City of Brisbane
City Council
Agenda Report

To: Mayor and City Council

From: Stuart Schillinger, Deputy City Manager

Subject: New Skateboard Park Design Request for Proposals

Date: March 17, 2014

Purpose:

Provide the Community with a concrete skateboard park geared towards beginner to intermediate skaters.

Recommendation:

City Council direct staff to begin the Request for Proposal Process for the design of a new skateboard park.

Background:

At the budget hearings for FY 2013/14 City Council directed the Parks and Recreation Commission to put together a plan of action for the skateboard park including information related to the current users of the park, park location, options to improve the park, best use of the current space, target user group for the park, and alternative funding solutions.

On November 19, 2013 the Parks and Recreation Commission's Teen Services met with the City Council's Facility Committee. There were a number of interested residents and skate park users also at the meeting. The skate park users spoke to the need for a smoother riding surface and a half pipe which did not have nails and screws coming out of it. They also spoke to the benefits it provides the younger children and pre-teens in Brisbane which include exercise, socialization, and safety.

Staff provided information related to the potential cost of developing a design concept of the park and a potential process to move forward. The subcommittee decided to recommend to the City Council to move forward with developing a design for the park. The process that the subcommittee discussed was to have an RFP brought back to the two subcommittees for approval. Then have the results of the RFP brought back to the subcommittees for discussion and potential interviews with the finalists. Have the two subcommittees work with the design firm and the public in developing the proposed design plus alternatives, and then have the City Council choose a proposed design which would have construction documents developed and costed out. The Facilities subcommittee would then recommend a financing plan for the City Council's approval. After the financing was in place the City would then bid out the project to be built. This is a similar process which took place for the construction of the new playground in the Community Park.

On December 16, 2013 City Council approved a process for the rehablitiation of the existing skateboard park (attached). The Council also directed staff to work with a joint subcommittee of the City Council and the Parks and Recreation Commission to develop the Request for Proposal and bring the document back to City Council for approval prior to its release.

Discussion:

A joint subcommittee of the Parks and Recreation Commission (Teen Services) and the City Council (Facilities) met on March 11, 2014 to review the request for proposal. The proposal as presented to the joint subcommittee requested that the selected design firm develop three different size skateboard parks. The three sizes reflected the size of the current park, a slightly larger park which would incorporate the space around the park to the sidewalks and our property line to the east, and finally the second option, expanded to include about 22 feet of the current basketball court, which would require the City to move the current basketball court to take up the open space between the basketball court and the sidewalk on Park Place. At the meeting a member of the public suggested adding a fourth option which would, instead of expanding the current skatepark into the basketball court, create what is called a skate spot between the basketball court and the sidewalk on Park Place.

Creating a skate spot would allow more users to use the skateboard facilities at the same time. A skateboard park usally has just a few skaters actually skating at a given time and others waiting their turn to use the ramps and elements. If the proposed additional skate spot was opened with just a few elements, it could increase the number of users who could be skating at one time. This could also assist in evening the flow between more experienced skaters and novices at the two locations.

The joint subcommittee agreed with this idea, so the Request for Proposal reflects the four size options.

If approved tonight, it is anticipated the Request for Proposal will be distributed on the 18th of March. Staff anticipates setting a due date of April 18th for the proposals. After that date, staff and the joint subcommittee will review the proposals and determine which one is best suited for our community. A contract with the recommended design firm will be brought to Council at a future meeting for approval.

Fiscal Impact:

There is no fiscal impact of requesting proposals. If a design firm is chosen there will be a fiscal impact at that time. There is some money available which has been donated for the skatepark, and there are budgetary savings within the Teen Services budget which the Commission recommended be used for the purpose of designing a skatepark.

Measure of Success:

A new, smoother, and longer lasting skateboard park is built which has an increased activity level at all ages.

