



**REQUEST FOR PROPOSALS
for**

**Consulting Services for the Implementation of the
Brisbane Building Efficiency Program**

January 2, 2020

Prepared by:

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CITY OF BRISBANE
REQUEST FOR PROPOSALS

BRISBANE BUILDING EFFICIENCY PROGRAM
GENERAL INFORMATION AND REQUIREMENTS

1. PROJECT BACKGROUND

The City of Brisbane committed to addressing the carbon footprint of our buildings through our 2015 Climate Action Plan (CAP). In May 2018, the City applied for and was subsequently awarded a grant from the Bay Area Air Quality Management District's Climate Protection Grant Program for a Comprehensive Commercial Building Efficiency Program. The project envisioned two phases, with the first phase of ordinance development and adoption completed in December 2019 and this RFP representing the second phase of program implementation. The Air District funds provide the support for this professional consulting services contract, which will be managed and supplemented by staff resources provided by the City.

2. SCOPE OF SERVICES

The City of Brisbane seeks qualified consultants to work with city staff, the citizen advisory committee and other local stakeholders to implement the Brisbane Building Efficiency Program as adopted by the City Council on December 12, 2019. Implementation will include development of city infrastructure and program management tools (i.e. database, CRM, processes and procedures), a voluntary pilot benchmarking period, a public-facing web portal (see Exhibit B, Task 2.3), staff training (Exhibit B, Task 2.4), public education and outreach (Exhibit B, Task 2.5), and a toolkit for program replication by other local governments (Exhibit B, Task 3.1). All deliverables referenced in Exhibit B Tasks 2.3, 2.4, 2.5 and 3.1 are to be prepared by the consultant for the City.

Progress Reports

The City is responsible for submitting quarterly progress reports describing progress toward completion of the work outlined above every January 15, April 15, July 15, and October 15 until the end of the grant term. Quarterly progress reports shall be prepared on the Air District's Quarterly Report form (provided separately). The consultant will report their progress to city staff no fewer than five (5) working days prior to the City's quarterly report due dates.

3. BUDGET

A maximum budget of approximately \$105,000 is available for this phase, inclusive of the consulting contract, materials, technology licenses or subscriptions, training, education and outreach.

4. QUALIFICATIONS

Firms must demonstrate adequate knowledge and experience on similar types of projects over the past five (5) years. Of particular importance is the firm's ability to meet the defined project scope within the time frame and budget of the City's grant agreement with the Air District.

5. **INSURANCE REQUIREMENTS**

Per the Agreement for Professional Services

6. **INFORMATION PROVIDED BY THE CITY**

- Exhibit A: City of Brisbane BAAQMD Climate Protection Grant Application
- Exhibit B: City of Brisbane BAAQMD Grant Contract
- Exhibit C: Brisbane Building Efficiency Program adopted ordinance and staff report
- Exhibit D: Sample Agreement for Professional Services

7. **PROPOSAL FORMAT**

The proposal will include as a minimum the following information:

A. Cover/Transmittal Letter

Introduce the consulting firm and summarize its qualifications, including any relevant professional licenses or certifications, indicate that that Project Manager has reviewed the sample Agreement for Professional Services and either agrees to the terms and conditions of the Agreement or has included proposed amendments in the proposal. (If proposed amendments are not stated, the City will assume that the terms in the agreement are acceptable.) Also, provide the name, address, phone, and email address for the designated contact person for all correspondence through selection of Consultant.

B. Scope of Work

Provide a detailed scope of services that outlines the required steps to accomplish the project. Include a detailed description of the consultant's overall understanding of the proposed project and proposed approach for successfully completing the project. Based on your experience, discuss any challenges that may be encountered, and areas of concern that may need to be addressed.

C. Project Team

Include a table of organization for the project showing the Project Manager and Key Project Staff. Project Manager shall not be replaced without written permission of the City. If two firms are submitting a proposal, one firm shall be designated as the lead firm with one lead project team representative designated from that firm for the duration of the project. Provide a brief narrative description of the qualifications and experience of each key person, along with their proposed project responsibilities. Indicate if the firm or any primary members of the team have been involved in any arbitration or litigation in the past five years related to their consulting.

D. Relevant Experience

Include descriptions of similar projects completed within the past five (5) years that are comparable to the proposed improvements. Indicate past experience working with each team member, including any associated firms and major subconsultants. Give examples of projects similar to this project completed by the team as a team or partial team. Explain the contractual relationship between team members (i.e. in-house, joint venture, subcontract).

E. Project Time Line and Budget

Describe how the team will meet the project objectives within the schedule. Prepare a schedule for major milestones for all deliverables. Describe how your team will effectively manage project budget creep and cost escalation.

Provide a basic estimate of the total number of labor hours expected to be required to perform each task completed for the project. Include a breakdown of the employees and professionals to be assigned to the tasks.

Present an estimated fee for consulting services per task as described in the Scope of Services. Breakdown the cost estimate into labor, fees, and expenses. Fees will include all markups, overhead, and profit.

F. Appendix

May include resumes of team members, samples of previous work products, or other pertinent information. No company brochures will be allowed. Samples of marketing, outreach and/or educational materials, and websites developed are strongly encouraged.

Items A-E shall not exceed 10 pages in length. Item F shall not exceed 20 pages in length.

8. PROPOSAL SUBMISSION DEADLINE

The proposal must be submitted by 12:00 p.m. January 24, 2020. Submissions will be confirmed by email within an hour if submitted on January 24, or within one business day if prior.

9. SUBMIT PROPOSALS AND QUESTIONS

By email to Adrienne Etherton, Sustainability Management Analyst, at aetherton@brisbaneca.org, subject line: BBEP RFP.

10. SELECTION PROCESS

Written proposals submitted by the deadline will be evaluated, and interviews may be conducted with select firms.

Proposals will be evaluated based on:

1. Project understanding and approach.
2. Consulting firm's past experience and performance.
3. Proposed team's demonstrated success in working together on projects of similar complexity.
4. A demonstrated ability to manage consulting services so that the project stays within the target budget and is completed on schedule.
5. Cost

After final selection, the highest rated firm will be invited to negotiate the final scope of work and fee. A key aspect of this negotiation will be the Consultant's development of a deliverable-based payment schedule.

Should the City fail to successfully negotiate a contract with the highest rated firm, the City reserves the right to terminate negotiations, and to open negotiations with the next most qualified firms until a contract is successfully negotiated.

11. PROJECT SCHEDULE - The anticipated project schedule is as follows:

A. RFP Posted and Sent to Consultants	1/3/20
B. RFP Question Deadline	1/15/20
C. RFP Question Responses Posted and Sent to Consultants	1/17/20
D. Proposals Due	1/24/20
E. Final Rating of Consultants	2/14/20
F. Negotiate Final Scope and Fee	2/21/20
G. Approve Contract at City Council Meeting	3/5/20
H. Kickoff Meeting with Project Team	March 2020
I. Develop City Infrastructure	April – May 2020
J. Draft Web Portal Design for City Review	May – June 2020
K. Voluntary Pilot Benchmarking	June – August 2020
L. Final Web Portal and City Staff Training	July 2020
M. Education and Outreach	August – October 2020
N. Ordinance Toolkit	November 2020

APPENDIX A

Climate Protection Grant Cover Sheet

I. Applicant

Name of Jurisdiction: City of Brisbane

Type of Public Agency: ☒ Local government ☐ Special District ☐ Community Choice Energy☐ Other (specify)

Primary Contact Person: Adrienne Etherton

Phone #: (415) 508-2118

E-mail: aetherton@brisbaneca.org

II. Project

Project Title: Comprehensive Commercial Building Efficiency Program

Program Category: ☒ Reducing GHGs from Existing Buildings ☐ Fostering Innovative Strategies

Total Project Cost: \$ 270,000

Funding Request: \$ 200,000

Individual authorized to enter into a formal agreement with the Air District:

I authorize the submittal of this grant application and certify that all information is correct and accurately reflects the project scope, costs, timeline, and availability of funds.

Signature:



Print Name:

Karen Kinser

Title:

Deputy Director of Public Works

Date:

May 10, 2018

Project Summary

The City of Brisbane seeks \$200,000 from the Bay Area Air Quality Management District for a two-year grant to develop and implement a Comprehensive Commercial Building Efficiency Program that will lead to substantial reductions in energy and water use and greenhouse gas emissions from the business sector. The centerpiece of the project will be an ordinance which requires existing commercial buildings, including multi-family buildings, to benchmark their energy and water use annually, and, for many, to audit or retro-commission their facility periodically. To facilitate the adoption and successful implementation of a strong local policy, the program will include significant outreach and resources aimed at making compliance and follow-up actions easy.

The Air District's support will accelerate development and implementation of a local GHG reduction policy and program that would be widely replicable to other communities. Funding sources for the development of local ordinances are extremely limited, making the Climate Protection Grant Program an ideal source to facilitate this work. The City of Brisbane will leverage existing staff resources, and local property owners can leverage existing program and funding sources for implementation of upgrades identified through the benchmarking, auditing and commissioning processes.

Strategic Approach

The City of Brisbane committed to addressing the carbon footprint of our buildings through our 2015 Climate Action Plan (CAP). In the years since, staff and the city's Open Space and Ecology Committee (a citizen advisory committee to the city council) have explored various policy and programmatic options, culminating in a recent discussion with City Council Liaisons to the Committee. Due to the significance of the commercial sector in Brisbane's overall emissions profile and the perceived challenges of residential mandates, an ordinance focused on reducing energy use in commercial buildings through benchmarking, auditing and retro-commissioning requirements was prioritized.

Through the background research already performed, the city recognized that strong educational resources, outreach, and support would be required for the policy to be a success. These well-documented challenges within the energy efficiency industry include those identified in this grant program's guidelines: that decision-making for building energy use is decentralized and that individual building owners responsible for these decisions often have limited access to information about the alternatives, financing and rebates available, lack clear understanding of the benefits and return on investment of participating, and don't know what questions to ask or where to turn for answers. By pairing a local requirement to participate with robust resources and support, including trainings for local business owners and contractors and information on financing options and rebates, Brisbane's comprehensive approach works to eliminate the obstacles to tackling this stubborn challenge. While we do not intend for the ordinance to apply to single-family residential, the resources provided will address residential buildings and voluntary programs focused on them.

Through research of numerous building energy ordinances around the country, city staff and CAP Subcommittee volunteers have identified the City of Los Angeles Existing Buildings Energy and Water Efficiency Ordinance as a model. As with many others, including the State's AB802, the ordinance uses the Energy Star Portfolio Manager tool for the initial step of benchmarking buildings. The city also intends to use this readily-available tool, ensuring consistency between state and local requirements and familiarity for building owners with compliance requirements in other jurisdictions. Conversation with staff responsible for implementation of LA's ordinance demonstrated the need for robust data and tools to manage the new program, which have been built into this grant application.

The City of Brisbane envisions a two-phase two-year project, with ordinance development and program implementation phases each requiring roughly one year. The Air District funds will support professional consultants, which will be managed and supplemented by staff resources provided by the City.

During the ordinance development phase, staff and consultants will work with the City's citizen advisory committee and other local stakeholders to: draft an ordinance; perform community outreach, particularly through the Brisbane Chamber of Commerce / to the local business community; facilitate public workshops; and shepherd the ordinance through Council approval. While the particular details of the ordinance will necessarily be determined through this development phase, staff envisions: extending benchmarking requirements to all commercial facilities, including most multi-family dwellings, and tiered auditing and retro-commissioning requirements that exclude the smallest buildings and high-performing facilities. Benchmarking, auditing and retro-commissioning would apply to both energy and water.

The program implementation phase will include consultants building technical resources as well as education and outreach.

- Consultants to build website/database for information-sharing, tracking compliance and public reporting. The web portal will either be integrated with the existing City of Brisbane website or a standalone site with strong linkages to the city's website and will include:
 - Information about the City's building energy ordinance
 - Clear and straightforward resources page(s) with local-specific & detailed information about:
 - Auditing & commissioning programs (i.e. PG&E's turnkey program, San Mateo County Energy Watch's free small & medium business audits, Energy Upgrade CA / Home Upgrade Advisor, etc.)
 - Rebates and incentives through PG&E, Bay Area Water Supply and Conservation Agency, Bay Area Regional Energy Network (BayREN), etc.
 - Financing options like Property Assessed Clean Energy (PACE) and on-bill financing

- On-site renewable energy generation (solar, etc., particularly programs like Bay Area SunShares) and storage (particularly how it can reduce demand charges)
 - Opportunities to reduce emissions from fuel-switching (converting natural gas equipment to electric) or choosing cleaner electricity by “opting up” to Peninsula Clean Energy’s ECO100 or PG&E’s Solar Choice (100% renewable energy rate plans)
 - Paybacks and other benefits of audits, retro-commissioning and energy-saving equipment
 - On-demand webinars and other training materials
- Back-end database for staff management of compliance and outreach to ~250 buildings
- Integration with Energy Star Portfolio Manager and data submitted from it
- Map / visualization of public disclosure data
- Education/Outreach (consultant/staff)
 - Information on web portal (see above) and promoted through City communications channels
 - Portfolio Manager trainings and other education events for building owners and contractors, including on-demand webinars posted on the website
 - Compliance support for small businesses
 - Audit demonstration event with the Brisbane Chamber of Commerce

In addition, Brisbane recognizes the potential for a successful policy and program to provide a model other jurisdictions can follow and thus multiply the positive impact. Staff will facilitate the replication of the program by presenting to the San Mateo County RICAPS (Regionally Integrated Climate Action Planning Suite) Working Group, a countywide collaborate of local agency staff that meets monthly, and other venues as applicable/requested. In addition, a “toolkit” of lessons learned, templates and other materials will be created and posted online, and staff will be available for calls/meetings with other jurisdictions.

Deliverable	Estimated Completion
Contract with BAAQMD	July 2018
PHASE 1: ORDINANCE	
RFP/contract for Ordinance Consultant	September 2018
Kickoff meeting with project team	October 2018
Community/chamber workshop	December 2018
Draft ordinance	February 2019
Council Study Session	April 2019
Council Meeting / Ordinance Adoption	June 2019
PHASE 2: IMPLEMENTATION	
RFP/contract for Consultant(s)	July 2019
Kickoff meeting with project team	August 2019
Development review	November 2019

Web portal handover & staff training	January 2020
Portfolio Manager workshops	February-April 2020
Audit demonstration event w/ chamber	May 2020
Benchmarking Compliance Deadline (First)	June 2020

Connection with Air District's goal and objectives

The City of Brisbane's proposed program directly addresses the overarching goal of the Climate Protect Grant Program to achieve GHG reductions by accelerating implementation of the Air District's 2017 Clean Air Plan, and objective 1 of supporting implementation of measures outlined in the plan. The Air District's plan calls for reductions in direct and indirect emissions from buildings, specifically through control measure BL1: Green Buildings. Our proposal addresses the goal to increase the energy efficiency of existing buildings by creating mandatory requirements for commercial facilities to benchmark, audit and retro-commission their facilities. The program's educational resources will also include information and guidance for onsite renewable energy and decarbonization through methods such as fuel-switching and selecting GHG-free electricity such as PCE ECO100, further addressing BL1 and touching on BL2: Decarbonize Buildings.

The Clean Air Plan's BL1 Brief Summary notes that "[t]he measure includes policy assistance, incentives, diffusion of public information, and targeted engagement and facilitation of partnerships in order to increase energy efficiency and onsite renewable energy in the buildings sector" and this proposal requests funding for policy assistance, diffusion of public information and targeted engagement for these purposes. The Implementation Actions detail the Air District's commitments to provide "Policy Assistance to Local Jurisdictions" including "requiring energy assessments, building benchmarking and/or upgrades" which is precisely what the City of Brisbane seeks to do. The Regulatory Context and Background notes various existing policies and programs, such as BayREN's Home Upgrade Initiative, on-bill financing and Property Assessed Clean Energy (PACE); our proposal seeks to increase the participation in these voluntary programs by requiring building owners to investigate their energy (and water) use, and providing clear and comprehensive resources to take action on their findings.

The City's proposal will also have air quality co-benefits, addressing the grant program's Objective 2, because, as the Clean Air Plan notes, "saving energy will also reduce various criteria pollutants." Since the proposed program will achieve significant energy savings it will therefore reduce criteria pollutants and have air quality co-benefits, particularly near power plants due to reduced production. (The table on page 7 includes estimates of reductions from auditing and retro-commissioning activities.) Other co-benefits include those associated with reduced power usage such as increased reliability of power supply and cost, reduced capital costs for utilities by avoiding upgrades and expansions, and financial savings over time for utility customers. The program will support green job creation due to the demand for qualified professionals to perform audits and retro-commissioning activities as well as the manufacturers, suppliers and contractors providing products or services for follow-up actions. Additional transparency and

certainty in the real estate market due to prospective buyers and lessees having information about facilities' energy and water performance, and increased property values due to the expected property improvements, are also likely co-benefits. As the benchmarking, auditing and retro-commissioning requirements also apply to water use, the City also expects to see reductions in water use that would increase the availability and reliability of the water supply under uncertain future conditions, as well as minor reductions in energy use associated with the movement of water.

Objective 3 of accelerating local implementation of GHG reduction policies and programs is inherent in this proposal. The City of Brisbane had identified a building energy savings ordinance, as well as improved education and outreach about existing voluntary programs, as priorities for reducing local GHG emissions. However, resources beyond existing staff, which has additional competing work priorities, have not been identified. Receiving this funding from BAAQMD would truly accelerate this project and ensure its timeliness and success by allowing the city to bring in expert consultants focused on the tasks at hand.

While most aspects of this proposal are not necessarily innovative in and of themselves, few jurisdictions have enacted ordinances that mandate energy and water auditing or retro-commissioning, or have benchmarking requirements that extend as far as those envisioned. The addition of a true "one-stop-shop" for comprehensive resources supporting local participation in energy- and water-saving programs and its pairing with the proposed ordinance takes this effort a step farther towards the "innovative approaches" sought by Objective 5.

Finally, as noted elsewhere in this application, this program systematically addresses a common problem in a comprehensive way and thus lends itself to replicability by other jurisdictions throughout the Bay Area, State and beyond. The City of Brisbane explicitly seeks to meet Objective 6 of creating replicable solutions by presenting our work to the countywide climate collaborative, RICAPS, which we already participate in as well as the creation of a toolkit. We stand ready to share our anticipated successes with other jurisdictions that hope to follow.

Potential for GHG Reduction

Emissions from the commercial sector are second only to transportation emissions in the City of Brisbane, and thus represent the greatest opportunity for the City to independently take action to reduce emissions.

