

**AGENDA  
MCFARLAND CITY COUNCIL  
MCFARLAND SUCCESSOR AGENCY  
MCFARLAND PUBLIC FINANCE AUTHORITY  
MCFARLAND IMPROVEMENT AUTHORITY  
MCFARLAND PARKING AUTHORITY**

**SPECIAL MEETING  
CITY COUNCIL CHAMBERS  
103 W. SHERWOOD AVE, MCFARLAND, CA**

**May 25, 2023  
5:00 PM**

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**In Person Meeting**

**How to submit public comments:**

The meetings of the City Council and all municipal entities, commissions, and boards (“the City”) are open to the public. At regularly scheduled meetings, members of the public may address the city on any item listed on the agenda, or on any non-listed matter over which the city has jurisdiction. At special or emergency meetings, members of the public may only address the city on items listed on the agenda. There is a time limitation of two minutes per person. For any item that is not on the agenda and within the jurisdiction or interest of the city, please come to the podium at this time. The Brown Act does not permit any action or discussion on items not listed on the agenda. If you wish to speak regarding a scheduled agenda item, please come to the podium when the item number and subject matter are announced, and the mayor opens Public Comment on the item. When recognized, please begin by providing your name and address for the record (optional). Anyone wishing to submit written information at the meeting needs to furnish ten (10) copies to the City Clerk in advance to allow for distribution to City Council, staff, and the media. Willful disruption of the meeting shall not be permitted. If the Mayor finds that there is in fact willful disruption of any City Council Meeting, he/she may order the disrupting parties out of the room and subsequently conduct the City’s business without them present.

**Americans with Disabilities Act:**

In compliance with the ADA, if you need special assistance to participate in a city meeting or other services offered by the City, please contact the City Clerk’s office, at (661) 792-3091 ext. 2135. Notification of at least 48 hours prior to the meeting, or time when services are needed, will assist the city staff in assuring those reasonable arrangements can be made to provide accessibility to the meeting or services.

**CALL TO ORDER:** Mayor Saul Ayon

**ROLL CALL:**

Mayor, Saul Ayon  
Vice Mayor, Ricardo Cano  
Council Member/Board Member, Amador Ayon  
Council Member/ Board Member, Anita Gonzalez  
Council Member/Board Member, Maria T. Pérez

**PUBLIC COMMENT:** The public may address the Council/Board Member on items which do not appear on the agenda. Council/Board Members may respond briefly to statements made or questions posed. They may ask a question for clarification; may refer the item to staff for further study or for placement on a future agenda. **Speakers are limited to two minutes for each person.** Please state your name and address for the record prior to making a presentation. Fifteen minutes total will be allowed for any one subject.

### **ADMINISTRATIVE AGENDA**

1. Report, Discuss, and Possible Approval of Amending the Professional Services Agreement Related to the Zero-Emission Bus Innovative Clean Transit Plan.

### **CLOSED SESSION**

1. Conference with Labor Negotiators (§54957.6): Service Employees International Union L521 (SEIU): City Manager Kenny Williams
2. Conference with Labor Negotiators (§54957.6): McFarland Police Officers Association MPOA: City Manager Kenny William.
3. Public Employment (Government Code §54957) Community Development Director.
4. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION Initiation of Litigation Pursuant to Paragraph (4) of Subdivision (d) of Section 549.56.9: (One Potential Case) MPRD

### **ADJOURNMENT**

This is to certify this agenda was posted at McFarland City Hall on May 24, 2023.

*Francisca Alvarado*  
Francisca Alvarado, City Clerk

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Kenneth Williams, City Manager

Next Meeting: Regular City Council June 8, 2023.

The City of McFarland does not discriminate based on disability and complies with the provisions of the Americans with Disabilities Act (ADA). If you need special assistance to participate in this meeting, please contact the City Clerk's Office at (661) 792-3091 at least 48 hours prior to the meeting to make reasonable arrangements to ensure accessibility to this meeting.

All agenda item and/or supporting documentation is available for public review on the city website at [www.mcfarlandcity.org](http://www.mcfarlandcity.org) and the office of the City Clerk of the City of McFarland, at 401 W, Kern Ave. McFarland, CA 93250 during regular business hours of 8:00 am – 5:00 pm Monday through Friday, following the posting of the agenda. Any supporting documentation related to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location and available at the meeting.

