



CITY OF
**PALO
ALTO**

TASK ORDER CONSTRUCTION CONTRACT

Contract No. C24189247

City of Palo Alto

**ON-CALL TRAFFIC SIGNAL AND ELECTRICAL SERVICES
(2024-2028 Year Task Order Contract)**

TASK ORDER CONSTRUCTION CONTRACT

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TASK ORDER CONSTRUCTION CONTRACT

THIS TASK ORDER CONSTRUCTION CONTRACT ("Construction Contract") entered into on June 3, 2024 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and BEAR ELECTRICAL SOLUTIONS, INC. ("Contractor"), is made with reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. Contractor is a corporation duly organized and in good standing in the State of California, California Contractor's License Number 982079 and Department of Industrial Relations Registration Number 1000002158. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Construction Contract.
- C. On January 25, 2024 City issued an Invitation for Bids ("IFB") to contractors for the Call Traffic and Electrical Services ("Project"). In response to the IFB, Contractor submitted a Bid.
- D. City and Contractor desire to enter into this Construction Contract for the Project, and other services as identified in the Contract Documents for the Project upon the following terms and conditions.

NOW THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the undersigned parties as follows:

SECTION 1 INCORPORATION OF RECITALS AND DEFINITIONS.

1.1 Recitals.

All of the recitals are substantive parts of this Construction Contract and are hereby incorporated herein by reference.

1.2 Definitions.

Capitalized terms shall have the meanings set forth in this Construction Contract (sometimes referred to herein as the "Contract") and/or in the General Conditions. If there is a conflict between the definitions in this Construction Contract and in the General Conditions, the definitions in this Construction Contract shall prevail. The following definitions apply to this Construction Contract and the General Conditions, notwithstanding and superseding any differing definitions in Article 1 of the General Conditions:

Acceptance: The point at the end of the Term (as defined in Section 2) when Contractor has fully performed each Task Order in compliance with the Contract Documents and the Project as a whole is accepted by the City in writing, including each Task Order which has been Conditionally Accepted.

Change Order: A duly authorized written instrument signed by the City or by the City and Contractor, which operates to amend the scope of Work in a Task Order, and which also amends the Task Order Compensation Amount or Contract Time.

Conditional Acceptance/Conditionally Accepted: The City's provisional acceptance of a completed Task Order, subject to final Acceptance of the Project at the end of the Term.

Contract Sum: The maximum amount of compensation stated in Section 7 of this Construction Contract that is payable to Contractor for performance of the Work encompassed in the Task Orders issued by the City for the performance of the Work in accordance with the Contract Documents, including adjustments made by Change Order.

Contract Time: The total number of days set forth in a Task Order within which completion of the Task Order Work, including any adjustments of time (increases or decreases) made by Change Order.

Field Order: A written instrument signed by the City or its Construction Manager that authorizes and directs performance of the Work described therein, and which may or may not include adjustments (increase or decrease) to the Task Order Compensation Amount or Contract Time.

Final Completion: Full completion of the Work required by a Task Order, including all punch list items and submission of Record Documents, all to City's satisfaction.

Final Payment: Final Payment of any undisputed amounts due to Contractor following Acceptance, less any amounts withheld or offset pursuant to the Contract Documents, including, but not limited to, liquidated damages, unreleased stop notices, amounts subject to setoff, up to 150% of unresolved third-party claims for which Contractor is required to indemnify City, and up to 150% of any amounts in dispute as authorized by Public Contract Code section 7107.

Task Order: A written directive issued by the City to the Contractor using the Task Order form attached as Exhibit A-1 to this Construction Contract which specifies a scope of Work to be performed by the Contractor as well as the time for commencement and completion of the Work and the Task Order Compensation Amount, including any documents attached thereto or incorporated therein, and which may be modified by Change Order.

Task Order Compensation Amount: The total amount payable to Contractor for satisfactory completion of a Task Order in accordance with the Contract Documents.

