



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Karen Kinser, Deputy Director of Public Works

Subject: Energy Service Contract with Willdan Energy Solutions

Community Goal/Result - Ecological Sustainability

Purpose

To complete the process necessary for entering into a sole source energy service contract with Willdan Energy Solutions.

Recommendation

1. Conduct the public hearing required by California Government Code sections 4217.10 et seq. (see Attachment 1 for procedural steps), and if appropriate, adopt a Resolution "Approving an Energy Service Contract with Willdan Energy Solutions."
2. Transfer \$183,394 from the General Fund to pay the city's share of project funds.

Background

City sustainability staff participated in a Zero Net Energy (ZNE) Study through BayREN (Bay Area Renewable Energy Network) in 2018 for the Community Pool, as it represents one of the City's largest uses of fossil fuels. The study indicated that pool heating needs could primarily be met with electric heat pump water heaters with an ultimately reduced energy cost.

As the existing gas boiler is near the end of its useful life, Parks & Recreation and Public Works Maintenance staff worked cooperatively on its replacement. Sustainability staff contacted San Mateo County Energy Watch and their partner Willdan Energy Solutions (WES), implementer of the PG&E Government and K-12 program (GK12 Program), for technical assistance.

The team scoped the project, which is described in Attachment 2, Exhibit A. PG&E offered the City a sizeable GK12 Energy Efficiency program incentive and On-Bill Financing (OBF) for the majority of the project costs. Note that California Public Utility Commission's Energy Division has final approval of the project. Staff is bringing this to Council in advance of that anticipated approval to accommodate Council's summer recess.

Due to WES's unique role as the sole implementer of the GK12 Program, its integral role in developing the project, and its ability to provide turnkey design-build services, staff recommends utilizing CA Government Code 4217 to award a contract with WES to undertake the project. In accordance with state law, notice of the public hearing was posted at City Hall, Brisbane Community Center, Brisbane Public Library and Mission Blue Center on June 23, 2022.

This Design-Build Contract with WES is structured in two parts, since WES will not only design the project but thereafter construct the project as the general contractor, after the design is approved. The design phase will commence following Council and CPUC approval. At or near the completion of the design phase, staff and WES will negotiate a Design-Build Amendment which will incorporate detailed specifications and final costs. No further Council action will be required so long as the cost of the design and the construction does not exceed \$718,393.

Discussion

Utilizing electric heat pump water heaters for a large outdoor pool is a relatively new endeavor; while several other agencies in the area are also embarking on similar projects, none to staff's knowledge have been completed in the state. Accordingly, the project team has worked through a variety of challenges to move the project forward, including:

- Receiving special permission to utilize OBF for a fuel-conversion project.
- Sizing the equipment to keep the pool at the required temperature (80 degrees) during the coldest times of the year. In the short term, the existing gas boiler will remain as backup. Longer term, City staff hopes to fully electrify the facility, which may require further electrical upgrades. In the interim, staff will evaluate the heat pump units' operating capabilities and backup needs, especially as climate change results in overall warmer temperatures.
- Managing the noise levels when three heat pump units are running simultaneously through strategic placement of the units to keep levels at nearby residences below allowable levels per City noise ordinance.

Fiscal Impact

The total project cost is estimated at \$653,393; the final cost will be detailed in a Design-Build Amendment. Funding sources include:

- \$285,000 incentive from PG&E
- \$249,999 OBF loan to be paid back to PG&E over 10 years on PG&E bills to the City
- \$118,394 from City's General Fund

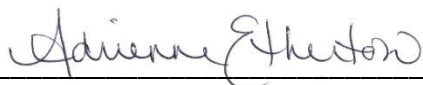
The recommended transfer from the General Fund is a total of \$183,394, which includes a 10% contingency of the total project cost (i.e., \$65,000), in the event that final costs in the Design Build Amendment are higher than expected. The completed project will provide estimated energy savings in the first year of \$26,036, and payback (in terms of savings) is estimated between 10 - 14 years, depending on utility escalation rates. Subsequently, the City would see significant savings for the remaining life of the unit, which is expected to be 20 years or more.

Measure of Success

Heat pump water heaters installed to provide primary heating for the community pool with a significant reduction of GHG emissions and long-term cost savings.

Attachments

1. Procedural steps for Public Hearing
2. Resolution No. 2022-XX including Exhibit A
3. Design-Build Contract with WES including Schedules A-C and Exhibits 1-3



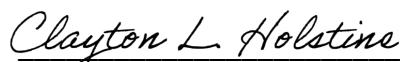
Adrienne Etherton, Sustainability Manager



Karen Kinser, Deputy Director of Public Works



Randy Breault, Director of Public Works



Clay Holstine, City Manager

ATTACHMENT 1

Recommended Steps for Public Hearing

1. City staff report.
2. Council clarifying questions.
3. Mayor's declaration that the Public Hearing "On Consideration of Entering into Energy Service Contract Pursuant to the Provisions of the California Government Code Section 4217.10 et seq. for the City of Brisbane Community Pool Electrification Project" is open.
4. Statement by the City Clerk verifying the posting of the Notice of Public Hearing, followed by the reading of any written protests by the City Clerk.
5. Hearing of oral testimony and comments.
6. Closure of Public Hearing.
7. Council deliberation and action.

RESOLUTION NO. 2022-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE APPROVING
AN ENERGY SERVICE CONTRACT WITH WILLDAN ENERGY SOLUTIONS**

WHEREAS, the Brisbane City Council has demonstrated its commitment to a sustainable and resilient future through its policy goals and actions, including energy reduction, and clean energy programs; and

WHEREAS, the City of Brisbane is a public agency authorized by California Government Code sections 4217.10-4217.18 to enter into contracts for design, construction, and financing of alternate energy equipment or energy conservation measures; and

WHEREAS, in order to enter into an energy service contract or facility financing contract, notice must be given, and the City must make specific findings, consistent with Sections 4217.12; and

WHEREAS, the City Council has held a regularly scheduled public hearing, public notice of which was given at least two (2) weeks in advance; and

WHEREAS, the City Council has received and reviewed the information in Exhibit “A” attached hereto, which is sufficient to allow it to make the requisite findings set forth below; and

WHEREAS, the City of Brisbane desires to engage Willdan Energy Services (Willdan) in a design-build energy service contract for the installation of an electric heat pump unit (“energy conservation facility”) to serve as the primary water heater for the Community Pool; and

WHEREAS, the design-build services are separate from the ongoing energy savings analysis, on-bill financing support incentive acquisition/management and engagement between the City and Pacific Gas & Electric, all provided by Willdan at no cost to the city as the authorized implementer of Pacific Gas & Electric Company’s Government K-12 (GK12) Energy Efficiency Program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRISBANE RESOLVES AS FOLLOWS:

Section 1. The anticipated cost to the City for electrical energy services provided by the energy conservation facility under the design-build energy service contract will be less than the anticipated marginal cost to the City for the other energy that would have been consumed in the absence of this energy service contract.