# CITY OF MCFARLAND

## STAFF REPORT

**TO:** Honorable Mayor and City Council Members

**FROM:** Kenny Williams, City Manager  
Diego Viramontes, Finance Director

**DATE:** May 25, 2023

**SUBJECT:** Report, Discuss, and Possible Approval of Amending the Professional Services Agreement Related to the Zero-Emission Bus Innovative Clean Transit Plan.

### **SUMMARY:**

The City of McFarland has made a commitment to environmental sustainability. As a part of this commitment, the City Council previously approved a professional services agreement with "Willdan Financial Services" to implement the Zero-emission bus innovative clean transit plan. The intent of this plan is to replace our city's public transit buses with zero-emission buses.

It has recently come to our attention that there was an error in the name of our consultant in the original agreement. The correct name of our consultant is a different division of Willdan, specifically "Willdan Energy Solutions". To maintain the integrity of our records and uphold our professional relationship, it is necessary to correct this error in our agreement.

Willdan Energy Solutions has affirmed their commitment to this project and its objectives. The updated draft agreement, attached to this report, reflects this name change.

### **FINANCIAL IMPACT:**

None.

### **RECOMMENDATION:**

Staff recommends that the City Council approve the amendment to the previously approved professional services agreement related to the Zero-emission bus innovative clean transit plan. This amendment would include replacing the consultant's name "Willdan Financial Services" with "Willdan Energy Solutions".

### **ATTACHMENT:**

1. Updated Draft Agreement with Willdan Energy Solutions

**AGREEMENT FOR CONSULTANT SERVICES BETWEEN**

**CITY OF MCFARLAND, CALIFORNIA,**

**AND**

**WILLDAN ENERGY SOLUTIONS**

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THIS AGREEMENT (“Agreement”) is made and entered into as of the date of execution by the CITY OF MCFARLAND (the "City") and WILLDAN ENERGY SOLUTIONS, a California corporation (“Consultant”).

**RECITALS**

The City requires outside assistance to provide the following services:

**Zero-Emission Bus Innovative Clean Transit Plan**

WHEREAS, Consultant represents itself as possessing the necessary skills and qualifications to provide the services required by the City and as being duly qualified to perform those services in accordance with the standard of quality ordinarily expected of competent professionals in Consultant’s field of expertise;

WHEREAS, Consultant will render such professional services, as hereinafter defined, on the following terms and conditions;

NOW THEREFORE, in consideration of these recitals, and the mutual covenants contained herein, the City and Consultant agree as follows:

**AGREEMENT**

**1. TERM OF AGREEMENT.**

**1.1.** This Agreement shall be effective on and from the day, month and year of the execution of this document by the City.

**1.2.** Consultant shall commence the performance of the services in accordance with the Scope of Work section provided in Attachment “A” to this Agreement and shall continue such services until all tasks to be performed are completed, or this Agreement is otherwise terminated. Consultant shall complete the services and provide final data and reports no later than **June 15, 2023**, unless an extension of time is mutually agreed to by both parties in writing.

**2. CONSULTANT'S OBLIGATIONS- SCOPE OF WORK (ATTACHMENT A).**

**2.1.** Consultant shall provide the City with the following services: The specific manner in which the services are to be performed is described in Attachment “A” which is attached

hereto and incorporated herein as though fully set forth at length, collectively hereinafter referred to as “Described Services.”

- 2.2. Consultant shall perform all work required to accomplish the Described Services in conformity with applicable requirements of Federal, State and Local law.
- 2.3. Consultant is hired to render the Described Services and any payments made to Consultant are compensation fully for such services.
- 2.4. Consultant shall maintain professional certifications as required to properly comply with all City, State, and Federal law.
- 2.5. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. If the City, in good faith, at any time during the term of this Agreement, desires the removal of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.
- 2.6. If a license or certification of any kind is required of Consultant, its employees, agents, or subcontractors by federal, state or law and regulation, Consultant warrants that such license has been obtained, is valid and in good standing, and shall keep in effect at all times during the term of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.
- 2.7. Consultant shall provide the City with timely written reports of all significant developments or delays arising during performance of its services.