Work: All labor, materials, equipment, services, permits, fees, licenses, and taxes, and all other things necessary for Contractor to perform its obligations and complete a Task Order, including, without limitation, any changes or additions requested by City, in accordance with the Contract Documents and all Applicable Code Requirements.

SECTION 2 **THE PROJECT.**

The Project is located at various locations within Palo Alto, CA. The Project requires the Contractor to perform Work as specified in any Task Order issued by the City from time to time over a four year period of time, beginning on the Execution Date set forth above (the "Term"). In the event that the Work specified in any Task Order is not completed by the expiration of the Term, the City, in its sole discretion, may elect to extend the Term until completion of the Work and the City's final Acceptance of the Project as a whole.

SECTION 3 **THE CONTRACT DOCUMENTS.**

3.1 List of Documents.

The Contract Documents (sometimes collectively referred to as "Agreement" or "Bid Documents") consist of the following documents which are on file with the City's Purchasing Division and are hereby incorporated into this Construction Contract by reference.

- 1) Change Orders
- 2) Field Orders
- 3) Construction Contract
- 4) Notice to Proceed
- 5) Bidding Addenda
- 6) Task Orders, and attachments thereto
- 7) Special Provisions
- 8) General Conditions
- 9) Project Plans and Drawings
- 10) Technical Specifications
- 11) Instructions to Bidders
- 12) Invitation for Bids
- 13) Contractor's Bid and Non-Collusion Declaration
- 14) Reports listed in the Contract Documents

- 15) Public Works Department's Standard Drawings and Specifications (most current version at time of Bid)
- 16) Utilities Department's Water, Gas, Wastewater, Electric Utilities Standards (most current version at time of Bid)
- 17) City of Palo Alto Traffic Control Requirements
- 18) City of Palo Alto Truck Route Map and Regulations
- 19) Notice Inviting Pre-Qualification Statements, Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable)
- 20) Performance and Payment Bonds

3.2 Order of Precedence.

For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, the Contract Documents shall have the order of precedence as set forth in the preceding section. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.

SECTION 4 CONTRACTOR'S DUTY.

4.1 Contractor's Duties.

Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents and individual Task Orders, all of which are fully incorporated herein. Contractor shall provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work as specified in each Task Order and in the Contract Documents, including, but not limited to, provision of all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor also agrees to use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents. Unless otherwise specified in a Task Order:

- 4.1.1** Work should be performed during normal work hours (Monday through Friday between 8 AM and 6 PM).
- 4.1.2** Each excavation must be fully restored within forty-eight (48) hours.
- 4.1.3** City representative shall be present to inspect Work performed and obtain necessary measurements/survey data if applicable.
- 4.1.4** Contractor must coordinate with the City's representative to schedule soil compaction testing prior to pavement restoration.
- 4.1.5** Contractor shall anticipate up to 24-hour turn-around time for City's contracted testing lab to perform soil compaction testing.

4.2 On-Call Provision.

4.2.1 Work performed under the Contract will be performed within the Term, on an on-call basis, as requested by the City from time to time, as needed, with a Task Order assigned and approved by the City's Project Manager. Each Task Order shall be in substantially the same form as Exhibit A-1.

4.2.2 Prior to issuing the first Task Order, the City will schedule a mandatory pre-construction meeting with the Contractor, which will include review of the Task Order procedures and Project requirements.

4.2.3 Each Task Order shall designate a City Project Manager and shall contain a specific scope of Work, a specific schedule of performance, and the Task Order Compensation Amount. Because each Task Order will contain a specific schedule of performance, unless otherwise specified in a Task Order, the Construction Schedule submittal requirements set forth in Section 3.10 (Schedules Required of Contractor) or in part 1.05 of Section 800 (Additional Provisions for Utilities Construction) of the Technical Specifications will not apply to this Construction Contract.

4.2.3 Time is of the essence in completion of all Task Order Work. Therefore, Contractor must sign each Task Order issued by the City and return it to the Project Manager in PDF form sent via email, as indicated on the Task Order form, within 2 days of the issuance date shown on the Task Order.