Per the City's 2015 Community GHG Inventory (the latest available), Commercial/ Industrial and Direct Access Electricity in Brisbane accounts for 61,850 MWh and Commercial/Industrial Gas for 1,200,203 Therms.

The City of Brisbane is part of the Community Choice Energy program for San Mateo County, Peninsula Clean Energy (PCE). The emissions factor for PCE's launch/2016 is 0.107 MTCO_{2e}/MWh.

Per reporting (<http://aceee.org/local-policy/toolkit/savings-strategies-buildings>) from the American Council for an Energy-Efficient Economy (ACEEE), benchmarking buildings has been shown to lead to energy savings:

“The Lawrence Berkeley National Laboratory (LBNL) compiled the impact of policies from eight cities and found that, on average, benchmarking policies resulted in energy reductions of 3 to 8% over a two-to four-year period.²² LBNL indicates that these results should be considered preliminary due to the need for more rigorous and longer-term analyses. More rigorous analyses are needed to predict conclusive energy savings from B&T policies. In addition, ENERGY STAR Portfolio Manager® conducted a study of more than 35,000 buildings in its benchmarking system from 2008 to 2011 and found a total of 7% energy savings over the three-year period.²³”

[22] Mims, N., S. Schiller, E. Stuart, L. Schwartz, C. Kramer, and R. Faesy. 2017. *Evaluation of U.S. Building Energy Benchmarking and Transparency Programs: Attributes, Impacts, and Best Practices*. Lawrence Berkeley National Laboratory. emp.lbl.gov/sites/default/files/lbnl_benchmarking_final_050417_0.pdf.

[23] Energy Star Portfolio Manager. 2012. “Benchmarking and Energy Savings.” DataTrends. www.energystar.gov/sites/default/files/buildings/tools/DataTrends_Savings_20121002.pdf

Since the City intends to use Energy Star Portfolio Manager as the tool for mandatory benchmarking of all commercial facilities, we can reasonably assume that this report’s findings would apply. The report details 7% energy savings over three years, or 2.4% annually, and we will assume these figures apply equally to electricity and gas and continue over time.

However, we estimate that approximately 45 of Brisbane’s approximately 247 commercial buildings are greater than 50,000 square feet and thus subject to the state’s AB802 benchmarking requirement. Thus the impact of our policy extending benchmarking requirements to all commercial facilities will be decreased. Current estimates put the square footage of 50,000+ square foot buildings at approximately 60% of the total footprint, leaving 40% of the footprint newly subjected to benchmarking requirements due to the City’s proposed policy. We do not currently have details on the numbers or square footage of different building types (office, hotel, warehouse, etc.) readily available, and privacy laws currently limit our access to the actual energy usage from individual buildings, therefore we are left with directly correlating building square footage with energy usage. Since the first benchmarking compliance deadline is expected to be near the end of the grant term, these results can be considered “near term” (within 1-2 years post-contract per BAAQMD FAQ guidance, here 2 years).

Emissions Reductions from Benchmarking

	Annual Use	Units	Emissions Factor	% Buildings	Year 2 Reduction: 4.80%	Year 5 Reduction: 12%
Gas	1,200,203	Therms	0.005	40%	115.22	288.05
Electric	61,850	MWh	0.107	40%	127.06	317.66
Total near term savings					242.28	MTCO2e/year
Total long term savings					605.71	MTCO2e/year

The expected GHG reduction from energy and water auditing and retro-commissioning requirements are significantly more impactful, particularly over the long term. The following tables detail the calculations and assumptions made.

Emissions Reductions from Auditing

Emissions factors		
NOx	94.0	lbs/10 ⁶ scf
Lead	0.001	lbs/10 ⁶ scf
PM total	7.600	lbs/10 ⁶ scf
SOx	0.600	lbs/10 ⁶ scf
Natural gas emissions	0.005	(MTCO ₂ e/therm) BAAQMD guidance
Weighted emission factor	0.000107	(MT CO ₂ /kWh) ECOplus, PG&E, and ECO 100

Base Project Assumptions	ASHRAE Level 1 requirement: Buildings that are 10-49,999 square feet	ASHRAE Level 2 requirement: Buildings that are 50,000 square feet +	Units
Square footage	2,093,357	4,106,927	Square feet
Electricity EUI	13.48 *	16.77 **	kWh/ft ²
Natural Gas EUI	18.02 *	23.94 **	kBtu/ft ²
Natural Gas EUI	1.80	2.39	therms
Annual Electricity Use	28,218,452	68,873,166	kWh per year
Annual Natural Gas Use	3,772,229	9,831,983	therms per year

Emissions Estimates	ASHRAE Level 1 (assume low-cost/no-cost measures installed)		ASHRAE Level 2 (assume most cost-effective measures installed)	
Assumed savings	5%	DNV GL professional judgement	10%***	DNV GL professional judgement
Annual Electric Energy Savings (kWh/yr)	1,410,923	Savings for each measure individually summed - there will be a slight difference when measures implemented together	6,887,317	Combined savings for all measures
Annual Gas Energy Savings (therms/year)	188,611		983,198	
Annual Gas savings (scf/year)	18,861,147		98,319,832	
		scf (assume 1 therm = 100 scf)		scf (assume 1 therm = 100 scf)
Annual GHG Reduction	1,093.63	MTCO₂e/year	5,650.98	MTCO₂e/year
NOx	1,772.95	lbs/year	9,242.06	lbs/year
Lead	0.103	lbs/year	0.531	lbs/year
PM total	0.167	lbs/year	0.869	lbs/year
SOx	0.000	lbs/year	0.000	lbs/year

Assumptions & Sources:

Energy consumption (EUI) for small office (*) and large office (**) is based on CEUS 2003 - <http://www.energy.ca.gov/2006publications/CEC-400-2006-005/CEC-400-2006-005.PDF>

Emissions factors for Nox, Lead, PM total, Sox:

<https://www3.epa.gov/ttnchie1/ap42/ch01/final/c01s04.pdf>

*** While we must assume that not all properties will act on their audit findings, others may take more extensive actions which can result in savings as high as 30% and balance the overall savings.

Due to the time delay of creating, passing and implementing the ordinance with reasonable compliance lead times, these estimates are considered to be “long term” (5 years, per BAAQMD FAQ guidance).

Combined Annual Long Term GHG Reductions from benchmarking and ASHRAE Audits:

$605.71 + 1093.63 + 5650.98 = 7350.32 \text{ MTCO}_2\text{e/year}$

In addition to the savings calculated above, the City expects additional reductions may be achieved through other aspects of the program, some of which may be seen in the shorter term, though these savings are more difficult to quantify. For instance, resources provided may increase: adoption rates of existing voluntary programs by residents, installation of renewables, fuel-switching, and/or “opt-ups” to PCE ECO100 or other cleaner energy sources. Water use reductions in commercial facilities due to benchmarking, auditing and commissioning requirements or among residents due to education and outreach may also result, providing further climate benefits. Increased availability of data through the benchmarking program will allow the City to better target outreach for specific programs, and sharing our results with RICAPS and others may have multiplier effects should the model be adopted in other jurisdictions.

Measuring Success

- An adopted ordinance which requires existing commercial buildings to benchmark their energy and water use annually, and, for many, to audit or retro-commission their facility periodically
- A comprehensive and easy-to-use web portal with details on the ordinance and resources on how and why to comply and take further actions to reduce energy and water use
- Have all existing commercial buildings in Brisbane benchmarked; for the purposes of this grant achieving 90% compliance within three years will be deemed success
- Present to the San Mateo County RICAPS (Regionally Integrated Climate Action Planning Suite) Working Group, and other venues as applicable/requested
- A “toolkit” of lessons learned and templates for other jurisdictions to replicate

Budget

The City of Brisbane is requesting support from the Air District for:

Item	Estimated Cost	Narrative
Consultants/sub-contractors		
<ul style="list-style-type: none">• Ordinance development consultant	\$100,000	Consultants will work with staff and the City's Open Space and Ecology Committee and other local stakeholders to: draft an ordinance; perform community outreach; facilitate public workshops; and shepherd the ordinance through Council approval. This cost estimate was provided by DNV GL, the City's partner through their RICAPS program contract.
<ul style="list-style-type: none">• Educational content research and development	\$25,000	Research and compilation of clear, detailed, local-specific information about: auditing and commissioning programs; rebates and incentives; financing options; on-site renewable energy generation and storage; opportunities to reduce emissions from fuel-switching or choosing cleaner electricity sources; paybacks and other benefits of audits, retro-commissioning and energy-saving equipment.
Meetings (convening of any public meetings, workshops, trainings, etc. NOT internal project meetings)	\$25,000	Includes the development and production of workshops and training during the program implementation phase. Public meetings and workshops for the development and approval of the ordinance are included in the above estimate for an ordinance development consultant.

Materials design & production (including web)	\$50,000	Consultants to build website/ database for information-sharing, tracking compliance and public reporting. This estimate is specifically for the technical work of building the back-end database for staff management of compliance and outreach, integration with Portfolio Manager, mapping/visualization of public disclosure, and posting of educational/ resource content. The research and development of that educational/resource content is listed separately; the consultant may or may not be the same.
Other expenses	in-kind	Sharing program development and what we've learned with the countywide collaborative, RICAPS (Regionally Integrated Climate Action Planning Suite)
TOTAL AIR DISTRICT FUNDING REQUESTED	\$200,000	

Salaries, benefits and overhead for City of Brisbane staff assigned to this project are not part of the grant request. Information provided below is estimated for consideration as an in-kind contribution from the City.

Name	Project Role	Estimated Hours	Hourly Rate	Benefits Rate	Overhead Rate	Total
Karen Kinser	Coordinator and committee liaison	120	\$77.19	52%	10%	\$15,006
Adrienne Etherton	Project Manager	600	\$39.95	44%	10%	\$36,914
Bob Sage	Engineering Technician	180	\$39.61	64%	10%	\$12,406
Caroline Cheung	Communications	70	\$47.79	63%	10%	\$5,787
ESTIMATED TOTAL IN-KIND CONTRIBUTION						\$70,113

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

GRANT AGREEMENT

GRANT NO. 2018.220

1. PARTIES - The parties to this Agreement ("Agreement") are the Bay Area Air Quality Management District ("DISTRICT") whose address is 375 Beale Street, Suite 600, San Francisco, CA 94105, and **City of Brisbane** ("GRANTEE") whose address is 50 Park Place, Brisbane, CA 94005.
2. RECITALS
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Agreement under California Health and Safety Code Section 40701.
 - B. DISTRICT desires to award GRANTEE a grant for the activities described in Attachment A, Work Plan.
 - C. All parties to this Agreement have had the opportunity to have the Agreement reviewed by their attorney.
3. TERM - The term of this Agreement is from the date of execution by both PARTIES until October 31, 2020, unless further extended by amendment of this Agreement in writing, or terminated earlier.
4. TERMINATION
 - A. DISTRICT shall have the right to terminate this Agreement at its sole discretion at any time upon thirty (30) days written notice to GRANTEE. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 10 below. Immediately upon receipt of the notice of termination, GRANTEE shall cease all activities under this Agreement, except such activities as are specified in the notice of termination. Within forty-five (45) days of receipt of written notice, GRANTEE is required to:
 - i) Submit a final written report describing all work performed by GRANTEE;
 - ii) Submit an accounting of all grant funds expended up to and including the date of termination; and,
 - iii) Reimburse DISTRICT for any unspent funds.
 - B. DISTRICT may terminate this Agreement and be relieved of any payments should GRANTEE fail to perform the requirements of this Agreement at the time and in the manner herein provided.
5. NO AGENCY RELATIONSHIP CREATED / INDEPENDENT CAPACITY - GRANTEE and the agents and employees of GRANTEE, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of DISTRICT, and nothing herein shall be construed to be inconsistent with that relationship or status. DISTRICT shall not have the right to direct or control the activities of GRANTEE in performing the services provided herein.
6. CONTRACTORS / SUBCONTRACTORS / SUBGRANTEES
 - A. GRANTEE will be entitled to make use of its own staff and such contractors, subcontractors, and subgrantees.
 - B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between DISTRICT and any contractors, subcontractors, or subgrantees of GRANTEE, and no

agreement with contractors, subcontractors, or subgrantees shall relieve GRANTEE of its responsibilities and obligations hereunder. GRANTEE agrees to be as fully responsible to DISTRICT for the acts and omissions of its contractors, subcontractors, and subgrantees and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by GRANTEE. GRANTEE's obligation to pay its contractors, subcontractors, and subgrantees is an independent obligation from DISTRICT's obligation to make payments to GRANTEE. As a result, DISTRICT shall have no obligation to pay or to enforce the payment of any moneys to any contractor, subcontractor, or subgrantee.

7. INDEMNIFICATION - GRANTEE agrees to indemnify, defend, and hold harmless DISTRICT, its officers, employees, agents, representatives, and successors-in-interest against any and all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses (including reasonable attorney fees) that DISTRICT, its officers, employees, agents, representatives, and successors-in-interest may incur or be required to pay arising from the death or injury of any person or persons (including employees of GRANTEE), or from destruction of or damage to any property or properties, caused by or connected with the performance of this Agreement by GRANTEE, its employees, subcontractors, subgrantees, or agents.
8. PAYMENT
 - A. DISTRICT agrees to award GRANTEE a grant of \$200,000 for the activities described in Attachment A, Work Plan. This grant shall be payable in eight (8) installments, as follows:
 - i) Seven (7) quarterly payments of \$25,000 each, upon DISTRICT'S receipt and approval of GRANTEE'S quarterly progress report and invoice according to the payment schedule set forth in Attachment A, Workplan, or as agreed upon in writing by both parties; and
 - ii) One (1) final payment of \$25,000 upon completion of all tasks identified in Attachment A, Work Plan, payable upon DISTRICT's receipt and approval of GRANTEE's final report and invoice.
 - B. GRANTEE shall carry out the work described on the Work Plan, and shall obtain DISTRICT's written approval of any changes or modifications to the Work Plan prior to performing or incurring costs for the changed work. If GRANTEE fails to obtain such prior written approval, DISTRICT, at its sole discretion, may refuse to provide funds to pay for such work or costs.
 - C. Payment will be made only to GRANTEE.
9. AUTHORIZED REPRESENTATIVE - GRANTEE shall continuously maintain a representative vested with signature authority authorized to work with DISTRICT on all grant-related issues. GRANTEE shall, at all times, keep DISTRICT informed as to the identity of the authorized representative.
10. NOTICES - All notices that are required under this Agreement shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. Pacific Time. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Attn: Jakub Zielkiewicz

GRANTEE: City of Brisbane
50 Park Place
Brisbane, CA 94005
Attn: Adrienne Etherton

11. ADDITIONAL PROVISIONS - All attachment(s) to this Agreement are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
12. ACKNOWLEDGEMENTS - GRANTEE shall acknowledge DISTRICT support each time the activities funded, in whole or in part, by this Agreement are publicized in any news media, brochures, or other type of promotional material. The acknowledgement of DISTRICT support must state "Funded by a Grant from the Bay Area Air Quality Management District." Initials or abbreviations for DISTRICT shall not be used.
13. FINANCIAL MANAGEMENT SYSTEM
- A. GRANTEE shall be responsible for maintaining an adequate financial management system and will immediately notify DISTRICT when GRANTEE cannot comply with the requirements in this section.
 - B. GRANTEE's financial management system shall provide for:
 - i) Financial reporting: accurate, current, and complete disclosure of the financial results of each grant in conformity with generally accepted principles of accounting, and reporting in a format that is in accordance with the financial reporting requirements of the grant.
 - ii) Accounting records: records that adequately identify the source and application of funds for DISTRICT-supported activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures and income.
 - iii) Internal control: effective internal and accounting controls over all funds, property and other assets. GRANTEE shall adequately safeguard all such assets and assure that they are used solely for authorized purposes.
 - iv) Budget control: comparison of actual expenditures or outlays with budgeted amounts for each grant.
 - v) Allowable cost: procedures for determining reasonableness, allowability, and allocability of costs generally consistent with the provisions of federal and state requirements.
 - vi) Source documentation: accounting records that are supported by source documentation.
 - vii) Cash management: procedures to minimize the time elapsing between the advance of funds from DISTRICT and the disbursement by GRANTEE, whenever funds are advanced by DISTRICT.
 - C. DISTRICT may review the adequacy of the financial management system of GRANTEE at any time subsequent to the award of the grant. If DISTRICT determines that GRANTEE's accounting system does not meet the standards described in paragraph B above, additional information to monitor the grant may be required by DISTRICT upon written notice to GRANTEE, until such time as the system meets with DISTRICT approval.

14. AUDIT / RECORDS ACCESS - GRANTEE agrees that DISTRICT shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. GRANTEE agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated, or until completion of any action and resolution of all issues which may arise as a result of any litigation, dispute, or audit, whichever is later. GRANTEE agrees to allow the designated representative(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, GRANTEE agrees to include a similar right of DISTRICT to audit records and interview staff in any contract, subcontract, or subgrant related to performance of this Agreement.
15. FORFEIT OF GRANT FUNDS / REPAYMENT OF FUNDS IMPROPERLY EXPENDED - If grant funds are not expended, or have not been expended, in accordance with this Agreement, or if real or personal property acquired with grant funds is not being used, or has not been used, for grant purposes in accordance with this Agreement, DISTRICT, at its sole discretion, may take appropriate action under this Agreement, at law or in equity, including requiring GRANTEE to forfeit the unexpended portion of the grant funds and/or to repay to DISTRICT any funds improperly expended.
16. COMPLIANCE - GRANTEE shall comply fully with all applicable federal, state, and local laws, ordinances, regulations, and permits. GRANTEE shall provide evidence, upon request, that all local, state, and/or federal permits, licenses, registrations, and approvals have been secured for the purposes for which grant funds are to be expended. GRANTEE shall maintain compliance with such requirements throughout the grant period. GRANTEE shall ensure that the requirements of the California Environmental Quality Act are met for any approvals or other requirements necessary to carry out the terms of this Agreement. Any deviation from the requirements of this section shall result in non-payment of grant funds.
17. CONFIDENTIALITY – In order to carry out the purposes of this Agreement, GRANTEE may require access to certain of DISTRICT’s confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, “Confidential Information”). It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner Confidential Information that GRANTEE obtains from DISTRICT, and GRANTEE agrees to:
- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of GRANTEE requiring access in fulfillment of the services provided under this Agreement.
 - B. Ensure that GRANTEE’s officers, employees, agents, representatives, subgrantees, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this section.
 - C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Agreement.

