

## CITY OF BRISBANE

Department of Public Works - 50 Park Place  
Brisbane, California 94005-1310  
(415) 508-2130  
Fax (415) 467-5547

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### M E M O R A N D U M

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**To:** Honorable Mayor and City Council  
**From:** Director of Public Works/City Engineer  
**Subject:** Municipal Improvements on Margaret Avenue and Paul Avenue  
**Date:** July 18, 2011

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This memorandum forwards the staff report provided when this subject was first heard at the July 5, 2011 City Council meeting, and a July 12, 2011 memorandum from the City Attorney.

Due to the lack of a voting quorum on this matter at the July 5<sup>th</sup> meeting, Council heard the staff report and public testimony, but took no action on this item.

As detailed in the City Attorney's memorandum, additional investigation has shown that four (4) of the Council Members (everyone except Mayor Bologoff) have property within 500 feet of the proposed boundaries that are the subject of any decision on this item; accordingly, Mr. Toppel recommends that a conflict of interest be declared for these 4 Council Members. At this meeting, staff will provide a random means of selecting two (2) of the four "conflicted" Council Members to establish a quorum on the decision before the Council.

Based on recent changes to the state law, the recused Council Members are not required to leave the room, but they must step down from the dais and they may not participate in the discussion on this item.

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Municipal Improvements on Margaret Avenue and Paul Avenue

DATE: July 5, 2011

### **City Council Goals:**

To provide public service that assures the safety of property and citizens residing, working, or visiting in Brisbane. (#9)

To encourage community involvement and participation. (#15)

### **Purpose:**

A property owner on Paul Avenue has asked the city to allow him to pay for the investigation of establishing an Assessment District on these two private streets to fund widening the roadway to twenty feet (20'). The action is consistent with the community's value of safety, because the creation of fire code roadway widths on these streets will provide appropriate access for public safety personnel.

### **Recommendation:**

1. Approve the "Agreement to Pay Processing Costs" with Semik Oungouljian and authorize the Mayor to sign the document on the city's behalf.
2. Approve the "Agreement for Consulting Services" with NBS Government Finance Group and authorize the Mayor to sign the document on the city's behalf.

### **Background:**

During his ongoing research on city requirements relative to development of his property on Paul Avenue, Mr. Oungouljian was informed that he would be required to widen the now private Margaret and Paul Avenues to the 20' minimum roadway width required by the California Fire Code, and to then offer these roads in fee to the city. In other situations on public roads where an improvement was required to be performed by one property owner that would benefit adjacent owners, the City has entered into Reimbursement Agreements with the first owner, which require the other "benefitting properties" to pay their proportionate share of the improvements if and when they submit development proposals that trigger a roadway widening.

Considering the significant length of roadway to be widened on Margaret and Paul, and the accompanying cost, another alternative available under state law is to establish an assessment district per the Municipal Improvement Acts of 1913 and 1915. The technical requirements of these acts generally include; establishing boundaries of the proposed district; verifying ownership of the included parcels; obtaining a preliminary cost estimate; preparing an assessment "spread"; and preparing all legal notices and formal hearing background material. The most important part of the process to note is that it requires a weighted vote by the property owners (based on their proportional benefit), and a majority vote in favor is required before the district can be formed.

**Discussion:**

The first recommended action above binds Mr. Oungouliau to pay all the processing costs the city will incur while considering the establishment of an assessment district. The second recommended action is the professional agreement with the consultant who will follow state law in preparing the background information necessary for a vote by the owners and final consideration by the City Council.

Considering that the city intends to impose the requirement on Mr. Oungouliau to widen the roadway and deed the property to the city, it would appear reasonable to allow him to pay the city for its costs to present the question of forming an assessment district to the impacted property owners.

Although not required by law at this stage of the process, city staff did mail the enclosed letter to all property owners of record for parcels on Margaret and Paul, advising them of the two actions Council was to consider at this meeting.

**Fiscal Impact:**

There is no cost to the city as a direct result of this action.