4.2.4 If Contractor has any objections to or questions regarding a Task Order it must notify City of such objections or questions promptly following receipt of the Task Order so any such issues may be resolved without delaying the Work as scheduled. Contractor's failure to timely comply with the requirements in this paragraph will be deemed a material breach of this Construction Contract.

4.2.5 The aggregated Task Order Compensation Amount issued under this Construction Contract shall not exceed the maximum Contract Sum set forth in Section 7, below. Contractor shall only be compensated for Work performed under an authorized Task Order and the City may elect, but is not required, to authorize Work up to the maximum Contract Sum set forth in Section 7.

4.3 Guarantee to Repair Period.

Notwithstanding any provision in the Contract Documents to the contrary, the one-year "Guarantee To Repair Period" specified in Section 12.2 of the General Conditions (Correction of Defective Work and Guarantee to Repair Period) will commence separately for each Task Order, beginning from the date of Conditional Acceptance by the City of each Task Order. If Contractor fails to repair Defective Work within the applicable Guarantee To Repair Period, the City may deduct its cost of having such Defective Work repaired from any payments otherwise due to Contractor.

SECTION 5 PROJECT TEAM.

5.1 Contractor's Cooperation.

In addition to Contractor, City has retained, or may retain, consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Contract requires that Contractor operate efficiently, effectively and cooperatively with City as well as all other members of the Project Team and other contractors retained by City to construct other portions of the Project.

SECTION 6 TIME OF COMPLETION.

6.1 Time Is of Essence.

Time is of the essence with respect to all time limits set forth in the Contract Documents, including each Task Order.

6.2 Commencement of Work.

Contractor shall commence the Work on the date specified in each Task Order, notwithstanding references elsewhere in the Contract Documents to commencing Work on the date specified in the Notice to Proceed.

6.3 Contract Time.

Work hereunder shall begin on the date specified in each Task Order, and the specific work authorized by each Task Order shall be completed no later than the time/schedule requirements specified therein, and in conformance with the Contract Documents. By executing this Construction Contract, Contractor expressly waives any claim for delayed early completion of any Task Order. Work hereunder shall begin on the date specified in each Task Order, and the specific work authorized by each Task Order shall be completed no later than the time/schedule requirements specified therein, and in conformance with the Contract Documents.

6.4 Liquidated Damages.

Pursuant to Public Contract Code Section 7203, if Contractor fails to achieve Final Completion of the entire Work within the Contract Time specified in a Task Order, including any approved extensions thereto, City may assess liquidated damages on a daily basis for each day of Unexcused Delay in achieving Final Completion of the Task Order, based on the amount of One Thousand Dollars (\$1,000.00) per day, or as otherwise specified in the Special Provisions. Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents, regardless of impact on the time for achieving Final Completion. The assessment of liquidated damages is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer by delay in completion of the Work. The City is entitled to setoff the amount of liquidated damages assessed against any payments otherwise due to Contractor, including, but not limited to, setoff against release of retention. If the total amount of liquidated damages assessed exceeds the amount of unreleased retention, City is entitled to recover the balance from Contractor or its sureties. Occupancy or use of the Project in whole or in part prior to Final Completion, shall not operate as a waiver of City's right to assess liquidated damages.

6.4.1 Other Remedies. City is entitled to any and all available legal and equitable remedies City may have where City's Losses are caused by any reason other than Contractor's failure to achieve Final Completion of the entire Work within the Contract Time specified in a Task Order.

6.5 Adjustments to Contract Time.

The Contract Time for each Task Order may only be adjusted for time extensions approved by City and memorialized in a Change Order approved in accordance with the requirements of the Contract Documents.

SECTION 7 COMPENSATION TO CONTRACTOR.

7.1 Maximum Compensation and Contract Sum.

Contractor shall be compensated for the Task Order Compensation Amount specified in each Task Order for satisfactory completion of the Work specified in that Task Order in compliance with the Contract Documents, but the Contract Sum will not exceed **Six Hundred Thousand Dollars (\$600,000.00)** for the Term.