- D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this section. Take at GRANTEE's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of GRANTEE.
 - E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Agreement and following expiration or termination of the Agreement.
 - F. Prevent access to such materials by a person or entity not authorized under this Agreement.
 - G. Establish specific procedures in order to fulfill the obligations of this section.
18. INTELLECTUAL PROPERTY RIGHTS - Title and full ownership rights to all intellectual property developed under this Agreement shall at all times remain with DISTRICT, unless otherwise agreed to in writing.
19. PUBLICATION
- A. DISTRICT shall approve in writing any report or other document prepared by GRANTEE in connection with performance under this Agreement prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.
 - B. Until approved by DISTRICT, any report or other document prepared by GRANTEE shall include on each page a conspicuous header, footer, or watermark stating "DRAFT – Not Reviewed or Approved by BAAQMD," unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
 - C. Information, data, documents, or reports developed by GRANTEE for DISTRICT, pursuant to this Agreement, shall be part of DISTRICT's public record, unless otherwise indicated. GRANTEE may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Agreement.

"This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (District). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of the District. The District, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report."
 - D. GRANTEE shall inform its officers, employees, subgrantees, and subcontractors involved in the performance of this Agreement of the restrictions contained herein and shall require compliance with the above.
20. PROPERTY AND SECURITY - Without limiting GRANTEE's obligations with regard to security, GRANTEE shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT's premises.

21. ASSIGNMENT - No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Agreement to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
22. WAIVER - No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Agreement, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
23. FORCE MAJEURE - Neither DISTRICT nor GRANTEE shall be liable for or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of DISTRICT or GRANTEE, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Agreement.
24. SEVERABILITY - If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
25. HEADINGS - Headings on the sections and paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
26. COUNTERPARTS/FACSIMILES/SCANS – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party's signature as an original for all purposes.
27. GOVERNING LAW - Any dispute that arises under or relates to this Agreement shall be governed by California law, excluding any laws that direct the application to another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Agreement, including mediation, shall be San Francisco, California.
28. ENTIRE AGREEMENT AND MODIFICATION - This Agreement represents the final, complete, and exclusive statement of the agreement between the parties and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to

enter into this Agreement by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Agreement may only be amended by mutual agreement of the parties in writing and signed by both parties.

29. SURVIVAL OF TERMS - The provisions of sections 7 (Indemnification), 15 (Audit / Records Access), 16 (Forfeit of Grant Funds / Repayment of Funds Improperly Expended), 18 (Confidentiality), 19 (Intellectual Property Rights), and 20 (Publication) shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

CITY OF BRISBANE

By: _____
Jack P. Broadbent
Executive Officer/APCO

By: _____
Karen Kinser
Deputy of Public Works

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Brian C. Bunger
District Counsel

ATTACHMENT A

WORK PLAN

GRANTEE will develop and implement a Comprehensive Commercial Building Efficiency Program, addressing energy and water use and greenhouse gas emissions from the business sector. The centerpiece of the project will be an ordinance requiring existing commercial buildings and multi-family residential buildings to benchmark their energy and water use annually, and, for many, to audit or retro-commission their facility periodically. To facilitate the adoption and successful implementation of the policy, the program will include developing online technical resources and significant outreach and education.

Task 1: Ordinance Development and Adoption

Task 1.1: Issue RFP/Contract for Ordinance Consultant

GRANTEE will develop and distribute a request for proposals from qualified consultants who will be responsible for preparing a draft commercial and multi-family building ordinance for buildings under 50,000 square feet, to be adopted by the City Council. The ordinance will include requirements for benchmarking energy and water use annually, and for periodic energy and water auditing and/or retro-commissioning. The consultant also will provide assistance conducting public and staff meetings, reaching out to the City's Citizen Advisory Committee and other local stakeholders, and providing technical assistance at City Council and Planning Commission meetings.

Deliverables

1. Request for Proposals
2. Consultant contract

Task 1.2: Convene Kick-off Meeting

GRANTEE will convene a project kick-off with city staff, consultants, the Open Space and Ecology Committee's Climate Action Plan sub-committee members, and Council representation to discuss project goals and schedule.

Deliverable

1. Kick-off meeting agenda, summary of outcomes and list of participants

Task 1.3: Convene Community Workshops

City staff and consultants will work with the Chamber of Commerce to facilitate two public events, one workshop held during regular business hours and one evening mixer. Events and opportunities for the public to submit feedback (i.e. by email, website contact form and/or letters) will be promoted through City and Chamber newsletters, emails and social media accounts.

Deliverable

1. For each workshop, provide the agenda, presentations and other materials, participant list and short list of key outcomes

Task 1.4: Develop Draft Ordinance

GRANTEE will develop a draft ordinance for commercial and multi-family residential buildings that will require certain activities that may lead to reductions in energy and water use, and greenhouse gas

emissions. Required activities may include: extending benchmarking requirements to all commercial facilities, including most multi-family dwellings, and tiered auditing and retro-commissioning requirements that exclude the smallest buildings and high-performing facilities. Benchmarking, auditing and retro-commissioning would apply to both energy and water. Ordinance will include a mechanism for demonstrating and reporting on compliance.

Deliverable

1. Draft ordinance

Task 1.5: Prepare and Present Draft Ordinance to Council for Adoption

Commence a public comment period with a “2x2” study session, with two council members and two Open Space and Ecology Committee members. Present the draft ordinance to the full Open Space and Ecology Committee and ultimately to the full Council for adoption.

Deliverables

1. Council presentation(s)
2. Council document confirming adoption of ordinance

Task 2: Program Implementation

Task 2.1: Issue RFP/Contract for Ordinance Consultant

GRANTEE will develop and distribute a request for proposals from qualified consultants who will be responsible for developing a web portal with online database to provide information-sharing, tracking ordinance compliance and publicly reporting results from the implementation of the ordinance program.

Deliverables

1. Request for Proposals
2. Consultant contract

Task 2.2: Convene Kick-off Meeting

GRANTEE will convene a project kick-off meeting with city staff, consultants and the Open Space and Ecology Committee’s Climate Action Plan sub-committee members to discuss project goals and schedule.

Deliverable

1. Kick-off meeting agenda, summary of outcomes and list of participants

Task 2.3: Develop Web Portal

GRANTEE will develop a web portal that will either be integrated with the existing City of Brisbane website or a standalone site with strong linkages to the city’s website and will include:

- Information about the City’s building energy ordinance
- Clear and straightforward resources page(s) with local-specific & detailed information about:
 - Existing auditing & commissioning programs
 - Rebates and incentives through PG&E, Bay Area Water Supply and Conservation Agency, Bay Area Regional Energy Network (BayREN), etc.
 - Financing options like Property Assessed Clean Energy (PACE) and on-bill financing
 - On-site renewable energy generation and storage

- Opportunities to reduce emissions from fuel-switching or choosing cleaner electricity by “opting up” to Peninsula Clean Energy’s ECO100 or PG&E’s Solar Choice
- Paybacks and other benefits of audits, retro-commissioning and energy-saving equipment
- On-demand webinars and other training materials
 - Integration with Energy Star Portfolio Manager and data submitted from it
 - Map / visualization of public disclosure data

Deliverable

1. URL for finalized and fully-operational web portal

Task 2.4: Conduct Staff Training on Web Portal

GRANTEE’s web consultant will conduct a training for City Staff on how to use, maintain and update the Web Portal.

Deliverable

1. Training materials including user’s manual/guide for managing the Web Portal, list of participants

Task 2.5: Conduct Education and Outreach

GRANTEE will conduct education and outreach on the ordinance and web portal support resources to City staff, the affected building owners, and general public, including:

- Information on web portal (see above) and promoted to city staff through city communications channels
- Two in-person Portfolio Manager trainings, as well as a webinar which will be recorded and posted online for on-demand viewing. Educational handouts will be prepared for distribution in City Hall and at other city and/or Chamber events.
- Compliance support for small businesses, including an online FAQ document and phone support
- Audit demonstration event – plan to partner with the Brisbane Chamber of Commerce

Deliverables

1. List of ways information on web portal has been communicated to city staff
2. For all trainings and webinars: agendas, presentations and other materials, and list of participants
3. For audit demonstration event: promotional announcements or materials, video or photos of event, list of participants

Task 3: Program Replication

Task 3.1: Produce Ordinance “Toolkit”

GRANTEE will develop and distribute a Toolkit that outlines the process for developing, adopting and implementing the ordinance. The toolkit will include lessons learned, templates, presentations and other materials to facilitate development of similar policies by other local governments. GRANTEE will post the Toolkit online and circulate it to other local governments in San Mateo County and elsewhere through the Bay Area.

Deliverables

1. Ordinance toolkit including materials such as the ordinance, staff report, presentations, lessons learned, etc.
2. URL for the online version of the toolkit

Task 3.2: Promotion of the Ordinance to Local Governments

GRANTEE will facilitate the replication of the ordinance program by presenting to the San Mateo County RICAPS (Regionally Integrated Climate Action Planning Suite) Working Group, and other venues as applicable/requested.

Deliverables

1. Schedule for presentations to local government networks
2. Copies of presentations given to local government networks

Task 4: Monitor the outcome and results

GRANTEE will monitor progress and track results such as:

- Number of buildings undergoing energy and water benchmarking
- Number of buildings undergoing auditing and retro-commissioning
- Estimated aggregate reductions in energy use and water consumption
- Estimated aggregate reduction in GHG emissions – by end of project contract period and into the future

Deliverable

1. Detailed results included in the project final report (see below)

Progress Reports

Beginning thirty (30) calendar days after execution of the contract, every April 15, July 15, October 15 and January 15 until the end of the Term, GRANTEE shall provide quarterly progress reports describing GRANTEE's progress toward completion of the work outlined above. Quarterly progress reports shall be prepared on the District's Quarterly Report form (provided separately).

Final Report

Within thirty (30) calendar days of completion of project, GRANTEE shall submit a Final Report, using the District's Final Report form (to be provided separately). The Final Report shall summarize the overall results of the project and include the metrics described in Task 4.

Grant Payments

Grant payments will be made in installments in accordance with Section 8, Payment, and with the reporting and payment schedule for grant funds set forth below. **Total payments under this Agreement shall not exceed \$200,000.**

Reporting and Grant Payment Schedule for Grant Funds

Payments of grant funds shall be contingent upon DISTRICT's approval of GRANTEE's quarterly progress reports and final report. DISTRICT approval will take into consideration adequate progress in

implementing program tasks to meet the milestones set forth below. DISTRICT shall pay GRANTEE its grant payments upon receipt and approval of GRANTEE's quarterly progress reports and final report demonstrating that the applicable project milestones have been met as provided in Section 8 of this Agreement.

Milestone	Required progress on project	Completion Date	Report	Payment
1	Task 1.1 – initiated Task 1.2 – initiated Task 1.3 – initiated	12/31/18	Quarterly progress report (QPR) #1 (1/15/19)	\$25,000
2	Task 1.1 – completed Task 1.2 – completed Task 1.4 – initiated Task 1.5 – initiated	3/31/19	QPR #2 (4/15/19)	\$25,000
3	Task 1.3 – completed Task 1.2 – continued Task 1.4 – continued Task 1.5 – continued	6/30/19	QPR #3 (7/15/19)	\$25,000
4	Task 1.4 – completed Task 1.5 – completed Task 2.1 – initiated	9/30/19	QPR #4 (10/15/19)	\$25,000
5	Task 2.1 – completed Task 2.2 – initiated Task 2.3 – initiated	12/31/19	QPR #5 (1/15/20)	\$25,000
6	Task 2.2 – completed Task 2.3 – completed Task 2.5 – initiated	3/31/20	QPR #6 (4/15/20)	\$25,000
7	Task 2.4 – completed Task 3.1 – initiated Task 3.2 – initiated	6/30/20	QPR #7 (7/15/20)	\$25,000
8 (Final)	Task 2.5 – completed Task 3.1 – completed Task 3.2 – completed Task 4 – completed	9/30/20	Final Report (10/31/20)	\$25,000



CITY COUNCIL AGENDA REPORT

Meeting Date: December 12, 2019

From: Adrienne Etherton, Sustainability Management Analyst

Subject: Addition to BMC Title 15 (Building Efficiency Program)

Recommendation

Adopt Ordinance No. 644, waiving second reading, amending Title 15 of the Brisbane Municipal Code adding a Chapter establishing the Building Efficiency Program.

Background

This ordinance was introduced at the regular City Council meeting held on November 21, 2019. Staff was directed to make revisions clarifying that condominium buildings are not covered, and to research an exemption for historical buildings.

Discussion

Three changes were made to the final version of the ordinance; first, the entire chapter and all of its subsections have been renumbered from 15.83 to 15.77 to remove the conflict with the chapter introduced as ordinance 643. The remaining two changes addressed below were completed after consultation with the City Attorney and with California Energy Commission staff.

Section 15.77.030.C (“applicability”) has been revised as follows:

C. This Chapter shall not apply to one- and two-family dwellings and related accessory structures; multifamily properties with four or fewer dwellings; **condominium projects as defined in California Civil Code §§ 4125 and 6542**; broadcast antennas; utility pumping stations; and other buildings not meeting the purpose of this Chapter, as determined by the Department.

The purpose of this second change is to specifically note the exclusion of condominiums from this ordinance.

Section 15.77.040.T (“definitions”) has been revised as follows:

T. “Multifamily Property” means any multifamily building that contains two or more residential living units, ~~as defined in section 4125 or 6542 of the California Civil Code~~. This includes high-rise buildings (10 or more stories), mid-rise buildings (5 to 9 stories), or low-rise buildings (1 to 4 stories).

The purpose of this third change is to remove unnecessary and repetitive references to Civil Code definitions that might mistakenly lead some stakeholders to the conclusion that condominium projects are covered under the ordinance.

Ordinance Application to Historical Buildings

Staff investigated the application of the ordinance to historical buildings in the City of Brisbane and the potential for an exemption, and does not recommend any changes to the ordinance for a number of reasons:

1. The statewide program does not exempt historic buildings from reporting and disclosure. The city's program seeks to align with the statewide program to receive a local exemption from the CEC that will avoid duplicative reporting requirements for some buildings. From our past conversations with CEC staff we understand that if Brisbane exempted historic buildings in our ordinance, it would not meet their minimum requirements for a local exemption; therefore, many buildings would be required to report to both the city and state programs.
2. The ordinance does not require any building to undergo any specific modification that would alter the exterior aesthetic or historic attributes of the building. The first requirement of the ordinance is benchmarking and self-reporting the annual energy and water use of the building, which has no physical impact on the building. The subsequent "Beyond Benchmarking" phase requires building energy and water auditing. After auditing, buildings have a choice of three options: retro-commissioning, a green lease agreement, or one energy and one water retrofit from a list of approved measures. Of the currently proposed energy and water retrofit options, almost all are to internal building systems that would not alter the exterior aesthetic or historic attributes. Furthermore, the owner may choose any option from the list, or request approval to perform any measure not on the list identified through the audit or retro-commissioning processes, easily allowing them to avoid impacts to historical attributes.
3. The only registered historic building in the city is the Roundhouse, which would not be covered by the ordinance since it is not an occupied building.
4. Of the seven historic buildings identified in the 1994 General Plan Addendum "Existing and Planned Parks, Recreation, Historic and Cultural Resources," all of these buildings appear to be below the 10,000 square foot threshold of the ordinance, with the sole exception of the Machinery & Equipment Building at 3401 Bayshore Blvd, which our records indicate is 10,000 sqft.

Attachments

1. Final version Ordinance No. 644
2. City Council Agenda Report of November 21, 2019
3. City Attorney

Randy Breault, Public Works Director

Clay Holstine, City Manager

ORDINANCE NO. 644

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING CHAPTER 15.77 TO THE BRISBANE MUNICIPAL CODE
CONCERNING THE BUILDING EFFICIENCY PROGRAM**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 15.77 is hereby added to the Brisbane Municipal Code to read as follows:

§15.77.010 - Authority.

The Department of Public Works through the Director or the Director's designee shall have the authority to enforce this chapter.

§15.77.020 - Purpose.

This Chapter implements the goals of the City's Climate Action Plan and related California legislation by lowering the environmental impact of existing buildings through reductions in greenhouse gas (GHG) emissions, energy, and water consumption. Owners and/or tenants of identified public and private properties will initially be required to complete annual building energy and water benchmarking. Subsequently, these owners/tenants will be required to demonstrate compliance with contemporary best energy and water performance standards by following either a performance pathway that allows the submittal of documentation confirming the building is already highly efficient, or a prescriptive pathway that requires an energy audit and retro-commissioning or retrofit of base building systems.

It is the intent of this Chapter that the provisions align with California Assembly Bill 802 (2015), codified in California Public Resources Code section 25402.10 and California Code of Regulations Title 20, Division 2, Chapter 4, Article 9 (State Regulations).

§15.77.030 - Applicability.

A. This Chapter shall apply to all property, including existing buildings on such property, that is:

1. City owned property and the building has a Gross Floor Area of 2,000 square feet or more, provided, however, any City owned property that has a building with a Gross Floor

Area less than 10,000 square feet is not subject to the requirements of Sections 15.77.060, 15.77.070, or 15.77.080 of this Chapter; or

2. Privately owned property and the building has a Gross Floor Area of 10,000 square feet or more; or
 3. Property owned by any other governmental agency that is required to comply with the City's building codes under California Government Code Section 53090, et seq., or successor legislation, and the building has a Gross Floor Area of 10,000 square feet or more.
- B. The reporting requirements of this Chapter (Sections 15.77.050, 15.77.060, 15.77.070, or 15.77.080) are not required for buildings with a Gross Floor Area of less than 10,000 square feet, except when a meter serves multiple buildings, all owned by the same property owner, and the buildings in total have a Gross Floor Area of 10,000 square feet or more.
- C. This Chapter shall not apply to one- and two-family dwellings and related accessory structures; multifamily properties with four or fewer dwellings; condominium projects as defined in California Civil Code §§ 4125 and 6542; broadcast antennas; utility pumping stations; and other buildings not meeting the purpose of this Chapter, as determined by the Department.

§15.77.040 - Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section unless the context indicates otherwise. Words and phrases not defined here shall be construed as defined in BMC Chapters 15.08, 15.70, 15.80, 15.81, and 15.82.

- A. “Base Building Systems” means the systems and subsystems of a building that use or distribute energy and/or water and/or impact the energy and/or water consumption, including the building envelope; the heating, ventilating and air-conditioning (HVAC) systems; air conveying systems; electrical and lighting systems; domestic hot water systems; water distribution systems; plumbing fixtures and other water-using equipment; landscape irrigation systems and water features; energy generation and storage equipment; and electric vehicle charging infrastructure. Base building systems shall not include:
1. Systems or subsystems owned by a tenant or for which a tenant bears full maintenance responsibility, that are within the tenant's leased space and exclusively serve such leased space, and for which the tenant pays all the energy and water bills according to usage and demand as measured by a meter or sub-meter.
 2. Systems or subsystems owned by a residential unit owner that exclusively serve the residential unit of that owner.

