

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: **Professional Service Agreements for Biological Studies in the San Bruno Mountain Habitat Conservation (HCP) Plan Area.**

DATE: Meeting of May 19, 2016

City Council Goals:

To develop plans and pursue opportunities to enhance open space.(Goal #7)
To develop plans and pursue opportunities to protect natural resources. (Goal #8)

Purpose:

To enable the City to administratively enter into professional services agreements with qualified biological consultants for biological studies within the San Bruno Mountain HCP area.

Recommendation:

That the City Council authorize the City Manager to enter into master professional services agreements with qualified biological consultants (as determined in consultation the HCP Plan Operator) for biological studies within the San Bruno Mountain HCP area.

Background:

The San Bruno Mountain HCP, adopted in 1982, requires that biological studies be conducted before the development of privately-owned properties in the HCP area can be approved. The San Mateo County Parks Department is the HCP operator (or Plan Operator). From 1982 through 2015, the San Mateo County Parks Department contracted with Thomas Reid Associates (TRA; now TRA/MIG) for biological services related to HCP management, including individual project review. In 2006, the City of Brisbane entered into a Master Professional Services Agreement with TRA to provide on-call biological services related to development applications in the City subject to HCP compliance. Under this contract, the City submits a request to TRA for biological services whenever a HCP-related development application is submitted.

In November 2015, TRA/MIG and the County ended their long-standing contract for HCP management. Management of the HCP has transitioned in-house to the Parks Department's new Natural Resources Manager. The Natural Resource Manager continues to require biological studies to be prepared by qualified biological consultants for project proposals within the HCP, subject to the County's review. The Natural Resources Manager has provided a preliminary list of biological consulting firms in addition to TRA/MIG that are considered qualified to provide those services.

Discussion:

Given that the Plan Operator has identified a list of biological consultants qualified to perform studies in the HCP area, it would be appropriate for the City of Brisbane to have the flexibility to utilize any of the qualified biological consultants as determined by the Plan Operator. It is recommended that the City Council authorize the City Manager to enter into master agreements with the other qualified biological consultants. The form of the agreements would be similar to the current agreement with TRA/MIG, which is attached for reference purposes. From a procedural standpoint, the financial responsibility for preparing a biological survey for a private development proposal lies with the developer/property owner, not the City. As noted in the attached master agreement, the City will not enter into a contract for specific studies until the private developer has deposited the funds required to cover the requisite costs.

The use of an "on-call" consultants list will allow the City to be responsive to schedule and workload demands by maintaining flexibility in contracting for required biological services. Additionally, this approach allows the City to respond to future changed conditions, as the list of qualified biological consultants may change over time. The City would continue to rely on the County as Plan Operator to identify qualified biological consultants.

If the City Council approves this recommendation, City staff would contact all qualified biological consultants to enter into master agreements. The firms now identified by the Plan Operator include *Coast Ridge Ecology, Creekside Center for Earth Observations, Neal Kramer Consulting, Nomad Ecology, TRA/ MIG, and Johnson Marigot Consulting.*

Once agreements are executed with interested qualified firms, staff foresees utilizing a rotational system among the qualified consultants for contracting purposes.

Fiscal Impact:

None. Project applicants are responsible for all costs associated with consultant services for their project.

Measure of Success:

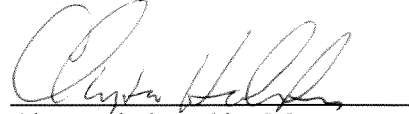
For the City to administer its role in the HCP process as efficiently as possible, thereby enabling the City to process planning applications in compliance with the timelines established in State law.

Attachments:

A. Executed Professional Services Agreement with TRA/MIG



John Swiecki, Community Development Director



Clay Holstine, City Manager

**AGREEMENT FOR PROFESSIONAL SERVICES
RELATED TO ADMINISTRATION OF THE
SAN BRUNO MOUNTAIN HABITAT CONSERVATION PLAN**

THIS AGREEMENT, effective as of 7/6/06, 2006, by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and THOMAS REID ASSOCIATES ("TRA"), is made with reference to the following facts:

A. Various properties in the City are located within the area covered by the San Bruno Mountain Habitat Conservation Plan ("HCP"), and are or will be subject to the terms and requirements of the Agreement With Respect To The San Bruno Mountain Habitat Conservation Plan (the "HCP Agreement").

B. The HCP is administered by the County of San Mateo ("the County"), in its capacity as the HCP Plan Operator, and the County has retained TRA to perform monitoring and consultation services as the Habitat Manager.

C. City is a party to the HCP Agreement and is required by that Agreement to find and determine that any proposed development within the habitat conservation area is consistent with the HCP. Such finding normally requires the preparation of a biological survey together with an operating program to be implemented by the landowner and monitored by TRA.

D. TRA has previously contracted directly with the individual landowners for services related to the biological survey and operating program, but in order to avoid any potential conflicts of interest, it is the desire of the County, the City, and TRA that City enter into a direct contract with TRA for the performance of biological surveys and the preparation and monitoring of operating programs when required by the HCP Agreement.

E. It is contemplated that City will enter into separate contacts with each landowner for collection of all fees and costs payable to TRA for the services to be performed hereunder.

NOW, THEREFORE, the parties agree as follows:

1. Proposal For Services.

(a) When City determines that a biological survey and operating program are required in connection with a proposed development within the HCP, City will provide all pertinent information concerning such development to TRA and following receipt of such information, TRA shall submit a proposal to City for performance of the work ("the Proposal"). In recognition of the fact that the application for development approval may be subject to the time constraints imposed by the Permit Streamlining Act, TRA shall make every effort to submit the Proposal in a timely fashion, but in no event later than 20 days after delivery to TRA of all information needed for preparation of the Proposal.