Attachments:

Request for Proposal

Stuart Schillinger, Deputy City Manager

Clay Holstine, City Manager

Council Approves Skateboard Project Process

Joint Subcommittee Reviews RFP

City Council Approves RFP

Companies respond to RFP

Joint Subcommittee reviews submittals and recommends design firm to Council

Council approves design firm

Design firm works with public to create multiple designs

Joint Subcommittee reviews designs and recommends 1 to Council

Joint Subcommittee reviews and recommends financing plan

Council approves design

Design firm draws up construction and bid documents

Council approves bid of project

Firms respond to Request for Bids

Council approves skate park building firm

Firm builds approved project

City of Brisbane

REQUEST FOR PROPOSAL
DESIGN OF COMMUNITY SKATEPARK

PROPOSALS DUE: April 18, 2014 BY 12:00 P.M.

DELIVER PROPOSALS TO:

City of Brisbane
SKATEPARK RFP
50 Park Place
Brisbane, CA 94005

REFER QUESTIONS TO:

Karen Kinser, Senior Civil Engineer
PHONE: 415-508-2133
E-MAIL: kkinser@ci.brisbane.ca.us

Questions shall be submitted in writing by electronic mail. Questions and responses will be posted on the City of Brisbane website at www.brisbaneca.org

REQUEST FOR PROPOSALS
DESIGN OF COMMUNITY SKATEPARK

1. INTRODUCTION

City of Brisbane is seeking proposals in response to this Request for Proposals (RFP) from a qualified skateboard park design firm or team (Consultant) to produce a conceptual design, final design, and construction documents for a non-supervised public concrete skate park.

The proposed skatepark will provide a safe, designated place for skateboarders to develop their skills and enjoy the company of their peers. The skate park will be state-of-the-art; based on the latest skate park design principles and fit with the character of the Brisbane community. It will feature a mix of street and transition-style terrain, with elements designed for a range of age groups and ability levels as determined by meetings with the stakeholders and approved by City Council.

The City is looking for a company to provide conceptual designs for three potential skate board park sizes. The three sizes are approximately 1) 55' x 75', 2) approximately 70'x80', 3) approximately 70'x90'. A design of an additional skate spot of approximately 22'x70' will also be requested. The concept plans will be developed through a public process of meetings with stake holders and a joint Parks and Recreation Commission and City Council Subcommittee. The proposer should explain their design process including their proposed strategy for public participation, such as the number and types of meetings they will hold with the stakeholders. The design for all three should include concrete surface material, proposed elements (one of which needs to be a half-pipe), construction material for the elements, and budget level estimated cost of construction of the three designs.

After the Subcommittee selects a design to recommend to the City Council, City Council will review and approve the design. If approved, the chosen firm will be asked to provide to the City construction documents, (including plans, base specifications and special provisions) for the skate park with a final detailed estimate of the cost to build.

2. SCOPE OF SERVICES

The scope of work outlined below is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project. Proposing teams may suggest a modified scope as part of their proposal.

1. Summary of Project: To design a community skate park as described above.

2. Design: Gather necessary data and evaluate existing infrastructure. Obtain public input. Prepare conceptual design plans for review by the City.
3. Once the conceptual design is approved, prepare detailed design plans and specifications, as appropriate for this project. Perform quality assurance, quality control and value engineering review, before submission of the final design to the City for approval, and throughout the construction process.

4. Applicable Standard Specifications and Details: The design will be completed in accordance with applicable City, State, and Federal Laws, Statutes, Codes, and any other applicable standard specifications.

5. Approvals and Permits: Any and all required permits are the responsibility of the Consultant to initiate and execute with all applicable governing agencies for approval of design.

6. Progress Meetings: Regular progress meetings with the Consultant, City, and other interested parties will be held throughout the life of the project. The frequency and location of these meetings will be established, by mutual agreement, prior to beginning the project. The purposes of these meetings are to establish and maintain lines of communication, report on design, progress, discuss and resolve problem areas, review schedule and progress, review project costs/budgets, review quality control and such other matters related to the project.