### **3. PAYMENT FOR SERVICES (ATTACHMENT B).**

- 3.1. Payment to Consultant to perform its Scope of Work is set forth in **Attachment B**, attached hereto and incorporated herein. The payments provided in this Section are full compensation for the Scope of Work as described in Attachment A.
- 3.2. Consultant shall submit monthly bills to the City, describing its services and costs provided during the previous month, based upon percentage of task completed. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant's monthly bills shall include the following information to which such services or costs pertain:
  - a description of services performed;
  - the date the services were performed;
  - the number of hours spent and by whom;
  - a description of all costs incurred, and the Consultant's signature.

Consultant agrees to use every appropriate method to contain fees and costs under this Agreement. Once invoice is submitted and approved by the City, City payment will be made within 30 days of approval.

3.3. The amount set forth in Attachment B may be modified or amended only by a written document executed by both Consultant and authorized City representative prior to the performance of the additional work. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

#### 4. SUBCONTRACTING.

4.1. Consultant will not subcontract any portion of its Scope of Work without prior written approval of City. If Consultant subcontracts for any of the work to be performed under this Agreement, Consultant shall be as fully responsible to the City for the acts and omissions of Consultant's subcontractors/subconsultants and for the persons either directly or indirectly employed by the subcontractors/subconsultants, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor/subconsultant of Consultant and the City. Consultant will be responsible for payment of subcontractors/subconsultants. Consultant shall bind every subcontractor/subconsultant to the terms of the Agreement applicable to Consultant's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the City. Consultant agrees that the City is an intended third-party beneficiary of any services agreement entered into between Consultant and any subcontractor or subconsultant.

#### 5. PROJECT SCHEDULE AND COMPLETION DATE (ATTACHMENT C).

5.1. Attachment C is the project schedule that Consultant shall strictly meet, including benchmark dates and completion date, which is attached hereto and incorporated herein. Consultant agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with the schedule specified herein. In the performance of this Agreement, time is of the essence.

5.2. Consultant shall promptly notify the City of any anticipated or unforeseen delays to the project schedule. Extensions to the project schedule and to this Agreement shall not be made without the prior written approval of the City. All requests for extensions to the project schedule shall be by written request only and submitted to the City prior to the commencement of such work.

6. **CHANGES IN WORK AND EXTRA WORK.** Consultant shall not change the scope or duration of work or perform work in excess of the Scope of Work without the prior, written approval of the City by an executed Change Order, describing in detail the revision to Scope of Work, revisions in payment and/or time, fully executed by both parties. Failure to obtain a Change Order prior to the commencement of any revision waives Contractor's right to payment for such additional services.

7. **RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY.** City designates Kenny Williams, its City Manager, to represent the City in all matters within the scope of this Contract relating to the conduct and approval of the work to be performed. Whenever the term "approval of City," "consult with City," "confer with City," or similar terms are used, they

shall refer to the City Manager. The City Manager may designate an assistant to act in his/her stead.

The CITY shall furnish upon request, without charge, all standard plans and specifications and any other information which the City now has in its files that may be of use to Consultant.

**8. VERBAL AGREEMENT OR CONVERSATION.** No verbal agreement or conversation with any officer, agent, or employee of the City, either before, during or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle Consultant to any additional payment whatsoever.

**9. TERMINATION OF AGREEMENT.**

**9.1.** Termination for Convenience City may terminate this Contract for City's convenience at any time by providing Consultant thirty days written notice. Upon receipt of the notice of termination, Consultant shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. City shall pay Consultant its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by Consultant to effect the termination. Thereafter, Consultant shall have no further claims against City under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights City is entitled to, shall become City property upon the date of the termination. Consultant agrees to execute any documents necessary for City to perfect, memorialize, or record City's ownership of rights provided herein.

**9.2.** Termination for Breach of Contract.

**9.2.1.** Except as provided in Attachment "C", if Consultant fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, City may give Consultant written notice of the default. City's default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of City. Additionally, City's default notice may offer Consultant an opportunity to provide City with a plan to cure the default, which shall be submitted to City within the time period allowed by City. At City's sole discretion, City may accept or reject Consultant's plan. If the default cannot be cured or if Consultant fails to cure within the period allowed by City, then City may terminate this Contract due to Consultant's breach of this Contract.