Section 2. The City Manager and designees, and each of them individually, for and in the name of and on behalf of the City, are authorized to do any and all things and to execute and deliver any and all documents that they may deem necessary or advisable in order to complete the execution and delivery of the Energy Service Contract and otherwise to carry out, give effect to, and comply with the terms and intent of this resolution. All actions heretofore taken by such officers and agents that are in conformity with the purposes and intent of this resolution are hereby ratified, confirmed and approved in all respects.

Section 3. The City Manager is authorized to execute the Design-Build Energy Service Contract in an amount not to exceed \$653,393.

Coleen Mackin, Mayor

* * * *

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the 7th day of July 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

EXHIBIT A

This energy conservation project will install electric air-source heat pumps as the primary heating system for the City's community pool, replacing the existing gas-fired pool heater currently in use as the primary heating source. The existing gas-fired pool heater will be retained to provide supplemental heating when outdoor temperatures fall below 50°F.

The outdoor pool is approximately 4,000 square feet, and an average depth of approximately six feet. The pool is in use throughout the year, and a pool cover is in use during non-operating hours. The pool is heated to approximately 80°F throughout the year.

The existing gas fired hot water boiler is located inside the Mechanical Building. It is rated for 1,826 kBtu/hr input, 1,497 kBtu/hr output, and a rated thermal efficiency of 82%. The system has onboard controls that fire the boiler, as needed, to maintain the pool temperate at the desired 80 degrees Fahrenheit year around. The unit has a fractional HP induced draft fan installed in the flue. The savings from operating this fan less in the proposed measure configuration has been neglected from the savings analysis to be conservative.

The main pool pump is also located in the Mechanical Building and is retrofit with a variable speed drive with pool specific controls. The pool pump operation will not change with the implementation of the project.

The proposed electric heat pump pool heaters have approximately 527 kBtu/hr output ratings each. Three units will be installed in parallel to match the required heat load with a total output capacity of 1,581 kBtu/hr. The three heat pumps will be installed outdoors, adjacent to the Mechanical Building. The proposed heat pumps have a coefficient of performance (COP) that vary with outside air conditions.

The existing gas-fired pool heater will be retained to support the load when daily average outdoor air temperatures are below 50°F. The site location sees average daily outdoor air temperatures below 50°F for about four weeks during a typical meteorological year. During months where lower outside air temperatures are expected, the gas-fired boiler will be enabled, but in a "lag" configuration with the heat pump system as "lead". During these colder days, the heat pumps will attempt to maintain the pool at the desired temperature of 80F, and the gas-boiler will be configured to come on only if the pool temperature drops to a lower setpoint, e.g., 78F. The existing gas-fired boiler will only be used during these low temperature conditions. At all other times, the newly installed heat pump system is expected to fully support the load. The energy savings calculations account for this operation.

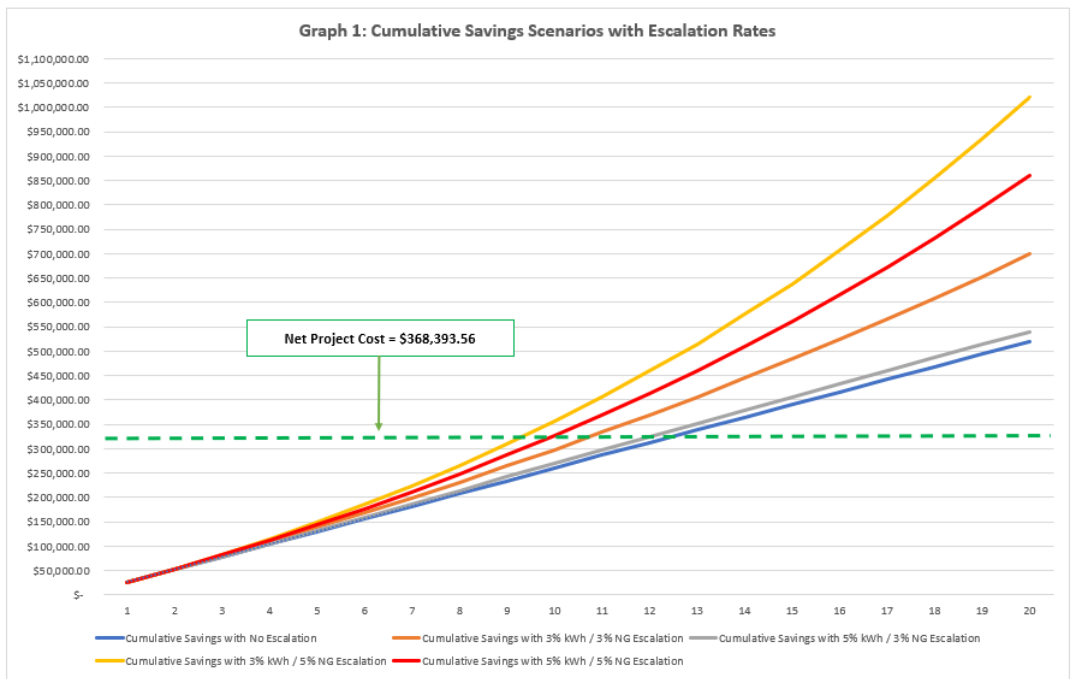
For the purposes of Government Code 4217.12, the effective useful life of the project has been determined to be 20 years and the not to exceed net project cost has been set to \$368,000 or the

gross cost less the Pacific Gas and Electric Company incentive payable to the City on the successful completion of the work.

Table 1 and Graph 1 below present marginal cost findings where first year energy savings have been calculated at \$26,036.25 and where varying utility escalation rate scenarios were examined. The anticipated cost to the City of Brisbane for energy services under the contract, across all scenarios, will be less than the anticipated marginal energy costs in the absence of the project.

