



# CITY *of* BRISBANE

## Public Art Advisory Committee Agenda

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Monday, May 23<sup>rd</sup>, 2022 at 4:30PM • Virtual Meeting

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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 Committee, while allowing for public participation. The public may address the Committee using exclusively remote public comment options. The Committee may take action on any item listed in the agenda.

### TO ADDRESS THE COMMITTEE

The meeting will be an exclusively virtual meeting. The agenda materials may be viewed online at [www.brisbaneca.org](http://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](mailto: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 Committee 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.

<https://us06web.zoom.us/j/84368060205?pwd=K2sxdTdob0dGWjNSKzhWUnErdVhEZz09>

Meeting ID: 843 6806 0205

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.

## **COMMITTEE MEMBERS:**

Councilmember Cunningham, Councilmember Davis, Chair D. Davis, Vice-Chair Olivier-Salmon, Park & Recreation Commissioner Greenlee, Park & Recreation Commissioner Seawell, Committee Member Grossman

## **ROLL CALL**

## **APPROVAL OF AGENDA**

## **APPROVAL OF MINUTES**

- A. Approve Minutes from April 26<sup>th</sup>, 2022 Public Art Advisory Committee

## **PRESENTATIONS AND DISCUSSION ITEMS**

- B. Further Discuss RFP Process and Elements to Include in RFP for an Art Consultant to Assist the City with a Process to Select and Install Art Elements for the Community Park between Old County and San Francisco Avenue Across from the Village Shopping Center.
- C. Discuss the City's Public Art Master Plan  
*Reviewing City of San Diego's Public Art Master Plan*  
<https://mccmeetingspublic.blob.core.usgovcloudapi.net/brisbaneca-meet-7a54840338ca4948a5660af4e64272d8/ITEM-Attachment-001-95f18fdd97d7436881f2af20dab0b8c8.pdf>

## **PUBLIC COMMENT**

## **NEXT MEETING**

Tuesday, June 14<sup>th</sup> at 4:30pm

## **ADJOURNMENT**

A.

**File Attachments for Item:**

A. Approve Minutes from April 26th, 2022 Public Art Advisory Committee



# CITY *of* BRISBANE

## Public Art Advisory Committee Minutes

Tuesday, April 26<sup>th</sup>, 2022 at 4:30PM • Virtual Meeting

### **CALL TO ORDER - 4:33 p.m.**

### **ROLL CALL**

Committee Members Present: Councilmember Cunningham, Chair Danette Davis, Vice-Chair Camille Olivier-Salmon, Committee Member Beth Grossman, Councilmember Davis, Park & Recreation Commissioner Leesa Greenlee

Committee Members Absent: none

Staff Members Present: Assistant City Manager Schillinger, Admin. Management Analyst Ibarra

### **APPROVAL OF AGENDA**

Agenda was approved by Cunningham and seconded by M. Davis. 6 Ayes, 0 Nos

### **APPROVAL OF MINUTES**

#### **A. Approve Minutes from March 29<sup>th</sup>, 2022 Public Art Advisory Committee**

The minutes were approved by Salmon and seconded by Cunningham. 4 Ayes, 0 Nos, 2 Abstain (M. Davis, Greenlee).

### **PRESENTATION AND DISCUSSION ITEMS**

#### **B. Further Discuss RFP Process and Elements to Include in RFP for an Art Consultant to Assist the City with a Process to Select and Install Art Elements for the Community Park between Old County and San Francisco Avenue Across from the Village Shopping Center.**

Grossman wanted to reopen the discussion regarding the RFP. She suggested setting up the RFP with a series of phases that will provide more opportunities for the committee to review the process as it progresses other than what is already in the RFP.

After some discussion, the Committee decided to have staff include some additional phases under the scope of work and will do a final review on May 23<sup>rd</sup> meeting.

