

# City of Brisbane Agenda Report

TO: Honorable Mayor and City Council  
FROM: Director of Public Works/City Engineer via City Manager  
SUBJECT: Agreement for Professional Services – Swaim Biological Inc.  
DATE: October 5, 2009

**City Council Goals:**

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

**Purpose:**

To approve the Agreement for Professional Services (PSA) with the firm that will provide biological consulting services for the city's efforts on the Lipman Middle School Slide Repair project.

**Recommendation:**

Approve the PSA with Swaim Biological Inc. in the total contract amount of \$38,777.60.

**Background:**

At its July 6, 2009 meeting, the City Council was provided an update on a pending Cooperative Agreement with the Brisbane School District (BSD) to facilitate repairs to the Lipman Middle School hillside and the City of Brisbane's tennis courts. At that time it was anticipated that a biological services consultant would be necessary to comply with requirements imposed on the landslide repair project.

On September 21, 2009, the Council concurred with the Brisbane School District's Board of Trustees' anticipated award of the Lipman Middle School Landslide Repair Project to Top Grade Construction, which included repair of the tennis courts in the bid amount of \$64,278

**Discussion:**

The City received two responses to a Request for Proposals; Swaim was determined to be the most qualified proposer based on their demonstrated knowledge of compliance with

federal regulations. Swaim has already begun work, and has completed several of the tasks under its original proposal and the requested amendment.

**Fiscal Impact:**

Per the Cooperative Agreement and arrangements with BSD, these services are a direct cost that will be reimbursed by the District.

**Measure of Success**

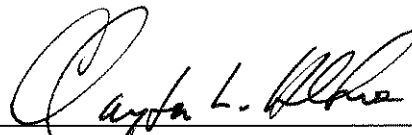
Completion of all three repair efforts in full compliance with federal Endangered Species Act requirements.

**Attachments:**

Agreement for Professional Services  
July 6, 2009 staff report  
September 21, 2009 staff report (minus attachments)



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Director of Public Works/City Engineer



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

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, dated 10 Sep 09, is made by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and Swain Biological Inc. a Corporation ("Consultant").

### RECITALS

A. City desires to retain Consultant for the performance of certain professional Biological Consulting services for Lipman Slide Repair, Project 9905 ("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.

2. **Time of Performance.** The services of Consultant shall commence upon the execution of this Agreement and shall be satisfactorily completed in accordance with the time schedule set forth in Exhibit B attached hereto and incorporated herein by reference.

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

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. In no event shall Consultant's total compensation exceed the sum of \$ 38,777.60 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 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. 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.

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.

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



- (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: \_\_\_\_\_  
A. Sepi Richardson, Mayor

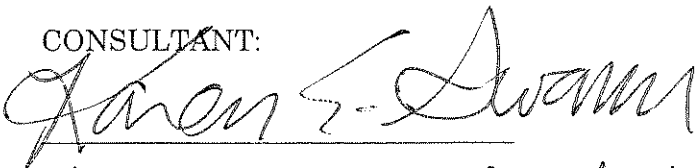
ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Harold S. Toppel, City Attorney

CONSULTANT:



Karen E. Swaim, President  
Typed Name, Title

**EXHIBIT A**  
**Description of Services**

See attached SBI letters dated June 19, 2009  
and August 4, 2009.



**Swaim Biological Incorporated**  
**4435 First Street PMB #312**  
**Livermore, CA 94551**

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

**From:** Jeff Mitchell

**Date:** June 19, 2009

**Re:** Lipman Slide Repair, Project 9905

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Swaim Biological Incorporated (SBI) is pleased to submit this scope of work and cost estimate to provide biological support services to the City of Brisbane for the Lipman Slide Repair Project. The project involves repairs to a hillside and an asphalt and concrete walkway that were damaged during heavy spring rains in 2006, and is eligible for federal funding under FEMA-CA-DR1646. Repairs will include the replacement of the walkway, drainage trench, and associated chain link fencing. Completion of the project is necessary in order to restore use of the walkway, which is the main ingress and egress route for students at the school.

