concerning the environmental clean up of OU-2.

NOW, THEREFORE, the parties agree as follows:

1. **Administrative Cost Reserve Account.** Within 10 business days of City's receipt of any ECRG concerning the environmental clean up of OU-2, BDI shall deposit with City the sum of Twenty Five Thousand Dollars (\$25,000), to be held by City as an Administrative Cost Reserve Account ("Reserve Account") and disbursed in accordance with the terms of this Agreement. City shall keep separate records of the Reserve Account showing all deposits made by BDI and all disbursements from the account made by City, and such records shall be available to BDI for inspection at any time during City's regular business hours. Beginning within 90 days of the initial deposit, the City shall send to BDI a statement of the Reserve Account's deposits and disbursements quarterly. Although separate accounting records of the Reserve Account shall be maintained, City shall not be required to segregate the Reserve Account into a separate fund and no interest shall be payable to BDI thereon.

2. **Use of the Reserve Account.** Reference is made to the terms and conditions of the ECRG that the State of California has provided to the City, a copy of which is attached hereto as Exhibit A. To the extent permissible under the ECRG, City shall use the ECRG to pay for any administrative costs the City incurs in administering the ECRG. To the extent, City incurs administrative costs to administer the ECRG in excess of what is provided in the ECRG, BDI shall reimburse the City for such costs out of the Reserve Account.

3. **Reinstatement of Reserve Account.** If at any time a disbursement from the Reserve Account would result in the balance being less than 50% of the Reserve Account, City shall provide written notice of such fact to BDI and BDI, within 15 days after receipt of such notice, shall deposit with the City such additional amount as may be necessary to restore the balance of the Reserve Account to an amount indicated by the City in the notice. If BDI should fail or refuse to deposit the additional funds, City shall be entitled to suspend all further review and work related to the ECRG.

4. **Termination of Reserve Account.** Upon completion of work related to the ECRG and the payment in full of all reimbursable amounts as provided in Section 2, City shall within 60 days return to BDI any balance remaining in the Reserve Account.

5. **Indemnification.** BDI shall indemnify, defend and hold harmless City, its officers, employees, and agents from any and all claims, demands, liabilities and judgments for, or by reason of, any damage, loss, personal injury, death, responsibility for the environmental clean up of OU-2, or any clean up costs of OU-2, caused by or arising out of BDI's use of the ECRG in its environmental clean up efforts concerning OU-2, or caused by or arising out of the City's administration of the ECRG.

6. **Notices.** Any notice or demand required or permitted to be given hereunder shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, to the address of the other party as follows:

To City: City of Brisbane
 Attn:
 50 Park Place
 Brisbane, CA 94005

To BDI:

7. **Limitation on Effect of Agreement.** City's execution of this Agreement shall not constitute the City's granting, or the City's commitment to grant, any form of land use entitlement, permit or approval, or any City agreement or commitment to take any action with respect to OU-2 or any other portion of the Baylands, or any other acts or activities relating to City's subsequent independent exercise of discretion. Any such subsequent action shall be considered by the City Council, in its sole and unfettered discretion, following the conduct of all legally required

procedures, including, without limitation, all environmental review processes as may be required by the California Environmental Quality Act.

8. Miscellaneous Provisions.

(a) **Costs of Suit.** In the event legal action between the parties shall become necessary in order to enforce or interpret this Agreement, or any provision contained herein, the prevailing party shall be entitled to recover all costs and expenses as may be incurred in connection therewith, including reasonable attorney's fees.

(b) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes and cancels any prior agreements or understandings, whether written or oral.

(c) **Choice of Law; Jurisdiction; Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Jurisdiction and venue of litigation arising from this Agreement shall be in the County of San Mateo, State of California.

(d) **Amendments.** This Agreement can only be modified by a written amendment hereto executed by both parties.

(e) **Counterparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF BRISBANE,
a municipal corporation

BDI

Coleen Mackin, Mayor

Attest:

Ingrid Padilla, City Clerk

Approved as to form:

Michael H. Roush
Legal Counse