#### **C. Discuss the City's Public Art Master Plan**

The Committee reviewed the City of Pasadena's Art Master Plan and the City of Carlsbad's Art Master Plan. Schillinger reiterated that the goal is to create a Request for Proposal (RFP) for

the City's Master Plan, so the Committee should think about if there is information or an area in the other cities' master plans that are important, and we want to make that it is in our RFP. Also, they should think about if there is a general style of a Master Plan that they prefer.

The Committee really liked the City of Pasadena's Art Master Plan: The layout was very clear and easy to follow; the section on engaging the community and including environmental elements was very detailed; they had a dedicated section for the "arm of education institution"; broke out the different policies and neighborhoods; aligned the document with their City's General Plan; and the City's process and vision are concise and yet flexible.

The Committee felt that Carlsbad's Art Master Plan started well detailed, but then became tedious and heavy. There were too many graphs, and too much explaining which bogs down the reader.

The Committee asked staff to reach out to the Cities' staff that have Master Plans they like and request them to join one of our meetings to discuss their process.

Schillinger noted to the Committee that Pasadena's and Belmont's Master Plans were done by the same consultant. He will reach out to a few cities to invite them to a future meeting.

#### **PUBLIC COMMENT**

None

#### **NEXT MEETING DATES**

Monday, May 9<sup>th</sup> 4:30pm: Review the City of Salinas' and the City of Seattle's Master Plan.

Monday, May 23<sup>rd</sup> 4:30pm: Review the Park Consultant Master Plan and the City of San Diego's Master Plan.

#### **ADJOURNMENT**

5:35PM

**File Attachments for Item:**

B. Further Discuss RFP Process and Elements to Include in RFP for an Art Consultant to Assist the City with a Process to Select and Install Art Elements for the Community Park between Old County and San Francisco Avenue Across from the Village Shopping Center.

**Ibarra, Angel**

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**From:** Schillinger, Stuart  
**Sent:** Friday, May 20, 2022 9:28 AM  
**To:** Ibarra, Angel  
**Subject:** FW: when arts commissions mess up and don't think about the artist

**STUART SCHILLINGER | He/Him**

Assistant City Manager, City Manager's Office

Direct: (415) 508-2151 | Cell: (628) 219-2920 | Email: [schillinger@brisbaneca.org](mailto:schillinger@brisbaneca.org)

City Hall is now open: M Th: 9-4, W: 9-7,

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**From:** Beth Grossman <beth@bethgrossman.com>  
**Sent:** Thursday, May 5, 2022 11:51 AM  
**To:** Schillinger, Stuart <schillinger@ci.brisbane.ca.us>; Ibarra, Angel <aibarra@ci.brisbane.ca.us>  
**Subject:** Fwd: when arts commissions mess up and don't think about the artist

Hi Stuart and Angel,

As promised, here is the article from the LA Times about the public art debacle at the SoFi Stadium in LA. This sounds like a nightmare and hopefully we can learn from these kinds of SNAFUs. Can you please send it out to our committee for interest?

Thanks,  
 Beth

**Stadium plan strands Black artists**

LA Times 4/22/22

CAROLINA A. MIRANDA

When SoFi Stadium hosted the Super Bowl in February, the new venue may have looked spiffy but its public art program remained incomplete — largely at the expense of Black artists. Two major installations by a pair of prominent Black artists not only remained uninstalled, but at the time it was unknown whether the stadium was going to even begin the process of getting sites prepped and the pieces fabricated. This included a site-

specific land piece by prominent African American sculptor Maren Hassinger, as well as a pair of architectonic installations by Afro-Cuban artist Alexandre Arrechea.

It was not a good look for SoFi, which is located at the heart of historically Black Inglewood.

Now a letter sent to the city of Inglewood lays out one artist's frustrations with the stadium and the lack of clarity about the timeline and the process.

"Maren Hassinger feels that she has been used as a pawn in the developers' and the City's efforts to have this massive commercial complex gain acceptance from the neighborhood," went a missive written by Susan Inglett, a New York-based art dealer who represents Hassinger.