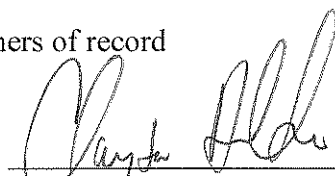
**Measure of Success**

Completion of the consideration of the question as to whether or not to form such an Assessment District in full compliance with state law, including the requirement for a consenting weighted majority vote of property owners before establishing said district.

**Attachments:**

- Agreement to Pay Processing Costs
- Agreement for Consulting Services
- Letter to all Margaret and Paul Avenues owners of record

  
\_\_\_\_\_  
Director of Public Works/City Engineer

  
\_\_\_\_\_  
City Manager

**ATKINSON • FARASYN, LLP**

ATTORNEYS AT LAW

660 WEST DANA STREET

P.O. BOX 279

MOUNTAIN VIEW, CALIFORNIA 94042

TELEPHONE (650) 967-6941

FACSIMILE (650) 967-1395

**MEMORANDUM**

TO: Brisbane City Council  
FROM: Hal Toppel, City Attorney  
RE: Margaret-Paul Assessment District – Conflict of Interest  
DATE: July 12, 2011

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An effort is now being made by some property owners on Paul Avenue to establish an assessment district for the purpose of constructing road improvements to service the area. At the regular meeting of the City Council on July 5, 2011, the Council was asked to approve two preliminary agreements related to this project – one being an agreement with Semik Oungouljian to pay processing costs incurred by the City for the establishment of such district, and the other being an agreement with NBS Government Finance Group to perform certain professional services related to the formation of the district. At that time, it was determined that certain Council members had a conflict of interest and the matter was therefore continued to the regular meeting of July 18<sup>th</sup>.

Although the exact boundaries of the proposed assessment district have not yet been determined, the general area to be included in the district is known at this time. A review of residence addresses shows that Council members Conway, Waldo, Richardson and Lentz all own real property located within 500 feet of the boundaries of the proposed district. The effect of this economic interest is determined by the conflict of interest regulations issued by the Fair Political Practices Commission (FPPC) pursuant to the Political Reform Act. Since the market value of such ownership interest exceeds \$2,000, it would be defined under Reg. Section 18703.2 as an "economic interest" subject to the Act.

The first question is whether the economic interest is directly or indirectly involved in the governmental decision. Section 18704.2 states that the real property of a public official is directly involved if that property is located within 500 feet of the proposed boundaries of the property that is the subject of the decision. As noted above, the answer would be "yes" with regard to each of the Council members owning property near the proposed assessment district. Where real property is directly involved, the next question is whether the financial effect of the decision will be "material," as determined by Section 18705.2(a), the relevant portion of which is attached for your reference. Section 18705.2(a) states that the financial effect is *presumed* to be material (so as to require disqualification of the official), unless the presumption can be rebutted by "proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real

property." In other words, the burden falls on the public official (and the City) to establish that absolutely no financial effect will occur.

Unfortunately, the question of whether there will or will not be any financial effect is mostly a question of fact that must be determined on a case by case basis. However, I think it is instructive to look at the rules that apply where real property is *not* directly involved, as set forth in Section 18705.2(b). Here the opposite rule applies – i.e. the decision is presumed *not* to be material, but that presumption can be rebutted by specific circumstances showing otherwise, examples of which are listed in the Paragraphs A, B and C of the Section. Section C refers to the "character of neighborhood" including effects of traffic, view, privacy, intensity of use and other factors.

It can certainly be argued that the only difference between these provisions is that in one case the burden of proof is upon the City and in the other case the burden of proof is upon the challenger, but the factors to consider in determining whether a material financial effect exists could be the same. While opinions may differ on the potential impacts of the proposed assessment district, it can be expected that opponents would argue that it would have some impact on the character of the neighborhood and these impacts would also affect the properties owned by the Council members residing within 500 feet from the district.