Table 1: kWh and Therm Cumulative Savings Estimates and Simple Payback Across Escalation Scenarios

Year	Cumulative Savings with No Escalation	Cumulative Savings with 3% kWh / 3% NG Escalation	Cumulative Savings with 5% kWh / 3% NG Escalation	Cumulative Savings with 3% kWh / 5% NG Escalation	Cumulative Savings with 5% kWh / 5% NG Escalation
1	\$ 26,036.25	\$ 26,036.25	\$ 26,036.25	\$ 26,036.25	\$ 26,036.25
2	\$ 52,072.50	\$ 52,853.59	\$ 52,335.29	\$ 53,892.61	\$ 53,374.31
3	\$ 78,108.75	\$ 80,475.45	\$ 78,879.09	\$ 83,675.64	\$ 82,079.28
4	\$ 104,145.00	\$ 108,925.96	\$ 105,647.78	\$ 115,497.68	\$ 112,219.49
5	\$ 130,181.25	\$ 138,229.99	\$ 132,619.53	\$ 149,477.17	\$ 143,866.72
6	\$ 156,217.50	\$ 168,413.14	\$ 159,770.44	\$ 185,739.00	\$ 177,096.30
7	\$ 182,253.75	\$ 199,501.78	\$ 187,074.39	\$ 224,414.76	\$ 211,987.37
8	\$ 208,290.00	\$ 231,523.08	\$ 214,502.88	\$ 265,643.19	\$ 248,622.99
9	\$ 234,326.25	\$ 264,505.03	\$ 242,024.93	\$ 309,570.48	\$ 287,090.39
10	\$ 260,362.50	\$ 298,476.43	\$ 269,606.89	\$ 356,350.70	\$ 327,481.15
11	\$ 286,398.75	\$ 333,466.97	\$ 297,212.25	\$ 406,146.19	\$ 369,891.46
12	\$ 312,435.00	\$ 369,507.23	\$ 324,801.51	\$ 459,128.00	\$ 414,422.29
13	\$ 338,471.25	\$ 406,628.70	\$ 352,332.00	\$ 515,476.35	\$ 461,179.65
14	\$ 364,507.50	\$ 444,863.81	\$ 379,757.60	\$ 575,381.09	\$ 510,274.88
15	\$ 390,543.75	\$ 484,245.97	\$ 407,028.65	\$ 639,042.20	\$ 561,824.88
16	\$ 416,580.00	\$ 524,809.60	\$ 434,091.63	\$ 706,670.34	\$ 615,952.37
17	\$ 442,616.25	\$ 566,590.14	\$ 460,889.00	\$ 778,487.38	\$ 672,786.24
18	\$ 468,652.50	\$ 609,624.09	\$ 487,358.91	\$ 854,726.98	\$ 732,461.80
19	\$ 494,688.75	\$ 653,949.07	\$ 513,434.97	\$ 935,635.24	\$ 795,121.14
20	\$ 520,725.00	\$ 699,603.79	\$ 539,045.96	\$ 1,021,471.27	\$ 860,913.45



ATTACHMENT 3

DESIGN-BUILD CONTRACT

This Design-Build Contract (the "Contract") is made and entered into as of this ___ day of July, 2022, between the Design-Builder: Willdan Energy Solutions ("WES"), and the City of Brisbane, California ("Customer"), for the purpose of installing certain improvements on the Customer's property and buildings (the "Premises") described in SCHEDULE A (SCOPE OF WORK).

RECITALS

WHEREAS, Customer desires to retain WES to purchase and install certain equipment of the type or class described in SCHEDULE A (SCOPE OF WORK), attached hereto and made part hereof; and

WHEREAS, WES is willing to perform Design and Preconstruction Phase Services as described in SCHEDULE A.2 (DESIGN AND PRECONSTRUCTION SERVICES) but at the conclusion of the Design and Preconstruction Phase, WES, at its sole option, may elect not to proceed with services described in SCHEDULE A.3 (CONSTRUCTION PHASE).

WHEREAS, Customer is authorized under the Constitution and the laws of the State of California to enter into this Contract for the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Customer and WES hereto covenant and agree as follows:

SECTION 1 DESIGN-BUILD DOCUMENTS

- Section 1.1 The Design-Build Documents consist of this Agreement between Customer and WES and its attached Schedules and Exhibits (hereinafter, the "Contract"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, (3) a Change Directive, or (4) a written order for a minor change in the Work issued by the Customer.
- Section 1.2 The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Customer and WES.
- Section 1.3 Attachments, Schedules, Exhibits and Appendices: WES has prepared and Customer has approved and accepted the Schedules as set forth below, copies of which are attached hereto and made parts of this Contract by reference.

Schedules

SCHEDULE A. SCOPE OF WORK

SCHEDULE B. COMPENSATION TO WES

SCHEDULE C. ADDITIONAL RESPONSIBILITIES

Exhibits

EXHIBIT 1. DESIGN-BUILD AMENDMENT

EXHIBIT 2. CERTIFICATE OF ACCEPTANCE – PROJECT COMPLETION

EXHIBIT 3. SUPPLEMENTAL AND OTHER CONDITIONS OF THE DESIGN AND PRE-CONSTRUCTION PHASE SERVICES

SECTION 2 THE WORK OF THE DESIGN-BUILD CONTRACT

- Section 2.1 The term "Work" means the design, construction and related services required to fulfill WES's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by WES.
- Section 2.2 WES shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.
- Section 2.3 WES shall perform all Work through Contractors or through the WES's own forces.
- Section 2.4 WES shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities in affect at the time of Contract or Amendment execution as applicable. If WES

performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, WES shall assume responsibility for such Work and shall bear the costs attributable to correction.

SECTION 3 PHASES OF THE WORK

- Section 3.1 Work shall be performed in two phases: The Design and Pre-Construction Phase and the Construction Phase as outlined in SCHEDULE A (SCOPE OF WORK). WES will commence work for the Design Pre-Construction Phase upon execution of this Design-Build Agreement. The Construction Phase will commence at the conclusion of the Design and Pre-Construction Phase upon the execution of EXHIBIT 1 (DESIGN-BUILD AMENDMENT).
- Section 3.2 The Scope of Work and Fee for each phase is defined in SCHEDULE A (SCOPE OF WORK) and SCHEDULE B (COMPENSATION TO WES) respectively.