"The developers cannily selected a female artist of color born and raised in Los Angeles to create this space as an olive branch to the neighborhood," the letter continued. "The City of Inglewood approved their plans based on schematics researched, developed and executed by the artist over the course of many months. Now that the stadium is built, the developer appears to have abandoned the project and the artist."

Hassinger is a respected sculptor, born and raised in L.A., now based on the East Coast. Her work figures in the permanent collections of institutions such as the Art Institute of Chicago and New York's Museum of Modern Art.

Inglett's letter, which was sent to the city in early March, was made public as part of a routine meeting of the Inglewood Arts Commission on Wednesday evening — a meeting that raised more questions than it supplied answers. In addition to the commissioners, in attendance were Inglett, as well as Inglewood's director of parks and recreation, Sabrina Barnes, and Jason Witt, a senior director of community affairs for SoFi Stadium.

Witt could not account for the delays. He told the commissioners that "the intention is still to move forward with the project," but that "there are still some discussions to be had — internal — to make sure we align it."

No timeline was forthcoming. In his remarks, Witt intimated that the stadium was reconsidering the locations of some artworks. "Being able to see how businesses interact with our project, utilizing the lake, seeing how people — fans, essentially fans from football games — how they interact with the site," he says of the SoFi environs, "has kind of changed how we look at how those different locations are frequented and how they are interacted with."

Hassinger's proposal envisioned a sequence of land-based installations on the southeastern edge of Hollywood Park Lake that would include garden areas, places to sit and reflect, as well as an abstract sculptural installation. As part of the project, she worked closely with the stadium's



andscape architects to make sure their design could adequately incorporate her work. To relocate the work to another site would, essentially, send it back to the drawing board.

“Maren was engaged to design gardens around the lake in order to provide a place of respite for the community, as well as visitors to the stadium,” Inglett stated during the meeting. “She does site-specific work. She visited the site. She created something specifically for that site. And it feels disingenuous to say that you want to see how people use the space. ... She’s frustrated. We’re all frustrated — to say that this all has to go back through the hopper again, after several years, without an end in sight.”

Reached via email, Inglett declined further comment on the situation. A spokeswoman for SoFi says that the stadium has held up its end of the bargain. “We have worked with many artists over the last several years to bring our art program to life at Hollywood Park, and it will continue to grow,” reads a statement sent to The Times via email on Thursday afternoon. “All of our contractual obligations with Ms. Hassinger have been honored, which was for a conceptual design only.”

The statement says SoFi is indeed revisiting how works are placed on-site: “Coming out of the pandemic, we have been able to identify how our guests use the site. As a result, the art program continues to evolve as we take into consideration highly trafficked areas, as well as changes that result in the ordinary course of development.”

At Wednesday’s meeting, the members of the arts commission put pressure on SoFi’s representative to see the Hassinger installation through in a prompt fashion.

“We just want to express that we 100% support her position,” commissioner Aletha Metcalf said in reference to Hassinger during the meeting. “She’s been beyond patient and her contract should be given top priority.”

But the commission, ultimately, has little power. The city gave up its customary percent-for-art ordinance as part of its contract with the property’s developer, Hollywood Park. The contract states that the “Arts Commission does not have its traditional authority over the developers’ public art plans, public art works, art sites, art budgets, art content, art definition or developers’ expenditures.” In short: Years after the public art process was launched for this gleaming, \$5-billion stadium, it remains uncertain exactly how and when these art projects might get off the ground, much less be completed. Part of that is due to the city’s obsequious contract with the developer, which gives Hollywood Park 25 years — yes, 25 years — to get the work done.

That was a detail with which Hassinger reportedly was not pleased. “At 75 years of age,” wrote Inglett in her letter, “the quarter of a century timeline was cold comfort to Maren.” It’s cold comfort to artists who have spent years laboring over materials and proposals, and cleared their calendars to make installations happen, only to be left in a state of complete uncertainty.