It is difficult to prove a negative. In this case, disqualification can be avoided only if we are able to prove that the district will have no financial effect whatsoever. Given the rather vague language of the FPPC regulations, it would not be difficult to assert a claim that some kind of financial effect will occur, even if that claim is later rejected by a court. Moreover, the claim could be separately raised with regard to each of the four Council members and would only need to be successful for one of them to put in jeopardy any vote in which that Council member participated.

In matters of conflict of interest, I tend to be conservative. In this case, I could not guaranty that a challenge to participation could successfully be defended since it would take very little for a court to find (either correctly or not) that there was at least some kind of financial impact on at least one of the Council members. And even if the challenge is completely rejected, the assessment district could potentially be tied up in litigation for years. It would therefore be my recommendation that a conflict of interest be declared for each of the four Council members who reside within 500 feet of the boundaries of the proposed district.

A disqualification of 4 Council members leaves us without a quorum. The situation would therefore be governed by Section 18708, which allows participation when "legally required" to obtain a quorum. A random means of selection may be used to select two Council members, which is the minimum number needed to establish a quorum. These two Council members would fully participate in the decisions relating to the assessment district and remaining two Council members would continue to be disqualified. Once selected through the random process, the Council members would continue to participate for the duration of the proceedings until his or her participation is no longer legally required or the need for invoking the exception no longer exists.

**EXCERPT FROM  
FPPC REGULATION  
SECTION 18705.2**

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18705.2. Materiality Standard: Economic Interests in Real Property.**

**(a) Directly involved real property.**

(1) Real property, other than leaseholds. The financial effect of a governmental decision on the real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.

(2) Real property, leaseholds. *[Deleted]*

**(b) Indirectly involved real property interests.**

(1) Real property, other than leaseholds. The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:

- (A) The development potential or income producing potential of the real property in which the official has an economic interest;
- (B) The use of the real property in which the official has an economic interest;
- (C) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

(2) Real property, leaseholds. *[Deleted]*



**AGREEMENT TO PAY  
PROCESSING COSTS**

THIS AGREEMENT, dated \_\_\_\_\_, between THE CITY OF BRISBANE, a municipal corporation ("City"), and SEMIK OUNGOULIAN ("Developer"), is made with reference to the following facts:

A. Developer desires to establish an assessment district pursuant to the Municipal Improvement Acts of 1913 and 1915 ("the Assessment District") for the improvement of Margaret Avenue and Paul Avenue as generally shown on the drawing prepared by BKF Engineers attached hereto as Exhibit "A" and made a part hereof ("the Project").

B. City is willing to conduct the proceedings for creation of the Assessment District and issuance of bonds to finance construction of the Project, so long as Developer pays all costs and expenses City will incur in connection therewith.

**NOW, THEREFORE, the parties agree as follows:**

1. **Establishment of Reserve Account.** Upon the execution of this Agreement, Developer shall deposit with City the sum of Fifteen Thousand Dollars (\$15,000.00), in cash, to be held by City as a Reserve Account and disbursed from time to time in accordance with the terms of this Agreement. City shall keep separate records of the Reserve Account, showing all deposits made by Developer and all disbursements from the account made by City, and such records shall be available to Developer for inspection at any time during City's regular business hours. However, City shall not be required to segregate the Reserve Account into a separate fund and no interest shall accrue thereon.

2. **Payment of Processing Fees and Costs.** The Reserve Account shall be utilized by City for payment of all processing costs related to formation of the Assessment District and review of the Project, including, but not limited to: (i) the cost of consulting services provided NBS Government Finance Group pursuant to its contract with City executed concurrently herewith; (ii) the cost of any other professional consultants retained by City, including, civil engineers, engineering geologists, environmental consultants, and



plan checkers; (iii) the cost of bond counsel retained City for the Assessment District, to the extent such cost is required to be advanced by City prior to issuance of the bonds; (iv) the cost of City staff time, including the City Attorney, for processing the Assessment District and review of the Project; (v) other out-of-pocket expenses necessarily incurred by City in connection with the Assessment District or the Project, including, but not limited to, the cost of publication and mailing of notices of public hearings, the cost of preparation, mailing and tabulation of ballots required by Proposition 218, and the cost of reproduction of surveys, plans, drawings and documents. All such fees, costs, and expenses shall be disbursed as needed from the Reserve Account.