**9.2.2.** If the default under this Contract is due to Consultant's failure to maintain the insurance required under this Contract, Consultant shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subconsultants of the loss of insurance coverage and Consultant's obligation to suspend performance of services. Consultant shall not recommence performance until Consultant is fully insured and in compliance with City's requirements.

**9.2.3.** If a federal or state proceeding for relief of debtors is undertaken by or against Consultant, or if Consultant makes an assignment for the benefit of creditors, then City may immediately terminate this Contract.

**9.2.4.** If Consultant engages in any dishonest conduct related to the performance or administration of this Contract or violates City's laws, regulations or policies relating to lobbying, then City may immediately terminate this Contract.

**9.2.5. Acts of Moral Turpitude.**

- a. Consultant shall immediately notify City if Consultant T or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
- b. If Consultant or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, City may immediately terminate this Contract.
- c. If Consultant or a Key Person is charged with or indicted for an Act of Moral Turpitude, City may terminate this Contract after providing Consultant an opportunity to present evidence of Consultant's ability to perform under the terms of this Contract.
- d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.
- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of Consultant.

**9.2.6.** In the event City terminates this Contract as provided in this section, City may procure, upon such terms and in the manner as City may deem appropriate, services similar in scope and level of effort to those so terminated, and Consultant shall be liable to City for all of its costs and damages, including, but not limited to, any excess costs for such services.

**9.2.7.** If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that Consultant was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 8 Termination for Convenience.



**9.2.8.** The rights and remedies of City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**9.3.** In the event that this Contract is terminated, Consultant shall immediately notify all employees and Subconsultants, and shall notify in writing all other parties contracted with under the terms of this Contract within five (5) working days of the termination.

**10. COVENANTS AGAINST CONTINGENT FEES.** Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability or, at the City's discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**11. OWNERSHIP OF DOCUMENTS.**

**11.1.** All computer data, computer drawing files, plans, studies, sketches, drawings, reports, specifications, and all work product produced by Consultant under this Agreement are the property of the City, whether or not the City completes the Scope of Work or proceeds with the project for which such documents are prepared.

**11.2.** This Agreement creates a nonexclusive and perpetual right or license for City to copy, use, modify, reuse, and sublicense any and all copyrights, designs, and other intellectual property embodied in the writings prepared by Consultant, and Consultant subcontractors, under this Agreement. In the event the City should ever desire to undertake a project or review other proposed projects based upon the documents, the Consultant agrees that the City shall have the right to reuse all or any portion of the documents at no additional compensation to the Consultant.

**12. INDEPENDENT CONTRACTOR.**

**12.1.** The Consultant shall perform the services provided for herein in a manner of Consultant's own choice, as an independent Contract and in pursuit of Consultant's independent calling, and not as an employee of the City. Consultant shall be under control of the City only as to the result to be accomplished and the personnel assigned to the Project.

**12.2.** If the Consultant subcontracts any of the work to be performed under this Agreement pursuant to the terms of this Agreement, Consultant shall be as fully responsible to the City or the acts and omissions of the Consultant's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor of Consultant and the City. The Consultant shall bind every subcontract by the terms of the

Agreement applicable to Consultant's work, including indemnity and insurance requirements.

### **13. HOLD HARMLESS AND INDEMNIFICATION.**

**13.1. Indemnification** - It is understood and agreed that Consultant has the professional skills, experience, and knowledge necessary to perform the work agreed to be performed under this Agreement and that City relies upon the professional skills of Consultant to do and perform Consultant's work in a skillful and professional manner, and Consultant thus agrees to so perform the work.

**13.2.** Acceptance by City of the work performed under this Agreement does not operate as a release of said Consultant from such professional responsibility for the work performed. It is further understood and agreed that Consultant is apprised of the scope of the work to be performed under this Agreement and Consultant agrees that said work can and shall be performed in a fully competent manner.

**13.3.** Consistent with California Civil Code section 2782.8, when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said section 2782.8, Consultant shall, to the fullest extent permitted by law, indemnify, protect, immediately defend, and hold harmless City, and its officers, employees, agents, and volunteers, from and against all claims, demands, damages, costs, or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, interest, defense costs, and expert witness fees) arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, subcontractors, subconsultants or agents during the performance this Agreement, or from any violation of any federal, state, or municipal law or ordinance to the extent caused, in whole or in part, by the negligence, reckless, or willful misconduct of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, excepting only liability arising from the sole negligence, sole active negligence, or intentional misconduct of City, its officers, employees, agents, and volunteers.

