

**AGREEMENT FOR INSTALLING SOLAR LED PARKING LOT LIGHTS
AT BG PECK SOCCER COMPLEX**

This Agreement (Agreement), dated effective _____ (Effective Date), is entered into by and between the City of Angleton, Texas ("City"), a municipal corporation, and Spark Lighting, LLC (Contractor). City and Contractor agree as follows:

1. **SERVICES**. Contractor will perform the scope of services (Services) as described in the January 4, 2024 Spark Lighting proposal attached and incorporated as Exhibit "A" contractor will install solar lighting at BG Peck Soccer Complex to the satisfaction of the City.
2. **TERM**. The term (Term) of this Agreement will begin on March _____, 2024 and will expire within (8 months) or 224 days, unless both parties agree to an extension or sooner terminated.
3. **FEES; PAYMENT**. The total amount of payment by City to Contractor is \$84,000.00 eighty-four thousand and 00/100 Dollars. The City is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, Tax Code, and Title 34 Texas Administrative Code §3.322, and is not required to provide a tax exemption certificate to establish its tax exempt status. Subject to and in accordance with Chapter 2251, Government Code, all fees will be paid within thirty days of receiving the Contractor's invoice. The invoice shall include the period of service, itemize services provided, and determined amount.
4. **RELATIONSHIP OF THE PARTIES**. Contractor is an independent contractor and is not an employee, partner, joint venturer, or agent of the City. Contractor will not bind nor attempt to bind the City of Angleton to any agreement.
5. **WARRANTIES AND REPRESENTATIONS**.
 - 5.1. Compliance with Laws and Policy. Contractor will comply with (a) all applicable federal, and state laws and City of Angleton ordinances (Applicable Laws. Neither Contractor, nor anyone acting for a firm, corporation or institution represented by Contractor, has (1) violated the antitrust laws of the State of Texas (ref. Chapter 15, Business and Commerce Code), or federal antitrust laws, or (2) communicated directly or indirectly the content of Contractor's response to any City procurement solicitation to any competitor or other person engaged in a similar line of business during the procurement process for this Agreement.
 - 5.2. Performance. Contractor warrants that it will perform the Services in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business.
 - 5.3. Legal Name. Contractor represents and agrees that this Agreement reflects Contractor's full and correct legal name.

5.4. Ethics Matters; No Financial Interest. Contractor and its officers, employees, agents, representatives and permitted subcontractors (Contractor Parties) have read and understand the City's Conflicts of Interest policy. Contractor represents and warrants that no city employee or city public official has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

6. **WORK MATERIAL.** All drawings, specifications, plans, computations, data, photographs, records, models, statements, reports, and other deliverables or materials prepared or produced by Contractor Parties in connection with the Services (Work Material), whether or not accepted or rejected by the City, are the property of the City and for the City's exclusive use and re-use at any time without further compensation and without any restriction.

Contractor grants and assigns to the City of Angleton all rights in and claims to the Work Material and will cooperate with the City in obtaining or enforcing the City's rights and claims. Contractor will not use the Work Material except as expressly authorized by this Agreement. Contractor will not apply for any copyright, patent or other property right related to the Work Material.

7. **Public Information.** The City adheres to Applicable Laws (including opinions of the Texas Attorney General) related to disclosure of public information under Texas Public Information Act (TPIA). In accordance with §552.002 of TPIA and §2252.907, Government Code, at no additional charge to the City, Contractor will make any information created or exchanged with the City pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by the City that is accessible by the public.
8. **TRANSFER PROHIBITED.** Contractor's interest in this Agreement may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, without the express written consent of the City of Angleton.
9. **INSURANCE.** CONTRACTOR ACKNOWLEDGES AND UNDERSTANDS THAT CITY DOES NOT MAINTAIN AND WILL NOT OBTAIN INSURANCE OF ANY TYPE TO PROTECT CONTRACTOR AGAINST ANY LOSS, DAMAGE OR INJURY THAT MAY IN ANY WAY RESULT FROM CONTRACTOR'S PERFORMANCE OF THE SERVICES. CONTRACTOR HEREBY RELEASES CITY FROM ANY AND ALL LIABILITY FOR ANY LOSS, DAMAGE, INJURY OR COSTS RELATING TO THE PERFORMANCE OF THE SERVICES, CITY'S USE OF THE WORK MATERIAL, THE CITY'S RELIANCE ON THE SERVICES. CONTRACTOR AGREES IT SHALL PROVIDE TO THE CITY ALL CERTIFICATES OF INSURANCE REQUIRED NAMING THE CITY AS AN ADDITIONAL INSURED; INCLUDING COMPREHENSIVE GENERAL LIABILITY COVERAGE, WORKER'S COMPENSATION ACCORDING TO STATUTORY LIMITS OR EMPLOYER'S LIABILITY, AUTO COVERAGE AND ANY OTHER INSURANCE REQUIRED BY CITY.