- B. “Baseline Year” means the calendar year that a building shall use as its past energy and water usage year when comparing to its “reporting data year” usage. For the first Beyond Benchmarking cycle, the baseline year is the calendar year of 2020 (the first year of mandatory benchmarking data), reported in 2021. In subsequent Beyond Benchmarking cycles, the baseline year resets to the calendar year reported in the previous Beyond Benchmarking cycle. The following table reflects the data and baseline years for a Commercial property during the first three Beyond Benchmarking cycles:

Due Date	Reporting Data Year	Baseline Year
May 1, 2023	Calendar year 2022	Calendar year 2020
May 1, 2028	Calendar year 2027	Calendar year 2022
May 1, 2033	Calendar year 2032	Calendar year 2027

- C. “Benchmarking Report” means a report, generated by ENERGY STAR® Portfolio Manager, summarizing the annual energy and water performance of a building.
- D. “Commercial Property” means a property that is defined by ENERGY STAR Portfolio Manager with the exception of the property types listed on Portfolio Manager as Multifamily or Manufacturing/Industrial Plants. Commercial property includes warehouses and distribution centers.
- E. “Covered Building” means the current definition of “Covered Building” as set forth in State Regulations.
- F. “Decarbonized Building” means any building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations.
- G. “Demand Flexibility” means the capability provided by building controls or distributed energy resources to reduce, shed, shift, modulate or generate electricity. Energy flexibility and load flexibility are often used interchangeably with demand flexibility.
- H. “Department” means the City of Brisbane’s Department of Public Works.
- I. “Disclosable Buildings” means the most current definition of “Disclosable Buildings” as set forth in State Regulations that have 10,000 square feet or more of Gross Floor Area.

- J. “Distributed Energy Resources (DER)” means distribution-connected distributed generation resources, energy efficiency, energy storage, electric vehicles, and demand response technologies, that are supported by a wide-ranging suite of California Public Utilities Commission policies.
- K. “Energy” means electricity, natural gas, steam, heating oil, or other products sold by a utility to a customer of a building, or renewable on-site electricity generation, for purposes of providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.
- L. “Energy Audit” means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize energy in order to optimize a building's overall energy performance.
- M. “ENERGY STAR® Portfolio Manager” means the United States Environmental Protection Agency's online tool for measuring, tracking, and managing a building's energy, water, and greenhouse gas emission data, and benchmarking the performance of the building.
- N. “ENERGY STAR® Certified” means a building which has earned an ENERGY STAR® Score of 75 or higher, indicating that it performs better than at least seventy-five percent (75%) of similar buildings Nationwide and the data has been verified by a professional engineer or registered architect.
- O. “ENERGY STAR® Score” means a number ranging from 1 to 100 assigned by the US EPA's Energy Star Portfolio Manager as a measurement of a building's energy efficiency, normalized for a building's characteristics, operations, and weather, according to methods established by the US EPA's ENERGY STAR® Portfolio Manager.
- P. “Energy Use Intensity” (EUI) as defined by the US EPA means all energy consumption divided by the Gross Floor Area. A normalized EUI is adjusted for property characteristics, site energy factors and source energy factors as determined by the US EPA’s ENERGY STAR® Portfolio Manager.
- Q. “Grid-Interactive Efficient Building (GEB)” means an energy efficient building with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.
- R. “Gross Floor Area” means the total building square footage, as measured between the exterior walls of the building(s). Open-air stairwells, breezeways, and other similar areas that are not

fully enclosed should not be included in the Gross Floor Area. Gross Floor Area for a Commercial Property shall include all finished areas inside the building(s) including supporting areas, lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, storage rooms. Gross Floor Area for an Industrial Property shall include all space within the building(s) at the plant, including production areas, offices, conference rooms, employee break rooms, storage areas, mechanical rooms, stairways, and elevator shafts. Gross Floor Area for a Multifamily Property shall include all buildings that are part of a multifamily community or property, including any management offices or other buildings that may not contain living units, all fully-enclosed space within the exterior walls of the building(s), including living space in each unit (including occupied and unoccupied units), interior common areas (e.g. lobbies, offices, community rooms, common kitchens, fitness rooms, indoor pools), hallways, stairwells, elevator shafts, connecting corridors between buildings, storage areas, and mechanical space such as a boiler room.

- S. "Industrial Property" means a property that is defined by ENERGY STAR® Portfolio Manager as a Manufacturing/Industrial building used for producing, manufacturing, or assembling goods and includes but is not limited to a main production area that has high-ceilings and contains heavy equipment used for assembly line production.
- T. "Multifamily Property" means any multifamily building that contains two or more residential living units. This includes high-rise buildings (10 or more stories), mid-rise buildings (5 to 9 stories), or low-rise buildings (1 to 4 stories).
- U. "Qualified Auditor" means an individual whose job duties do not regularly occur at the Property, who possesses such qualifications as determined by the Department to perform or directly supervise individuals performing audits and to certify audit reports required by this Chapter. A Qualified Auditor may be a contractor hired by the reporting entity, or an employee of a utility, so long as such person has two or more years of auditing experience and possesses one or more of the following certifications:
 - 1. Accredited certification that has been designated a "Better Buildings Recognized Program" by the U.S. Department of Energy ("DOE") meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Energy Auditors or Energy Managers;
 - 2. Certified Energy Auditor (CEA) or Certified Energy Manager (CEM), issued by the Association of Energy Engineers (AEE);
 - 3. Certified Facilities Manager (CFM), issued by the International Facility Management Association (IFMA);

4. High Performance Building Design Professional (HBDP) or Building Energy Assessment Professional (BEAP), issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
 5. For audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), issued by the Building Performance Institute (BPI);
 6. Professional Engineer (PE) registered in the State of California;
 7. System Maintenance Administrator (SMA) or System Maintenance Technician (SMT), issued by Building Owners and Managers Institute (BOMI) International; or
 8. Additional qualified certifications as the Director of the Department deems appropriate.
- V. “Qualified Retro-Commissioning Professional” means an individual whose job duties do not regularly occur at the Property, who possesses such qualifications as determined by the Department to perform or directly supervise individuals performing the retuning work (i.e. adjusting system control parameters) required by this Chapter. A Qualified Retro-Commissioning Professional may be a contractor hired by the reporting entity or an employee of a utility so long as such person has two or more years of commissioning or retuning experience and possesses one or more of the following certifications:
1. Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin;
 2. Accredited certification that has been designated a "Better Buildings Recognized Program" by the Department of Energy meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Commissioning Professionals;
 3. Certified Building Commissioning Professional (CBCP) or Existing Building Commissioning Professional (EBCP), issued by the Association of Energy Engineers (AEE);
 4. Certified Commissioning Professional (CCP), issued by the Building Commissioning Association (BCA);
 5. Certified Commissioning Authority (CxA) or Certified Commissioning Technician (CxT), issued by the AABC Commissioning Group (ACG);
 6. Certified Professional certified by the National Environmental Balancing Bureau (NEBB);
 7. Commissioning Process Management Professional (CPMP), issued by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
 8. Professional Engineer (PE) registered in the State of California; or
 9. Additional qualified certifications as the Director of the Department deems appropriate.
- W. “Retro-Commissioning” means a systematic process for optimizing existing systems relating to building performance through the identification and correction of deficiencies in such systems.

- X. “Retro-Commissioning Measures” means work relating to retro-commissioning such as repairs, maintenance, adjustments, changes to controls or related software, or operational improvements that optimize a building's energy and/or water performance.
- Y. “Retrofit Measures” means upgrades or alterations of building systems involving the installation of energy and/or water efficiency and DER technologies that reduce energy and/or water consumption and improve the efficiency of such systems.
- Z. “Solar Thermal System” means the process of utilizing energy from the sun through the use of collectors to produce heat for a variety of applications including but not limited to heating water, providing process heating, space heating, absorption cooling and any combination of such applications.
- AA. “Solar Photovoltaic” means a technology that uses a semiconductor to convert sunlight directly into electricity.
- BB. “Stationary Battery Electric Storage System (BESS)” means a rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, and associated electrical equipment designed to provide electrical power to a building, designed for service in a permanent location.
- CC. “US EPA Water Score” means a number ranging from 1 to 100 assigned by the US EPA's ENERGY STAR® Portfolio Manager, and available to existing multifamily properties with twenty (20) or more units, as a measurement of a whole building's water use, normalized for that building's characteristics, operations, and weather, according to the methods established by the US EPA's ENERGY STAR®; Portfolio Manager.
- DD. “Water Audit” means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize water in order to optimize a building's overall water performance.
- EE. “Water Use Intensity” (WUI) as defined by the US EPA means all water consumption divided by the Gross Floor Area. (not including parking or irrigated area) and is not adjusted for any of the building use details (number of workers, weekly hours, etc.).

§15.77.050 – Annual Energy and Water Benchmarking, and Self-Reporting.

- A. Annual Energy and Water Benchmarking and Self-Reporting. For every building subject to this Chapter, the property owner shall annually submit to the Department an energy and water benchmarking report according to the schedule set forth in Section 15.77.100.

B. Owner and Tenant Responsibilities. For every building subject to this Section 15.77.050 that has non-residential tenants, the property owner shall request from its non-residential tenants and the utility companies that serve the building the information necessary related to paragraphs 1 and 2 of subsection C of this Section 15.77.050 to satisfy the requirements of this Section. Utility companies shall provide aggregated whole building data for buildings with three or more non-residential tenant accounts and shall provide the aggregated tenant-authorized information for buildings with less than three non-residential tenants.

1. The property owner of a building with one or two non-residential tenants in which the tenant(s) holds the utility account shall by February 1 of each calendar year, beginning in 2021, request the tenant(s) to authorize the utility companies that serve the tenant's space to provide to the property owner the energy and water use data for the tenant space. Within 30 days of the tenant's receipt of such request, the tenant shall authorize the utility companies to release the energy use data for the tenant space to the property owner. After the tenant provides to the property owner an authorization form and the property owner provides such form to a utility company, the utility company shall provide to the property owner energy and water use data for tenant space including any area that the tenant subleases.
2. A tenant's failure to provide the authorization to the utility companies subjects the tenant to the penalty provisions of this Chapter.
3. A tenant's failure to provide the authorization to the utility companies does not relieve the property owner's benchmarking obligations under this Chapter but such obligation may be satisfied by a partial building benchmarking report as approved by the Director.
4. If by reason of a lease or otherwise, a single tenant has assumed complete management and control of a building, the property owner and the tenant may agree in writing and inform the Director that the tenant will assume full responsibility for the obligations of the property owner under this Chapter.
5. Nothing in this Chapter shall be construed to permit a property owner to use tenant utility usage data for purposes other than compliance with the benchmarking report requirements. Nor shall the reporting requirements of this Chapter be construed to excuse property owners from compliance with federal or state laws governing direct access to tenant utility data from the responsible utility.

C. Energy and Water Benchmarking Report. The energy and water benchmarking report shall be based on an assessment in the ENERGY STAR® Portfolio Manager of the total energy and water consumed by the whole building for the entire calendar year being reported. The energy and water benchmarking report shall, at a minimum, include the following:

1. Descriptive Information. Basic descriptive information to track and report a building's compliance with this Chapter, including but not limited to:
 - a. Property address;
 - b. Gross Floor Area;
 - c. Property type;
 - d. Year built;
 - e. Number of stories;
 - f. Weekly operating hours;
 - g. Number of workers on main shift;
 - h. Number of computers;
 - i. Space use types and corresponding Gross Floor Areas;
 - j. Covered parking garage information (if applicable);
 - k. Information about buildings that share a meter with the building subject to this Chapter;
 - l. Any other reasonable information about energy consuming assets connected to the meter that affect the energy use intensity of the building;
 - m. Any other information required for an ENERGY STAR® Score as defined by the EPA;
 - n. The ENERGY STAR® Portfolio Manager contact information fields for the individual or entity responsible for the benchmarking report (either the service provider, owner, tenant, or building data administrator);
 - o. Custom field for an electricity energy provider;
 - p. If the property owner is seeking an exemption, the property notes field in ENERGY STAR® Portfolio Manager shall include a brief description of the reason for seeking an exemption; and
 - q. Information on any non-residential tenants, including the tenant's name, contact information, and Gross Floor Area leased, and whether each tenant provided needed data as required by Section 15.77.050.B.1.
2. Energy and Water Benchmarking Information. Information necessary to benchmark energy and water usage, including, at a minimum, the following data:
 - a. The ENERGY STAR® Score for the building, where available;
 - b. The weather-normalized site and source EUI in kBtu per square foot per year for the building;
 - c. The site and source EUI in kBtu per square foot per year for the building;

- d. The annual carbon dioxide equivalent emissions due to energy use for the building as estimated by ENERGY STAR® Portfolio Manager;
- e. Indoor water use, indoor water use intensity, outdoor water use (monthly when available), and total water use;
- f. Number of years the building has been ENERGY STAR® Certified and the last approval date, if applicable;
- g. Monthly grid purchased electricity, natural gas, and other fuel and water consumption (monthly when available) and dollar amounts (when available);
- h. Monthly Electricity Use – Generated from Onsite Renewable Systems and Used Onsite (kWh) - mandatory if applicable and seeking a performance pathway for compliance;
- i. Annual Maximum Demand (kW) if available; and
- j. Annual Maximum Demand date if available.

D. Quality Check of Benchmarking Report Submission.

The property owner or the owner's authorized representative shall run all automated data quality checker functions available within ENERGY STAR® Portfolio Manager, and shall correct all missing or incorrect information as identified by ENERGY STAR® Portfolio Manager prior to submitting the benchmarking report to the Department.

E. Exemptions from Benchmarking Report Submission.

- 1. For each reporting cycle, a property owner may request an exemption from submitting a benchmarking report and the Department shall determine whether an exemption under this subsection applies to a building. A property owner may appeal a determination that a building is not exempt as set forth in section 15.77.125.
- 2. All Disclosable Properties must submit at a minimum the descriptive information in all subparagraphs set forth in paragraph 1 of subsection C of this Section, even if energy and water consumption are not disclosed.
- 3. A property owner shall not be required to file a full benchmarking report with energy data for a reporting year if any of the following conditions apply:
 - a. If a Certificate of Occupancy or Temporary Certificate of Occupancy for the building was not issued for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.77.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.77.050 are not required to be reported.

- b. If the building were vacant for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.77.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.77.050 are not required to be reported.
- c. If the building did not receive energy or water services for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.77.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.77.050 are not required to be reported.
- d. If a demolition permit for the entire building has been issued, or a schedule for demolition can be reasonably documented to the satisfaction of the Department, the building is exempt from benchmarking reporting and this Section 15.77.050.

F. Publication of Limited Summary Data.

The Department shall make the following information, as reported by property owners, available to the public on the City's website, and update the information at least annually; provided, however, for properties with one or two non-residential tenants, such tenant(s) may elect to not have the information made available to the public:

- 1. Summary statistics on overall compliance with this Chapter;
- 2. Summary statistics on overall energy and water consumption of buildings subject to this Chapter derived from the aggregation of annual benchmarking reports; and
- 3. For each building subject to this Chapter:
 - a. Property address, year built, Gross Floor Area, and property use type;
 - b. Monthly and/or annual summary statistics for the whole building derived from the submitted benchmarking report, including all information required under subsection C of this Section 15.77.050 ; and
 - c. The status of compliance with the requirements of this Chapter.

§15.77.060 – Beyond Benchmarking: Pathways for Demonstrating and Increasing Energy and Water Performance.

- A. Compliance with Beyond Benchmarking requirements shall be demonstrated in one of two methods: a Performance Path or a Prescriptive Path. Criteria for the Performance Path are described in Section 15.77.070 and apply to Disclosable Properties of any size. Criteria for the Prescriptive Path are described in 15.77.080 and are specific to a building's Gross Floor Area.
- B. Exemption from Beyond Benchmarking Requirements. For each reporting cycle, a building may request an exemption to comply with this Section 15.77.060 and the Department shall determine whether an exemption under this section applies. A property owner may appeal the Department's determination that a building is not exempt under this section following the procedures set forth in section 15.77.125. Any property owner requesting an exemption under this Section shall, by April 1 in the year for which the exemption is being requested, submit to the Department any documentation reasonably necessary to substantiate the request or otherwise assist the Department in the exemption determination. Any exemption granted does not extend to past or future submittals. A property owner shall not be required to file an energy and water audit report for a reporting year if the building was exempt from the benchmarking requirements in section 15.77.050 E and any of the following conditions apply:
1. A demolition permit for the entire building has been issued, or a schedule for demolition can be reasonably documented to the satisfaction of the Department.
 2. If the building is intended for sale within the scheduled compliance deadline and the property owner has conducted a real estate appraisal within one calendar year of the reporting deadline, only a copy of the appraisal summary report is required;
 3. If the building was recently constructed and received a certificate of occupancy within the last five years of the scheduled compliance deadline, the property owner shall report in the following compliance cycle.
 4. If a Certificate of Occupancy or Temporary Certificate of Occupancy for the building had not been issued for more than half of the calendar year required to be audited, the property owner shall report in the following compliance cycle.
 5. If 50% or more of the Gross Floor Area of the building was not occupied for more than half of the calendar year required to be benchmarked, only an Asset Score Full as set forth in subsection B of Section 15.77.080 is required, and retro-commissioning and water audits, or installing measures, shall not be required for the current reporting period.
 6. If the building did not receive energy or water services for the more than half of the calendar year required to be audited, only an Asset Score Full is required, and retro-commissioning and water audits, or installing measures, shall not be required for the current reporting period.

