



CITY OF
FOLSOM
DISTINCTIVE BY NATURE

**CITY OF FOLSOM
CONSULTANT AND PROFESSIONAL
SERVICES AGREEMENT**

This Agreement is entered into as of November 1, 2021 ("Effective Date") by and between the City of Folsom, a Municipal Corporation, hereinafter referred to as "City" and Bear Electrical Solutions, Inc., a California Corporation, hereinafter referred to as "Contractor."

WITNESSETH:

WHEREAS, City desires to hire a contractor to provide on-call minor electrical and streetlight repair at various locations throughout the City; and,

WHEREAS, Contractor, by reason of its qualifications, experience, and facilities for performing the type of services contemplated herein, has proposed to provide the requested services.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, City and Contractor agree as follows:

1. Scope of Service

The scope of service covered by this Agreement includes all consulting services described and contained in Exhibit A, attached hereto and by this reference incorporated into this Agreement. In the event of a conflict between the terms and conditions in this Agreement and the terms and conditions in Exhibit A, the terms and conditions set forth in this Agreement shall prevail.

2. Term of Agreement

The term of this Agreement shall commence on the Effective Date and shall continue until all services provided for in this Agreement have been performed or for two years, whichever is sooner, unless otherwise terminated as set forth in Paragraph 17 of this Agreement. Based on successful completion of the initial agreement the City at its discretion can extend the contract for up to two additional one-year extensions.

3. Schedule for Performance

City and Contractor agree that time is of the essence in the performance of this work, and Consultant agrees to produce documents in the times stated in the Proposal. Deviations from the time schedule stated in the Proposal may be made with the approval of the Parks and Recreation Director, or his/her authorized representative.



4. Compensation

Compensation for the services shall be paid on a time-and-materials, not-to-exceed basis. The maximum compensation for the services specified in Exhibit A, including any and all costs or expenses, is \$100,000.00. In the event the cost for services exceeds \$100,000.00, Contractor agrees to complete all services enumerated in Exhibit A at no additional expense to City.

The City shall have the right to review all books and records kept by the Contractor and any subcontractors in connection with the operation and services performed under this Agreement. The City shall withhold payment for any expenditure not substantiated by Contractor's or subcontractor's books and records. In the event the City has made payment for expenditures that are not allowed, as determined by the City's audit, the Contractor shall reimburse the City for the amount of the disallowed expenditures. City shall make no payment for any services not specified in Exhibit A of this Agreement unless such additional services and the price thereof are agreed to in writing and approved by the City prior to the time that such additional services are rendered.

5. Invoicing, Payment, Notices

A. Contractor shall submit periodic invoices, not more frequently than monthly, for the services rendered during the preceding period. Invoices shall describe the services performed and costs incurred, the person(s) rendering performed services, the amount of time spent by such person(s), and the applicable hourly rate. Invoices that include charges for services rendered during the month of June shall not include any charges incurred after June 30th. A separate invoice shall be submitted for all services rendered after June 30th.

B. Contractor shall transmit invoices and any notices required by this Agreement, to City as follows:

Municipal Landscape Services Division
Parks and Recreation Department
City of Folsom
50 Natoma Street
Folsom, California 95630

C. City shall transmit payments on invoiced amounts, and any notices required by this Agreement to Contractor as follows:

Bear Electrical Solutions, Inc.
1252 State St., PO 924
Alviso, California 95002

6. Professional Services

Contractor agrees that services shall be performed and completed in the manner and according to the professional standards observed by a competent practitioner of the profession in

which Contractor and its subcontractors or agents are engaged. Contractor shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the work of City or the operations or procedures of the City without the prior written consent of City.

Contractor further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.

7. Independent Contractor

A. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Contractor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Contractor desire any insurance protection, Contractor is to acquire same at its sole expense.

B. Contractor's assigned personnel shall not be entitled to any benefits payable to employees of City.

C. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of the Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of Contractor's assigned personnel.

D. Contractor, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished.

E. Any third persons employed by Contractor shall be entirely and exclusively under the direction, supervision, and control of Contractor.

F. Contractor hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement. In the event Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall further indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

8. Authority of Contractor

Contractor enters into this Agreement as an independent contractor and not as an officer, employee or representative of the City. Accordingly, Contractor shall provide information, recommendation, and advice to City, but shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity as agent, or to bind City to any obligations whatsoever.

9. Conflict of Interest

Contractor certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Contractor agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Contractor further agrees to complete any statements of economic interest required by either City ordinance or State law.

Neither this Agreement, any duties or obligations under this Agreement, nor the intention or expectations of the City will cause the Contractor to be a "public official" as that term is used in California Government Code section 87100. The City and Contractor agree that the Contractor is not a "public official" or "participating in governmental decisions" as those terms are used in section 87100. The City and Contractor also agree that no actions and opinions necessary for the performance of duties under this Agreement will cause the Contractor to be a "public official" or "participating in a governmental decision" as those terms are used in section 87100. Nothing in this Agreement shall be construed to be inconsistent with the Contractor's status as an independent contractor.