SECTION 4 COMMENCEMENT DATE AND TERMS

- Section 4.1 Commencement Date: The effective date of this agreement is the date of agreement's last signature.
- Section 4.2 Construction and Installation Period: The Construction and Installation Period will be a term set forth in the Design-Build Amendment.
- Section 4.3 Weather disruptions, availability of necessary equipment, remediation of hazardous materials, and other delays beyond the control of WES shall not count toward the Construction and Installation Period.

SECTION 5 CONTRACT SUM

- Section 5.1 The Contract Sum is the amount to be paid to WES for the performance of the Work. This amount includes a Stipulated Sum for the Design and Pre-Construction Phase services and a Stipulated Sum for the Construction Phase as identified in SCHEDULE B (COMPENSATION TO WES).

SECTION 6 PAYMENTS TO WES

- Section 6.1 WES Compensation and Fees: WES's fees and compensation are set forth in SCHEDULE B (COMPENSATION TO WES).
- Section 6.2 Billing Information Procedure: Payments due to WES shall be calculated each month and paid in accordance with SCHEDULE B (COMPENSATION TO WES).
- Section 6.3 Payment: Customer shall pay WES within 30 days of receipt of WES's application for payment.
- Section 6.4 Effective Date of Payment Obligation: See SCHEDULE B (COMPENSATION TO WES).

SECTION 7 FISCAL FUNDING

- Section 7.1 Non-appropriation of Funds: In the event no Customer or other funds or insufficient Customer or other funds are appropriated and budgeted, and funds are otherwise unavailable by any means whatsoever in any fiscal period for which payments are due WES under this Contract, then the Customer will, not less than 30 days prior to the end of such applicable fiscal period, in writing, notify WES of such occurrence and this Contract shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the Customer of any kind whatsoever, except as to the portions of payments herein agreed upon for which Customer and/or other funds shall have been appropriated and budgeted or are otherwise available.

SECTION 8 CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

- Section 8.1 Construction Schedule: Construction and equipment installation shall proceed in accordance with the construction period in SECTION 4 (COMMENCEMENT DATE AND TERMS). A detailed schedule of construction will be submitted to Customer following Commencement of the Design-Build Amendment. This schedule will be updated regularly to reflect ongoing progress on the Project.
- Section 8.2 Systems Startup: WES shall provide startup of the installed equipment in accordance with any procedures specified in SCHEDULE C and prior to acceptance of the project by Customer. WES shall provide notice to the Customer of any scheduled test(s) and the Customer and/or its designees shall have the right to be present at any or all such tests conducted by WES and/or manufacturers of the equipment.

SECTION 9 EQUIPMENT WARRANTIES

- Section 9.1 WES covenants and agrees that all equipment installed as part of this Contract is new, in good and proper working condition and protected by appropriate written warranties covering all parts and equipment performance. WES further agrees to deliver warranty documentation to Customer for inspection and approval; to pursue rights and remedies

against manufacturer and supplier of the equipment under the warranties in the event of equipment malfunction or improper or defective function, and defects in parts, workmanship and performance, to notify the Customer whenever defects in equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by WES. The cost of any risk of damage or damage to the equipment and its performance, including damage to property and equipment of the Customer or the Premises, due to WES's failure to exercise its warranty rights shall be borne solely by WES.

Section 9.2 All warranties shall be transferable and extend to the Customer. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessitated by malfunction.

Section 9.3 All warranties required hereunder shall be in force for a minimum of one year from the commencement date as defined in Section 4.1 hereof.

Section 9.4 Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve WES from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

SECTION 10 TRAINING BY WES

Section 10.1 Any training provided by WES shall be as described in SCHEDULE C hereto. The training specified in SCHEDULE C must be completed prior to acceptance of the equipment installation.

SECTION 11 PERMITS AND APPROVALS; COORDINATION

Section 11.1 Permits and Approvals: Customer shall use its best efforts to assist WES in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Customer, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by WES shall at all times conform to all federal, state and local code requirements. WES shall furnish copies of each permit or license which is required to perform the work to the Customer before WES commences the portion of the work requiring such permit or license.

Section 11.2 Coordination During Installation: The Customer and WES shall coordinate the activities of WES's equipment installers with those of the Customer, its employees, and agents. WES shall not commit or permit any act which will interfere with the performance of business activities conducted by the Customer or its employees without prior written approval of the Customer. Customer will require a minimum of two weeks' notice before any shutdown of facilities to facilitate the tie-in of new equipment.

SECTION 12 PERFORMANCE BY WES

Section 12.1 WES shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems. WES shall repair and restore to its original condition any area of damage caused by WES's performance under this Contract. The Customer reserves the right to review the work performed by WES and to direct WES to take certain corrective action if, in the opinion of both parties, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by WES's performance of the work shall be borne by WES.

Section 12.2 WES shall remain responsible for the professional and technical accuracy of all services performed, whether by WES or its subcontractors or others on its behalf, throughout the term of this Contract.

SECTION 13 OWNERSHIP

Section 13.1 Ownership of Certain Proprietary Property Rights: Customer shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. WES shall grant to the Customer a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Customer to continue to operate, maintain, and repair the equipment.

Section 13.2 Ownership of Existing Equipment: Ownership of the equipment and materials presently existing at the Premises at the time of execution of this Contract shall remain the property of the Customer even if it is replaced or its operation made unnecessary by work performed by WES pursuant to this Contract. If applicable, WES shall advise the Customer in writing of all equipment and materials to be replaced at the Premises and the Customer shall within 30 days designate in writing to WES which equipment and materials should not be disposed of off-site by WES. It is understood and agreed to by both Parties that the Customer shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. WES shall be responsible for the disposal of all equipment and materials designated by the Customer as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

Section 13.3 New Equipment: All new equipment or materials supplied to the Customer shall become the property of the Customer.

SECTION 14 LOCATION AND ACCESS

Section 14.1 The physical address of the property as related to the scope of work under this contract is:

Brisbane Community Pool Facility
2 Solano Street
Brisbane, CA 94005

Section 14.2 Customer shall provide sufficient space on the Premises for the installation and operation of the Equipment and shall take reasonable steps to protect such Equipment from harm, theft and misuse. Customer shall provide access to the Premises for WES to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by WES and acceptable to the Customer. WES's access to Premises to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Customer.