§15.77.070 – Beyond Benchmarking Performance Path

- A. Owners of properties that are highly efficient, have demonstrated increased efficiency, or have adopted distributed energy resources may establish satisfactory energy and water efficiency by providing the documentation described below to the Department in such a form as required by the Department that demonstrates the following:
1. The building is new and has been occupied for less than five (5) years from its first compliance due date, based on its Temporary Certificate of Occupancy or Certificate of Occupancy; or has achieved one (1) or more of the energy standards and one (1) or more of the water standards as set forth below for at least three (3) of the five (5) calendar years preceding the building's compliance due date.
 2. Energy Standards: The building has the latest version of the Leadership in Energy and Environmental Design (LEED™) Existing Buildings Operations and Maintenance Certification; or Qualified Auditor or Retro-Commissioning Professional certified at least at least one (1) of the following:
 - a. The building has received an ENERGY STAR Score of 80 or greater from the US EPA; or
 - b. The building has improved its ENERGY STAR Score by twenty (20) points or more relative to its performance during the baseline year; or
 - c. The building has a weather normalized site GHG Intensity as calculated by the benchmarking tool that is twenty-five percent (25%) below the calculated mean for that property type; or
 - d. The building has reduced its weather normalized site GHG Intensity by at least twenty percent (20%) relative to its performance during the baseline year.
 3. If a building has installed one or more of the following distributed energy resources (DERs):
 - a. Solar Photovoltaic. An on-site solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational. The greater of the two following options satisfy the solar photovoltaic measure:
 - i. A minimum amount of solar photovoltaic capacity of 5 kilowatts per Brisbane Municipal Code Section 15.82.050; or
 - ii. Sufficient capacity must be installed to offset equal to or greater than 20% of their annual electricity consumption, as calculated by ENERGY STAR Portfolio Manager, or otherwise determined by the City Department.

- b. Stationary Electric Storage. An on-site stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
 - c. Grid-interactive Efficient Building (GEB). The building currently has the ability to interact with the distribution system operator's grid to optimize its energy consumption and/or dispatch. GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.
 - d. Decarbonized Building. The building is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized in the current reporting year.
4. Water Standards: A Qualified Auditor or Qualified Retro-commissioning Professional has certified at least one (1) of the following:
- a. The building has received a US EPA Water Score of 80;
 - b. The building has improved its US EPA Water Score by twenty (20) points or more relative to its performance during the baseline year;
 - c. The building has reduced its Water Use Intensity by at least twenty percent (20%) relative to its performance during the baseline year.
- B. If a building has achieved both energy and water standards, the property owner is only required to submit an ENERGY STAR® Performance Verification Report for that reporting year. If the building only meets one (1) of the standards, the property owner shall submit a Performance Verification Report for the satisfactory standard and shall comply with this section by completing one (1) of two (2) prescriptive pathway options for the unmet standard as set forth in subsection G of section 15.77.080.
- C. After the establishment of a DOE-recognized standard for a water auditor, the Director may adopt the qualifications of the DOE-recognized standard with modifications as the Director deems to be appropriate.

§15.77.080 - Beyond Benchmarking Prescriptive Path.

- A. If a building does not meet performance standards set forth in 15.77.070, a property owner shall meet the requirements of this Chapter through one (1) of two (2) alternative means:

1. For properties between 10,000 and 39,999 square feet:
 - a. Conducting an Asset Score Full Report described in Section 15.77.080 B; and either
 - b. Performing Retro-Commissioning described in Section 15.77.080 D; or
 - c. Adopting Improvement Measures described in subsection F of Section 15.77.080; or
 - d. Adopting a Green Lease as described in subsection H of Section 15.77.080.
 2. For properties 40,000 square feet and more:
 - a. Conducting a minimum of an ASHRAE audit Level II Audit described in Section 15.77.080 B (Level III audits are also acceptable); and either
 - b. Performing Retro-Commissioning described in Section 15.77.080 D; or
 - c. Adopting efficiency and/or DER Improvement Measures described in subsection F of Section 15.77.080; or
 - d. Adopting a Green Lease as described in subsection H of Section 15.77.080.
- B. Energy and Water Audit Standards. Energy and water auditing standards shall comply with both of the following:
1. Energy Auditing. Energy audits required by this Chapter shall meet or exceed either the Department of Energy (DOE) Asset Score standards, American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Level II audit standards in conformance with the ASHRAE Standard 211-2018 (or latest version) “Standard for Commercial Building Energy Audits” and shall be performed under the direct supervision of a Qualified Auditor or Qualified Retro-commissioning Professional. The DOE Audit Template shall be used to transmit data to the City for compliance with Energy Auditing and Retro-commissioning. The City will publish an Audit Template on the Building Energy Asset Score website with standardized data collection fields to capture information about base energy systems and recommended retrofit opportunities. Section 15.77.080 A describes the applicability of each of the following audit standards based on Gross Floor Area:
 - a. Asset Score Full
 - i. Collect Building Data: Use the Data Collection Form “Full” Input Mode version to gather information about the building’s physical characteristics.
 - ii. Review the Data Collection Priority Map to help focus on the most important building data given the building’s use type and climate zone.
 - iii. Enter the data on the Audit Template supplied on the DOE Asset Score website for the Brisbane Building Efficiency Program
 - b. ASHRAE Level II Audit

- i. Energy audits required by this Chapter shall meet or exceed Level II audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 211-2018 “Standard for Commercial Building Energy Audits” and shall be performed under the direct supervision of a Qualified Auditor.
 2. Water Auditing. Water audits shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the Department directs the use of the latest version of ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process), and under the direct supervision of a Qualified Auditor or Qualified Retro-commissioning Professional. The water audit of the base building systems shall include, at a minimum, the following:
 - a. Potable water distribution systems;
 - b. Landscape irrigation systems;
 - c. Water reuse systems; and
 - d. Water features.
- C. Energy and Water Audit Report. A report of the energy and water audit, completed and signed by a Qualified Auditor, shall be maintained by the property owner as required in Section 15.77.090. The report shall meet the requirements of subsection 15.77.080 B and shall include, at a minimum, the following:
1. The date(s) that the audit and retro-commissioning were performed;
 2. Identifying information on the auditor and retro-commissioning provider;
 3. Information on the base building systems and equipment;
 4. A list of all retrofit measures that can reduce energy use and/or cost of operating the building, costs of each measure, and an estimate of the energy savings associated with each measure;
 5. A list of all retrofit measures that can reduce water use and/or cost of operating the building; costs of each measure; and an estimate of the water savings associated with each measure;
 6. Functional performance testing reports;
 7. Operational training conducted;
 8. Inventory of existing, planned, or desired electric vehicle (EV) charging stations on the property;
 9. Inventory of existing, planned, or desired solar photovoltaic, solar water heating, other energy generation equipment;
 10. Inventory of existing, planned, or desired stationary battery electric storage system or other energy storage equipment;

11. Inventory of existing, planned or desired building energy end-use electrification retrofits including electrical panel upgrades;
12. Inventory of existing, planned or desired water systems and equipment; and
13. Acknowledgment that an Asset Score Full, or ASHRAE Level II audit was conducted.

D. Energy and Water Retro-Commissioning Standards.

1. Energy retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies. The Department may consider updating the ASHRAE Guideline 0.2 with ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process) once the Standard has been voted and approved by ASHRAE. These activities shall be conducted under the direct supervision of a Qualified Retro-commissioning Professional. The retro-commissioning of base building systems shall include, at a minimum, the following:
 - a. Heating, ventilation, air conditioning (HVAC) systems and controls
 - b. Indoor lighting systems and controls;
 - c. Exterior lighting systems and controls;
 - d. Water heating systems;
 - e. Renewable energy systems;
 - f. Stationary electric battery storage systems;
 - g. Electric vehicle charging equipment; and
 - h. Demand flexibility systems.
2. Water retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the Department directs the use of the latest version of ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process), and under the direct supervision of a Qualified Retro-commissioning Professional. The water retro-commissioning of the base building systems shall include, at a minimum, the following:
 - a. Potable water distribution systems;
 - b. Landscape irrigation systems;
 - c. Water reuse systems; and
 - d. Water features.

- E. Energy and Water Retro-Commissioning Report. A report of the energy and water retro-commissioning, completed and signed by a Qualified Retro-commissioning Professional, shall

be maintained by the property owner as required in Section 15.77.090. The report shall meet the requirements of Subsection 15.77.080 D and shall include, at a minimum, the following:

1. The date(s) that the retro-commissioning was performed;
2. Identifying information on the retro-commissioning provider;
3. Information on the base building systems and equipment;
4. All the retro-commissioning process activities undertaken and retro-commissioning measures completed;
5. Functional performance testing reports; and
6. Operational training conducted.

F. Improvement Measures. A property owner may comply with the requirements of this Chapter for any unmet standard by demonstrating two (2) of the following corresponding efficiency improvement measures - one energy-related measure and one water-related measure listed below - were completed and by submitting an Improvement Measures Report within the time set forth in Section 15.77.100.

1. Energy-Related Improvement Measures

- a. Energy Efficiency Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will continually be updated thereafter. The list of measures will include opportunities that prioritize energy efficiency in base building systems, decarbonized buildings, and building electrification. An owner may submit a request to the Department to add measures not contained in the published list that are identified by a qualified auditor or retro-commissioning professional. Examples of energy systems include, but are not limited to:

- i. Space heating and cooling
- ii. Ventilation
- iii. Building envelope measures such as insulation, air sealing and window upgrades
- iv. Water heating
- v. Lighting
- vi. Cooking
- vii. Refrigeration
- viii. Office equipment and computing
- ix. Other loads

- b. Distributed Energy Resource Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will

continually be updated thereafter. The list of measures will include opportunities that prioritize decarbonized buildings and building electrification. Examples of energy systems include, but are not limited to:

- i. Solar Photovoltaic. An on-site solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- ii. Stationary Electric Storage. An on-site stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- iii. Grid-interactive Efficient Building (GEB). GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way that is currently operational.
- iv. Electric Vehicle (EV) Charging Infrastructure. Electric Vehicle Charging Infrastructure has been installed on the building site.
- v. Decarbonized Building. A building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized.

2. Water-Related Improvement Measures

- a. Water Efficiency Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will continually be updated thereafter. The list of measures will include opportunities that prioritize water efficiency. Examples of energy systems include, but are not limited to:
 - i. Installation of plumbing such that all systems in the building are in compliance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational;
 - ii. Installation of outdoor landscaping and irrigation such that all systems on the property are in compliance with Brisbane Municipal Code Chapter 15.70, Water Conservation in Landscaping in effect at the time of the compliance cycle;
 - iii. Installation of a greywater system in accordance with California Code of Regulations, Title 24, Sections 1502.6, 1502.10.3, or as amended and in effect at the time of installation and currently operational;
 - iv. Installation of insulation on all hot water pipes in accessible building locations;or

- v. Participation in approved water utility retrofit program (e.g. taken advantage of rebate or incentive programs for upgrades).

G. **Improvement Measures Report.** A report of the Improvement Measures implemented shall be submitted to the Department and maintained by the property owner as required in Section 15.77.090. The report shall be submitted with sufficient supporting data including receipts or other proof of compliance and shall include, at a minimum, the following:

1. Descriptions of the measures including the date(s) that the Improvement Measures were implemented;
2. Identifying information on the person implementing the Improvement Measures;
3. Information on the Base Building Systems and equipment; and
4. A list of all Improvement Measures that can reduce energy or water use and the cost of operating the building, and the costs of each measure.

H. **Green Lease Attestation.** A property owner may submit a letter of attestation that its lease or other rental agreement for the building contains sustainability or environmental provisions specifically related to energy and water as part of the agreement (a “green lease”). At a minimum, the owner shall provide reasonable evidence that the agreement includes provisions for:

1. Energy and water cost pass through requirements that do not exceed the actual reduction in building operating costs for the tenant;
2. Operational clauses that support overall energy and water reductions on the property; and
3. Reporting clauses that allow the owner and tenant to share data necessary to comply with this Chapter.

I. **Required Submittal to the Department.**

1. For each building subject to this Chapter, the property owner shall submit to the Department an Energy and Water Audit and Report as described in Section 15.77.080 D, or proof of meeting one of the exemptions, in accordance with the schedule set forth in Section 15.77.100.
2. For each building subject to this Chapter, the property owner shall submit to the Department, in accordance with the schedule set forth in Section 15.77.100, one of the following:
 - a. An Energy and Water Retro-Commissioning Report as described in Section 15.77.080 E;
 - b. An Improvement Measures Report as described in Section 15.77.080 G; or

c. A Green Lease Attestation as described in Section 15.77.080 H.

§15.77.090 - Record Maintenance.

The property owner shall maintain records related to benchmarking, audits and retro-commissioning, including, but not limited to, the energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of six years. When the building is sold, the records shall be given to the new property owner.

§15.77.100 - Schedule for Compliance.

A. Schedule for Benchmarking Report Compliance. A property owner shall submit to the Department an annual benchmarking report in compliance with Section 15.77.050 according to the following schedule:

1. For properties owned by the City with a gross floor area of 2,000 square feet or more, the City must complete and submit the initial Benchmarking Report annually on or before May 15, beginning in 2020.
2. For all other properties subject to this Chapter, the property owner must complete and submit the initial Benchmarking Report annually on or before May 15, beginning in 2021.

B. Schedule for Beyond Benchmarking Compliance for Performance and Prescriptive Paths. A property owner must comply with Section 15.77.060 once every five years, based on the federal Unique Building Identifier (UBID) which will be published on the City website for each building subject to this Chapter under Section 15.77.060.

1. For commercial - May 15, 2023
2. For industrial and multifamily - May 15, 2024
3. For any newly constructed commercial or multifamily buildings receiving a certificate of occupancy after May 15, 2018, or industrial buildings after May 15, 2019, the property owner shall comply with Sections 15.77.060, 15.77.070 and/or 15.77.080 at the time of the next reporting cycle corresponding to the property type (e.g. 2028 or 2029).

C. Timing of Audit and Retro-Commissioning. Except as otherwise provided in Subsection 15.77.060 B, a property owner shall complete the audits and retro-commissioning within five years of a building's compliance due date.

- D. Early Compliance Pilots. The City may launch a voluntary early compliance pilot program to test the reporting infrastructure and refine the reporting requirements. The pilot program may begin prior to the reporting deadline in this Section 15.77.100.
- E. Time Extensions. A property owner may be granted up to three extensions of sixty days each to file any submittal required by this Chapter provided satisfactory proof is made to the Department that one of the following conditions applies:
1. The property is under financial or legal distress, as verified by recent financial statements, legal filings and other relevant documents showing one or more of the following:
 - a. The property is under the control of a court-appointed receiver as a result of financial distress;
 - b. The property is owned by a financial institution as a result of borrower default;
 - c. The property has been acquired by a financial institution via deed in lieu of foreclosure;
 - d. The property is encumbered by a senior mortgage subject to a notice of default;
 - e. The property is an asset subject to probate proceedings;
 - f. The property is subject to a State of California Board of Equalization (BOE) Welfare Property Tax Exemption and the cost of complying with the reporting requirements will exceed or significantly deplete existing cash flow. The property owner must provide proof of a BOE-issued Organizational Clearance Certificate and, where the property owner is a limited partnership, provide a Supplemental Clearance Certificate.
 2. The property owner, or tenant if applicable, is unable to timely comply due to substantial hardship. Substantial hardship shall mean circumstances by some verifiable level of adversity or difficulty from which the Department determines a property owner, or tenant if applicable, would not be able reasonably to satisfy the obligations of this Chapter.
 3. Fifty percent or more of the Gross Floor Area occupied by tenant(s) in the building has a lease ending within one year of the compliance deadline and the lease is not being renewed.
- F. Notification. For buildings with compliance dates of May 1, 2021 or later, the Department shall notify the property owner at least three months prior to the due dates specified in subsections A and B of this Section 15.77.100.

§15.77.110 - Penalties for Violation.

The violation of any provisions of this Chapter shall constitute an infraction and the City shall enforce this Chapter as set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such enforcement

actions are cumulative and shall be in addition to any other enforcement remedies specified under the Code or under other law.

§15.77.115 - Declaration of Public Nuisance.

Any building operating contrary to the provisions of this Chapter and any use of property or of a building operated or maintained contrary to the provisions of this Chapter are declared to be public nuisances. The City Attorney may undertake the necessary proceedings to abate and/or enjoin the operation or use of any such property or building. The remedies provided by this Section shall be in addition to any other remedy or remedies or penalties provided in this Chapter, this Code or any other law.

§15.77.120 - Fees.

By Council resolution, the City may impose fees to cover the cost of the Department's review of submittals required by this Chapter and any other costs to administer this Chapter. Such fees may include, but not be limited to, an annual benchmarking disclosure compliance fee and an audit and retro-commissioning fee.

§15.77.125. - Appeals.

- A. As to any matter arising under this Chapter, any person may appeal to the Director any decision, determination, order, requirement or other action of the Department in which the Director has not been directly involved "the Department Decision"). Any such appeal shall be in writing and filed with the City Clerk within 15 days after the action giving rise to the appeal. The Director shall decide the appeal within 30 days.
- B. Any person dissatisfied with the Director's decision concerning the Department Decision may appeal to the City Manager by filing such appeal with the City Clerk within 10 days after the Director's decision concerning the Department's Decision.
- C. The City Manager shall consider the appeal within 30 days and may affirm, reverse or modify the Director's decision concerning the Department Decision. The decision of the City Manager shall be final.

§15.77.130. - Disclosure of Data Provided to the City.

Data provided to the City under this Chapter are public records as defined in the California Public Records Act.

SECTION 2: Adoption of this Ordinance does not require environmental review because it represents general policy making that would not result in a direct or indirect physical change in the environment and therefore it is not a project under the California Environmental Quality Act. CEQA Guidelines, Section 15378 (b)(2).

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

Madison Davis, Mayor

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Thomas C. McMorrow, Interim City Attorney



CITY COUNCIL AGENDA REPORT

Meeting Date: November 21, 2019

From: Adrienne Etherton, Sustainability Management Analyst

Subject: Introduction of Draft Ordinance 644 Establishing the Brisbane Building Efficiency Program

Community Goal

Ecological Sustainability - Brisbane will be a leader in setting policies and practicing service delivery innovations that promote ecological sustainability.

Purpose

Establish the Brisbane Building Efficiency Program (BBEP) to reduce the environmental impact of existing commercial buildings through annual energy and water benchmarking, auditing, retro-commissioning and/or retrofits.

Recommendation

Adopt Ordinance No. 644.

Background

The commercial building sector represents approximately 30% of the City of Brisbane's greenhouse gas (GHG) emissions, the second-largest sector after transportation, according to the city's latest community emissions inventory in 2015. The City's Climate Action Plan, adopted by the City Council in September 2015, identified a program to address emissions from existing buildings as a high-priority climate strategy.

The State of California and cities around the country and world have adopted building benchmarking laws encouraging or requiring building owners to report their energy, and sometimes water, usage to the local jurisdiction annually. Often, these laws include public posting of some portion of the reported data; this market transparency drives energy and water efficiency for current owners and tenants, and provides insights into the cost of operating buildings for potential buyers or lessees, further driving market actions to reward the most efficient buildings. Newer efforts go "beyond benchmarking" to require building audits, retro-commissioning, or efficiency improvements.