3. **Reports to Developer and Reinstatement of Reserve Account.** City shall provide a monthly report to Developer showing the amount and purpose of each expenditure from the Reserve Account. With respect to disbursements for City staff time or payments to consultants, the report shall include a description of the services rendered and amount charged for such services. If, at any time, a disbursement from the Reserve Account will result in the balance in such account being reduced below the sum of Five Thousand Dollars (\$5,000.00), City shall give written notice of such fact to Developer and Developer shall, within fifteen (15) days after receipt of such notice, deposit with City such additional amount as may be necessary to restore the balance of the Reserve Account to Fifteen Thousand Dollars (\$15,000.00). In the event of any failure or refusal by Developer to deposit such additional amounts, City shall be entitled to suspend all further processing of the Assessment District and the Project.

4. **Termination of Agreement.** Upon completion of all processing of the Assessment District, either as a result of the District having been established or the proceedings having been abandoned, any balance remaining in the Reserve Account after payment in full of all costs and expenses owed to City under the terms of this Agreement, shall be refunded to Developer.

5. **Notices.** Any notices 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 other party at the following address:

To City: City of Brisbane  
Attn: Director of Public Works/City Engineer  
50 Park Place  
Brisbane, CA 94005

To Developer: Semik Oungouljian  
13 Cascade Land  
Orinda, CA 94563

6. **Reimbursement to Developer.** To the extent permitted by law, City shall endeavor to include the processing costs advanced by Developer for the Assessment District and the Project in the total amount of the bonds to be issued by City and will reimburse Developer for such costs as and when the bond proceeds become available. Prior to a final determination of the bond amount, Developer shall provide City with a complete accounting of all costs for which Developer is seeking reimbursement, which shall be subject to review and approval by the City's Director of Public Works/City Engineer.


7. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes and cancels any prior agreements or understandings, whether written or oral. This Agreement can only be modified by a written amendment hereto executed by both parties.

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

CITY OF BRISBANE,  
a municipal corporation

DEVELOPER:

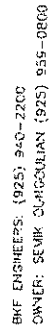
By: \_\_\_\_\_  
Cyril "Cy" Bologoff, Mayor

  
\_\_\_\_\_  
SEMIK OUNGOULIAN

Attest: \_\_\_\_\_  
Sheri Spediacci, City Clerk

APPROVED AS TO FORM

  
Harold S. Toppel, City Attorney



## EXHIBIT "A"

## AGREEMENT FOR CONSULTING SERVICES

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

### RECITALS

City desires to retain Consultant to perform certain professional services in connection with the formation of an assessment district pursuant to the Municipal Improvement Acts of 1913 and 1915 (the "Assessment District") for the improvement of Margaret Avenue and Paul Avenue ("the Project"), and Consultant represents that Consultant is experienced and qualified to provide such services and is willing to do so pursuant to the terms and conditions of this Agreement.

### AGREEMENT

1. **Scope of Services.** Subject to the direction and approval of City, Consultant shall provide the services to City as described in the Addendum dated December 15, 2010, attached hereto as Exhibit "A" and made a part hereof.

2. **Continuation of Performance.** Consultant has previously performed services for Semik Oungoulain, the developer of the Project ("Developer"), under a separate agreement between Consultant and Developer. The Addendum attached hereto reflects a continuation of services related to formation of the Assessment District that will be performed by Consultant pursuant to this Agreement. It is the intention of the parties that this Agreement shall replace the prior agreement between Consultant and Developer and all future services pertaining to the Assessment District will be performed by Consultant pursuant to this Agreement. However, Consultant acknowledges that City has entered into an agreement with Developer wherein Developer is required to pay all amounts owed to Consultant hereunder.

3. **Compensation.** As compensation for all services to be performed by Consultant under this Agreement, Consultant shall be paid the amounts set forth in Exhibit A attached hereto. In no event shall Consultant's total fees exceed the sum of \$12,500 (plus expenses) 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.