**13.4.** Other than in the performance of professional services by a design professional, which law shall be solely as addressed in subparagraph 12.3 above, and to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City, and its officers, employees, agents, and volunteers, from and against any claims, demands, damages, costs, or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, interest, defense costs, and expert witness fees) arising out of the performance of this Agreement by Consultant, its officers, employees, agents, subcontractors and subconsultants, excepting only that resulting from the sole negligence, sole active negligence, or intentional misconduct of City, its officers, employees, agents, and volunteers. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code.

**13.5.** Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

**14. ASSIGNMENT OF AGREEMENT.** Consultant is without right to and shall not assign this Agreement or any part thereof or any monies due hereunder without the prior written consent of the City.

**15. INSURANCE.**

**15.1. Insurance.** On or before beginning any of the services or work called for by any term of this Agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement (including all extensions provided), and provide proof thereof that is acceptable to the City the insurance specified in subsections (A) through (F) below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor. The Certificate of Insurance shall clearly identify the project name and number in the space labeled "Description of Operations/Locations/Special Items" on the form.

**A. Commercial General and Automobile Liability.** Consultant, at Consultant's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form 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. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an additional insured endorsement to the policy: City, its officers, employees, agents, and volunteers are to be covered as insured's as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. In

the event that Consultant purchases automobiles during the term of this Agreement, said automobiles shall be likewise covered. The coverage shall contain no special

An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.

Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A:VII.

**B. *Professional Liability.*** Consultant shall obtain, and during the term of this Agreement shall maintain, a policy of professional liability insurance that shall:

- i. Be from an insurance company authorized to be in business in the State of California;
- ii. Be in an insurable amount of not less than \$1,000,000 for each occurrence; and
- iii. Provide that the policy shall remain in full force during the full term of this Agreement and shall not be canceled, terminated, or allowed to expire without thirty (30) days prior written notice to the City from the insurance company.

**C. *Workers' Compensation.*** Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Consultant shall be provided with limits not less than one million dollars. In the alternative, Consultant may rely on a self-insurance program to meet these requirements 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 the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this Agreement.

**D. *Deductibles and Self-Insured Retentions.*** During the period covered by this Agreement, upon express written authorization of City Risk Manager, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

**E. *Notice of Reduction in Coverage.*** In the event that any coverage required under subsections (A), (B), or (C) of this section of the Agreement is reduced, limited,

or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five day after Consultant is notified of the change in coverage.

- F. *Other Remedies.*** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
- i.** Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - ii.** Order Consultant to stop work under this Agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
  - iii.** Terminate this Agreement.
  - iv.** Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Consultant's failure to maintain insurance or secure appropriate endorsements.

## **16. DISPUTES.**

**16.1.** If a dispute should arise regarding the performance of this Agreement, the following initial dispute resolution procedures shall be used:

- A.** Within twenty (20) City working days after a dispute regarding the performance of this Agreement arises, it shall be reduced to writing at staff level by the complaining party setting forth the nature of the dispute in detail, along with all pertinent back up documentation in support. The writing shall be delivered to the receiving party by first class mail or personal delivery directly to the party's project manager, along with recommended methods of resolution.
- B.** The party receiving the letter shall reply to the letter with a detailed response, along with a recommended method of resolution, if any, within ten (10) City working days of receipt of the letter.

**16.2.** If the dispute is not resolved at staff level in accordance with Section 16.1, within five (5) City working days of the receiving party response (or longer if agreed between the parties) , the aggrieved party, through its respective project manager shall deliver to the General Manager's office a letter outlining the dispute for the General Manager's review. The receiving party may submit further response, if required, to the General Manager within five (5) City working days thereafter. The General Manager, at his/her sole discretion may respond as he/she deems appropriate, including recommendations for

resolution, discussions or rejection of the dispute within fifteen (15) working days of receipt of the complaint.

**16.3.** If the dispute remains unresolved and the parties have exhausted the procedures outlined in this section, the parties may then seek remedies available to them under this Agreement and at law, including, but not limited to, under the termination procedures. This provision does not relieve Consultant of its obligation and Consultant is required to timely comply with all applicable provisions of the Government Claims Act before initiating any legal proceeding against City.