7. Insurance Requirements: The Consultant must keep in full force and effect until the termination of the agreement; the following insurance with an insurance company licensed and qualified to do business in the State of California, as evidenced by an endorsement of insurance on the insurance policy. Any deductibles or self-insured retentions are to be paid by the Consultant and must be declared and approved by the City. Consultant shall provide a copy of the certificate of insurance with verification that full policy limits are available with their bid submittals.

a. Workers Compensation and Employers Liability insurance in the amount of $1,000,000.

b. Automobile Coverage for all Owned, Non-Owned and Hired vehicles in the amount of $1,000,000 per occurrence, $2,000,000 aggregate.

c. Comprehensive General Liability or Commercial General Liability insurance covering all operations or job specifics in the amount of $1,000,000 per occurrence, $2,000,000 aggregate;

d. Excess Liability/ Umbrella Insurance in the amount of $5,000,000.

e. Errors and Omissions/ Professional Liability insurance in the amount of $1,000,000 per occurrence, $1,000,000 aggregate.

f. Additional Insured: The City shall be named as an additional insured on all liability

policies using the following language: "Consultant shall indemnify, hold harmless and defend the City, its officials, employees, agents, and volunteers, against any and all liability, loss, costs, damages, expenses, claims, or actions, including attorney's fees which the City, its officials or employees may hereafter sustain, incur or be required to pay, arising wholly or in part due to any act or omission of the Consultant, its agents, servants, or employees, in the execution, performance or failure to adequately perform Consultant's obligations pursuant to this contract."

3. SUBMITTAL REQUIREMENTS

Proposals must be clear and succinct. Only those Consultants providing complete information as required will be considered for evaluation. Any major deviation from these specifications will be cause for rejection of the proposal at the City's discretion.

Each proposal shall contain ALL of the following information:

1. Firm Background: Include firm identification, including legal name, address, the legal form of the firm (e.g., partnership, corporation, joint venture, sole proprietorship) and date of establishment. If a corporation, identify the state of its incorporation. If a joint venture, identify the members of the joint venture and provide all the information required under this section for each member. If your firm is a wholly owned subsidiary of a "parent company," identify the "parent company."

2. Proposed Project Team Members: For each person proposed to render professional services for this project, include full name, title, professional registration and relevant experience. Indicate the roles and responsibilities of each person and the percentage of their time to be spent on this project. Attach a resume or curriculum vitae for each such person. Indicate the professional background and caliber of previous experience of each person. Provide all information required under this section for each sub-consultant.

a. Project manager during conceptual design phase
b. Skatepark designer
c. Primary party for landscape architecture
d. Primary party for professionally engineered skatepark construction drawings

Provide the following additional information for the individuals listed above.

a. Experience with similar or related projects of this size and scope

b. Group experience and work performed on similar or related projects of this size and scope.

c. Years with firm under its current name and ownership

d. Written assurance that the key individuals listed and identified will be performing the work and not be substituted with other personnel or reassigned to another project without City's approval

3. Proposed Project Approach: The Consultants' understanding and approach to the project is an important aspect of the RFP process. The Consultant should provide a clear and concise understanding of the project based on the information given as well as project goals and requirements.

Consultants should not submit concept drawings at this time. The City desires that all design work come out of a collaborative process of public involvement and site analysis.

4. Experience: Describe firm's experience in providing similar design/build services to municipalities, agencies, and other government entities. List recent experience of a maximum of five (5) similar projects completed by the firm within the past two (2) years. Preference should be given to projects located in California.

Include project descriptions, photographs of the completed projects and a contact for the owners of the project. References must include the contact person's name, agency, phone number, their role in the project (e.g., project manager, purchasing, etc.) and when the work was done.

5. Financial Stability: Provide a complete description of the legal structure, length of time in business, and number of employees. The firm shall disclose whether the company has ever had a voluntary or involuntary bankruptcy petition filed in its current or any prior name. The firm should similarly disclose whether or not it or any team member are in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. The firm should also disclose if any parent company or subsidiaries have been refused liability coverage in its current or previous name(s).