4. **Method of Payment.** Consultant shall submit billings to City describing in detail the work performed for which payment is requested, the number of hours spent, 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 staff. If City objects to all or any portion of the billing, City shall notify Consultant of the nature of such objection and the amount in dispute. City shall pay when due the portion of the billing, if any, that is not in

dispute. The parties will make every effort to settle the disputed billing through good faith negotiations.

5. **Maintenance and Inspection of Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, time cards, 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.

6. **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 under this Agreement without the prior written approval of City. If City consents to any subcontracting of work, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor.

7. **Ownership of Documents.** All documents and other writings prepared by and for Consultant in the course of performing its services under this Agreement, except working notes and internal documents, shall become the property of City upon payment to Consultant for such work, 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 documents and other writings to City upon written request.

8. **Correction of Work.** Consultant shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, goods, services, or other work, without additional cost to City. The performance or acceptance of services furnished by Consultant shall not relieve Consultant from the obligation to correct subsequently discovered defective, inaccurate, or incomplete performance of Consultant's services hereunder.

9. **Independent Contractor.** Consultant is, and at all times shall remain, an independent contractor, and not an agent, officer or employee of City. As such independent contractor, neither Consultant nor any of its 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 it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature that are legally required of Consultant to provide the services contemplated by this Agreement. 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 maintain a City of Brisbane business license.

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 Consultant's 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 are 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 attorney's fees, arising out of or in any manner relating to the negligent performance by Consultant of its services under this Agreement or any breach by Consultant of its obligations contained in this Agreement, and City shall not be liable for any acts or omissions of Consultant.

14. **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  
Attn.: City Manager  
50 Park Lane  
Brisbane, CA 94005

To Consultant

NBS Government Finance Group  
Attn: Tim Seufert  
32605 Temecula Parkway  
Suite 100  
Temecula, CA 92592

15. **Litigation Expenses and Attorneys' Fees.** If either 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 attorneys' fees.

16. **Stop Work Order.** City may issue a Stop Work Order to Consultant in the event Developer fails or refuses to advance the fees and costs payable to Consultant or terminates or abandons the agreement between City and Developer requiring payment thereof. In such event, Consultant shall be entitled to all fees and costs that may have accrued to the date Consultant receives the Stop Work Order. Upon receipt of a Stop Work

Order, Consultant shall immediately discontinue all services hereunder and shall not resume performance of such services unless Consultant receives a written Notice to Proceed from City.

17. **Termination of Agreement.** This Agreement may be terminated by either 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. **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.
- (e) **Successors and Assigns.** Subject to the restriction against assignment and subcontracting, this Agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

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

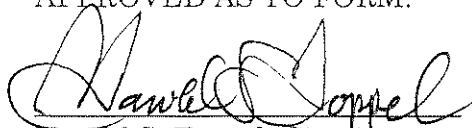
THE CITY OF BRISBANE

By: \_\_\_\_\_  
Cyril "Cy" Bologoff, Mayor

ATTEST:

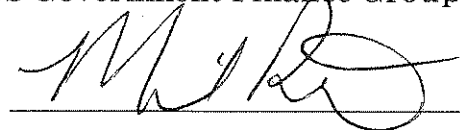
\_\_\_\_\_  
Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

  
Harold S. Toppel, City Attorney

CONSULTANT:

NBS Government Finance Group

By: 



December 15, 2010

Mr. Hal Toppel  
City Attorney  
**City of Brisbane**  
50 Park Lane  
Brisbane, CA 94005

**Subject: Addendum to Original Agreement to Provide 1915 Act Assessment District Formation Services for the City of Brisbane**

Dear Mr. Toppel:

**NBS** would like to thank you for the opportunity to provide the City of Brisbane ("City") 1915 Act Assessment District Formation Services. We will add these services to our existing agreement with the City. All other provisions of the existing contract between the City and **NBS** remain in effect. We look forward to continuing our professional relationship.