10. Assignment and Subcontracting

Contractor's rights, duties and obligations under this Agreement are not assignable or transferable, and Contractor shall not subcontract any work, without the prior written approval of the City.

11. Ownership of Work Product

All technical data, evaluations, reports, plans and other work products of Contractor provided hereunder shall become the property of City and shall be delivered to City upon completion of the services authorized hereunder. Contractor may retain copies thereof for its files and internal use. City representatives shall have access to work products for the purpose of inspecting same and determining that the services are being performed in accordance with the terms of the Agreement. Publication of the information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by City.

Both parties recognize that the City is a public entity subject to the requirements of the California Public Records Act ("PRA"). Contractor understands that the release of any written, printed, graphic, or electronically recorded information and document delivered by Contractor to the City will be governed by the PRA and agrees that the release of such material pursuant to the PRA shall not require Contractor's prior consent or approval.

12. Indemnification

Contractor shall indemnify, protect, defend, save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Contractor or Contractor's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Contractor or its employees, subcontractors, or agents, or by the quality or character of Contractor's work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply, and shall further survive the expiration or termination of this Agreement. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

13. Insurance

During the term of this Agreement, Contractor shall maintain and provide evidence of insurance coverage as set forth in Exhibit B, attached hereto and incorporated herein by reference, at its own cost and expense.

14. Employment Practices

Contractor, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.

15. Licenses, Permits, Etc.

Contractor represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature legally required for Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Contractor to practice its profession at the time the services are performed.

16. Records

Contractor shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Agreement in accordance with generally accepted accounting principles and practices.

17. Termination

A. City or Contractor may terminate this Agreement by providing thirty (30) days written notice prior to the effective termination date.

B. In the event of such termination, City shall pay Contractor for all services actually rendered up to and including the date of termination.

C. Contractor shall deliver to City copies of all drawings, reports, analyses, and investigations whether completed or not, prepared or in the process of being prepared under the provisions of this Agreement.

18. Amendments

Any modification or amendment of any provision of this agreement shall be in writing and must be executed by both parties hereto.

19. Incidental Beneficiaries

It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to City and Contractor. Nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the City and Contractor that any such person or entity, other than City and Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

20. Miscellaneous Provisions

A. Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees according to law.

B. Venue: This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a state court in the County of Sacramento, State of California.

C. Enforceability: If any term or provision of this Agreement is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Agreement shall remain binding.

D. Time: All times stated herein or in any other contract documents are of the essence.

E. Binding: This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of Contractor and to the successors in interest of City in the same manner as if such parties had been expressly named herein.

F. Survivorship: Any responsibility of Contractor for warranties, insurance, indemnity, record keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.

G. Waiver: In the event that either City or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

21. Entire Agreement

This instrument and any attachments hereto constitute the entire Agreement between the City and Contractor concerning the subject matter hereof and supersedes any and all prior oral and written communications between the parties regarding the subject matter hereof.

22. Authority to Execute

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

23. Counterparts

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all of the signatories hereto have signed a counterpart of this Agreement. All counterparts so executed shall constitute one Agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

END OF TEXT - SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

BEAR ELECTRICAL SOLUTIONS, INC., a California Corporation:

(If a corporation, must be signed by two officers of the corporation per Corporations Code section 313.)

10/13/2021
Date

46-1898744
Tax I.D. Number


Signature


Signature

ROBERT ASUNCION
Print Name

Andrew Bader
Print Name

VICE PRESIDENT
Title

CFo
Title

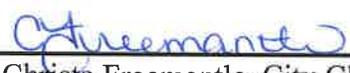
CITY OF FOLSOM, A Municipal Corporation:

11/8/21
Date


Elaine Andersen, City Manager

ATTEST:

FUNDING AVAILABLE:


Christa Freemantle, City Clerk
11/8/21
Date


Stacey Tamagni, Finance Director
11/2/21
Date

ORIGINAL APPROVED AS TO CONTENT:

ORIGINAL APPROVED AS TO FORM:


Lorraine Poggione,
Parks & Recreation Director
10-20-21
Date


Steven Wang, City Attorney
11/8/2021
Date

NOTICE: SIGNATURE(S) ON BEHALF OF CONTRACTOR MUST BE NOTARIZED.

A certificate of acknowledgment in accordance with the provisions of California Civil Code section 1189 must be attached for each person executing this agreement on behalf of consultant. This section provides, at part (b): "Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made."

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Santa Clara)

On 10/15/2021 before me, Sandra Hernandez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Andrew Bader, Robert Asuncion
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

EXHIBIT A

(Scope of Work)

See following pages.