6. Scope of Services:

- **Initial Coordination Meeting.** Consultant shall familiarize themselves with the existing conditions, and shall also meet with City staff to understand the goals and concerns and to confirm existing conditions.

- **Schedule**. Prepare and submit to the City's Project Manager a preliminary project schedule. This schedule shall outline the consultant's approach, time line, and all deliverables by tasks developed for this project. Project schedule shall be updated on a quarterly basis, as needed, to reflect any major changes to the schedule.

- **Conceptual Design Memorandum.** Prepare for City review and comment conceptual designs for each of the three site sizes. Revise conceptual designs upon receipt of City and public comments.

- **Design and Preparation of Construction Documents.** Prepare appropriate environmental documents per the California Environmental Quality Act. Address geotechnical conditions, surrounding utilities and structures. Complete design and prepare final construction plans, including all civil, structural and landscape improvement aspects of the project, as appropriate. Construction documents shall be submitted to the City for review and comment at 50% and 90% levels of completion, before final documents. Design shall also include recommendations for traffic control, including pedestrians. Detailed plans and specifications for construction shall include all bidding sheets and forms necessary for receiving competitive bids. Final plans and specifications shall be signed and sealed by a professional engineer registered in the State of California in the appropriate discipline. Provide an estimate of the probable construction cost for the project tasks. Construction cost estimates shall be submitted for City review with the 50% design submittal and updated at the 90% and final levels of completion.

- **Meetings and Agency Coordination.** Organize and manage public input meetings as required to assess community needs during the course of the design. Prepare meeting minutes, as appropriate.

7. Fees. Overall fee for the project plus anticipated per major task as shown in the scope of services.

Submittal:

Five (5) hardcopy copies and one electronic copy on CD/DVD of your proposal must be received by the City Clerk no later than **April 18, 2014 BY 12:00 p.m.**. Proposals shall be addressed to:

City of Brisbane
RFP Design of Community Skate Park
50 Park Place
Brisbane, CA 94005

The outside of the envelope must be identified as "City of Brisbane Skatepark RFP." Late proposals and proposals sent by facsimile will not be accepted.

4. RFP SCHEDULE

RFP Issued:	**March 18, 2014**
Deadline for Submission of Written Questions:	**April 8, 2014**
RFP Due:	**April 18, 2014** at 12:00 P.M.
Potential Interview of Consultants	**To Be Determined**
Notice of Award:	**To Be Determined**

The City reserves the right to make adjustments to the above noted schedule as necessary.

5. EVALUATION AND SELECTION PROCESS

Selection Process

The City reserves the right in its discretion to make a selection based directly on the proposals submitted. The respondent selected will be chosen based on its apparent ability to best meet the overall objectives of the City. The City has the right to reject any or all proposals.

Evaluation Criteria Scoring

Each proposal shall be evaluated on the following evaluation criteria, weighting and maximum points, as follows:

- Thoroughness of the proposal.
- Overall experience of the firm with skatepark installations, specifically those located in similar geographic regions to this project site.
- Qualifications and abilities of staff and personnel assigned to this project, with consideration given to project experience within the region.
- Demonstrated variety of designs and creativity across project experience.
- Public Participation – proposed strategy and past successes.
- Documentation of staffing levels necessary to meet the timetable most desirable to the City.

Maximum Criteria Score

1. Project Team - 20 pts
2. Project Approach and Understanding – 35 pts
3. Experience– 35 pts
4. Financial Stability - 10 pts

Total Points Available 100

Proposal Review

An evaluation review committee ("Committee") will be evaluating the proposals received. For the purpose of scoring proposals, committee members will evaluate each proposal in accordance with the criteria and point factors listed above. The evaluation committee may seek outside expertise, including, but not limited to, input from technical advisors, to assist in evaluating proposals. The successful Consultant shall be selected by the following process:

The committee will score the written proposals based on the information submitted according to the evaluation criteria and point factors.