SECTION 15 INDEMNIFICATION

Section 15.1 WES shall be responsible for (i) any damage to the Equipment or other property on the Premises and (ii) any personal injury where such damage or injury occurs as a result and to the extent of WES's negligence or other wrongful conduct in its performance under this Contract.

Section 15.2 WES shall save and hold harmless Customer and its officers, agents and employees or any of them from any and all claims, demands, actions or liability of any nature based upon or arising out of WES's negligence or other wrongful conduct in any services performed by WES, its agents or employees under this Contract.

SECTION 16 CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 16.1 If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of Nature, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days' notice to the performing party, in which event neither party shall have any further liability to the other.

SECTION 17 EVENTS OF DEFAULT

Section 17.1 Events of Default by Customer: Each of the following events or conditions shall constitute an "Event of Default" by Customer:

- (i) any failure by Customer to pay WES any sum due for a service and maintenance period of more than 30 days after written notification by WES that Customer is delinquent in making payment and provided that WES is not in default in its performance under the terms of this Contract; or
- (ii) any other material failure by Customer to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty days after notice to Customer demanding that such failures to perform be cured or if such cure cannot be effected in thirty days, Customer shall be deemed to have cured default upon the commencement of a cure within thirty days and diligent subsequent completion thereof;
- (iii) any representation or warranty furnished by Customer in this Contract which was false or misleading in any material respect when made.

Section 17.2 Events of Default by WES: Each of the following events or conditions shall constitute an "Event of Default" by WES:

- (i) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in SCHEDULE A (SCOPE OF WORK) and SECTION 4 (COMMENCEMENT DATE AND TERMS);
- (ii) any failure by WES to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within 30 days after written notice by the Customer to WES demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;
- (iii) any lien or encumbrance upon the equipment by any subcontractor, laborer or material man of WES;

- (iv) the filing of a bankruptcy petition whether by WES or its creditors against WES which proceeding shall not have been dismissed within 30 days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of WES;

SECTION 18 REMEDIES UPON DEFAULT

Section 18.1 Remedies upon Default: All disputes shall be submitted to the individuals listed in SECTION 29 (NOTICE) for resolution. In the event that a remedy acceptable to both Customer and WES cannot be found, either party may seek remedy as outlined in SECTION 19 (MEDIATION).

SECTION 19 MEDIATION

Section 19.1 Any Claim arising out of or related to the Contract shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

Section 19.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

Section 19.3 The parties shall share the mediator's fee and any filing fees equally.

Section 19.4 The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.

Section 19.5 Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

SECTION 20 REPRESENTATIONS AND WARRANTIES

Section 20.1 Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

SECTION 21 ADDITIONAL REPRESENTATIONS OF THE PARTIES

Section 21.1 WES hereby warrants, represents and promises that:

- (i) it shall use qualified subcontractors and delegates, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;
- (ii) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

SECTION 22 COMPLIANCE WITH LAW AND STANDARD PRACTICES

Section 22.1 WES shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Customer relative to the Premises. WES shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

SECTION 23 INDEPENDENT CAPACITY OF THE CONTRACTOR

Section 23.1 The parties hereto agree that WES, and any agents and employees of WES, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the Customer.

SECTION 24 NO WAIVER

Section 24.1 The failure of WES or Customer to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of WES or Customer.

SECTION 25 SEVERABILITY

Section 25.1 In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

SECTION 26 COMPLETE CONTRACT

Section 26.1 This Contract, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the parties hereto.

SECTION 27 FURTHER DOCUMENTS

Section 27.1 The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

SECTION 28 APPLICABLE LAW

Section 28.1 This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of California.

SECTION 29 NOTICE

Section 29.1 Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO WES:

Willdan Energy Solutions
Attention: Micah Chen
2401 E. Katella Ave, #300
Anaheim, CA 92806

TO CUSTOMER:

City of Brisbane
Attention: Tom McMorrow
50 Park Place
Brisbane, CA 94005

SECTION 30 HEADINGS

Section 30.1 Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

SECTION 31 BONDS

Section 31.1 Any and all bonds obtained by WES for this project shall specifically exclude coverage for those portions of the Contract or the Work pertaining to design services and any other part of this Contract and the Contract Documents which do not relate specifically to construction management and supervision of Work for purchasing and installing of Equipment, or for work to be accomplished by the Customer.

SECTION 32 INSURANCE

Section 32.1 WES shall procure and maintain in effect insurance coverage in amounts not less than the following.

- (i) Workers' Compensation and Employer's Liability Insurance with limits of not less than \$1,000,000 per occurrence.

- (ii) Commercial General Liability Insurance for personal and bodily injury, including death, and property damage with limits not less than \$2,000,000 combined single limit each occurrence and \$4,000,000 general aggregate.
- (iii) Automobile Liability Insurance for personal and bodily injury, including death and property damage in the amount of not less than \$1,000,000 per occurrence.
- (iv) Professional Liability Insurance for damages incurred by reason of any negligent act, error or omission committed by WES in performing professional services with limits of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate.
- (v) Builders All-Risk Insurance: WES, at Customer's expense, shall maintain "All Risk Insurance" for all equipment, and property obtained by or for WES which is to become a part of the work while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the project from such temporary locations. WES shall also be responsible for insuring Subcontractor's owned, rented, or borrowed equipment.

Section 32.2 WES will provide Customer with certificates of insurance evidencing coverage required above. Each certificate shall provide that the coverage shall not be canceled except with at least thirty days prior written notice to Customer, ten days' notice if cancellation is due to nonpayment of premium. Should this occur, WES shall procure and furnish to Customer prior to such effective date new certificates conforming to the above coverage requirement.

SECTION 33 TERMINATION

Section 33.1 WES shall have the right at any time by written notice to the Customer, to terminate this Agreement with or without cause. In the event of such a termination for convenience, WES shall be entitled to full payment pursuant to the terms of SCHEDULE A.2 (DESIGN AND PRECONSTRUCTION SERVICES) for all Design and Preconstruction Services performed as of the date of termination. CUSTOMER waives any claim for costs, fees, losses directly or indirectly related to services described in SCHEDULE A.3 (CONSTRUCTION PHASE) in the event WES exercises this clause. CUSTOMER shall have the right to terminate for cause by written notice to WES.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract by their duly authorized officers on the date last below written.