In addition, the total annual Task Order Compensation Amount may not exceed \$<insert field> during each year of the Term.

7.2 Full Compensation.

The Task Order Compensation amount, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all Losses arising out of the nature of the Work or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work required by each Task Order until its Conditional Acceptance by City, all risks connected with the Work, and any and all expenses incurred due to suspension or discontinuance of the Work, except as expressly provided herein. The Task Order Compensation Amount may only be adjusted by a Change Order approved in accordance with the requirements of the Contract Documents.

7.3 Payment.

Notwithstanding any conflicting or inconsistent provisions in the Contract Documents, including Article 9 (Payments and Completion) of the General Conditions, the following will apply to this Construction Contract:

7.3.1 The Task Order Compensation Amount will be based upon the unit prices set forth in the Bid Schedule and not on a separate Schedule of Values.

7.3.2 The City will withhold five percent (5%) retention from each payment to Contractor. All undisputed retention will be released to Contractor within sixty (60) days following:

The end of each one-year period during the Term, measured from the Execution Date.

Other: _____.

7.3.3 The City may also withhold or make deductions from payments otherwise due or to become due to the Contractor as otherwise specified within the Contract Documents, including deductions for liquidated damages or withholding for unreleased stop notices.

7.3.4 Section 9.7 (Substantial Completion) of the General Conditions will not apply to this Construction Contract and all other references to "Substantial Completion" in the Contract Documents will be deemed to mean "Final Completion," as defined herein.

SECTION 8 STANDARD OF CARE.

8.1 Standard of Care.

Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. All services performed in connection with this Construction Contract shall be performed in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project.

SECTION 9 INDEMNIFICATION.

9.1 Hold Harmless.

To the fullest extent allowed by law, Contractor will defend, indemnify, and hold harmless City, its City Council, boards and commissions, officers, agents, employees, representatives and volunteers (hereinafter individually referred to as an "Indemnitee" and collectively referred to as "Indemnitees"), through legal counsel acceptable to City, from and against any and liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. Contractor shall pay City for any costs City incurs to enforce this provision. Except as provided in Section 9.2, below, nothing in the Contract Documents shall be construed to give rise to any implied right of indemnity in favor of Contractor against City or any other Indemnitee.

Pursuant to Public Contract Code Section 9201, City shall timely notify Contractor upon receipt of any third-party claim relating to the Contract.

9.2 Survival.

The provisions of Section 9 shall survive the termination or expiration of this Construction Contract.

SECTION 10 NON-DISCRIMINATION.

10.1 Municipal Code Requirement.

As set forth in Palo Alto Municipal Code section 2.30.510, Contractor certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. Contractor acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and will comply with all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 11 INSURANCE AND BONDS.

11.1 Evidence of coverage.

Within ten (10) business days following issuance of the Notice of Award, Contractor shall provide City with evidence that it has obtained insurance and shall submit Performance and Payment Bonds satisfying all requirements in Article 11 of the General Conditions. Notwithstanding any conflicting or inconsistent provisions elsewhere in the Contract Documents, the amount for each of the bonds must be based upon one hundred percent (100%) of the Contract Sum, as defined in this Construction Contract.

SECTION 12 PROHIBITION AGAINST TRANSFERS.

12.1 Assignment.

City is entering into this Construction Contract in reliance upon the stated experience and qualifications of the Contractor and its Subcontractors set forth in Contractor's Bid. Accordingly, Contractor shall not assign, hypothecate or transfer this Construction Contract or any interest therein, including any Task Order, directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any assignment, hypothecation or transfer without said consent shall be null and void, and shall be deemed a substantial breach of contract and grounds for default in addition to any other legal or equitable remedy available to the City.

12.2 Assignment by Law.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor or of any general partner or joint-venturer or syndicate member of Contractor, if the Contractor is a partnership or joint venture or syndicate or co-tenancy shall result in changing the control of Contractor, shall be construed as an assignment of this Construction Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

SECTION 13 NOTICES.