Unmentioned in the commission meeting was Arrechea, who designed a pair of biomorphic works to be installed over the eastern end of the lake. The artist, a founding member of the Cuban art

B.

Collective Los Carpinteros, has work in major museum collections and has had major public art installations in cities including New York. In 2016, his “Katrina Chairs” — a series of bright towers set on plinths that resembled gargantuan chairs — served as an impromptu landmark at the Coachella music festival.

Reached for comment on the status of his piece for SoFi Stadium, Arrechea declined to go into details. He did say one thing, though: “All the news I get about the stadium is from the paper.”

## Request for Proposal

### Seeking Consultant to Assist the City of Brisbane Public Art Committee with the Selection and Installation of Public Art in the City's Community Park

The City of Brisbane's Public Art Commission is seeking a consultant or consultant team to support their work in the selection and installation of Public Art in the City's Community Park. The Public Art Commission is charged with improving the Community's quality of life through public art which stimulates creativity, imagination, and adds a unique human quality to the community environment and enriches public spaces.

**Location of Project:** The art installation will be located in the area between Old County Road and San Francisco Avenue on the south easterly portion in the City's Community Park. Currently, there are picnic tables and decorative fire hydrants located in this area. Attached is a google map image of the area.

**Project Description:** The Public Art Committee is seeking a Consultant or Consultant Team to assist in the Committee in creating a Request for Proposal which will result in an artist, artists, or artist teams which will create and install an art piece or art elements in the designated location. The chosen consultant or consultant team will also assist the Committee with the selection of the artist(s), and work with the artist throughout the installation process. The Committee wants a process that is open and seeks community feedback for selection of the art work/elements. It is anticipated the overall cost of the project to be \$200,000 including the both the artist and consultant. However, the final budget can be adjusted with City Council approval.

#### Desired Knowledge, Skills, and Abilities:

- Excellent writing and communication skills
- Ability to facilitate public meetings
- Working knowledge of the visual arts in general and public art specifically,
- Familiarity with issues and best practices around the selection of public art undertaken by other municipalities
- Knowledge and experience related to racial equity and social justice as it relates to public art
- Familiarity with installation of public art in outdoor spaces

#### Scope of Work

- Facilitate conversation with Public Art Commission to determine requirements for artist and art work at the Community Park including budget for art installation
  - As a part of this phase of the process assist the Committee in identifying the community values the art work should showcase
- Develop and Administer Request for Proposal or Interest Process
  - Request for Proposal will be recommended by the Public Art Committee to the City Council for approval

- Meet with Public Art Commission to assist with the selection of the artist based on the results of the Request for Proposal process
  - The Artist will be recommended by the Public Art Committee for approval by the City Council
- Work with the chosen artist to ensure the vision of the Public Art Commission is achieved in the final design of the art work
- Be the lead contact for the artist and the City during the installation of the art work

Work with the artist to ensure the City has the appropriate documentation for maintenance of the art work and include anticipated public outreach process as part of your proposal for each phase of the project.

#### **Submittal requirements**

- Consultant /Consultant Team information
  - Name
  - Address
  - Telephone Number
  - E-mail Address
- Cover Letter
- Resume
- Portfolio of previous projects consultant has overseen
- Cost Proposal

The City of Brisbane is an Equal Opportunity Employer and as such does not discriminate on the basis of race, color, sex, religion, ancestry, physical or mental disability, marital status, sexual orientation, or national origin.

## AGREEMENT FOR PROFESSIONAL SERVICES **[DRAFT]**

**THIS AGREEMENT** dated \_\_\_\_\_, 2022 is made by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and \_\_\_\_\_ ("Consultant").

### RECITALS

### AGREEMENT

1. **Scope of Services.** Subject to the direction and approval of City through its staff that City may provide from time to time, Consultant shall perform the services described in the scope of work outlined in the RFP and Consultant's proposal and referenced herein as exhibits #(TBD).