On an as-needed basis, the Contractor may be required to provide any or all of the following services:

- Temporary traffic control consistent with MUTCD best practices.
- Minor electrical repairs to service points including breaker, contactor, outlet, photoelectric sensor, and similar types of electrical repair.
- Bulb, ballast, fuse, pole, fixture mounted photoelectric sensor, and fixture replacements.
- Minor tree trimming on trees that are preventing access to the pole/fixture to be serviced (any additional conflict with pole/fixture that require substantial trimming shall be forwarded to the City's representative for resolution). Minor trimming is considered to be small branches of 1 inch or less in diameter.
- Clean up and proper disposal of used materials.

Contractor Responsibilities

All work subject to this Agreement shall be identified in the Task Authorization provided for each assignment as needed as follows:

- Assess the feasibility of the work in question and providing a cost estimate and work schedule.
- Interface with the Maintenance Supervisor and/or other City personnel.
- Interface with property owners to complete assigned work.
- Complete work within the agreed time frame and budget.
- Provide a detailed invoice that provides detailed work performed, labor, hours, and material used. Protocols for accessing and using city-supplied storage containers and materials such as bulbs and ballasts, etc. shall be followed per direction provided.
- Provide report and invoice in electronic form.

EXHIBIT B
INSURANCE

NOTE: The word "Consultant" in this Exhibit refers to either "Consultant" or "Contractor" as the term is used in the Agreement/Contract to which this Exhibit is attached.

A. During the term of this Agreement, Consultant shall maintain in full force and effect at all times during the term of the contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

- a. General liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:

| | |
|----------------------------------|-----------------------------------|
| Each occurrence: | One Million Dollars (\$1,000,000) |
| Products & Completed Operations: | One Million Dollars (\$1,000,000) |
| Personal & Advertising Injury: | One Million Dollars (\$1,000,000) |
- e. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
- f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
- g. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
- b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).
- c. The limits of liability per accident shall not be less than:

Combined Single Limit

One Million Dollars (\$1,000,000)

- d. If Automobile Liability coverage, as required above, is provided by the Commercial General Liability form, the General Liability policy shall include an endorsement providing automobile liability as required above.
3. Workers' Compensation
 - a. Workers' Compensation Insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and Employer's Liability coverage.
 - b. Employer's Liability Coverage with a limit not less than \$1,000,000 per accident for bodily injury and disease.
 - c. Consultant shall sign and file with the City department responsible for this Agreement/Contract the Worker's Compensation Certificate contained in the Project Manual.
4. Insurance Required in the Supplementary Conditions: Consultant shall be required to comply with all conditions as stipulated in the Standard Construction Specifications, any supplementary conditions and any special provisions as applicable.
5. Professional Liability Insurance
If required, errors and omissions, malpractice or professional liability insurance with coverage of not less than \$1,000,000 per claim.
6. Other Insurance Provisions:
 - a. The Consultant's General Liability and Automobile Liability policies shall contain, or be endorsed to contain, the following provisions:
 - i. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insureds on a separate endorsement as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant in a form acceptable to the City Attorney.
 - ii. The Endorsement requirement may be satisfied with express provisions in the insurance policy(ies) which identifies any person or entity required to be included as an insured under the policy. A copy of the declarations page identifying the policy number, and pertinent provisions in the policy providing additional insured coverage shall be provided to the City.
 - iii. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
 - b. For any claims related to the project, the Consultant's General Liability and Automobile insurance coverage shall be primary insurance in their coverage of the City and its officers, officials, employees, agents, or volunteers, and any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

- c. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
 - d. The Consultant's Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
 - e. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after **30 days prior written notice** by certified mail has been given to the City. Ten days prior written notice by certified mail shall be given to the City in the event of cancellation due to nonpayment of premium.
7. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**
 8. The Consultant shall furnish the City with Certificates of Insurance and endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, the Standard Specifications, Special Provisions and/or any Supplementary Conditions. **The Consultant shall furnish complete, certified copies of all required insurance policies, including original endorsements specifically required hereunder if requested.**
 9. The Consultant shall report, by telephone to the Project Manager within 24 hours, and also report in writing to the City within 48 hours, after Consultant or any Subcontractors or agents have knowledge of, any accident or occurrence involving death of or serious injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property of the City or others, arising out of any work done by or on behalf of the Consultant as part of the contract.
 10. Such report shall contain:
 - a. the date and time of the occurrence,
 - b. the names and addresses of all persons involved, and
 - c. a description of the accident or occurrence and the nature and extent of the injury or damage.
 11. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
 12. If the Consultant fails to procure or maintain insurance as required by this section, the Standard Specifications, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the contract.
 13. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
 14. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Subcontractors of responsibility for loss or direct

physical loss, damage, or destruction occurring prior to final acceptance by the City.

15. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
16. In the event Consultant carries Excess Liability Coverage, the Excess Liability Coverage shall apply to any and all claims related to the project on a primary and non-contributory basis, and the City's insurance or self-insurance coverage shall be excess to the Consultant's Excess Liability Coverage.