In consultation with the US Fish and Wildlife Service, FEMA has determined the project is 'not likely to adversely affect' federally listed species or their designated or proposed critical habitats if the conservation measures described in Appendices B and C of FEMA's May 2006 Programmatic Biological Assessment for FEMA-funded disaster assistance projects in California, as amended, are fully and correctly implemented. The project specific conservation measures are described in the FEMA issued Project Worksheets, PW 216 and PW 227. SBI proposes to provide biological services to ensure compliance with the documents referenced above pursuant to the federal Endangered Species Act (1973), as amended.

### **Tasks to be performed under this Scope of Work:**

#### *Coordination*

We anticipate that coordination will be required between SBI, the City, and the construction contractor hired by the City. Under this task SBI will review draft construction plans, recommend calendar periods for construction, and develop an environmental awareness training program for on site workers. SBI will provide technical assistance with implementing the conservation measures (including providing schematic drawings of exclusion fencing and one-way funnel exits) and shall be familiar with all of the applicable requirements listed in the PBA/PBO and Project Worksheets. This task includes preparation for and participation in



conference calls and other communications, including possible contact with regulatory agencies.

#### *Site Assessment*

SBI will conduct an assessment of the project site with regard to federally listed species having potential to occur there. This task will involve a minimum of one site survey prior to the initiation of construction, and a thorough background review of available literature and database records.

#### *Monitoring*

SBI will provide a Service-approved biological monitor to remain on site for the duration of the project. The on site biologist will monitor all construction activities to help ensure that no federally listed species is harassed, killed or injured and to ensure that the project otherwise conforms to the conservation measures described in the PBA/PBO and Project Worksheets. The biological monitor will have the authority to stop any aspect of the project that will result in unauthorized take of federally listed species.

#### *Reporting*

SBI will provide the City with a report in .pdf or similar electronic format describing the project's compliance with the conditions described in the PBA/PBO and Project Worksheets. This report shall include at a minimum, the results of our assessment of the project area with regard to potentially occurring federally listed species, a description of construction activities performed, a description of any observed or potential impacts to federally listed species and their habitats as a result of project activities, and a discussion of the contractor's compliance with the terms and conditions of the documents listed above.

### **Subtasks**

SBI proposes to perform the following specific subtasks:

- 1) Review draft plans and specifications. SBI will make recommendations on how best to implement the conservation measures based on this review. These recommendations will include, if appropriate, a proposed alignment of an exclusion fence, and the identification of any constraints on access / egress and staging areas based on the location of any sensitive habitats.
- 2) Provide construction contract specification language to ensure the requirements of the PBA/PBO, PWs and ESA are met. SBI will recommend calendar periods for construction based on the natural history of listed species with potential to occur in the project area.
- 3) Provide a Service-approved on site biological monitor to be present during all construction activities. The on site biologist will be familiar with all applicable requirements listed in the PBA/PBO, the PW-227 Hillside Repair, and the PW-216 Path Repair and will be available to provide guidance on their implementation.