A short list of Consultants, based on the highest scores, may be selected for telephone or group interviews if deemed necessary. The City reserves the right to award the contract without an interview or to increase or decrease the number of Consultants on the short list depending on the scoring and whether the Consultants have a reasonable chance of being awarded a contract.

Negotiations will follow with the selected Consultant, and, if successful, the Consultant and City will enter into a contract for the work.

Clarification During Review Process

During the evaluation process, the City has the right to request additional information and presentations for clarification in order to understand the Consultant's view and approach to the project and scope of the work. The City further reserves the right to make an award without further clarification of proposals reviewed. Any changes to a submitted proposal made before executing the contract will become part of the final Consultant contract.

6. GENERAL TERMS AND CONDITIONS

1. This RFP does not commit the City to enter into an agreement, to pay any cost incurred in the preparation of a submittal to this request or in subsequent negotiations, or to procure or contract for the Project.

2. At any time prior to the specified time and date set for the submission, a person/firm, or their designated representative, may withdraw their proposal.

3. The issuance of this RFP and the acceptance of a proposal do not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right to:

- Reject any or all proposals.
- Reissue an RFP.
- Extend the time frame for submission of the proposals by notification to all parties who have registered an interest in this RFP with the City.
- Request more information from any or all applicants.
- Waive any immaterial defect or informality.
- Decline to go forward with the RFP. The City expressly reserves the right not to proceed to contract under this RPP.
- Reject any sub-contractor or consultant proposed by the Proposer.

4. All services shall be provided in accordance with Enclosure "A," the City's Agreement for Professional Services. Final terms of any agreement will be established during negotiations. Negotiations may be terminated by the City for failure to reach mutually acceptable terms.

5. Each person/firm will be responsible for all costs incurred in preparing a response to this RFP.

6. All materials and documents submitted in response to this RFP will become the property of the City and will not be returned. Persons/firms selected for further negotiations will be responsible for all costs incurred by it during negotiations whether or not such negotiations lead to a contract with the City.

7. Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the City, in writing, if the proposer discovers any ambiguity, discrepancy, omission or other error in the RFP. Any such notification should be directed to the City promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals.

AGREEMENT FOR PROFESSIONAL SERVICES

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

RECITALS

A. City desires to retain Consultant for professional services for the conceptual design and engineering plans, specifications and estimated costs of a skateboard park ("the Project").

B. Consultant represents that Consultant is specially trained, experienced, and qualified to provide such professional 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 through its staff that City may provide from time to time, Consultant shall perform the services described in Exhibit A attached hereto and incorporated herein by reference. All services shall be performed to the reasonable satisfaction of the City department head in charge of the Project. All plans, specifications, estimates, and engineering data furnished by Consultant to City shall be signed by the responsible engineer, with registration number indicated where appropriate.

2. **Time of Performance.** The services of Consultant shall commence upon the issuance by City of a Notice to Proceed and shall be satisfactorily completed in accordance with the time schedule set forth in Exhibit B attached hereto and incorporated herein by reference, subject to delays beyond the reasonable control of Consultant.

3. **Responsible Personnel.** The personnel acting on behalf of Consultant primarily responsible for performance of the services hereunder shall be _____.

4. **Compensation.** As compensation for all services to be performed by Consultant under this Agreement, Consultant shall be paid the amounts set forth in Exhibit C attached hereto and incorporated herein by reference. The lump sum amounts set forth in Exhibit C include salary, fringe benefits, overhead, profit, and other expenses incurred by Consultant. In no event shall Consultant's total compensation exceed the sum of $_____ 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 in accordance with the stages of work described

in Exhibit C attached hereto, 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.