In addition to climate benefits, efficient buildings cost less to operate, are more valuable and marketable, and increase the health and productivity of occupants. The data provided to local governments improves understanding of the local building stock, emissions tracking, climate action and resiliency planning, and marketing of existing or development of new targeted programs to further reduce energy and water use and decarbonize the building sector.

Discussion

The Building Efficiency Program would require that owners, or tenants in certain cases, perform annual energy and water benchmarking of commercial, industrial and multi-family buildings 10,000 square foot or larger beginning in 2021. The Beyond Benchmarking phase would begin in 2023 for commercial properties, and 2024 for industrial and multi-family properties, with compliance requirements in five-year cycles. The compliance documentation aligns with the latest State and Federal energy tools and standards, and includes sensible exemptions.

Beyond Benchmarking includes two pathways, the Performance Path and the Prescriptive Path. The Performance Path recognizes new or already high-performing buildings, with several options to demonstrate compliance. The Prescriptive Path begins with building energy and water audits to uncover opportunities for building improvements; audits are streamlined for buildings over 10,000 square feet, and traditional for buildings larger than 40,000 square feet. The Prescriptive Path offers flexibility in selecting either retrofit, retro-commissioning, or green lease opportunities in the five-year cycle following submission of the audit report.

This ordinance builds upon best practices from similar ordinances around the state and country, but is unique and innovative in a number of ways:

- It extends participation requirements to tenants in some cases, easing concerns of owners with rental agreements that provide control to lessees, while also providing both tenants and owners recourse through exemptions, extensions, hardships and appeals.
- The green lease compliance option is the first of its kind and encourages owners and tenants to share data and building improvement costs and benefits.
- Due to its prevalent local footprint, Brisbane's program includes industrial buildings, which are typically exempt in other jurisdictions.
- Looking to the future, properties are asked to report on current or planned distributed energy resources: on-site solar, energy storage, electric vehicle charging, grid-connected efficient buildings, and decarbonized buildings. The program provides recognition on the Performance Path for being early adopters of these technologies, and includes them as eligible Improvement Measures for the Prescriptive Path.

Staff and consultants performed a wide range of community outreach, including two public workshops in the spring, two in-depth technical webinars, and several one-on-one meetings with property owners representing over two million square feet, roughly 30% of the covered building square footage. The Planning Commission, Open Space and Ecology Committee, and Economic Development Subcommittee were consulted and provided their input and approval. In addition, a webpage dedicated to the program (brisbaneca.org/building-efficiency-program) hosts event slides and notes, and an email distribution list invited local building owners and other stakeholders to participate throughout the process. A summary of outreach events is included as Attachment 3.

Feedback received through the outreach process was incorporated into the ordinance, almost without exception. Representatives from the local business community reported familiarity with similar ordinances in other locations, or that they knew this was “the right thing to do” and the ordinance would just be the nudge they needed to do so. Others inquired about the costs of compliance, in particular building audits. Audit costs vary widely by building size and auditor, making cost estimation difficult, however staff and consultant research puts estimates for the streamlined audits required for smaller buildings at ~\$600-2,000, while standard audits required for buildings over 40,000 square feet are estimated at \$0.10-15 per square foot. Audit costs are typically offset by acting on cost-effective improvements they suggest which often have payback periods of or in under a year and result in significant long-term savings. In addition, the Performance Path and other exemptions provide numerous opportunities for buildings to avoid these costs.

Fiscal Impact

A \$200,000 Climate Protection Grant from the Bay Area Air Quality Management District is funding the creation of this ordinance and its implementation, including administrative and technical build-out as well as community outreach and trainings, over the next 9-12 months. After conclusion of the grant, current sustainability staff will conduct program management; additional supporting resources are expected to be necessary in the first few years, details to be determined in the implementation phase. Non-compliance penalties may partially offset program expenses, and the ordinance retains the option for the City Council to set administrative fees.

Measure of Success

Creation of the Building Efficiency Program leading to more energy- and water-efficient commercial, industrial and multi-family buildings in the City of Brisbane, reductions in local greenhouse gas (GHG) emissions, higher-value buildings, and improved data access and transparency for decision-makers and current and future building owners and tenants.

Attachments

1. Draft City Ordinance 644
2. Compliance Pathways flowchart
3. BBEP Outreach Summary

Randy Breault, Public Works Director

Clay Holstine, City Manager

ORDINANCE NO. 644

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING CHAPTER 15.83 TO THE BRISBANE MUNICIPAL CODE
CONCERNING THE BUILDING EFFICIENCY PROGRAM**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 15.83 is hereby added to the Brisbane Municipal Code to read as follows:

§15.83.010 - Authority.

The Department of Public Works through the Director or the Director's designee shall have the authority to enforce this chapter.

§15.83.020 - Purpose.

This Chapter implements the goals of the City's Climate Action Plan and related California legislation by lowering the environmental impact of existing buildings through reductions in greenhouse gas (GHG) emissions, energy, and water consumption. Owners and/or tenants of identified public and private properties will initially be required to complete annual building energy and water benchmarking. Subsequently, these owners/tenants will be required to demonstrate compliance with contemporary best energy and water performance standards by following either a performance pathway that allows the submittal of documentation confirming the building is already highly efficient, or a prescriptive pathway that requires an energy audit and retro-commissioning or retrofit of base building systems.

It is the intent of this Chapter that the provisions align with California Assembly Bill 802 (2015), codified in California Public Resources Code section 25402.10 and California Code of Regulations Title 20, Division 2, Chapter 4, Article 9 (State Regulations).

§15.83.030 - Applicability.

A. This Chapter shall apply to all property, including existing buildings on such property, that is:

1. City owned property and the building has a Gross Floor Area of 2,000 square feet or more, provided, however, any City owned property that has a building with a Gross

Floor Area less than 10,000 square feet is not subject to the requirements of Sections 15.83.060, 15.83.070, or 15.83.080 of this Chapter; or

2. Privately owned property and the building has a Gross Floor Area of 10,000 square feet or more; or
 3. Property owned by any other governmental agency that is required to comply with the City's building codes under California Government Code Section 53090, et seq., or successor legislation, and the building has a Gross Floor Area of 10,000 square feet or more.
- B. The reporting requirements of this Chapter (Sections 15.83.050, 15.83.060, 15.83.070, or 15.83.080) are not required for buildings with a Gross Floor Area of less than 10,000 square feet, except when a meter serves multiple buildings, all owned by the same property owner, and the buildings in total have a Gross Floor Area of 10,000 square feet or more.
- C. This Chapter shall not apply to one- and two-family dwellings and related accessory structures; multifamily properties with four or fewer dwellings; broadcast antennas; utility pumping stations; and other buildings not meeting the purpose of this Chapter, as determined by the Department.

§15.83.040 - Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section unless the context indicates otherwise. Words and phrases not defined here shall be construed as defined in BMC Chapters 15.08, 15.70, 15.80, 15.81, and 15.82.

- A. “Base Building Systems” means the systems and subsystems of a building that use or distribute energy and/or water and/or impact the energy and/or water consumption, including the building envelope; the heating, ventilating and air-conditioning (HVAC) systems; air conveying systems; electrical and lighting systems; domestic hot water systems; water distribution systems; plumbing fixtures and other water-using equipment; landscape irrigation systems and water features; energy generation and storage equipment; and electric vehicle charging infrastructure. Base building systems shall not include:
1. Systems or subsystems owned by a tenant or for which a tenant bears full maintenance responsibility, that are within the tenant's leased space and exclusively serve such leased space, and for which the tenant pays all the energy and water bills according to usage and demand as measured by a meter or sub-meter.
 2. Systems or subsystems owned by a residential unit owner that exclusively serve the residential unit of that owner.

- B. “Baseline Year” means the calendar year that a building shall use as its past energy and water usage year when comparing to its “reporting data year” usage. For the first Beyond Benchmarking cycle, the baseline year is the calendar year of 2020 (the first year of mandatory benchmarking data), reported in 2021. In subsequent Beyond Benchmarking cycles, the baseline year resets to the calendar year reported in the previous Beyond Benchmarking cycle. The following table reflects the data and baseline years for a Commercial property during the first three Beyond Benchmarking cycles:

Due Date	Reporting Data Year	Baseline Year
May 1, 2023	Calendar year 2022	Calendar year 2020
May 1, 2028	Calendar year 2027	Calendar year 2022
May 1, 2033	Calendar year 2032	Calendar year 2027

- C. “Benchmarking Report” means a report, generated by ENERGY STAR® Portfolio Manager, summarizing the annual energy and water performance of a building.
- D. “Commercial Property” means a property that is defined by ENERGY STAR Portfolio Manager with the exception of the property types listed on Portfolio Manager as Multifamily or Manufacturing/Industrial Plants. Commercial property includes warehouses and distribution centers.
- E. “Covered Building” means the current definition of “Covered Building” as set forth in State Regulations.
- F. “Decarbonized Building” means any building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations.
- G. “Demand Flexibility” means the capability provided by building controls or distributed energy resources to reduce, shed, shift, modulate or generate electricity. Energy flexibility and load flexibility are often used interchangeably with demand flexibility.
- H. “Department” means the City of Brisbane’s Department of Public Works.
- I. “Disclosable Buildings” means the most current definition of “Disclosable Buildings” as set forth in State Regulations that have 10,000 square feet or more of Gross Floor Area.

- J. “Distributed Energy Resources (DER)” means distribution-connected distributed generation resources, energy efficiency, energy storage, electric vehicles, and demand response technologies, that are supported by a wide-ranging suite of California Public Utilities Commission policies.
- K. “Energy” means electricity, natural gas, steam, heating oil, or other products sold by a utility to a customer of a building, or renewable on-site electricity generation, for purposes of providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.
- L. “Energy Audit” means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize energy in order to optimize a building's overall energy performance.
- M. “ENERGY STAR® Portfolio Manager” means the United States Environmental Protection Agency's online tool for measuring, tracking, and managing a building's energy, water, and greenhouse gas emission data, and benchmarking the performance of the building.
- N. “ENERGY STAR® Certified” means a building which has earned an ENERGY STAR® Score of 75 or higher, indicating that it performs better than at least seventy-five percent (75%) of similar buildings Nationwide and the data has been verified by a professional engineer or registered architect.
- O. “ENERGY STAR® Score” means a number ranging from 1 to 100 assigned by the US EPA's Energy Star Portfolio Manager as a measurement of a building's energy efficiency, normalized for a building's characteristics, operations, and weather, according to methods established by the US EPA's ENERGY STAR® Portfolio Manager.
- P. “Energy Use Intensity” (EUI) as defined by the US EPA means all energy consumption divided by the Gross Floor Area. A normalized EUI is adjusted for property characteristics, site energy factors and source energy factors as determined by the US EPA’s ENERGY STAR® Portfolio Manager.
- Q. “Grid-Interactive Efficient Building (GEB)” means an energy efficient building with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.
- R. “Gross Floor Area” means the total building square footage, as measured between the exterior walls of the building(s). Open-air stairwells, breezeways, and other similar areas that are not

fully enclosed should not be included in the Gross Floor Area. Gross Floor Area for a Commercial Property shall include all finished areas inside the building(s) including supporting areas, lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, storage rooms. Gross Floor Area for an Industrial Property shall include all space within the building(s) at the plant, including production areas, offices, conference rooms, employee break rooms, storage areas, mechanical rooms, stairways, and elevator shafts. Gross Floor Area for a Multifamily Property shall include all buildings that are part of a multifamily community or property, including any management offices or other buildings that may not contain living units, all fully-enclosed space within the exterior walls of the building(s), including living space in each unit (including occupied and unoccupied units), interior common areas (e.g. lobbies, offices, community rooms, common kitchens, fitness rooms, indoor pools), hallways, stairwells, elevator shafts, connecting corridors between buildings, storage areas, and mechanical space such as a boiler room.

- S. "Industrial Property" means a property that is defined by ENERGY STAR® Portfolio Manager as a Manufacturing/Industrial building used for producing, manufacturing, or assembling goods and includes but is not limited to a main production area that has high-ceilings and contains heavy equipment used for assembly line production.
- T. "Multifamily Property" means any multifamily building that contains two or more residential living units, as defined in section 4125 or 6542 of the California Civil Code. This includes high-rise buildings (10 or more stories), mid-rise buildings (5 to 9 stories), or low-rise buildings (1 to 4 stories).
- U. "Qualified Auditor" means an individual whose job duties do not regularly occur at the Property, who possesses such qualifications as determined by the Department to perform or directly supervise individuals performing audits and to certify audit reports required by this Chapter. A Qualified Auditor may be a contractor hired by the reporting entity, or an employee of a utility, so long as such person has two or more years of auditing experience and possesses one or more of the following certifications:
 - 1. Accredited certification that has been designated a "Better Buildings Recognized Program" by the U.S. Department of Energy ("DOE") meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Energy Auditors or Energy Managers;
 - 2. Certified Energy Auditor (CEA) or Certified Energy Manager (CEM), issued by the Association of Energy Engineers (AEE);
 - 3. Certified Facilities Manager (CFM), issued by the International Facility Management Association (IFMA);

4. High Performance Building Design Professional (HBDP) or Building Energy Assessment Professional (BEAP), issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
 5. For audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), issued by the Building Performance Institute (BPI);
 6. Professional Engineer (PE) registered in the State of California;
 7. System Maintenance Administrator (SMA) or System Maintenance Technician (SMT), issued by Building Owners and Managers Institute (BOMI) International; or
 8. Additional qualified certifications as the Director of the Department deems appropriate.
- V. “Qualified Retro-Commissioning Professional” means an individual whose job duties do not regularly occur at the Property, who possesses such qualifications as determined by the Department to perform or directly supervise individuals performing the retuning work (i.e. adjusting system control parameters) required by this Chapter. A Qualified Retro-Commissioning Professional may be a contractor hired by the reporting entity or an employee of a utility so long as such person has two or more years of commissioning or retuning experience and possesses one or more of the following certifications:
1. Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin;
 2. Accredited certification that has been designated a "Better Buildings Recognized Program" by the Department of Energy meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Commissioning Professionals;
 3. Certified Building Commissioning Professional (CBCP) or Existing Building Commissioning Professional (EBCP), issued by the Association of Energy Engineers (AEE);
 4. Certified Commissioning Professional (CCP), issued by the Building Commissioning Association (BCA);
 5. Certified Commissioning Authority (CxA) or Certified Commissioning Technician (CxT), issued by the AABC Commissioning Group (ACG);
 6. Certified Professional certified by the National Environmental Balancing Bureau (NEBB);
 7. Commissioning Process Management Professional (CPMP), issued by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
 8. Professional Engineer (PE) registered in the State of California; or
 9. Additional qualified certifications as the Director of the Department deems appropriate.
- W. “Retro-Commissioning” means a systematic process for optimizing existing systems relating to building performance through the identification and correction of deficiencies in such systems.

- X. “Retro-Commissioning Measures” means work relating to retro-commissioning such as repairs, maintenance, adjustments, changes to controls or related software, or operational improvements that optimize a building's energy and/or water performance.
- Y. “Retrofit Measures” means upgrades or alterations of building systems involving the installation of energy and/or water efficiency and DER technologies that reduce energy and/or water consumption and improve the efficiency of such systems.
- Z. “Solar Thermal System” means the process of utilizing energy from the sun through the use of collectors to produce heat for a variety of applications including but not limited to heating water, providing process heating, space heating, absorption cooling and any combination of such applications.
- AA. “Solar Photovoltaic” means a technology that uses a semiconductor to convert sunlight directly into electricity.
- BB. “Stationary Battery Electric Storage System (BESS)” means a rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, and associated electrical equipment designed to provide electrical power to a building, designed for service in a permanent location.
- CC. “US EPA Water Score” means a number ranging from 1 to 100 assigned by the US EPA's ENERGY STAR® Portfolio Manager, and available to existing multifamily properties with twenty (20) or more units, as a measurement of a whole building's water use, normalized for that building's characteristics, operations, and weather, according to the methods established by the US EPA's ENERGY STAR®; Portfolio Manager.
- DD. “Water Audit” means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize water in order to optimize a building's overall water performance.
- EE. “Water Use Intensity” (WUI) as defined by the US EPA means all water consumption divided by the Gross Floor Area. (not including parking or irrigated area) and is not adjusted for any of the building use details (number of workers, weekly hours, etc.).

§15.83.050 – Annual Energy and Water Benchmarking, and Self-Reporting.

- A. Annual Energy and Water Benchmarking and Self-Reporting. For every building subject to this Chapter, the property owner shall annually submit to the Department an energy and water benchmarking report according to the schedule set forth in Section 15.83.100.

B. Owner and Tenant Responsibilities. For every building subject to this Section 15.83.050 that has non-residential tenants, the property owner shall request from its non-residential tenants and the utility companies that serve the building the information necessary related to paragraphs 1 and 2 of subsection C of this Section 15.83.050 to satisfy the requirements of this Section. Utility companies shall provide aggregated whole building data for buildings with three or more non-residential tenant accounts and shall provide the aggregated tenant-authorized information for buildings with less than three non-residential tenants.

1. The property owner of a building with one or two non-residential tenants in which the tenant(s) holds the utility account shall by February 1 of each calendar year, beginning in 2021, request the tenant(s) to authorize the utility companies that serve the tenant's space to provide to the property owner the energy and water use data for the tenant space. Within 30 days of the tenant's receipt of such request, the tenant shall authorize the utility companies to release the energy use data for the tenant space to the property owner. After the tenant provides to the property owner an authorization form and the property owner provides such form to a utility company, the utility company shall provide to the property owner energy and water use data for tenant space including any area that the tenant subleases.
2. A tenant's failure to provide the authorization to the utility companies subjects the tenant to the penalty provisions of this Chapter.
3. A tenant's failure to provide the authorization to the utility companies does not relieve the property owner's benchmarking obligations under this Chapter but such obligation may be satisfied by a partial building benchmarking report as approved by the Director.
4. If by reason of a lease or otherwise, a single tenant has assumed complete management and control of a building, the property owner and the tenant may agree in writing and inform the Director that the tenant will assume full responsibility for the obligations of the property owner under this Chapter.
5. Nothing in this Chapter shall be construed to permit a property owner to use tenant utility usage data for purposes other than compliance with the benchmarking report requirements. Nor shall the reporting requirements of this Chapter be construed to excuse property owners from compliance with federal or state laws governing direct access to tenant utility data from the responsible utility.