Willdan Energy Solutions (WES)

City of Brisbane (Customer)

Signed _____

Signed _____

Name Anthony Sclafani_____

Name _____

Title Vice President of Engineering_____

Title City Manager_____

Date _____

Date _____

California Contractors License No. 1065713

Willdan Energy Solutions
2401 E. Katella Ave, #300
Anaheim, CA 92806

City of Brisbane
50 Park Place
Brisbane, CA 94005

SCHEDULE A. SCOPE OF WORK

1. DESIGN-BUILD PROGRAM REQUIREMENTS:

a) General Scope and Intent:

- (1) Electrify the City of Brisbane's Community Pool ("Pool") heating system by installing heat pump heating equipment including site electrical upgrades ("new equipment") that may be required to accommodate the new equipment. The new equipment will be the primary heating source for the Pool, while the existing natural gas hot water heater will remain for supplemental heat when needed.
- (2) Provide grading, paving and excavation services that may be required to install a new electrical system to accommodate the new equipment. Coordinate with PG&E, including for example preparation of a new service application, engineering field meetings, and installation of upgraded service. Provide a new concrete pad for new heat pump heating equipment. Excavation scope includes excavation with standard soil conditions, free of rock, debris, water, or any other item which would prolong or complicate the excavation process.
- (3) Provide electrical and plumbing equipment, materials, and installation as required to install the new equipment as an operational system.
- (4) Furnish and install an operable heat pump water heating system that achieves a level of service comparable to the existing natural gas heating system. It is understood and acknowledged by both Customer and WES that usage of the existing natural gas heating system may still be required after installation of the heat pump units; particularly during cold weather extremes (defined as times when the outdoor air temperature is 52°F or lower) or if the pool temperature setpoint exceeds 80°F.
- (5) The target budget for the work is \$653,000. This includes the WES Contract Sum as well as any other costs or fees paid by Customer to entities other than WES.

b) Scope Exclusions:

- (1) Hazardous Materials Removal.
- (2) Any work related to the Wading Pool.
- (3) Environmental impact studies of any kind; including noise studies.
- (4) Trenching by any means other than backhoe; for example, if excavation of hard rock is required.

2. DESIGN AND PRE-CONSTRUCTION PHASE SERVICES:

a) General:

- (1) WES shall progress the design and engineering of the proposed new equipment consistent with the Design-Build Program Requirements. WES shall also provide the Customer with recommendations, consistent with the Design-Build Program Requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible cost reductions.

b) Engineering and Design: During the Design and Pre-Construction Phase Services phase, WES shall perform:

- (1) Conceptual design required to develop the scope and project solution that meets Design-Build Program Requirements as identified in SCHEDULE A.1. Conceptual design is to be reviewed and accepted by Customer, as with material submittals
- (2) Develop design that is sufficient to procure subcontractors and materials and develop the Contract Sum to be included in the Design-Build Amendment. Customer to review conceptual design before WES requests bids.

c) Preparation of the Design-Build Amendment:

- (1) When the Drawings and Specifications are sufficiently complete, WES shall prepare a Design-Build Amendment as outlined in Exhibit 1. This Amendment shall include:

- (a) Contract Sum
 - (b) Contract Time
 - (c) Construction Schedule
 - (d) Information Upon Which Amendment is Based, including:
 - (i) Scope of Work
 - (ii) Drawings
 - (iii) Specifications
 - (iv) Supplementary and other Conditions of the Contract
 - (v) Deviations from the Design-Build Program Requirements as identified in SCHEDULE A.1.
 - d) Supplemental and other Conditions of the Design and Pre-Construction Phase Services are attached as Exhibit 3. As used in that Exhibit, "City" is "Customer" and "WES" is "Consultant". If there are conflicts between the terms and conditions of the Design-Build Contract and the terms and conditions in Exhibit 3, the terms and conditions of Exhibit 3 shall prevail.
3. CONSTRUCTION PHASE:
- a) Construction Documents:
 - (1) As the Drawings and Specifications, while developed as described in Section 2 b) (2) above, may not be finished at the time the Design-Build Amendment is prepared, WES may provide, in the amendment, for further development of the Drawings and Specifications for construction. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.
 - b) Design-Builder's Responsibility:
 - (1) WES shall supervise and direct the Work, using the WES's best skill and attention. WES shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.
 - (2) WES shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
 - c) Labor and Materials
 - (1) Unless otherwise provided in the Design-Build Documents, WES shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Work.
 - d) Project Implementation Scope of Work:
 - (1) Final, more detailed scope of work will be specified in the Design-Build Amendment.
4. TIME:
- a) WES and Customer will work together to develop construction schedules that minimize disruption to Customer operations while allowing for completion of Scope of Work in a timely fashion. All construction will be completed in accordance with SECTION 4 (COMMENCEMENT DATE AND TERMS).

SCHEDULE B. COMPENSATION TO WES

The Customer shall compensate and make payments to WES for both Design and Preconstruction Phase services and Construction Phase Services as follows:

1. DESIGN AND PRECONSTRUCTION PHASE SERVICES. The Customer shall compensate and make payments to WES for Design and Preconstruction Phase services as follows:
 - a) Sum of **\$66,785.00**.
2. CONSTRUCTION PHASE SERVICES. For WES's performance of Construction, Customer shall pay WES the Contract Sum after the execution of the Design-Build Amendment. The Contract Sum shall be identified in the Design-Build Amendment.
3. PAYMENT PROCEDURES
 - a) Design and Pre-construction Phase Payments:
 - (1) WES shall provide a monthly Application for Payment to Customer for Design and Preconstruction Phase services completed during the previous month. The Customer shall make payment in the manner and within the time provided in Section 6.3.
 - b) Construction Phase Payments:
 - (1) Progress Payments: WES shall provide a monthly Application for Payment to Customer for work completed during the previous month. The Customer shall make payment in the manner and within the time provided in Section 6.3. Until the total cumulative amount paid from Customer to WES equals \$118,394, less any other costs or fees paid by Customer to entities other than WES, Customer will pay one hundred percent (100%) of the amount due to WES on account of progress payments for each line item. After the total cumulative amount paid from Customer to WES equals \$118,394, less any other costs or fees paid by Customer to entities other than WES, Customer may cease making progress payments and WES will receive the balance of the Contract Sum as the payee of the PG&E On-Bill Finance disbursement check.
 - (2) Schedule of Values: WES will prepare and submit a complete schedule of values in advance of the initial Application for Payment. Projects listed as line items in the Schedule of Values will be treated as individual projects for the purposes of Progress Payments and Project Completion.
 - (3) Final payment application: After completing all project closeout requirements, Customer and WES shall execute the Certificate of Acceptance – Project Completion as presented in Exhibit 2; which shall not be unreasonably withheld. WES will then submit a final Application for Payment. Final payment to WES shall come from PG&E in the form of the On-Bill Financing (OBF) check disbursement. WES shall be the sole payee of the check.