2. **Time of Performance.** The services of Consultant shall commence upon the execution of this Agreement and shall be satisfactorily completed within the agreed upon timeframe.

3. **Responsible Personnel.** The personnel acting on behalf of Consultant primarily responsible for performance of the services hereunder shall be as set forth within Consultant's proposal.

4. **Compensation.** As compensation for all services to be performed by Consultant under this Agreement, Consultant shall be paid the amounts set forth and incorporated herein as exhibit #(TBD). In no event shall Consultant's total compensation exceed the agreed upon sum without additional authorization from City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to City at the time of payment.

5. **Method of Payment.** Consultant shall submit billings to City describing in detail the work performed for which payment is requested, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. Billings shall be submitted monthly, or at such other time as agreed upon between City and Consultant. City shall pay Consultant no later than 30 days after approval of the invoice by City. Such payment shall not be unreasonably withheld.

6. **Maintenance and Inspection of Records.** Consultant shall maintain all ledgers, books of account, invoices, vouchers, canceled checks, timecards, and other records or documents relating to charges for services or expenditures charged to City, for a minimum of three (3) years from the date of final payment to Consultant under this Agreement and shall make the same available to City or its authorized representatives for inspection and audit, at any time during regular business hours, upon written request by City. The right of inspection shall include the right to make extracts and copies.

7. **Assignment and Subcontracts.** Consultant acknowledges that Consultant's special skill and expertise is a material consideration for City entering into this Agreement. Consultant shall not assign, subcontract or delegate to any other party the performance of any services to be rendered by Consultant or Subconsultants without the prior written approval of City. If City consents to any sub-consulting of work, Consultant shall be fully responsible to City for all acts or omissions of the subconsultant.

8. **Ownership of Documents.** Upon payment of fees and expenses due, all plans, studies, documents, and other writings prepared by and for the Consultant in the course of performing its services under this Agreement, except working notes and internal documents, shall become the property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents, and other writings to City upon written request.

9. **Independent Contractor.** Consultant is, and at all times shall remain, an independent contractor, and not an agent, officer or employee of City. As an independent contractor, neither Consultant nor any of Consultant's agents or employees shall be entitled to any salary, fringe benefits, worker's compensation, retirement contributions, sick leave, insurance, or other benefit or right connected with employment by City, or any compensation other than as provided in this Agreement. Consultant shall have no power or authority to bind City to any contract or otherwise to incur any obligation or liability for, or on behalf, or in the name of City.

10. **Licenses.** Consultant represents and warrants to City that Consultant has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature that are legally required of Consultant to practice its profession. Consultant shall, at its sole cost and expense, keep and maintain such licenses, permits, qualifications, insurance and approvals in full force and effect at all times during the term of this Agreement. Consultant shall procure and thereafter maintain a City of Brisbane business license during the term of this Agreement.

11. **Compliance with Laws.** Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations in connection with the performance of its services under this Agreement.

12. **Employment Eligibility.** At the request of City, Consultant shall furnish to City copies of Employment Eligibility Verifications (INS Form I-9) or other evidence satisfactory to City showing that any

or all persons providing services under this Agreement for on behalf of Consultant is eligible to be employed in the United States. In the event Consultant is unable or unwilling to provide the employment eligibility verification within ten (10) days after City's request, City may require the immediate removal from the project of such workers as specified by City, and upon any failure by Consultant to do so, City shall be entitled to terminate this Agreement.

13. **Indemnity.** Consultant shall indemnify, defend, and hold City, its officers, officials, agents, employees and volunteers, harmless from and against any and all claims, demands, causes of action, losses, damages, injuries, expenses and liabilities, direct or indirect, including reasonable attorney's fees, to the extent actually caused by negligence or willful misconduct in the performance by Consultant of its services under this Agreement or its failure to comply with any of the its obligations contained in this Agreement, and City shall not be liable for any negligent acts or omissions or willful misconduct of Consultant. Consultant shall not be liable for the negligent acts or omissions or willful misconduct of the City.