Please find enclosed two (2) copies of our Executed Agreement. Upon signing, please return one copy to the undersigned and keep one copy for your records.

#### **Scope of Services**

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##### **[1915 Act Assessment District Formation Services]**

*The following scope of services is for the formation of such an Assessment District. Note however that some initial feasibility and analysis work was performed by NBS earlier in 2010. This mostly includes initial discussions and kick off meeting type activities, initial data collection, discussion of boundaries, and a draft assessment spread. The fees quoted below reflect a reduction in costs given this initial work that was privately funded.*

**Expert Resource.** First and foremost, **NBS** will act as the City's "expert resource," and is available to answer questions and advise the City on particular issues involving the Assessment District.

**Kick-Off Meeting, Project Schedule.** **NBS** will meet with City staff, legal counsel and other interested parties to:

- Establish lines of communication.
- Clarify the specific project goals and criteria that will meet the City's preference.
- Identify and resolve any special circumstances that may be involved in the formation of the City.
- Develop project schedules to meet legal requirements and provide for effective interaction of all involved parties.
- Establish meeting dates consistent with schedule to achieve project milestones.

**Data Collection.** **NBS** will gather and review data relevant to the formation of the Assessment District. Data will be obtained from various sources, including City records, Assessor's parcel maps, and County Assessor information.

**Preliminary District Boundaries.** Make preliminary determinations of the property benefited from the proposed improvements.

- Establish tentative boundaries for the Assessment District, giving consideration to both the project area and peripheral lands (direct and indirect benefits).
- Verify ownership based on last equalized tax roll.
- Formulate concepts with viable alternatives for spreading costs equitably within the area of benefit.

**Preliminary Cost Estimate.** Obtain the estimate of engineering design costs and incidentals and prepare a preliminary total project cost estimate.

**1931 Act Compliance.** Prepare findings for inclusion in the Engineer's Report to comply with The Special Assessment Investigation, Limitation and Majority Protest Act of 1931. This may include preparation and distribution of a Property Owner's petition to form the proposed district.

**Preliminary Assessment Spread.** Meet to review and discuss the preliminary assessment criteria and spread with the City, bond counsel, financial consultant and others, as appropriate. If necessary, modify criteria and spread to more accurately assess specific benefit conferred.

**Mapping.** Prepare maps (Assessment Diagram and Boundary Map) and related documents and present to the City as required under the Municipal Improvement Act of 1913.

**Preliminary Engineer's Report.** Based on the results of the aforementioned reviews, discussions and modifications, prepare a detailed written report (Draft Preliminary Engineer's Report) regarding the preliminary assessment spread and present to the City, bond counsel, financial consultant and property owners. The Report shall be prepared in compliance with the California Streets and Highways Code §10204 and shall contain the following:

- A general description of the project
- Plans and specifications of the project
- A detailed cost estimate
- An Assessment Diagram
- The Method of Assessment
- The proposed Assessment of each parcel in the district
- A proposed maximum assessment to pay administrative expenses

**Legal Notices and Ballots.** NBS will prepare legal notices and ballots to be mailed to all property owners within the boundary of the proposed assessment district listed on the last equalized County Assessor's roll, as required, for compliance with the 1913 Act and Proposition 218.

**Map Recordation.** Record the Boundary Map with County Recorder in compliance with the Municipal Improvement Act of 1913.

**Formal Hearing.** Present all necessary testimony and respond to public comments regarding the assessment proceedings. Prepare a booklet for each member of the City Council and each appropriate staff member, consisting of an Engineer's Report, tabulation of final assessment on each parcel of land, alphabetical list of parcel ownership and general information. Prior to conclusion of the hearing, tabulate all protests and file a written summary thereof with the District.

**Assessment Revisions.** Revise and amend the Preliminary Engineer's Report, including assessment roll and cost estimates, Boundary Map and Assessment Diagram as appropriate, based on direction received at the second public hearing (protest hearing). Prepare a Confirmed Engineer's Report for submittal.