Failure of Payment: If the Customer does not pay WES within seven days after the date established in Section 6.3, then WES may, upon written notice to the Customer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the WES's reasonable costs of shut-down, delay and start-up, plus interest.

SCHEDULE C. ADDITIONAL RESPONSIBILITIES

1. Customer Responsibilities

a) PG&E On-Bill Financing Program

- (1) Customer shall promptly comply with all PG&E On-Bill Financing (OBF) program requirements including, but not limited to:
 - (a) Sign and return the Loan Agreement to PG&E.
 - (b) Sign and return the Loan Modification Agreement (if necessary) to PG&E.
 - (c) Designate WES as the payee for the OBF check disbursement.

b) Equipment Noise Levels

- (1) WES shall provide equipment data sheets indicating operational noise levels of proposed equipment. WES shall make commercially reasonable efforts to facilitate physical inspection of similar equipment, operating in similar conditions to the proposed project, by Customer.
- (2) Customer shall be responsible for approving the use of the proposed equipment or alternatives via submittal. By providing this approval:
 - (a) Customer confirms that the proposed equipment is acceptable for use in the proposed location.
 - (b) Customer confirms that the proposed equipment complies with Brisbane Municipal Code Chapter 8.28 – Noise Control and related sections; or
 - (c) Customer agrees that the work is exempt per Brisbane Municipal Code 8.28.050.C; or
 - (d) Customer assumes full responsibility for any and all noise related issues associated with new equipment. Under no circumstances will WES be responsible for additional engineering or construction required to document or abate any noise related issues without receiving compensation.

c) Data and Records

- (1) Customer hereby warrants, represents and promises that it has provided or shall provide timely to WES, all records relating to energy usage and energy-related maintenance of Premises requested by WES and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects.
- (2) Providing descriptions of property boundaries and existing service and utility lines. This includes any existing surveys describing underground utilities or concealed conditions at the project site.
- (3) As-built and record drawings of existing structures at the project site.
- (4) Existing environmental requirements or studies applicable to the project site.

d) Retained Equipment

- (1) Customer shall be responsible for, and designate the location and storage for, any equipment and materials that should not be disposed of off-site.

e) Differing Site Conditions

- (1) The conditions at the site are the property of the Customer regardless of whether or not they could be identified by an investigation or exploration conducted according to the professional standard of care. A “Differing Site Condition” is a subsurface, hidden, latent, or physical condition at a project site/building not revealed by the site exploration, site investigation, or other information provided to the Customer and which cannot be reasonably anticipated. Special risks occur whenever engineering is applied to identifying site/building conditions. Even a comprehensive investigation according to the professional standard of care may not detect all subsurface or site/building conditions. WES shall not be liable for site/building conditions which could not be identified by such an investigation or exploration. Accordingly, the Customer agrees to indemnify, including all costs and fees, and hold WES harmless from all claims for Differing Site Conditions.

f) Site Preparation

- (1) Customer is responsible for removal and relocation of the shipping container currently being used as temporary storage that is currently located within the proposed project footprint.
- (2) Providing for scheduling and shutdown of affected areas.

g) Customer Information Technology Responsibilities

- (1) Customer is responsible for providing network connection(s) for wireless connection of proposed demand-response capable controllers/controls and required internet accessibility.
- (2) Customer shall engage its IT representative familiar with the Customer's network to work with WES and its subcontractors to establish internet connectivity, at no cost to the project, to assure proper operation of the proposed demand-response capable controllers/controls

h) Maintenance

- (1) Customer is responsible for performing all maintenance on new work as recommended in the manufacturer's written instructions. This includes maintaining water chemistry within acceptable parameters and maintaining adequate records to pursue any warranty claims if required.
- (2) Customer is responsible for maintaining groundskeeping around the new equipment to ensure proper operation.
- (3) WES is not responsible for performance of any maintenance on equipment or premises.
- (4) Pursuing repairs or replacement of new equipment covered by manufacturer warranty after the warranty period of this agreement expires (refer to SECTION 9). After this period, WES is not obligated to provide for repair or replacement of work under warranty. Customer shall seek repair or replacement from manufacturer and arrange for installation labor.

2. WES Responsibilities

a) System Start-up

- (1) WES will perform start-up of new equipment in accordance with manufacturer's written instructions.

b) Operating parameters of installed equipment

- (1) WES will provide operating parameters in the Operation and Maintenance Manuals. These manuals will be provided to Customer prior to Project Completion.
- (2) Operation and Maintenance Manuals will include as-built drawings of all new equipment. As-builts will also be included in digital format.

c) Training Requirements

- (1) WES will provide four (4) hours of dedicated training to City maintenance staff prior to Project Completion to ensure proper understanding of installed systems. The training may be provided in-person and on-premises, or remotely via Webex, Microsoft Teams, or equivalent.

EXHIBIT 1. DESIGN-BUILD AMENDMENT (DRAFT, TO BE PROVIDED AT THE CONCLUSION OF THE DESIGN AND PRECONSTRUCTION PHASE)

This Amendment is incorporated into the accompanying Design-Build Contract dated the ____ day of July, 2022, (the “Agreement”) for the following:

PROJECT: Brisbane Community Pool Heating System Electrification, 2 Solano St., Brisbane, CA 94005

THE CUSTOMER: City of Brisbane, 50 Park Place, Brisbane, CA 94005

THE DESIGN-BUILDER: Willdan Energy Solutions, Inc.