14. **Insurance.** Consultant, at its own expense, shall procure and maintain, for the duration of this Agreement, insurance policies, which satisfy the following requirements:

(a) Type of policies and coverage:

- (1) *General Liability Coverage.* Consultant shall maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage, providing coverage at least as broad as Insurance Services Office Commercial General Liability form CG 0001 (Ed. 11/88). If the form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
- (2) *Automobile Liability Coverage.* Consultant shall maintain automobile liability insurance in an amount not less than \$1,000,000 combined single limit for each occurrence, for bodily injury and property damage, providing coverage at least as broad as Insurance Services Office form CA 0001 (Ed. 12/90) Code 1 (any auto).
- (3) *Workers' Compensation and Employer's Liability Coverage.* Consultant shall maintain workers' compensation insurance as required by the State of California and employer's liability insurance in an amount not less than \$1,000,000 per occurrence, for any and all persons employed by Consultant in connection with the performance of services under this Agreement. In the alternative, Consultants may rely on a self-insurance program to provide this coverage so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is

provided, or Consultants, if a program of self-insurance is provided, shall waive all rights of subrogation against City for loss arising from work performed by Consultants for City.

- (4) *Professional Liability Coverage.* Consultant shall maintain professional errors and omissions liability insurance in an amount not less than \$1,000,000 per occurrence, covering negligent acts, errors or omissions which may be committed by Consultant in the performance of its services under this Agreement.
- (b) Endorsements: Each general liability and automobile liability insurance policy shall contain, or be endorsed to contain, the following provisions:
- (1) The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, or volunteers.
  - (2) For any claims related to the Project, Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents, or volunteers shall be excess of Consultants' insurance and shall not contribute with it.
  - (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its officers, officials, employees, agents, or volunteers.
  - (4) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - (5) Consultant's insurance coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.



- (c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. . At City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- (d) Acceptability of Insurers. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII, unless otherwise approved by City in writing.
- (e) Verification of coverage. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required by this Agreement. Certificates of such insurance shall be filed with City before commencement of work by Consultant. At the request of City, Consultant shall provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement.

15. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, addressed to the other party as follows:

To City

City of Brisbane

50 Park Lane

Brisbane, CA 94005

Attn.: City Manager

To Consultant

TBD

16. **Litigation Expenses and Attorneys' Fees.** If any party to this Agreement commences any legal action against the other party to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

17. **Termination of Agreement.** This Agreement may be terminated by any party, effective upon written notice, should the other party commit any material default in the performance of its obligations hereunder. This Agreement may also be terminated by either party, for any reason, upon fifteen (15) day's prior written notice to the other party. In the event this Agreement is terminated by City through no fault of Consultant, Consultant shall be compensated for all services performed to the date of termination.

18. **Equal Opportunity Employment.** Consultant warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal opportunity employment.

19. **Miscellaneous Provisions.**

- (a) Severability. Should any portion of this Agreement be declared void or unenforceable in a final decision by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be reasonably interpreted to implement the intention of the parties.
- (b) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and cancels all prior agreements or understandings, whether written or verbal.
- (c) Amendments. This Agreement may be modified or amended only by a written document duly executed by both City and Consultant.
- (d) Waiver. The waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same provision or any other provision of this Agreement.
- (e) Execution. Each party warrants that the individuals signing this Agreement on its behalf have the legal power and authority to do so and to bind the party to this Agreement.
- (f) Successors and Assigns. Subject to the restriction against assignment and subcontracting, this Agreement shall be inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

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

THE CITY OF BRISBANE

By: \_\_\_\_\_

Clayton L. Holstine, City Manager

ATTEST:

\_\_\_\_\_

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Consultant:

\_\_\_\_\_

Michael Roush

Legal Counsel