**Filing Assessment Documents.** File the assessment diagram assessment, roll and notice of assessment with the appropriate Officials, such as the Superintendent of Streets, County Recorder, Treasurer and any other officials, as required.

**Assessment Notices.** Prepare and mail out to the property owners the final assessment notices as required by the Act.

**Ballot Tabulation.** NBS will tabulate the ballots returned via the most appropriate method (bar code or other), and report the statistics upon completion.

**Meeting Attendance.** NBS will attend one to two district-related Council meetings, as requested by the City.

**Paid/Unpaid Assessments.** After expiration of the 30-day cash collection period, prepare a "paid" and "unpaid" list of assessments and present it to the City. Release the liens of all prepaid assessments. Prepare a final "As Sold" Engineer's Report based upon conditions of the sale of Improvement Bonds.

## **Fees**

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### **[1915 Act Assessment District Formation Services]**

Per District ..... \$12,500

*These fees are reduced to reflect the preliminary feasibility and analysis work performed by NBS earlier in 2010 that was funded directly by the property owners.*

### **[Expenses]**

Customary out-of-pocket expenses will be billed to the City at actual cost to **NBS**. These expenses may include, but not be limited to, mailing fulfillment, postage, reproduction, telephone, travel, meals and various third-party charges for data, maps, and recording fees.

### **[Additional Services]**

The following table shows our current hourly rates. Additional services authorized by the City will be billed at this rate or the then applicable hourly rate.

<b>Title</b>	<b>Hourly Rate</b>
Director	\$ 190
Senior Consultant/Programmer	150
Engineer	140
Consultant	130
Analyst	100
Clerical/Support	55
Expert Witness	TBD; with minimum fee

[Terms]

Assessment District Formation Services fees will be invoiced monthly until completion of the task. If the project is prematurely terminated by either party, **NBS** shall receive payment for work completed. Payment shall be made within 30 days of submittal of an invoice. If payment is not received within 90 days simple interest will begin to accrue at the rate of 1.5% per month.

Please feel free to contact me if you have any questions or need further information.

Best regards,  
**NBS Government Finance Group,  
DBA NBS**

**City of Brisbane**



Mike Rentner

\_\_\_\_\_  
Name

\_\_\_\_\_  
President and CEO

\_\_\_\_\_  
12/15/10

Title

Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

June 24, 2011

Name  
Address  
City State Zip

Subject: City Council Consideration of Actions Related to Margaret and Paul Avenues

Dear Property Owner,

The purpose of this letter is to provide you advance notification of two items the City Council will consider at its July 5, 2011 meeting. Both of these items consider the **possible** formation of an assessment district to improve Margaret Avenue and Paul Avenue to current city standards; with the expectation that the improved streets would then be accepted into the public street system, and the city would own and maintain these roads.

The owner of the properties at 92, 94 & 96 Paul Avenue, Semik Oungouljian, has asked the city to conduct the proceedings for establishment of an assessment district (pursuant to the municipal Improvement Acts of 1913 and 1915), and has agreed to pay all costs associated with these proceedings. The first action the Council will consider is approval of a reimbursement agreement with Mr. Oungouljian for the processing costs.

The second action the Council will consider is approval of an agreement with NBS Government Finance Group to complete all steps required by law to consider this proposal. In brief summary, these steps include; establishing boundaries of the proposed district; verifying ownership of the included parcels; obtaining a preliminary cost estimate; preparing an assessment "spread"; and preparing all legal notices and formal hearing background material.

**I want to stress that the Council's approval of these two items on July 5<sup>th</sup> will not create the assessment district. No district can be formed until the property owners have been given the opportunity to vote for or against the proposal.** There will be multiple opportunities during this process for property owners to participate and to **cast their vote** on whether or not this district should be formed. These opportunities will include; review of the preliminary engineer's report and proposed assessment spread; review of the legal notices and a **vote** on the ballot that will be mailed; and a time to offer testimony during the final formal hearing the Council will hold.

Please call me at (415) 508-2131 if there are any questions regarding this matter.

Very truly yours,

Randy L. Breault, P.E.  
Director of Public Works/City Engineer