

# *City of Brisbane*

## *Agenda Report*

**TO:** City Council via the City Manager

**FROM:** Interim Community Development Director

**SUBJECT:** **Proposed Contract to Perform Additional Technical Services for the Baylands Renewable Energy Alternative**

**DATE:** Meeting of May 3, 2010

**City Council Goals:**

To design infrastructure and public facilities to be efficient, cost effective and to contribute to the cohesion and character of the community (Goal #2).

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

**Purpose:**

The City is proposing to engage a qualified energy consultant (Energy Solutions) to assist in refining the Renewable Energy Land Use Alternative for the Baylands to be studied in the forthcoming environmental impact report (EIR). This would allow the City to present this alternative to PG&E for a feasibility assessment. A followup task would for the consultant to consider the Renewable Energy Alternative, feedback received from PG&E and the developer's renewable energy strategy and offer recommendations to the City on how to further approach the issue of renewable energy on the Baylands.

**Recommendation:**

The City Council authorize the City Manager to execute the attached contract with Energy Solutions to provide a preliminary technical assessment of renewable energy on the Baylands as specified in the scope of work (Exhibit A of the attached contract).

**Background:**

In considering alternatives to be studied in the forthcoming Baylands Specific Plan EIR, the City Council directed that the EIR analyze an alternative focused on renewable energy generation as requested by the Committee For Renewable Energy at the Baylands (CREBL). City staff and the EIR consultants worked with CREBL to develop the conceptual renewable energy alternative as shown on the attached exhibit. This

alternative represents a conceptual land use plan, not a technically-based design for a renewable energy generation facility. During staff discussions with PG&E regarding the potential feasibility of such a facility, PG&E indicated they would be able to perform a preliminary feasibility study based upon information presented by the City. Required technical information to allow for a feasibility study to be undertaken includes a gross estimate of the amount of renewable energy that could be produced and the mix of technologies (wind and solar) to be deployed to maximize power generation.

Staff contacted several alternative energy firms about preparing the required technical work and the scope of work proposed by Energy Solutions is presented for the City Council's consideration.

### **Discussion:**

As indicated in the attached work scope, there are two major proposed tasks. The first is to define the design parameters associated with the Renewable Energy alternative, thereby allowing it to be submitted to PG&E for a preliminary feasibility analysis. In addition to supporting a preliminary feasibility analysis, this technical work would also help define the physical characteristics of the Renewable Energy Alternative to be studied in the forthcoming Baylands Draft EIR.

The second task reflects that there are a range of options for generating renewable energy on the Baylands, and it will take an iterative process to develop an optimal solution. A commercial-scale energy farm as reflected in the Renewable Energy Alternative is one method, while the developer is exploring smaller scale, distributed generation. The preferred option could ultimately be some combination of the two, or another alternative that has not yet been identified. The intent of the second task is to explore this issue further, integrating the feedback from PG&E and establishing a basis for further development and refinement of a renewable energy strategy for the Baylands.

In summary, the proposed scope of work represents a starting point for the development of a renewable energy strategy for the Baylands, and not the final resolution of this issue. Staff anticipates that further study and refinement will be required as the process moves forward.

### **Fiscal Impact:**


The cost of the study is \$15,000, and is proposed to be split equally between Universal Paragon Corporation and the City.

### **Measures of Success:**

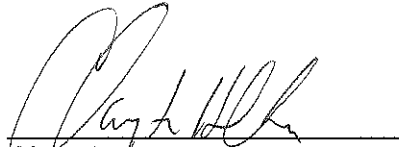
It is anticipated the work products resulting from this study will help refine the Renewable Energy land use alternative and generate useful feedback from PG&E regarding the feasibility of renewable energy generation on the Baylands, thereby informing further study and analysis of this issue as the specific plan process moves forward.

