



CITY COUNCIL AGENDA REPORT

Meeting Date: 6/16/2022

From: Stuart Schillinger, Assistant City Manager

Subject: Approval of Public Art Committee Request for Proposal to Employ a Consultant to Assist the Committee in Finding and Working with an Artist for Art Work Located at the Community Park Located in the Area between San Francisco Avenue and Old County Road Across from the Village Shopping Center

Community Goal/Result

Community Building

Purpose

To improve the quality of life within the community by stimulating creativity, imagination, and add a unique human quality to the community environment and enrich public spaces through works of art.

Recommendation

Approve a budget of up to \$200,000 for an art installation in the Community Park located in the area between San Francisco Avenue and Old County Road across from the Village Shopping Center. The budget includes hiring a consultant to work with the Committee in selecting an artist and working with the artist through the development and the installation of the art work.

Background

In early 2022 the Public Art Advisory Committee reviewed City owned property for possible locations for a public art piece. The Committee determined the first location would be the area in the Community Park between San Francisco Avenue and Old County Road across from the Village Shopping Center with the picnic tables and painted fire hydrants.

Discussion

The Public Art Advisory Committee recommends the City hire a consultant to work with the City and the Committee to assist in soliciting input from the Community regarding art in the park, the selection of an artist, working with the artist and the Committee in determining the final art element to be installed and working with the artist throughout the installation process.

This is the first time the City or the Committee has solicited for a Consultant to work with the Committee. Therefore, the anticipated cost of the consultant is not known, but typically is 10% of the designated budget. The Committee determined that a not to exceed amount for the art element and the Consultant of \$200,000 would be appropriate. This would provide the ability to attract Consultants who have been successful in other cities and provide for a diverse range of

art element styles to be installed based on our past experiences with the Library, the Skateboard Park, proposed private projects, and the re-installation of the raccoon.

The proposal is attached for your review and approval. The Scope of Work includes:

- Work with the Committee to determine the requirements of the artist and art work (this phase will include identifying the community values the art should showcase)
- Develop and Administer the Request for Proposal
- Assist the Committee with determining the recommended artist
- Work with the Committee and Artist to ensure the vision of the Committee is achieved in the final product
- Be the lead contact between the artist and the City during the installation of the art work and approved maintenance plan.

The Committee is looking forward to receiving public input during all phases of the project and will work with the Consultant to engage the public in the process. In addition to receiving public input through the Committee, the Community will have an opportunity to participate in Council meetings when the Consultant is selected, the Artist is chosen, and when the final design is approved by City Council.

Fiscal Impact

The City's Public Art Fund currently has approximately \$1,340,000 in the fund.

Measure of Success

The City commissions a piece of public art or art elements for the Community Park, which stimulates the community's creativity and imagination while enriching the public space.

Attachments

1. Request for Proposal.
2. Draft Agreement for Professional Services

Stuart Schillinger

Stuart Schillinger, Assistant City Manager

Clayton L. Holstine

Clay Holstine, City Manager

Request for Proposal

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

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

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

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

Desired Knowledge, Skills, and Abilities:

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

Scope of Work

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

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

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

Submittal requirements

- Consultant /Consultant Team information
 - Name
 - Address
 - Telephone Number
 - E-mail Address
- Cover Letter
- Resume
- Portfolio of previous projects consultant has overseen
- Cost Proposal broken down by each aspect of the Scope of Work

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

AGREEMENT FOR PROFESSIONAL SERVICES [DRAFT]

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

RECITALS

AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

12. **Employment Eligibility.** At the request of City, Consultant shall furnish to City copies of Employment Eligibility Verifications (INS Form I-9) or other evidence satisfactory to City showing that any or all persons providing services under this Agreement for on behalf of Consultant is eligible to be employed in the United States. In the event Consultant is unable or unwilling to provide the employment eligibility verification within ten (10) days after City's request, City may require the immediate removal from the project of such workers as specified by City, and upon any failure by Consultant to do so, City shall be entitled to terminate this Agreement.

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

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

(a) Type of policies and coverage:

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

under this Agreement. In the alternative, Consultants may rely on a self-insurance program to provide this coverage so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or Consultants, if a program of self-insurance is provided, shall waive all rights of subrogation against City for loss arising from work performed by Consultants for City.

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

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

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

To City	City of Brisbane 50 Park Lane Brisbane, CA 94005 Attn.: City Manager
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To Consultant	TBD
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16. **Litigation Expenses and Attorneys' Fees.** If any party to this Agreement commences any legal action against the other party to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

17. **Termination of Agreement.** This Agreement may be terminated by any party, effective upon written notice, should the other party commit any material default in the performance of its obligations hereunder. This Agreement may also be terminated by either party, for any reason, upon fifteen (15) day's prior written notice to the other party. In the event this Agreement is terminated by City through

no fault of Consultant, Consultant shall be compensated for all services performed to the date of termination.

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

19. **Miscellaneous Provisions.**

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

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

THE CITY OF BRISBANE

By: _____

Clayton L. Holstine, City Manager

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Consultant:

Michael Roush

Legal Counsel