13.1 Method of Notice.

All notices, demands, requests or approvals to be given under this Construction Contract shall be given in writing and shall be deemed received on the earlier of the following:

- (i) On the date delivered if delivered personally;
- (ii) On the third business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;
- (iii) On the date sent if sent by facsimile transmission;
- (iv) On the date sent if delivered by electronic mail; or
- (v) On the date it is received by the recipient if sent by certified mail.

13.2 Notice to Recipients.

All notices, demands or requests (including, without limitation, Change Order Requests and Claims) from Contractor to City shall include the Project name and the number of this Construction Contract and shall be addressed to City at:

To City: City of Palo Alto
 City Clerk
 250 Hamilton Avenue
 P.O. Box 10250
 Palo Alto, CA 94303

Copy to: City of Palo Alto
 Office of Transportation
 250 Hamilton Avenue
 Palo Alto, CA 94301
 Attn: Rafael Rius
 Rafael.rius@cityofpaloalto.org

[Include Construction Manager, If Applicable.]

City of Palo Alto
Utilities Engineering
250 Hamilton Avenue
Palo Alto, CA 94301
Attn:

In addition, copies of all Claims by Contractor under this Construction Contract shall be provided to the following:

Palo Alto City Attorney's Office
250 Hamilton Avenue
P.O. Box 10250
Palo Alto, California 94303

All Claims shall be sent by registered mail or certified mail with return receipt requested.

All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

To BEAR ELECTRICAL SOLUTIONS, INC
1252 State Street, Box 924,
Alviso, CA 95002
Attn: Robert Asuncion

13.3 Change of Address.

In advance of any change of address, Contractor shall notify City of the change of address in writing. Each party may, by written notice only, add, delete or replace any individuals to whom and addresses to which notice shall be provided.

SECTION 14 DEFAULT.

14.1 Notice of Default.

In the event that City determines, in its sole discretion, that Contractor has failed or refused to perform any of the obligations set forth in the Contract Documents, including any Task Order, or is in breach of any provision of the Contract Documents, City may give written notice of default to Contractor in the manner specified for the giving of notices in the Construction Contract, with a copy to Contractor's performance bond surety.

14.2 Opportunity to Cure Default.

Except for emergencies, Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) Days (or such shorter time as City may reasonably require) after receipt of written notice. However, if the breach cannot be reasonably cured within such time, Contractor will commence to cure the breach within two (2) Days (or such shorter time as City may reasonably require) and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) Days after receipt of such written notice.

SECTION 15 CITY'S RIGHTS AND REMEDIES.

15.1 Remedies Upon Default.

If Contractor fails to cure any default of this Construction Contract within the time period set forth above in Section 14, then City may pursue any remedies available under law or equity, including, without limitation, the following:

15.1.1 Delete Certain Work. City may, without terminating the Construction Contract, delete certain portions of the Work from one or more Task Orders, reserving to itself all rights to Losses related thereto.

15.1.2 Perform and Withhold. City may, without terminating the Construction Contract, engage others to perform the Work or portion of the Work from one or more Task Orders that has not been adequately performed by Contractor and withhold the cost thereof to City from future payments to Contractor, reserving to itself all rights to Losses related thereto.

15.1.3 Suspend the Construction Contract. City may, without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, suspend all or any portion of this Construction Contract or one or more Task Orders for as long a period of time as City determines, in its sole discretion, appropriate, in which event City shall have no obligation to adjust the Contract Sum, Task Order Compensation Amount or Contract Time, and shall have no liability to Contractor for damages if City directs Contractor to resume Work.

15.1.4 Terminate the Construction Contract for Default. City shall have the right to terminate this Construction Contract, in whole or in part, upon the failure of Contractor to promptly cure any default as required by Section 14. City's election to terminate the Construction Contract for default shall be communicated by giving Contractor a written notice of termination in the manner specified for the giving of notices in the Construction Contract. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein.