(b) The Proposal shall set forth a complete description of the services to be provided by TRA, the fees and estimated costs payable to TRA for the performance of such services, the manner in which such payment is to be made, and the estimated time for commencement and completion of the work. Separate fees and costs shall be quoted for preparation of the biological survey, preparation of the operating program, and monitoring of the operating program.

(c) If City's Director of Community Development ("the Director") finds the Proposal to be satisfactory, the Director shall indicate his acceptance by returning a signed copy of the Proposal to TRA and the Proposal shall thereupon constitute an Addendum to this Agreement. However, the Proposal shall not become effective until all of the following events shall have occurred:

- (1) City has entered into a Reimbursement Agreement with the landowner providing for advance payment by the landowner of all fees and costs payable to TRA as quoted in the Proposal; and
- (2) City has collected from the landowner all amounts required to be paid under the Reimbursement Agreement as of the date such agreement is signed; and
- (3) The Director has given TRA written Notice To Proceed with the work.

2. **Change Orders.**

In the event of any change in the scope of services to be performed by TRA or expenses to be incurred in connection therewith, TRA shall submit a proposed Change Order to City describing the nature of the change and the effect, if any, upon the fees and costs payable to TRA under the Proposal. Upon acceptance of the Change Order by the Director, City shall request approval of the Change Order by the landowner along with payment of any additional fees and costs that may be required. City shall thereupon return the Change Order, signed by the Director, to TRA as an amendment to the Proposal.

3. **Limitation of Liability.**

(a) TRA acknowledges that City is only obligated to remit payments collected from the landowner and City has assumed no other obligation or liability for payment of any amounts owed to TRA pursuant to the Proposal or any modification thereof. Nothing herein shall be construed as constituting an assumption or guaranty by City of any amounts payable by the landowner under the Reimbursement Agreement as fees and costs for TRA.

(b) City acknowledges that TRA shall have no obligation or liability to perform any services or incur any costs pursuant to a Proposal or any modification thereof until City has confirmed to TRA that it has collected sufficient funds from the landowner for payment of all fees and costs owed to TRA as and when the same become due.

4. **Administrative Fee.**

City shall be entitled to charge each landowner an administrative fee to compensate City for the cost of staff time and other expenses that will be incurred in connection with

the performance by City of its services under this Agreement. Such administrative fee shall be an amount equal to ten percent (10%) of the total fees payable to TRA for the project.

5. Independent Contractor.

TRA is, and at all times shall remain, an independent contractor, and not an agent, officer or employee of City. As such independent contractor, neither TRA 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. TRA 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. The parties also acknowledge that TRA shall not be considered an agent, employee, or representative of the landowner whose property is the subject of the services to be provided by TRA hereunder.

6. Assignment and Subcontracts.

TRA acknowledges that TRA's special skill and expertise is a material consideration for City entering into this Agreement. TRA shall not assign, subcontract or delegate to any other party the performance of any services to be rendered by TRA under this Agreement without the prior written approval of City and County. If City and County consent to any subcontracting of work, TRA shall be fully responsible to City and County for all acts or omissions of the subcontractor.

7. Indemnity.

TRA 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 TRA of its services under this Agreement or failure by TRA to comply with any of its obligations contained in this Agreement, and City shall not be liable for any negligent acts or omissions of TRA.

8. 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.: Director of Community Development 50 Park Lane Brisbane, CA 94005
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To TRA	Thomas Reid Associates 545 Middlefield Road Suite 200 Menlo Park, CA 94025
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9. Termination of Agreement.

This Agreement may be terminated by either party upon giving thirty (30) days prior written notice to the other party. In the event of termination, TRA shall be entitled to payment for all services rendered and costs incurred to the effective date of termination to the extent that City has collected payment for such services and costs from the landowner.

10. 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) **Amendments.** This Agreement may be modified or amended only by a written document duly executed by both City and TRA.

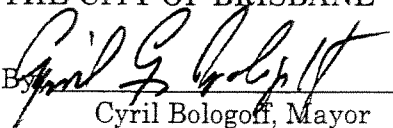
(c) **Waiver.** The waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same provision or any other provision of this Agreement.

(d) **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.

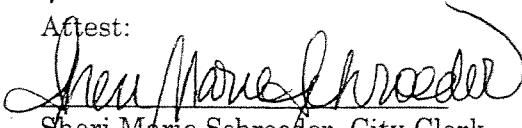
(e) **Successors and Assigns.** Subject to the restriction against assignment and subcontracting, this Agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

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

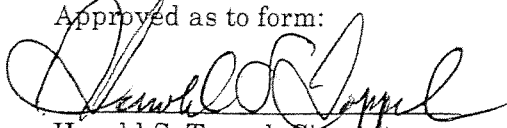
THE CITY OF BRISBANE

By 
Cyril Bologoff, Mayor

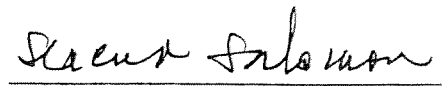
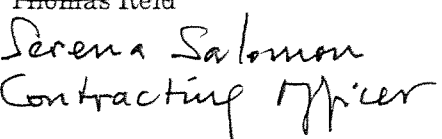
Attest:


Sheri Marie Schroeder, City Clerk

Approved as to form:


Harold S. Toppel, City Attorney

THOMAS REID ASSOCIATES


~~Thomas Reid~~

Serena Salomon
Contracting Officer