**17. CONFLICT OF INTEREST.** Contractor warrants and covenants that it presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local, or federal law, including, but not limited to, Government Code section 1090. If any principal provider of services is a "consultant" for the purposes of the Fair Political Practices Act (Gov. Code § 81000 et seq.), each such person shall comply with Form 721 Statement of Economic Interests filing requirements in accordance with state or City local Conflict of Interest Code. In addition, if any other conflict of interest should nevertheless hereinafter arise, Consultant shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this Agreement.

**18. CONSULTANT'S BOOKS AND RECORDS.**

**18.1.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant.

**18.2.** Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

**18.3.** Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City General Counsel, City Auditor, General Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

**18.4.** City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in the General Manager's office. Access to such records and documents shall be granted to any party authorized by Consultant's representatives, or Consultant's successor in interest.

**19. WRITTEN NOTIFICATION.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first-class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City:                      City of McFarland  
    Attn: City Manager  
    401 W. Kern Avenue  
    McFarland, CA 93250

If to Consultant:              Willdan Energy Solutions  
    Attn: David Daniel  
    2401 East Katella Avenue, Suite 300  
    Anaheim, California 92806-5909

Any party may change any of the foregoing as it relates to the party by giving written notice to the other party of the change in the manner set forth herein.

**20. GENERAL PROVISIONS.**

- 20.1.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
- 20.2.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
- 20.3.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Kern.
- 20.4.** Time is of the essence with regard to each covenant, condition and provision of this Agreement.
- 20.5.** This Agreement constitutes the entire agreement between the parties with regard to the subject matter herein and supersedes any prior oral and written agreements and understandings between the parties with respect thereto.
- 20.6.** This Agreement may not be altered, amended, or modified except by a writing executed by duly authorized representatives of all parties.

- 20.7.** In the event any action or proceeding is instituted arising out of or relating to this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and actual costs.
- 20.8.** This Agreement may be executed in counterparts. A facsimile or electronic copy of this Agreement shall be as effective as the original for all purposes.
- 20.9.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors, and assigns. Notwithstanding the foregoing, Consultant shall not assign this Agreement or any part thereof to any other entity or individual.
- 20.10.** City and Consultant each acknowledge that each party and their respective legal counsel have reviewed this Agreement and agree that this Agreement is the product of negotiations between the parties. This Agreement shall be interpreted without reference to the rule of interpretation of documents that uncertainties or ambiguities therein shall be determined against the party so drafting the Agreement.
- 20.11.** All references to a statute or ordinance, shall incorporate any, or all, successor statute or ordinance enacted to govern the activity now governed by the statute or ordinance, noted herein to the extent, however, that incorporation of such successor statute or ordinance does not adversely affect the benefits and protections granted to the Developer under this Agreement.

**21. CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT.** Consultant certifies that Consultant is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

## **22. ACCESS AND ACCOMMODATIONS**

- 22.1.** Consultant shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 et seq., the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- 22.2.** Consultant shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- 22.3.** Consultant shall provide reasonable accommodation upon request to ensure equal access to CITY-funded programs, services and activities;
- 22.4.** Construction, if any, will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- 22.5.** The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.



Consultant understands that City is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by Consultant for work to be performed under this Contract must include an identical provision.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the day and year written below.

CITY	CONSULTANT*
<p><b>CITY OF MCFARLAND,</b> a municipal corporation</p> <p>By: _____ Name: _____ Title: _____</p> <p>Dated: _____, 202__</p> <p>ATTEST:</p> <p>_____ Francisca Alvarado, City Clerk</p>	<p><b>WILLDAN ENERGY SOLUTIONS</b> a corporation</p> <p>By: _____ Name: _____ Title: _____</p> <p>Dated: _____, 202__</p> <p>By: _____ Name: _____ Title: _____</p> <p>Dated: _____, 202__</p> <p>*Signatures of consultant must be notarized. Need two signatures if contractor is a corporation. Attach acknowledgement</p>
<p>APPROVED AS TO FORM:</p> <p>_____ Nathan M. Hodges, City Attorney</p>	

## “ATTACHMENT “A”

### SCOPE OF WORK

Willdan proposes the following tasks and associated deliverables for this scope of work.