- 4) Conduct a thorough database search and literature review to determine whether federally-listed species occur within dispersal distance of the project site. This will include a search of California Natural Diversity Database records, consultant's reports from projects in the area submitted to CDFG and USFWS, books, published literature, and internet resources. A federally listed species will be determined 'likely to occur' on the project site if a) it is within dispersal distance of a documented sighting of the species, and b) suitable habitat is present in the project area.
- 5) Conduct a reconnaissance-level field assessment to determine the presence of federally listed wildlife species and / or suitable habitat for federally listed species. This assessment will be conducted by a Service-approved biologist, following Service-approved survey methods, and conducted during an appropriate time of year to identify the relevant species' presence.
- 6) For species identified as 'likely to occur on the project site', SBI will provide recommendations to the City in complying with and implementing the species-specific conservation measures described in Appendix C in the PBA/PBO.
- 7) Provide a Service-approved biological monitor to be present onsite during all activities related to the project. The monitor will ensure the project complies with the conservation measures described in the PBA/PBO, the PW-227 Hillside Repair, and the PW-216 Path Repair documents, and shall have the authority to stop work that may result in the unauthorized take of a federally listed species.
- 8) Provide the City with guidance to ensure that all work be conducted in a manner that will not result in the unauthorized take of a federally listed species. This shall include ancillary activities associated with the project such as equipment staging and refueling areas, spoils stockpiling areas, and routes of ingress and egress.
- 9) Provide the City with guidance on avoiding and limiting disturbance to federally listed species and their habitats to the maximum extent practicable.
- 10) If appropriate, assist the City in directing the installation of exclusionary fencing with one-way exit funnels to allow species to passively leave the project area. The on site biological monitor shall inspect the exclusion fence regularly to ensure it is intact and functioning properly
- 11) Provide the City with guidance on exercising every reasonable precaution to protect federally listed species and their habitats from pollution due to fuels, oils, lubricants, and other harmful materials. This includes construction by-products and pollutants such as fresh cement, saw-water and other deleterious materials.

## Assumptions

- 1) SBI will have full access to the project site prior to construction in order to conduct a site assessment. The City will obtain any required permissions for SBI biologists to access the site
- 2) If an exclusion fence with one-way exit funnels is required for this project, the materials and labor required for its installation will be provided by the City or the construction contractor. SBI will provide a schematic depicting the exit funnel design and may direct the alignment of the fence
- 3) The construction contractor will be familiar with, and will implement all Best Management Practices (e.g. per Regional Water Quality Control Board, the California Stormwater Best Management Practice Handbooks, *etc.*)
- 4) The construction contractor will provide a plan for the emergency clean up of any spills of fuel or other material, and will maintain this plan on site
- 5) The construction contractor will collect and transport all construction pollutants to an authorized disposal area, as appropriate and per all federal, state, and local laws and regulations
- 6) The construction contractor will properly store any hazardous materials on site, and will maintain a plan for emergency clean up of such materials as well as adequate supplies to implement the plan
- 7) The construction contractor will be responsible for removing all construction debris from the site once the project is completed, and will transport it to an authorized disposal area per all federal, state, and local laws and regulations
- 8) The duration of the construction period will not exceed thirty (30) days, and workers will remain onsite no more than an average of ten (10) hours per work day

## Project Staff

For this project SBI proposes the following personnel:

- **Jeff Mitchell**, B.A., Project Manager
- **Jesse Reeb**s, B.A., Lead Biologist
- **Karen Swaim**, M.S., Principal/QA/QC
- **SBI Staff**, On Site Monitors

**Jeff Mitchell** is an ecologist and environmental compliance specialist with extensive experience in protected-species issues. He has ten years of experience leading wildlife surveys and

conducting biological monitoring throughout the San Francisco Bay Area. Mr. Mitchell has managed a variety of projects ranging from biological monitoring of construction projects of various sizes to focused special-status wildlife surveys. His experience spans a wide array of regulatory contexts and agencies including the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and California Department of Fish and Game. He holds federal permits for the California red-legged frog, California tiger salamander, and vernal pool fairy shrimp, and is authorized to handle the Alameda whipsnake and San Francisco garter snake. Mr. Mitchell will be the SBI's Project Manager and primary point of contact for the project.

**Jesse Reeb**s is a biologist with expertise in botany and entomology. His project experience includes the creation and enhancement of habitats for native plant species in the Bay Area, including critical habitat for the Mission Blue, Calippe Silverspot, and San Bruno Elfin butterflies. He is trained in the identification of federally-listed plant species, including all of those with potential to occur in the project area. He is authorized to handle federally-listed species including the California red-legged frog, San Francisco garter snake, and the Alameda whipsnake. Mr. Reeb will perform the site assessment and database review for the project.