Customer and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

1. CONTRACT SUM
2. CHANGES IN THE CONTRACT SUM
3. CONTRACT TIME
4. CONSTRUCTION SCHEDULE
5. INFORMATION UPON WHICH AMENDMENT IS BASED

1. CONTRACT SUM

a) Stipulated Sum:

- (1) The Stipulated Sum for Construction Phase Services shall be (\$XXX,XXX), subject to authorized adjustments as provided in the Design-Build Documents.

2. CHANGES IN THE CONTRACT SUM:

- a) Any overage in the cost of the Scope of Work in SCHEDULE A (SCOPE OF WORK) shall be the responsibility of WES.
- b) Changes to the contract sum are warranted for, but are not limited to: Hazardous materials, additions or modifications to the Scope of Work, and Differing Site Conditions as defined in SCHEDULE C. All additional costs associated with these items shall be the responsibility of Customer.

3. CONTRACT TIME

- a) The date of Substantial Completion upon which this proposal is based is [TBD].
- b) The date of Final Completion is [TBD].
- c) Weather disruptions, documented availability of necessary equipment, remediation of hazardous materials, and other delays beyond the control of WES shall not count toward the construction timeframe in SECTION 4 (COMMENCEMENT DATE AND TERMS).

4. CONSTRUCTION SCHEDULE

d) [TBD]

5. INFORMATION UPON WHICH AMENDMENT IS BASED

a) Scope of Work

- (1) [TBD]

b) Drawings

- (1) [TBD]
- c) Specifications
 - (1) [TBD]
- b) Supplementary and other Conditions of the Contract
 - (1) [TBD]
- c) Deviations from the Design-Build Program Requirements as identified in SCHEDULE A.3:
 - (1) [TBD]

This Amendment to the Agreement entered into as of the day and the year last written below.

Willdan Energy Solutions (WES)

City of Brisbane (Customer)

Signed _____

Signed _____

Name Anthony Selafani _____

Name _____

Title Vice President of Engineering _____

Title City Manager _____

Date _____

Date _____

California Contractors License No. 1065713

Willdan Energy Solutions
 2401 E. Katella Ave, #300
 Anaheim, CA 92806

City of Brisbane
 50 Park Place
 Brisbane, CA 94005

EXHIBIT 2. CERTIFICATE OF ACCEPTANCE – PROJECT COMPLETION

This is to certify that a final inspection of the Project has been conducted jointly by WES and the City of Brisbane, California, and that the parties have determined that the Project has been fully completed in accordance with the Contract Documents. All guarantees and warranties that have not commenced previously shall commence as of the date last written below.

Customer accepts the Project as being fully completed and assumes responsibility for maintenance, custodial care, and utilities for the premises. WES remains responsible to correct errors and omissions discovered subsequent to the execution of this document and to respond to claims made under applicable warranties.

Willdan Energy Solutions (WES)

City of Brisbane (Customer)

Signed _____

Signed _____

Name Anthony Sclafani_____

Name _____

Title Vice President of Engineering_____

Title Public Works Director/City Engineer__

Date _____

Date _____

California Contractors License No. 1065713

Willdan Energy Solutions
2401 E. Katella Ave, #300
Anaheim, CA 92806

City of Brisbane
50 Park Place
Brisbane, CA 94005

EXHIBIT 3. SUPPLEMENTAL AND OTHER CONDITIONS OF THE DESIGN AND PRE-CONSTRUCTION PHASE SERVICES

5. **Maintenance and Inspection of Records.** Consultant shall maintain any and 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 solely and exclusively related to this Agreement, for a minimum of three years from the date of the City's final payment to Consultant for the Park Place Project and for a minimum of three years from the date of any payment for Other Projects. Consultant 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 of the documents solely and exclusively related to this Agreement.

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

8. **Ownership of Documents.** All plans, studies, documents, and other written materials that Consultant prepares in the course of providing services, except working notes and internal documents, shall become the City's property upon the City's payment for the services/work associated with such materials. City shall have the right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Consultant shall provide, at Consultant's sole expense, such written materials upon City's 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 subcontractors harmless against any claims of liability arising from such reuse or modification made to the documents by City

9. **Independent Contractor.** Consultant is, and at all times shall remain, an independent contractor, and not agent, officer or employee of City. As such 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 maintain a City of Brisbane business license.

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

12. **Indemnity.** Consultant shall indemnify, defend, and hold City, its officers, officials, employees and volunteers, harmless from and against any and all direct claims, losses, damages, injuries, expenses and liabilities, including the reimbursement of attorney's fees, to the extent caused by the negligent performance or willful misconduct 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. The duty to defend obligation of the Consultant shall be limited to the proportionate percentage of any claim arising directly from Services performed by the Consultant under this Agreement.

13. **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.
- (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.
- (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.
- (4) *Professional Liability Coverage.* Consultant shall maintain professional errors and omissions liability coverage in an amount not less than \$1,000,000 per claim, covering negligent acts and errors or omissions.

- b) Endorsements: Each general liability policy shall contain the following provisions:
- (1) The City, its officers, officials, employees, agents and volunteers are to be included as additional insureds as respects: liability arising out of activities performed by Consultant solely and exclusively under this Agreement; products and completed operations of Consultant solely and exclusively provided under this Agreement; premises owned, occupied or used by Consultant; or automobiles, leased, hired or borrowed by Consultant.
 - (2) For any claims related to the services being provided by Consultant solely and exclusively under this Agreement, 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) Consultant shall provide City with thirty (30) days prior written notice by email in the event any of the insurance coverage is canceled..
- c) 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.
- d) Verification of coverage. Consultant shall provide certificates of insurance including the City as additional insured 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 required by this Agreement.

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

To City	City of Brisbane 50 Park Place Brisbane, CA 94005 Attn.: Public Works Director
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To Consultant	Willdan Energy Solutions Attention: Micah Chen 2401 E. Katella Ave, #300 Anaheim, CA 92806
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15 . **Resolution of Disputes.** If any dispute between the parties concerning this Agreement arises, the parties shall in good faith attempt to resolve it through mediation before commencing any legal action.

16. **Termination of Agreement.** This Agreement may be terminated immediately 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 be terminated by either party, for any reason, upon thirty (30) day's prior written notice to the other party. In the event this Agreement is terminated by City, Consultant shall be compensated for all services performed to the date of termination.

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