**Attachments:**

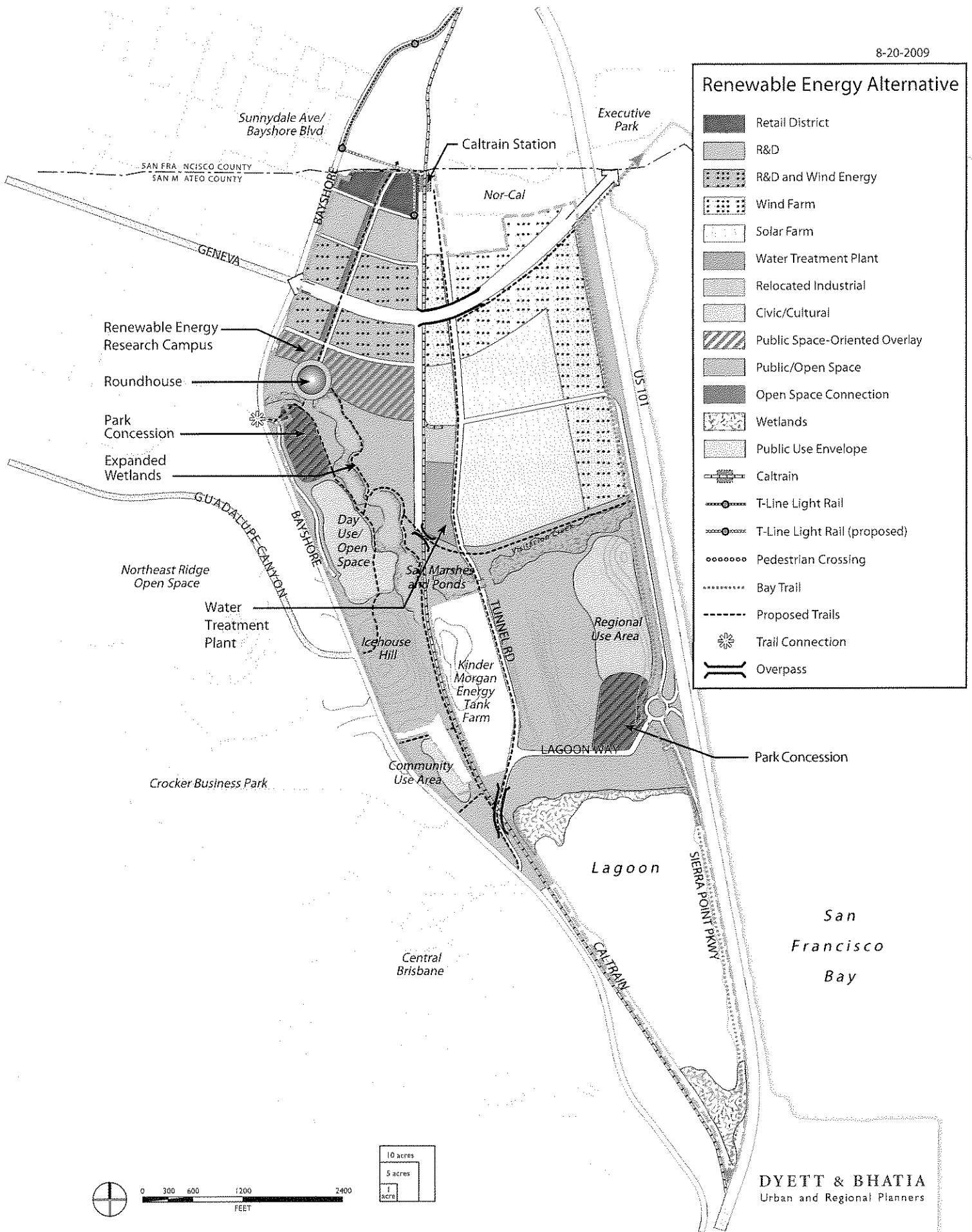
Draft Renewable Energy Land Use Alternative  
Draft Contract

A stylized, handwritten signature in black ink, consisting of several large, flowing loops and strokes.

Department Head

A handwritten signature in black ink, featuring a large initial 'P' followed by several smaller, connected strokes.

City Manager



## **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT**, dated May 3, 2010 is made by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and Cohen Ventures, Inc. dba Energy Solutions ("Consultant").

### **RECITALS**

A. City desires to retain Consultant to evaluate renewable energy options for the Baylands, including but not limited to assistance in refining a Renewable Energy Generation Land Use alternative for review by PG&E and study in the forthcoming Baylands Specific Plan EIR ("the Project").

B. Consultant represents that Consultant is specially trained, experienced, and qualified to provide such professional services and is willing to do so pursuant to the terms and conditions of this Agreement.

### **AGREEMENT**

1. **Scope of Services.** Subject to the direction and approval of City through its staff that City may provide from time to time, Consultant shall perform the services described in Exhibit A attached hereto and incorporated herein by reference.

2. **Time of Performance.** The services of Consultant shall commence upon the execution of this Agreement. Task 1 shall be completed and a draft memo submitted to the City no later than 6 weeks following contract execution. The schedule for completion of Task 2 shall be determined in consultation with the Community Development Director.

3. **Responsible Personnel.** The personnel acting on behalf of Consultant primarily responsible for performance of the services hereunder shall be as set forth in Exhibit A.

4. **Compensation.** As compensation for all services to be performed by Consultant under this Agreement, Consultant shall be paid the amounts set forth in Exhibit A attached hereto and incorporated herein by reference. In no event shall Consultant's total compensation exceed the sum of \$15,000 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.

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

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

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

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

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

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, (Contractor/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 (Contractor/Consultant) are eligible to be employed in the United States. In the event (Contractor/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 (job/project) of such workers as specified by City, and upon any failure by (Contractor/ 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 attorney's fees, arising out of or in any manner relating to the negligent 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 acts or omissions of Consultant.

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 8 and Code 9 (hired and non-owned autos).
- (3) *Workers' Compensation and Employer's Liability Coverage.* Consultant shall maintain workers' compensation insurance as required by the State of California and employer's liability insurance in an amount not less than \$1,000,000 per occurrence, for any and all persons employed by Consultant in connection with the performance of services under this Agreement. In the alternative, Consultant may rely on a self-insurance program to provide this coverage so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against City for loss arising from work performed by Consultant for City.
- (4) *Professional Liability Coverage.* Consultant shall maintain professional errors and omissions liability insurance in an amount not less than \$1,000,000 per 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 insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents or volunteers.
  - (2) For any claims related to the Project, Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
  - (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its officers, officials, employees, agents or volunteers.
  - (4) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - (5) Consultant's insurance coverage shall not be 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 effecting 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  
Attn.: City Manager  
50 Park Lane  
Brisbane, CA 94005

To Consultant

Energy Solutions  
Attn: Annette Guy  
1610 Harrison Street  
Oakland, CA 94612

16. **Litigation Expenses and Attorneys' Fees.** If either party to this Agreement commences any legal action against the other party to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

17. **Termination of Agreement.** This Agreement may be terminated by either party, effective upon written notice, should the other party commit any material default in the performance of its obligations hereunder. This Agreement may also be terminated by either party, for any reason, upon fifteen (15) day's prior written notice to the other party. In the event this Agreement is terminated by City through no fault of Consultant, Consultant shall be compensated for all services performed to the date of termination.

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:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

CONSULTANT:

\_\_\_\_\_  
Annette Guy  
Director