10. **INDEMNITY**. CONTRACTOR WILL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, EMPLOYEES, DIRECTORS, REPRESENTATIVES AND AGENTS, FROM AND AGAINST ALL LIABILITIES, DAMAGES, CLAIMS, DEMANDS, ACTIONS (LEGAL OR EQUITABLE), AND COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING CLAIMS), OF ANY KIND OR NATURE, ARISING FROM CONTRACTOR'S PERFORMANCE OF THE SERVICES THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION, OR WILLFUL MISCONDUCT, OF CONTRACTOR OR ANY CONTRACTOR PARTIES FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY.
11. **FORCE MAJEURE**. Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control.
12. **TERMINATION**. CITY may terminate this Agreement with or without cause upon five (5) days prior written notice to Contractor. City will pay Contractor for Services satisfactorily performed through the date of termination. Notwithstanding any provision to the contrary, the City will not pay Contractor Fees or reimburse Travel Expenses incurred after the date Contractor is given notice that Contractor could have avoided or mitigated.
13. **NOTICES**. Any notices, consents, approvals or other communications required under this Agreement will be in writing, and sent via certified mail, hand delivery, overnight courier, fax or email. Notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, fax or email, when received:

City: City of Angleton, Texas
121 Velasco
Angleton, Texas 77515
City Manager, Chris Whittaker
Telephone: 979-849-4364 ext. 2112
Email: cwhittaker@angleton.tx.us

Contractor: Andrew DeBarbieris
Spark Lighting, LLC
9135 Spring Branch Dr., Suite 202
Houston, Texas 77080
Telephone: 832-413-2551
Email: andrew@sparklighting.com

or other person or address given in writing by either party in accordance with this Section.

14. **ENTIRE AGREEMENT; EXTERNAL TERMS; AMENDMENT.** This Agreement (including exhibits and schedules which are attached and incorporated for all purposes) states the entire agreement and understanding between the parties, supersedes all prior agreements, written or oral, between the parties with respect to the subject matter of this Agreement, and prevails over and replaces all other agreements including any other terms displayed in any format that the City and the Parties may have exchanged or discussed, concerning Contractor's performance of the Services (External Terms). Prior agreements and External Terms are null and void and will have no effect, regardless of whether the Parties agreed to the prior agreements or External Terms. This Agreement is binding on the parties, their successors and assigns, and may not be amended except by writing signed by authorized representatives of both parties.

15. **ADDITIONAL PROVISIONS**

15.1. **Venue; Governing Law.** Brazoria County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

15.2. **DISPUTE RESOLUTION.** To the extent applicable by law, any controversy or claim arising out of or relating to this Agreement or the Agreement documents or any breach thereof shall be settled by mediation as agreed to by the parties in Brazoria County, Texas.

16. **CHANGES IN THE WORK** CUSTOMER MAY REQUEST CHANGES IN WORK CONSISTING OF ADDITIONS, DELETIONS OR MODIFICATIONS, WHEREBY, THE CONTRACT PRICE, CONTRACT TIME AND/OR PERFORMANCE GUARANTEE SHALL BE ADJUSTED ACCORDINGLY. SUCH CHANGES IN THE WORK SHALL BE AUTHORIZED BY WRITTEN CHANGE ORDER THAT SHALL BE MUTUALLY AGREED TO AND SIGNED BY CUSTOMER AND CONTRACTOR.

17. **PAYMENTS AND COMPLETION**

17.1. Payments shall be made as provided in Article 3 of the Contract.

17.2. Payments may be withheld on account of (1) Defective Work not remedied or (2) repeated failure to carry out the Work in accordance with the Contract Documents.

17.3. Upon Substantial Completion of the Work or any portion of the Work, Contractor

will issue City a Substantial Completion Letter for the applicable Work. For the purposes of this Agreement, Substantial Completion means the stage where the progress of the Work or designated portion is completed following the Scope of Work such that the City can utilize the Work for its intended purpose.

18. **PROTECTION OF PERSONS AND PROPERTY** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby, (2) the Work and materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. Contractor agrees to perform the work and travel on city streets as directed in the manner directed by City and in compliance with all State laws and City Ordinances. Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss.

19. **Severability**. Any provision of this Agreement, which is invalid or unenforceable in any jurisdiction, shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

Andrew DeBarbieris

Andrew DeBarbieris, Spark Lighting, LLC

2-23-2024

Date

Chris Whittaker, City of Angleton City Manager

Date

EXHIBIT "A"

SCOPE OF SERVICES

BACKGROUND

This is a contract with the City of Angleton for the installation of solar LED parking lot lights at BG Peck Soccer Complex.

SCOPE OF WORK

See attached Spark Lighting Proposal for BG Peck Soccer Complex 709 Kelly Blvd - solar LED parking lot lights Installation dated January 4, 2024.

A Spark Lighting solution for



BID NO 2023-10
BG Peck Soccer Complex
Solar LED Parking Lot Lights

Stewart Crouch
scrouch@angleton.tx.us
Version Three

January 4, 2024



Process No. 090-25, for
Energy-Saving Lighting Products

Proposal prepared by:
Jeremy Wendt
832-301-1722
jeremy@sparklighting.com