C. Energy and Water Benchmarking Report. The energy and water benchmarking report shall be based on an assessment in the ENERGY STAR® Portfolio Manager of the total energy and water consumed by the whole building for the entire calendar year being reported. The energy and water benchmarking report shall, at a minimum, include the following:

1. Descriptive Information. Basic descriptive information to track and report a building's compliance with this Chapter, including but not limited to:
 - a. Property address;
 - b. Gross Floor Area;
 - c. Property type;
 - d. Year built;
 - e. Number of stories;
 - f. Weekly operating hours;
 - g. Number of workers on main shift;
 - h. Number of computers;
 - i. Space use types and corresponding Gross Floor Areas;
 - j. Covered parking garage information (if applicable);
 - k. Information about buildings that share a meter with the building subject to this Chapter;
 - l. Any other reasonable information about energy consuming assets connected to the meter that affect the energy use intensity of the building;
 - m. Any other information required for an ENERGY STAR® Score as defined by the EPA;
 - n. The ENERGY STAR® Portfolio Manager contact information fields for the individual or entity responsible for the benchmarking report (either the service provider, owner, tenant, or building data administrator);
 - o. Custom field for an electricity energy provider;
 - p. If the property owner is seeking an exemption, the property notes field in ENERGY STAR® Portfolio Manager shall include a brief description of the reason for seeking an exemption; and
 - q. Information on any non-residential tenants, including the tenant's name, contact information, and Gross Floor Area leased, and whether each tenant provided needed data as required by Section 15.83.050.B.1.
2. Energy and Water Benchmarking Information. Information necessary to benchmark energy and water usage, including, at a minimum, the following data:
 - a. The ENERGY STAR® Score for the building, where available;
 - b. The weather-normalized site and source EUI in kBtu per square foot per year for the building;
 - c. The site and source EUI in kBtu per square foot per year for the building;

- d. The annual carbon dioxide equivalent emissions due to energy use for the building as estimated by ENERGY STAR® Portfolio Manager;
- e. Indoor water use, indoor water use intensity, outdoor water use (monthly when available), and total water use;
- f. Number of years the building has been ENERGY STAR® Certified and the last approval date, if applicable;
- g. Monthly grid purchased electricity, natural gas, and other fuel and water consumption (monthly when available) and dollar amounts (when available);
- h. Monthly Electricity Use – Generated from Onsite Renewable Systems and Used Onsite (kWh) - mandatory if applicable and seeking a performance pathway for compliance;
- i. Annual Maximum Demand (kW) if available; and
- j. Annual Maximum Demand date if available.

D. Quality Check of Benchmarking Report Submission.

The property owner or the owner's authorized representative shall run all automated data quality checker functions available within ENERGY STAR® Portfolio Manager, and shall correct all missing or incorrect information as identified by ENERGY STAR® Portfolio Manager prior to submitting the benchmarking report to the Department.

E. Exemptions from Benchmarking Report Submission.

- 1. For each reporting cycle, a property owner may request an exemption from submitting a benchmarking report and the Department shall determine whether an exemption under this subsection applies to a building. A property owner may appeal a determination that a building is not exempt as set forth in section 15.83.125.
- 2. All Disclosable Properties must submit at a minimum the descriptive information in all subparagraphs set forth in paragraph 1 of subsection C of this Section, even if energy and water consumption are not disclosed.
- 3. A property owner shall not be required to file a full benchmarking report with energy data for a reporting year if any of the following conditions apply:
 - a. If a Certificate of Occupancy or Temporary Certificate of Occupancy for the building was not issued for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.83.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.83.050 are not required to be reported.

- b. If the building were vacant for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.83.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.83.050 are not required to be reported.
- c. If the building did not receive energy or water services for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.83.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.83.050 are not required to be reported.
- d. If a demolition permit for the entire building has been issued, or a schedule for demolition can be reasonably documented to the satisfaction of the Department, the building is exempt from benchmarking reporting and this Section 15.83.050.

F. Publication of Limited Summary Data.

The Department shall make the following information, as reported by property owners, available to the public on the City's website, and update the information at least annually; provided, however, for properties with one or two non-residential tenants, such tenant(s) may elect to not have the information made available to the public:

- 1. Summary statistics on overall compliance with this Chapter;
- 2. Summary statistics on overall energy and water consumption of buildings subject to this Chapter derived from the aggregation of annual benchmarking reports; and
- 3. For each building subject to this Chapter:
 - a. Property address, year built, Gross Floor Area, and property use type;
 - b. Monthly and/or annual summary statistics for the whole building derived from the submitted benchmarking report, including all information required under subsection C of this Section 15.83.050 ; and
 - c. The status of compliance with the requirements of this Chapter.

§15.83.060 – Beyond Benchmarking: Pathways for Demonstrating and Increasing Energy and Water Performance.

- A. Compliance with Beyond Benchmarking requirements shall be demonstrated in one of two methods: a Performance Path or a Prescriptive Path. Criteria for the Performance Path are described in Section 15.83.070 and apply to Disclosable Properties of any size. Criteria for the Prescriptive Path are described in 15.83.080 and are specific to a building's Gross Floor Area.
- B. Exemption from Beyond Benchmarking Requirements. For each reporting cycle, a building may request an exemption to comply with this Section 15.83.060 and the Department shall determine whether an exemption under this section applies. A property owner may appeal the Department's determination that a building is not exempt under this section following the procedures set forth in section 15.83.125. Any property owner requesting an exemption under this Section shall, by April 1 in the year for which the exemption is being requested, submit to the Department any documentation reasonably necessary to substantiate the request or otherwise assist the Department in the exemption determination. Any exemption granted does not extend to past or future submittals. A property owner shall not be required to file an energy and water audit report for a reporting year if the building was exempt from the benchmarking requirements in section 15.83.050 E and any of the following conditions apply:
1. A demolition permit for the entire building has been issued, or a schedule for demolition can be reasonably documented to the satisfaction of the Department.
 2. If the building is intended for sale within the scheduled compliance deadline and the property owner has conducted a real estate appraisal within one calendar year of the reporting deadline, only a copy of the appraisal summary report is required;
 3. If the building was recently constructed and received a certificate of occupancy within the last five years of the scheduled compliance deadline, the property owner shall report in the following compliance cycle.
 4. If a Certificate of Occupancy or Temporary Certificate of Occupancy for the building had not been issued for more than half of the calendar year required to be audited, the property owner shall report in the following compliance cycle.
 5. If 50% or more of the Gross Floor Area of the building was not occupied for more than half of the calendar year required to be benchmarked, only an Asset Score Full as set forth in subsection B of Section 15.83.080 is required, and retro-commissioning and water audits, or installing measures, shall not be required for the current reporting period.
 6. If the building did not receive energy or water services for the more than half of the calendar year required to be audited, only an Asset Score Full is required, and retro-commissioning and water audits, or installing measures, shall not be required for the current reporting period.

§15.83.070 – Beyond Benchmarking Performance Path

- A. Owners of properties that are highly efficient, have demonstrated increased efficiency, or have adopted distributed energy resources may establish satisfactory energy and water efficiency by providing the documentation described below to the Department in such a form as required by the Department that demonstrates the following:
1. The building is new and has been occupied for less than five (5) years from its first compliance due date, based on its Temporary Certificate of Occupancy or Certificate of Occupancy; or has achieved one (1) or more of the energy standards and one (1) or more of the water standards as set forth below for at least three (3) of the five (5) calendar years preceding the building's compliance due date.
 2. Energy Standards: The building has the latest version of the Leadership in Energy and Environmental Design (LEED™) Existing Buildings Operations and Maintenance Certification; or Qualified Auditor or Retro-Commissioning Professional certified at least at least one (1) of the following:
 - a. The building has received an ENERGY STAR Score of 80 or greater from the US EPA; or
 - b. The building has improved its ENERGY STAR Score by twenty (20) points or more relative to its performance during the baseline year; or
 - c. The building has a weather normalized site GHG Intensity as calculated by the benchmarking tool that is twenty-five percent (25%) below the calculated mean for that property type; or
 - d. The building has reduced its weather normalized site GHG Intensity by at least twenty percent (20%) relative to its performance during the baseline year.
 3. If a building has installed one or more of the following distributed energy resources (DERs):
 - a. Solar Photovoltaic. An on-site solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational. The greater of the two following options satisfy the solar photovoltaic measure:
 - i. A minimum amount of solar photovoltaic capacity of 5 kilowatts per Brisbane Municipal Code Section 15.82.050; or
 - ii. Sufficient capacity must be installed to offset equal to or greater than 20% of their annual electricity consumption, as calculated by ENERGY STAR Portfolio Manager, or otherwise determined by the City Department.

- b. Stationary Electric Storage. An on-site stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
 - c. Grid-interactive Efficient Building (GEB). The building currently has the ability to interact with the distribution system operator's grid to optimize its energy consumption and/or dispatch. GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.
 - d. Decarbonized Building. The building is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized in the current reporting year.
4. Water Standards: A Qualified Auditor or Qualified Retro-commissioning Professional has certified at least one (1) of the following:
- a. The building has received a US EPA Water Score of 80;
 - b. The building has improved its US EPA Water Score by twenty (20) points or more relative to its performance during the baseline year;
 - c. The building has reduced its Water Use Intensity by at least twenty percent (20%) relative to its performance during the baseline year.
- B. If a building has achieved both energy and water standards, the property owner is only required to submit an ENERGY STAR® Performance Verification Report for that reporting year. If the building only meets one (1) of the standards, the property owner shall submit a Performance Verification Report for the satisfactory standard and shall comply with this section by completing one (1) of two (2) prescriptive pathway options for the unmet standard as set forth in subsection G of section 15.83.080.
- C. After the establishment of a DOE-recognized standard for a water auditor, the Director may adopt the qualifications of the DOE-recognized standard with modifications as the Director deems to be appropriate.

§15.83.080 - Beyond Benchmarking Prescriptive Path.

- A. If a building does not meet performance standards set forth in 15.83.070, a property owner shall meet the requirements of this Chapter through one (1) of two (2) alternative means:

1. For properties between 10,000 and 39,999 square feet:
 - a. Conducting an Asset Score Full Report described in Section 15.83.080 B; and either
 - b. Performing Retro-Commissioning described in Section 15.83.080 D; or
 - c. Adopting Improvement Measures described in subsection F of Section 15.83.080; or
 - d. Adopting a Green Lease as described in subsection H of Section 15.83.080.
 2. For properties 40,000 square feet and more:
 - a. Conducting a minimum of an ASHRAE audit Level II Audit described in Section 15.83.080 B (Level III audits are also acceptable); and either
 - b. Performing Retro-Commissioning described in Section 15.83.080 D; or
 - c. Adopting efficiency and/or DER Improvement Measures described in subsection F of Section 15.83.080; or
 - d. Adopting a Green Lease as described in subsection H of Section 15.83.080.
- B. Energy and Water Audit Standards. Energy and water auditing standards shall comply with both of the following:
1. Energy Auditing. Energy audits required by this Chapter shall meet or exceed either the Department of Energy (DOE) Asset Score standards, American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Level II audit standards in conformance with the ASHRAE Standard 211-2018 (or latest version) “Standard for Commercial Building Energy Audits” and shall be performed under the direct supervision of a Qualified Auditor or Qualified Retro-commissioning Professional. The DOE Audit Template shall be used to transmit data to the City for compliance with Energy Auditing and Retro-commissioning. The City will publish an Audit Template on the Building Energy Asset Score website with standardized data collection fields to capture information about base energy systems and recommended retrofit opportunities. Section 15.83.080 A describes the applicability of each of the following audit standards based on Gross Floor Area:
 - a. Asset Score Full
 - i. Collect Building Data: Use the Data Collection Form “Full” Input Mode version to gather information about the building’s physical characteristics.
 - ii. Review the Data Collection Priority Map to help focus on the most important building data given the building’s use type and climate zone.
 - iii. Enter the data on the Audit Template supplied on the DOE Asset Score website for the Brisbane Building Efficiency Program
 - b. ASHRAE Level II Audit

- i. Energy audits required by this Chapter shall meet or exceed Level II audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 211-2018 “Standard for Commercial Building Energy Audits” and shall be performed under the direct supervision of a Qualified Auditor.
 2. Water Auditing. Water audits shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the Department directs the use of the latest version of ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process), and under the direct supervision of a Qualified Auditor or Qualified Retro-commissioning Professional. The water audit of the base building systems shall include, at a minimum, the following:
 - a. Potable water distribution systems;
 - b. Landscape irrigation systems;
 - c. Water reuse systems; and
 - d. Water features.
- C. Energy and Water Audit Report. A report of the energy and water audit, completed and signed by a Qualified Auditor, shall be maintained by the property owner as required in Section 15.83.090. The report shall meet the requirements of subsection 15.83.080 B and shall include, at a minimum, the following:
1. The date(s) that the audit and retro-commissioning were performed;
 2. Identifying information on the auditor and retro-commissioning provider;
 3. Information on the base building systems and equipment;
 4. A list of all retrofit measures that can reduce energy use and/or cost of operating the building, costs of each measure, and an estimate of the energy savings associated with each measure;
 5. A list of all retrofit measures that can reduce water use and/or cost of operating the building; costs of each measure; and an estimate of the water savings associated with each measure;
 6. Functional performance testing reports;
 7. Operational training conducted;
 8. Inventory of existing, planned, or desired electric vehicle (EV) charging stations on the property;
 9. Inventory of existing, planned, or desired solar photovoltaic, solar water heating, other energy generation equipment;
 10. Inventory of existing, planned, or desired stationary battery electric storage system or other energy storage equipment;

11. Inventory of existing, planned or desired building energy end-use electrification retrofits including electrical panel upgrades;
12. Inventory of existing, planned or desired water systems and equipment; and
13. Acknowledgment that an Asset Score Full, or ASHRAE Level II audit was conducted.

D. Energy and Water Retro-Commissioning Standards.

1. Energy retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies. The Department may consider updating the ASHRAE Guideline 0.2 with ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process) once the Standard has been voted and approved by ASHRAE. These activities shall be conducted under the direct supervision of a Qualified Retro-commissioning Professional. The retro-commissioning of base building systems shall include, at a minimum, the following:
 - a. Heating, ventilation, air conditioning (HVAC) systems and controls
 - b. Indoor lighting systems and controls;
 - c. Exterior lighting systems and controls;
 - d. Water heating systems;
 - e. Renewable energy systems;
 - f. Stationary electric battery storage systems;
 - g. Electric vehicle charging equipment; and
 - h. Demand flexibility systems.
2. Water retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the Department directs the use of the latest version of ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process), and under the direct supervision of a Qualified Retro-commissioning Professional. The water retro-commissioning of the base building systems shall include, at a minimum, the following:
 - a. Potable water distribution systems;
 - b. Landscape irrigation systems;
 - c. Water reuse systems; and
 - d. Water features.

- E. Energy and Water Retro-Commissioning Report. A report of the energy and water retro-commissioning, completed and signed by a Qualified Retro-commissioning Professional, shall

be maintained by the property owner as required in Section 15.83.090. The report shall meet the requirements of Subsection 15.83.080 D and shall include, at a minimum, the following:

1. The date(s) that the retro-commissioning was performed;
2. Identifying information on the retro-commissioning provider;
3. Information on the base building systems and equipment;
4. All the retro-commissioning process activities undertaken and retro-commissioning measures completed;
5. Functional performance testing reports; and
6. Operational training conducted.

F. Improvement Measures. A property owner may comply with the requirements of this Chapter for any unmet standard by demonstrating two (2) of the following corresponding efficiency improvement measures - one energy-related measure and one water-related measure listed below - were completed and by submitting an Improvement Measures Report within the time set forth in Section 15.83.100.

1. Energy-Related Improvement Measures

- a. Energy Efficiency Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will continually be updated thereafter. The list of measures will include opportunities that prioritize energy efficiency in base building systems, decarbonized buildings, and building electrification. An owner may submit a request to the Department to add measures not contained in the published list that are identified by a qualified auditor or retro-commissioning professional. Examples of energy systems include, but are not limited to:

- i. Space heating and cooling
- ii. Ventilation
- iii. Building envelope measures such as insulation, air sealing and window upgrades
- iv. Water heating
- v. Lighting
- vi. Cooking
- vii. Refrigeration
- viii. Office equipment and computing
- ix. Other loads

- b. Distributed Energy Resource Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will

continually be updated thereafter. The list of measures will include opportunities that prioritize decarbonized buildings and building electrification. Examples of energy systems include, but are not limited to:

- i. Solar Photovoltaic. An on-site solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- ii. Stationary Electric Storage. An on-site stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- iii. Grid-interactive Efficient Building (GEB). GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way that is currently operational.
- iv. Electric Vehicle (EV) Charging Infrastructure. Electric Vehicle Charging Infrastructure has been installed on the building site.
- v. Decarbonized Building. A building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized.

2. Water-Related Improvement Measures

- a. Water Efficiency Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will continually be updated thereafter. The list of measures will include opportunities that prioritize water efficiency. Examples of energy systems include, but are not limited to:
 - i. Installation of plumbing such that all systems in the building are in compliance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational;
 - ii. Installation of outdoor landscaping and irrigation such that all systems on the property are in compliance with Brisbane Municipal Code Chapter 15.70, Water Conservation in Landscaping in effect at the time of the compliance cycle;
 - iii. Installation of a greywater system in accordance with California Code of Regulations, Title 24, Sections 1502.6, 1502.10.3, or as amended and in effect at the time of installation and currently operational;
 - iv. Installation of insulation on all hot water pipes in accessible building locations;or

- v. Participation in approved water utility retrofit program (e.g. taken advantage of rebate or incentive programs for upgrades).

G. **Improvement Measures Report.** A report of the Improvement Measures implemented shall be submitted to the Department and maintained by the property owner as required in Section 15.83.090. The report shall be submitted with sufficient supporting data including receipts or other proof of compliance and shall include, at a minimum, the following:

1. Descriptions of the measures including the date(s) that the Improvement Measures were implemented;
2. Identifying information on the person implementing the Improvement Measures;
3. Information on the Base Building Systems and equipment; and
4. A list of all Improvement Measures that can reduce energy or water use and the cost of operating the building, and the costs of each measure.

H. **Green Lease Attestation.** A property owner may submit a letter of attestation that its lease or other rental agreement for the building contains sustainability or environmental provisions specifically related to energy and water as part of the agreement (a “green lease”). At a minimum, the owner shall provide reasonable evidence that the agreement includes provisions for:

1. Energy and water cost pass through requirements that do not exceed the actual reduction in building operating costs for the tenant;
2. Operational clauses that support overall energy and water reductions on the property; and
3. Reporting clauses that allow the owner and tenant to share data necessary to comply with this Chapter.