**Karen Swaim**, SBI's CEO, has devoted 15 years to the study of the Alameda whipsnake and is considered a local expert on the whipsnake and other herpetofauna. She currently has federal and state permits for the San Francisco garter snake, California red-legged frog, Alameda whipsnake, and giant garter snake. She has managed dozens of projects for a wide range of clients, including the San Francisco Public Utilities Commission, Contra Costa Water District, East Bay Regional Park District, California State Parks, Lawrence Livermore National Laboratories, the National Park Service and the US Fish and Wildlife Service. Ms Swaim will provide senior management and quality control for the project.

**Swaim Biological Incorporated (SBI)** is a natural resources consulting firm specializing in the ecology of amphibians and reptiles of the greater Bay Area. SBI's staff is a group of dedicated biologists and natural resource managers, all of whom are authorized by the U.S. Fish and Wildlife Service and the California Department of Fish and Game to handle special-status wildlife species and are qualified to perform on site biological monitoring for the project. Our team is familiar with all state and federal regulatory standards for listed species and is experienced in compliance with the federal Endangered Species Act and the California Fish and Game Code.

## **Relevant Project Descriptions**

**Project: Ox Mountain Landfill Alternative Energy Facility**  
**Half Moon Bay, San Mateo County, California**  
**Client/Funding: Ameresco Half Moon Bay, LLC**  
**Date of Performance: September 2006 – 2009 (ongoing)**

For nearly three years SBI has been providing environmental consulting services for the construction of an alternative energy facility that converts landfill gas into electricity located in

potential San Francisco garter snake and California red-legged frog habitat near Half Moon Bay, California. The project involved preparing a mitigation strategy, permitting the project through the Section 7 process, and monitoring the construction of the energy plant at the landfill. During the past years SBI has directed the installation and maintenance of exclusion fencing, trained onsite workers for environmental awareness, hand-excavated potential underground refuges for listed species, and conducted site inspections to ensure compliance with project permits. The project is now nearing completion and has resulted in no unauthorized impacts to listed species. Currently SBI is assisting with planning and monitoring the final mitigation efforts including non-native vegetation removal and replanting portions of the site with native seed stock.

**Project: San Pablo Dam Seismic Upgrade Biological Monitoring**

**Location: San Pablo Dam, Richmond, CA**

**Client: East Bay Municipal Utility District / ESA**

**Dates of Performance: April 2007 – September 2008**

SBI provided biological monitoring services for test drilling at San Pablo Dam as part of a multi-year seismic upgrade project. The project area was located within suitable habitat for both the California red-legged frog and Alameda whipsnake. Services provided included pre-construction surveys for California red-legged frogs, contractor awareness training, and biological monitoring of construction activities. SBI biological monitors ensured that contractors underwent environmental training and adhered to the conservation measures in the Programmatic Biological Opinion.

**Project: Connemara Residential Development**

**Pacifica, San Mateo County, California**

**Client/Funding: NPS and O'Brien Homes**

**Date of Performance: 2007–2008**

SBI conducted preconstruction and construction monitoring for a development in Pacifica involving the construction of 23 single family homes, two commercial buildings, and associated roads and other infrastructure on a 10-acre development parcel. Listed species in the area included the San Francisco garter snake, California red-legged frog, mission blue butterfly, and San Bruno elfin butterfly. SBI surveyed the parcel for listed species, and excavated rodent burrows onsite as required by the Biological Opinion. SBI biologists monitored the relocation of San Bruno Elfin butterfly host plants outside the project site and surveyed work areas prior to construction.

## **Cost Estimate**

The tasks described above can be completed for a maximum cost of \$36,077.60 for labor and expenses. Please see the attached table for details. We will submit invoices for labor and travel expenses on a monthly basis (net 30).

If you have any questions regarding this proposal and cost estimate please feel free to contact me at (415) 350-4143.