#### Task 1: Project Management

Following receipt of a formal Notice to Proceed (NTP) from the City, Willdan will hold a kickoff meeting with City staff to review the project scope and goals. Willdan will then prepare a Request for Information (RFI) to collect the necessary data to complete the project tasks. Throughout the project duration, Willdan will hold biweekly check-in meetings with the project team to review progress, exchange information and ensure expectations are being met.

#### Task 2: Zero-Emission Bus (ZEB) ICT Rollout Plan

Willdan will complete the following elements for integration into the final plan.

- **Route analysis and bus specifications** – Willdan will calculate the energy demand and resulting minimum battery size, in kWh, needed to operate the existing fixed routes and Dial-a-Ride (DAR) options with electric buses. Willdan will utilize representative battery electric buses to determine the viability of electrifying existing operations without on-route charging.
- **Charger specifications and operational analysis** – For routes that can be completed on a single full charge, Willdan will determine the minimum charger power level needed to fully recharge the vehicle overnight and develop a charging schedule that avoids charging during on-peak times. If a route cannot be completed on a single charge, Willdan will investigate alternative solutions such as on-route charging or operational changes to fit within battery electric capabilities. Willdan will consider bus operating schedules, returning battery state of charge (SOC), required daily range, electrical capacity, staff availability, costs, and other factors to optimize a charging scenario for the fleet.
- **Phase in Plan** – After buses and chargers are selected, Willdan will develop a phase in plan, indicating how many and which type of equipment (bus or charger) need to be added to the fleet each year through 2040.
- **Workforce training** – Willdan will provide an overview of required and recommended training for bus operators, maintenance technicians, and support staff to properly operate and maintain electric buses.
- **Site Evaluations and Facility Modifications Review** – Willdan will work with the City to evaluate one potential site for bus chargers and supporting infrastructure for each fleet. It is assumed that other facilities will not require major modifications to support electric buses.
- **Funding plan** – Willdan will identify potential funding sources for both the purchase of electric buses and related charging infrastructure, including federal, state, utility, and local grant, rebate, or incentive programs.

Willdan will integrate our findings and recommendations from the aforementioned elements to develop a CARB Compliant Rollout Plan. Willdan expects to submit a Rollout Plan to McFarland’s City Council on June 22, 2023 so that the approved Plan can then be submitted to CARB no later than June 30, 2023. The Rollout Plan will contain the following sections:

- Section A: Transit Agency Information
- Section B: Rollout Plan General Information
- Section C: Technology Portfolio
- Section D: Current Bus Fleet Composition and Future Bus Purchases

- Section E: Facilities and Infrastructure Modifications
- Section F: Providing Service in Disadvantaged Communities
- Section G: Workforce Training
- Section H: Potential Funding Sources
- Section I: Start-up and Scale-Up Challenges

**Summary of Deliverables**

- *Copies of all meetings minutes and agendas*
- *Draft and Final ICT Rollout Plan Report*

**ATTACHMENT “B”**

### **Payment for Services**

Once an invoice is submitted and approved by the City, City payment will be made within 30 days of approval. The payment provided is full compensation for the DESCRIBED SERVICES

#### **FEE**

Willdan proposes to complete the proposed scope of work for a **fixed fee of \$7,000**, to be paid following issuing the final Rollout Plan.

**ATTACHMENT “C”  
Project Schedule and Completion Date**

**SCHEDULE**

Willdan anticipates the scope of work will take 4-6 weeks to complete. The City Plans to take the final ICT Plan to Council Approval on June 22, 2023. If requested by the City, Willdan will participate in the Council meeting virtually. In order to meet this deadline, Willdan will issue a final ICT Plan by June 15, 2023. The proposed schedule assumes a Notice-to-Proceed is issued the week of May 1, 2023.

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party’s Subconsultants), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subconsultant of Consultant shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both Consultant and Subconsultant, and without any fault or negligence of either of them. In such case, Consultant shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subconsultant were obtainable from other sources in sufficient time to permit Consultant to perform timely. As used in this Contract, the term “Subconsultant” means a subconsultant at any tier. In the event Consultant’s delay or failure to perform arises out of a Force Majeure Event, Consultant agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.