6. **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. Consultant shall also make such records and documents available for inspection and audit upon request by any representatives of the State or Federal government. 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 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. Each subcontractor must agree in writing to comply with all of the applicable terms and conditions of this Agreement.

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. **Ownership of Documents.** All plans, studies, 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 reports, plans, studies, documents and other writings to City upon written request. Consultant shall not be responsible for any reuse of such documents by City which is unrelated to the Project and City agrees to indemnify, defend, and hold Consultant and its subcontractors harmless against any claims of liability arising from such reuse by City.

10. **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.

11. **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 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 maintain a City of Brisbane business license.

12. **Compliance with Standards of Care and Laws.** Consultant shall adhere to the standard of care in its profession and shall comply with all applicable federal, state and local laws, codes, ordinances and regulations in connection with the performance of its services under this Agreement. Without limiting the generality of the foregoing, Consultant shall comply with the Federal Acquisition Regulations as set forth in CFR Title 48, Part 31 and CFR Title 49, Part 18, to the extent the same are applicable to the performance of Consultant's services under this Agreement.

13. **Errors and Omissions.**

(a) Where a change order to the construction contract is caused by a design error due to the professional negligence of the Consultant and the cumulative cost of all such change orders exceeds two percent (2%) of the original construction contract amount, Consultant shall be obligated to reimburse City for one hundred percent (100%) of such excess cost. The formula for such reimbursement is as follows: [Cost of Design Error Change Orders] – [Original Construction Contract Amount x 0.02] = Required Reimbursement to City.

(b) Where the change order to the construction contract is caused by a design omission due to the professional negligence of the Consultant and the cumulative cost of all such change orders exceeds two percent (2%) of the original construction contract amount, Consultant shall be obligated to reimburse City for fifteen percent (15%) of such excess cost. The formula for such reimbursement is as follows: [Cost of Design Omission Change Orders x 0.15] – [Original Construction Contract Amount x 0.02] = Required Reimbursement to City.

14. **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, arising out of or in any manner relating to the negligent performance by Consultant or any of its subcontractors, agents or employees, of any services under this Agreement or the failure by Consultant or any of its subcontractors, agents or employees to comply with any of their obligations contained in this Agreement, and City shall not be liable for any acts or omissions of Consultant or any of its subcontractors, agents or employees.

15. **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, Consultant 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 Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against City for loss arising from work performed by Consultant 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 claim and $2,000,000 aggregate, 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 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 Consultant's 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 canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to by the carrier City. Consultant shall immediately give written notice to City of any suspension or reduction in coverage or limits.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions exceeding $50,000 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 effecting the coverage required by this Agreement.

16. **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: Senior Civil Engineer – Capital Projects
50 Park Lane
Brisbane, CA 94005

To Consultant

17. **Resolution of Disputes; Litigation Expenses and Attorneys' Fees**. In the event of any dispute between the parties pertaining to this Agreement, the parties shall endeavor in good faith to resolve such dispute through mediation before the commencement of legal action by one party against the other. 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.

18. **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.

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

20. **Miscellaneous Provisions.**

(a) Covenant Against Contingent Fees. Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. Consultant shall sign and deliver to City the Certification attached hereto as Exhibit "D" and made a part hereof. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

(b) 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.

(c) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and cancels all prior agreements or understandings, whether written or verbal.

(d) Amendments. This Agreement may be modified or amended only by a written document duly executed by both City and Consultant.

(e) 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.

(f) 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.

(g) 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: _____
W. Clarke Conway, Mayor

ATTEST:

_____
Sheri Marie Schroeder, City Clerk

APPROVED AS TO FORM:

_____
David Kahn, City Attorney

CONSULTANT:

_____

_____
Typed Name, Title

EXHIBIT A

Description of Services

1. Insert here Consultant's approved Scope of Services

EXHIBIT B

Time Schedule for Performance of Services

1. Insert here Consultant's Approved Time Schedule

EXHIBIT C

Compensation

1. Insert here Consultants Summary of Fees & Hours By Task