Sincerely,

A handwritten signature in black ink that reads "Jeff Mitchell". The signature is written in a cursive style with a large, sweeping initial "J".

Jeff Mitchell  
Project Manager  
Swaim Biological Incorporated  
4435 First Street PMB 312  
Livermore, CA 94551  
jmittchell@swaimbio.com

### Lipman Slide Repair, Biological Services

Task	Personnel	Hours	Rate	Cost
1. Coordination	SB	10	\$90.00	\$900.00
	PI	2	\$165.00	\$330.00
2. Site Assessment	SB	8	\$90.00	\$720.00
	B	16	\$75.00	\$1,200.00
3. Monitoring	SB	180	\$90.00	\$16,200.00
	B	180	\$75.00	\$13,500.00
4. Reporting	SB	20	\$90.00	\$1,800.00
	PI	2	\$165.00	\$330.00
<b>Total Labor Cost</b>				<b>\$34,980.00</b>

Expenses	Unit	Quantity	Rate	Cost
Travel (est. 32 Round Trips @ 60 miles each)	Mile	1,920	\$0.51	\$969.60
Bridge Tolls (estimated 32)	Crossing	32	\$4.00	\$128.00
<b>Total Expenses</b>				<b>\$1,097.60</b>
<b>TOTAL PROPOSED BUDGET (Labor and Expenses)</b>				<b>\$36,077.60</b>

PI= Principal, SB=Senior Biologist, B= Biologist



**Swaim Biological Incorporated**  
**4435 First Street PMB #312**  
**Livermore, CA 94551**

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**To:** Randy Breault  
**From:** Jeff Mitchell  
**Date:** August 4<sup>th</sup>, 2009  
**Re:** Lipman Slide Repair Scope of Work

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Randy:

Per our phone conversation, I would like to request an amendment to our agreement for the Lipman Slide Repair project habitat assessment. I am currently proceeding with Section 7 Consultation with the U.S. Fish and Wildlife Service under our purchase order (A90000162) dated 6/29/2009. This cost estimate originally was budgeted to include activities related to the habitat assessment required by FEMA's PBA/PBO under which the project was to be permitted. Since the Service has determined the project can not be covered under the PBA/PBO, a Section 7 consultation culminating in a project specific biological opinion is required. I am requesting an amendment for an additional maximum of 30 hours of time for consultation with the Service pursuant to this change.

**Agency Consultation**

Activities covered under this task would be undertaken for the purpose of obtaining the required U.S. Fish and Wildlife Service permit and may include phone call and email communications, document preparation and review, preparation for and participation in conference calls, and up to one (1) additional site visit, if required.

The above tasks can be performed for a maximum of \$2,700.00. A summary of the proposed budget is attached. Please feel free to contact me if you have any questions.

Sincerely,

Jeff Mitchell  
Project Manager / Biologist  
Swim Biological Incorporated  
[jmitchell@swaimbio.com](mailto:jmitchell@swaimbio.com)  
(415) 350-4143

Attachment: Cost Estimate



**Lipman Slide Repair Amendment  
Cost Estimate**

<b>Task</b>	<b>Personnel</b>	<b>Hours</b>	<b>Rate</b>	<b>Cost</b>
1. Agency Consultation	SB	30	\$90	\$2,700.00
<b>Total</b>				<b>\$2,700.00</b>

SB = Senior Biologist

**EXHIBIT B**

**Time Schedule for Performance of Services**

*Not used.*

EXHIBIT C  
Compensation

See letters in Exhibit A.

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

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

SUBJECT: City Manager Update on Pending Cooperative Agreement with BSD

DATE: July 6, 2009

### **City Council Goals:**

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

### **Purpose:**

To update the City Council on a pending Cooperative Agreement with the Brisbane School District (BSD) to facilitate repairs to the Lipman Middle School hillside and the City of Brisbane's tennis courts.

The agreement is presently being drafted by the City Attorney's office, and will then require coordination of its final form with BSD. Due to the urgency of this work and the looming summer schedules for both agencies, the agreement will be signed by the executive officers of each agency.