I. **Required Submittal to the Department.**

1. For each building subject to this Chapter, the property owner shall submit to the Department an Energy and Water Audit and Report as described in Section 15.83.080 D, or proof of meeting one of the exemptions, in accordance with the schedule set forth in Section 15.83.100.
2. For each building subject to this Chapter, the property owner shall submit to the Department, in accordance with the schedule set forth in Section 15.83.100, one of the following:
 - a. An Energy and Water Retro-Commissioning Report as described in Section 15.83.080 E;
 - b. An Improvement Measures Report as described in Section 15.83.080 G; or

c. A Green Lease Attestation as described in Section 15.83.080 H.

§15.83.090 - Record Maintenance.

The property owner shall maintain records related to benchmarking, audits and retro-commissioning, including, but not limited to, the energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of six years. When the building is sold, the records shall be given to the new property owner.

§15.83.100 - Schedule for Compliance.

A. Schedule for Benchmarking Report Compliance. A property owner shall submit to the Department an annual benchmarking report in compliance with Section 15.83.050 according to the following schedule:

1. For properties owned by the City with a gross floor area of 2,000 square feet or more, the City must complete and submit the initial Benchmarking Report annually on or before May 15, beginning in 2020.
2. For all other properties subject to this Chapter, the property owner must complete and submit the initial Benchmarking Report annually on or before May 15, beginning in 2021.

B. Schedule for Beyond Benchmarking Compliance for Performance and Prescriptive Paths. A property owner must comply with Section 15.83.060 once every five years, based on the federal Unique Building Identifier (UBID) which will be published on the City website for each building subject to this Chapter under Section 15.83.060.

1. For commercial - May 15, 2023
2. For industrial and multifamily - May 15, 2024
3. For any newly constructed commercial or multifamily buildings receiving a certificate of occupancy after May 15, 2018, or industrial buildings after May 15, 2019, the property owner shall comply with Sections 15.83.060, 15.83.070 and/or 15.83.080 at the time of the next reporting cycle corresponding to the property type (e.g. 2028 or 2029).

C. Timing of Audit and Retro-Commissioning. Except as otherwise provided in Subsection 15.83.060 B, a property owner shall complete the audits and retro-commissioning within five years of a building's compliance due date.

- D. Early Compliance Pilots. The City may launch a voluntary early compliance pilot program to test the reporting infrastructure and refine the reporting requirements. The pilot program may begin prior to the reporting deadline in this Section 15.83.100.
- E. Time Extensions. A property owner may be granted up to three extensions of sixty days each to file any submittal required by this Chapter provided satisfactory proof is made to the Department that one of the following conditions applies:
1. The property is under financial or legal distress, as verified by recent financial statements, legal filings and other relevant documents showing one or more of the following:
 - a. The property is under the control of a court-appointed receiver as a result of financial distress;
 - b. The property is owned by a financial institution as a result of borrower default;
 - c. The property has been acquired by a financial institution via deed in lieu of foreclosure;
 - d. The property is encumbered by a senior mortgage subject to a notice of default;
 - e. The property is an asset subject to probate proceedings;
 - f. The property is subject to a State of California Board of Equalization (BOE) Welfare Property Tax Exemption and the cost of complying with the reporting requirements will exceed or significantly deplete existing cash flow. The property owner must provide proof of a BOE-issued Organizational Clearance Certificate and, where the property owner is a limited partnership, provide a Supplemental Clearance Certificate.
 2. The property owner, or tenant if applicable, is unable to timely comply due to substantial hardship. Substantial hardship shall mean circumstances by some verifiable level of adversity or difficulty from which the Department determines a property owner, or tenant if applicable, would not be able reasonably to satisfy the obligations of this Chapter.
 3. Fifty percent or more of the Gross Floor Area occupied by tenant(s) in the building has a lease ending within one year of the compliance deadline and the lease is not being renewed.
- F. Notification. For buildings with compliance dates of May 1, 2021 or later, the Department shall notify the property owner at least three months prior to the due dates specified in subsections A and B of this Section 15.83.100.

§15.83.110 - Penalties for Violation.

The violation of any provisions of this Chapter shall constitute an infraction and the City shall enforce this Chapter as set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such enforcement

actions are cumulative and shall be in addition to any other enforcement remedies specified under the Code or under other law.

§15.83.115 - Declaration of Public Nuisance.

Any building operating contrary to the provisions of this Chapter and any use of property or of a building operated or maintained contrary to the provisions of this Chapter are declared to be public nuisances. The City Attorney may undertake the necessary proceedings to abate and/or enjoin the operation or use of any such property or building. The remedies provided by this Section shall be in addition to any other remedy or remedies or penalties provided in this Chapter, this Code or any other law.

§15.83.120 - Fees.

By Council resolution, the City may impose fees to cover the cost of the Department's review of submittals required by this Chapter and any other costs to administer this Chapter. Such fees may include, but not be limited to, an annual benchmarking disclosure compliance fee and an audit and retro-commissioning fee.

§15.83.125. - Appeals.

- A. As to any matter arising under this Chapter, any person may appeal to the Director any decision, determination, order, requirement or other action of the Department in which the Director has not been directly involved "the Department Decision"). Any such appeal shall be in writing and filed with the City Clerk within 15 days after the action giving rise to the appeal. The Director shall decide the appeal within 30 days.
- B. Any person dissatisfied with the Director's decision concerning the Department Decision may appeal to the City Manager by filing such appeal with the City Clerk within 10 days after the Director's decision concerning the Department's Decision.
- C. The City Manager shall consider the appeal within 30 days and may affirm, reverse or modify the Director's decision concerning the Department Decision. The decision of the City Manager shall be final.

§15.83.130. - Disclosure of Data Provided to the City.

Data provided to the City under this Chapter are public records as defined in the California Public Records Act.

SECTION 2: Adoption of this Ordinance does not require environmental review because it represents general policy making that would not result in a direct or indirect physical change in the environment and therefore it is not a project under the California Environmental Quality Act. CEQA Guidelines, Section 15378 (b)(2).

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

Madison Davis, Mayor

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Thomas C. McMorrow, Interim City Attorney

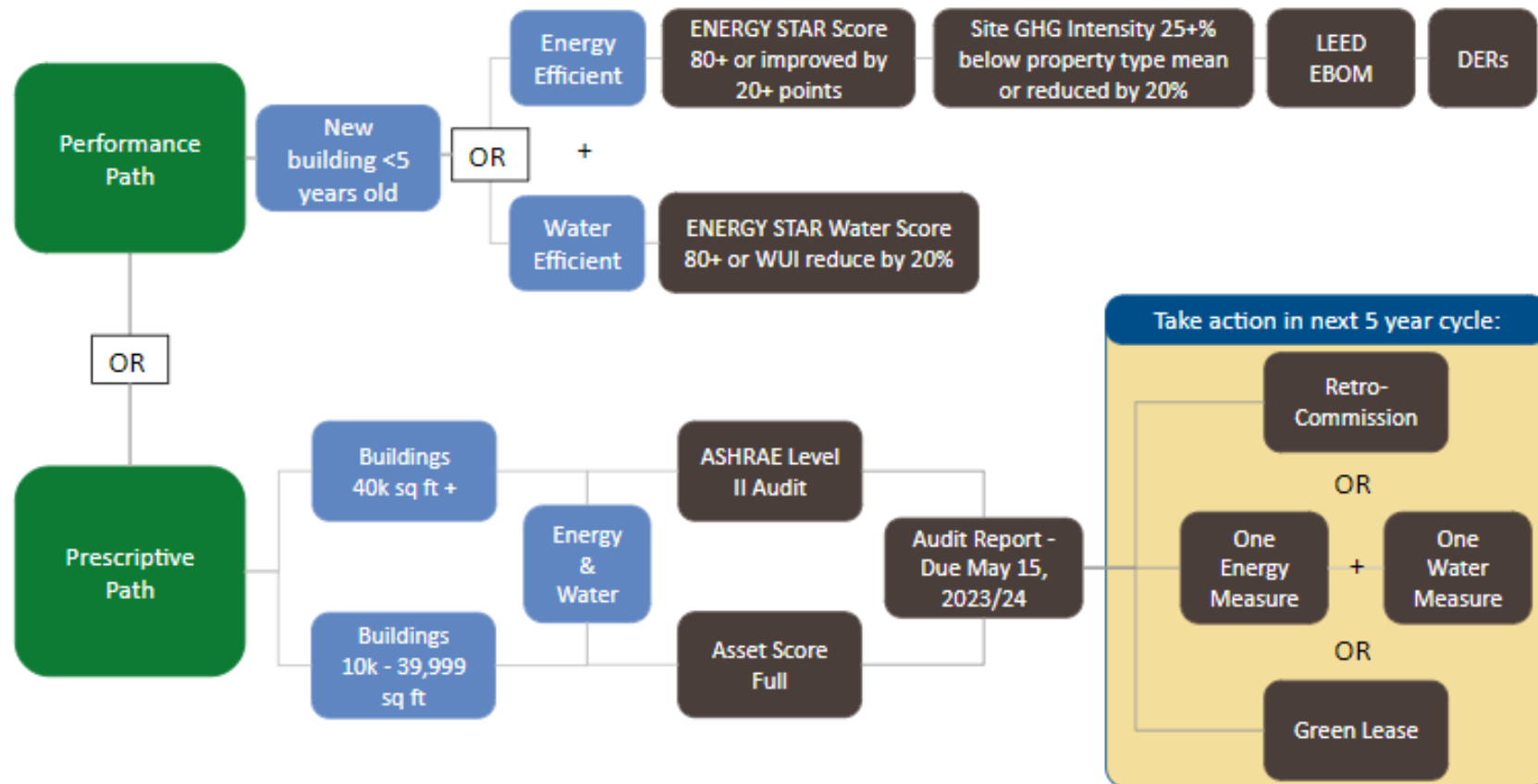


Proposed Brisbane Building Efficiency Program

Compliance Pathways

Annual Benchmarking beginning 2021 - 10,000 sq ft or more

Beyond Benchmarking - every 5 years beginning: 2023 for commercial, 2024 industrial + residential



Want to learn more? Visit www.brisbaneca.org/building-efficiency-program or contact Adrienne Etherton: aetherton@brisbaneca.org or 415.508.2118

Brisbane Building Efficiency Program Outreach

- **Workshop 1: April 9, 2019 1:00 - 2:30 PM at Mission Blue Center**
 - 27 attendees, representing: City of Brisbane, The Energy Coalition, Menlo Spark, City of Berkeley, BiRite, SFSU, Verdafero, California Energy Commission (CEC), Western Allied, Ecology Action, San Mateo County Office of Sustainability, Marble Company, Bay Area Air Quality Management District (BAAQMD), PG&E, CHC Hydro
- **Workshop 2: June 12, 2019 6:00 - 7:30 PM at the DoubleTree Hotel**
 - 17 attendees, representing: City of Brisbane, The Energy Coalition, Verdafero, Sustainable San Mateo County, UPC, CEC, Cal Hydro, SSF Genesis, Pacific Northwest National Lab (PNNL)
- **Webinars**
 - Benchmarking Primer: June 6, 2019 10:00 - 11:00 AM
 - Audits Deep Dive: July 18, 2019 10:00 - 11:00 AM
- **Staff “1-on-1” meetings/calls with:**
 - Local building owners: Prologis, UPC, BiRite, FW Spencer, Phase 3
 - CEC, City of San Jose, Verdani Partners, Institute for Market Transformation
- **Study Session on draft ordinance: August 29, 2019 12:30-2:30 PM**
 - Economic Development Subcommittee: Councilmembers Karen Cunningham and Cliff Lentz
 - Open Space and Ecology Committee (OSEC) Climate Action Plan Subcommittee: Glenn Fieldman, Barbara Ebel, Ross Dykes
 - City Staff: City Manager Clay Holstine, Economic Development Director Mitch Bull, Public Works Director Randy Breault, Public Works Deputy Director Karen Kinser, Sustainability Management Analyst Adrienne Etherton, Administrative Management Analyst Angel Ibarra
 - Consultant: Marc Costa, Director of Policy & Planning, The Energy Coalition
- **Planning Commission: September 12, 2019 7:30 PM**
 - Commissioners present: Gomez, Gooding, Mackin, Patel
- **Open Space and Ecology Committee: September 18, 2019 6:30 PM**
 - Members present: Salmon, Rogers, Dykes, Ankenbruck, Fieldman, Ebel
- **OSEC Climate Action Plan Subcommittee: November 7, 2019 3:00 PM**
- **Economic Development Subcommittee: November 8, 2019 11:00 AM**

A. Background

At its November 21, 2019, meeting, the City Council considered Draft Ordinance 644. If enacted, staff reported that the draft ordinance would “establish the Brisbane Building Efficiency Program (BBEP) to reduce the environmental impact of existing commercial buildings through annual energy and water benchmarking, auditing, retro-commissioning and/or retrofits.”¹

Draft Ordinance 644 includes a separate “Purpose” clause stating, in relevant part, “It is the intent of this Chapter that the provisions align with California Assembly Bill 802 (2015), codified in California Public Resources Code section 25402.10 and California Code of Regulations Title 20, Division 2, Chapter 4, Article 9 (State Regulations).”²

During public comments on Draft Ordinance 644, a concern was raised as to whether the language of the draft ordinance would clearly exempt condominiums from its coverage as reported in the Staff Report.

State regulations implementing AB 802 (2015) energy efficiency benchmarking and performance reporting requirements are found in California Code of Regulations Title 20, Division 2, Chapter 4, Article 9. Those regulations specifically provide an exemption from applicability for condominium projects:

CCR §1681(c) Covered Building: Any structure used or intended to support or shelter any use or occupancy, *other than a condominium project as described in section 4125 or 6542 of the California Civil Code*, that received Energy from a Utility during the period for which Energy use data is requested, and has (1) no residential Utility Accounts, or (2) five or more Active Utility Accounts of any one Energy type, at least one of which is residential. Two or more Covered Buildings on the same parcel, campus, or site that are served by one common Energy meter without submetering, such that their Energy use cannot be tracked individually, shall be considered one Covered Building.

(emphasis added)

B. City Council’s Concern

Notwithstanding the exemption of condominium projects from CCR §1681(c), and therefore from proposed Draft Ordinance 644, the City Council directed staff to (1) determine if state law defines the term “condominium project” and (2) draft language for Council consideration that would amend the draft ordinance to directly state that condominiums are exempt from the ordinance.

1. Condominium Project

State law defines a “condominium project” in California Civil Code sections 4125 and 6542. These definitions are the same and are provided here for reference:

¹ City Council Agenda Report, Introduction of Draft Ordinance 644, p. 1 (November 21, 2019) (the “Staff Report”).

² *Id.* at p. 4, see proposed Section 15.83.020. – Purpose.

(a) A “condominium project” means a real property development consisting of condominiums.

(b) A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof.

(c) The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support.

(d) An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

2. Draft Exemption Language

Draft Ordinance 644 defines its applicability in section 15.83.030 - Applicability. Subsection C. thereof provides a list of the facilities that are excluded from application of the draft ordinance. The term “condominium project” can be amended into the subsection to clearly state that condominium projects, as defined in applicable state law, are exempt from Draft Ordinance 644. The proposed amendment appears in bold underline here:

C. This Chapter shall not apply to one- and two-family dwellings and related accessory structures; multifamily properties with four or fewer dwellings; **condominium projects as defined in California Civil Code §§ 4125 and 6542**; broadcast antennas; utility pumping stations; and other buildings not meeting the purpose of this Chapter, as determined by the Department.

AGREEMENT FOR PROFESSIONAL SERVICES

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

RECITALS

A. City desires to retain Consultant for the performance of certain professional consulting services for development and passage of a Benchmarking and Transparency Ordinance ("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. All services shall be performed to the reasonable satisfaction of the City department head in charge of the Project.

2. **Time of Performance.** The services of Consultant shall commence upon the execution of this Agreement and shall be satisfactorily completed in accordance with the time schedule set forth in Exhibit A attached hereto and incorporated herein by reference, unless subject to delays beyond the reasonable control of Consultant.

3. **Responsible Personnel.** The personnel acting on behalf of Consultant primarily responsible for performance of the services hereunder shall be _____.

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 \$_____ without additional written 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 pursuant to a deliverable-based payment schedule to be negotiated between City and Consultant. In no event shall the Consultant's payment for a deliverable-based payment schedule item exceed 80% of the full value of the deliverable until such time as the deliverable has been accepted by the city and deemed complete. Alternatively, City may authorize Consultant to submit billings to City describing in detail the work performed for which payment is requested, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. Billings shall be submitted monthly, or at such other time

as agreed upon between City and Consultant. City shall pay Consultant no later than 30 days after approval of the invoice by City staff. If City objects to all or any portion of the billing, City shall notify Consultant of the nature of such objection and the amount in dispute. City shall pay when due the portion of the billing, if any, that is not in dispute. The parties will make a good faith effort to settle the disputed billing through good faith negotiations.

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. Each subcontractor shall agree in writing to comply with all of the applicable terms and conditions of this Agreement.

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

9. **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. 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 by City.

10. **Independent Contractor.** Consultant is, and at all times shall remain, an independent contractor, and not an agent, officer or employee of City. As an independent contractor, neither Consultant nor any of 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.

11. **Licenses.** Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature that are legally

City of Brisbane Department of Public Works
Building Efficiency Program Implementation Consultant

January 2, 2020
PSA-2

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 current and in full force and effect at all times during the term of this Agreement. Consultant shall maintain a current City of Brisbane business license.

12. **Compliance with Standards of Care and Laws.** Consultant shall adhere to the standard of care in its profession and shall comply with all applicable federal, state, and local laws, codes, ordinances, and regulations in connection with the performance of its services under 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 or any of its subcontractors, agents, or employees, subcontractors, agents, or employees to comply with any of their obligations contained in 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 or any of its subcontractors, agents, or employees.

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

(a) Type of policies and coverage:

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

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

To City	City of Brisbane Attn: Adrienne Etherton 50 Park Place Brisbane, CA 94005-1310
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To Consultant	_____ _____ _____ _____
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16. **Resolution of Disputes.** In the event of any dispute between the parties pertaining to this Agreement, the parties shall endeavor in good faith to resolve such dispute through mediation before the commencement of legal action by one party against the other.

17. **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 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.

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

THE CITY OF BRISBANE

By: _____
Terry O'Connell, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

City of Brisbane Department of Public Works
Building Efficiency Program Implementation Consultant

January 2, 2020
PSA-6

Michael Roush, City Attorney

CONSULTANT:

Typed Name, Title

EXHIBIT A

Description of Services, Compensation, Schedule