### **Recommendation:**

Provide any direction deemed necessary and appropriate.

### **Background:**

Heavy rains in March and April of 2006 caused a landslide on Brisbane School District property that damaged the walkway students use to access Lipman Middle School, and also damaged the city owned and operated tennis courts. At FEMA's direction, the School District has gone through numerous design revisions, and is now approaching the point where the project is ready to bid.

BSD does not have staff with experience managing FEMA-funded civil engineering projects. These repairs are slightly more complicated than standard disaster recovery projects because FEMA has separated the approved funding into three "Project

Worksheets”; two are issued in favor of the District for repair of the landslide and walkway; one is issued in favor of the City for repair of the tennis courts and fencing.

As a follow on to the last “2x2” meeting between the District and the City, staff proposed the idea of a cooperative agreement where City Engineering personnel would provide project management and construction management to facilitate the delivery of this work.

**Discussion:**

The District Superintendent has already received approval from the Board to enter into an agreement with the City for the purpose described. The City Attorney is currently preparing a draft agreement to provide these services, and to also provide for the tennis court repairs to be bid and constructed under the same project as the landslide and walkway repairs.

**Fiscal Impact:**

The underlying principles for the agreement assume that the city will be reimbursed by District for all direct costs we incur (i.e., biological services consultant, disaster recovery consultant), and that we will bill the District for our labor and overhead costs. The principles also assume that the city will reimburse the District for their direct costs to design the tennis court repairs and to construct the repairs. The city anticipates that funding for the tennis court work will come from an amended version of the Project Worksheet previously prepared and approved by FEMA.

**Measure of Success**

Completion of all three repair efforts.

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Director of Public Works/City Engineer

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City Manager

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

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

SUBJECT: Lipman Tennis Court Repair

DATE: September 21, 2009

### **City Council Goals:**

To maintain and improve infrastructure. (#3)

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

### **Purpose:**

To obtain Council approval to expend public funds.

### **Recommendation:**

Concur with the Brisbane School District's Board of Trustees' anticipated award of the Lipman Middle School Landslide Repair Project to Top Grade Construction, which includes repair of the tennis courts in the bid amount of \$64,278.

### **Background:**

At its July 6, 2009 meeting, Council was updated on a pending Cooperative Agreement with the Brisbane School District to facilitate repairs to the Lipman Middle School hillside and the City of Brisbane's tennis courts. The underlying principles for that agreement included city staff serving in a reimbursable role as project & construction manager for the repairs, and the City reimbursing the District for their direct costs to design and construct the tennis court repairs. (See attached 7/6/09 staff report for further details.)

The District received bids for the project on 8/31/09, and is scheduled to consider award of the project at its September 22, 2009 meeting. The attached memorandum addressed to the District Superintendent details the results of the bid process, the pending approval from multiple state and federal agencies, and also includes a recommendation that the Superintendent be granted authority to delay the award of the project until November

if/when the necessary approvals are received. Unless all four agencies grant their approvals within the next 2 weeks, it is unlikely that construction will commence before summer of 2010.

**Discussion:**

If Council does not concur with the District's award, the District has the latitude to remove the tennis court repairs from their overall project. Assuming the City eventually wants the repairs completed, city staff will then have to commence the design/bid/construct process to complete the work.

**Fiscal Impact:**

FEMA previously provided the City an approved "Project Worksheet" for interim repairs of the tennis courts. It is assumed that our request for an amended final repair will likewise be approved. Emergency repair funds from the state/federal government are provided on a reimbursement basis. The initial outlay of funds is assumed to come from the city's General Fund.

**Measure of Success**

Completion of the tennis court repair allowing full, safe access to the original court area.

**Attachments:**

July 6, 2009 Brisbane City Council Agenda Report  
September 22, 2009 Memorandum to Superintendent Presta

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Director of Public Works/City Engineer

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City Manager