15.1.5 Invoke the Performance Bond. City may, with or without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

15.1.6 Additional Provisions. All of City's rights and remedies under this Construction Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not waive the City's authority to designate other breaches as material nor limit City's right to terminate the Construction Contract, or prevent the City from terminating the Construction Contract for breaches that are not material. City's determination of whether there has been noncompliance with the Construction Contract so as to warrant exercise by City of its rights and remedies for default under the Construction Contract, shall be binding on all parties. No termination or action taken by City after such termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all liquidated damages and Losses suffered by City.

15.2 Delays by Sureties.

Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety shall be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety shall be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City shall have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for a Task Order for the purposes of completing the remaining Work.

15.3 Damages to City.

15.3.1 For Contractor's Default. City will be entitled to recovery of all Losses under law or equity in the event of Contractor's default under the Contract Documents.

15.3.2 Compensation for Losses. In the event that City's Losses arise from Contractor's default under the Contract Documents, City shall be entitled to deduct the cost of such Losses from monies otherwise payable to Contractor. If the Losses incurred by City exceed the amount payable, Contractor shall be liable to City for the difference and shall promptly remit same to City.

15.4 Suspension by City.

15.4.1 Suspension for Convenience. City may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work under one or more Task Orders in whole or in part. The order shall be specifically identified as a Suspension Order by City. Upon receipt of a Suspension Order, Contractor shall, at City's expense, comply with the order and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order. During the Suspension or extension of the Suspension, if any, City shall either cancel the Suspension Order or, by Change Order, delete the Work covered by the Suspension Order. If a Suspension Order is canceled or expires, Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. A Suspension Order shall not be the exclusive method for City to stop the Work.

15.4.2 Suspension for Cause. In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents including the applicable Task Order(s), City may immediately order the Work, or any portion thereof, suspended until the cause for the suspension has been eliminated to City's satisfaction. Contractor shall not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents. City's right to suspend the Work shall not give rise to a duty to suspend the Work, and City's failure to suspend the Work shall not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

15.5 Termination Without Cause.

City may, at its sole discretion and without cause, terminate this Construction Contract in part or in whole upon written notice to Contractor. Upon receipt of such notice, Contractor shall, at City's expense, comply with the notice and take all reasonable steps to minimize costs to close out and demobilize. The compensation allowed under this Paragraph 15.5 shall be the Contractor's sole and exclusive compensation for such termination and Contractor waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind resulting from termination without cause. Termination pursuant to this provision does not relieve Contractor or its sureties from any of their obligations for Losses arising from or related to the Work performed by Contractor.

15.5.1 Compensation. Following such termination and within forty-five (45) Days after receipt of a billing from Contractor seeking payment of sums authorized by this Paragraph 15.5.1, City shall pay the following to Contractor as Contractor's sole compensation for performance of the Work :

.1 For Work Performed. The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.

.2 For Close-out Costs. Reasonable costs of Contractor and its Subcontractors:
(i) Demobilizing and
(ii) Administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) Days after receipt of the notice of termination.

.3 For Fabricated Items. Previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

.4 Profit Allowance. An allowance for profit calculated as four percent (4%) of the sum of the above items, provided Contractor can prove a likelihood that it would have made a profit if the Construction Contract had not been terminated.

15.5.2 Subcontractors. Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts permitting termination for convenience by Contractor on terms that are consistent with this Construction Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor against City under this Section.

15.6 Contractor's Duties Upon Termination.

Upon receipt of a notice of termination for default or for convenience, Contractor shall, unless the notice directs otherwise, do the following:

- (i) Immediately discontinue the Work to the extent specified in the notice;
- (ii) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work that is not discontinued;
- (iii) For each Task Order, provide to City a description in writing, no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as City may determine necessary in order to decide whether

- to accept assignment of or request Contractor to terminate the subcontract, purchase order or contract;
- (iv) Promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and
- (v) Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

Upon termination, whether for cause or for convenience, the provisions of the Contract Documents remain in effect as to any Claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

SECTION 16 CONTRACTOR'S RIGHTS AND REMEDIES.

16.1 Contractor's Remedies.

Contractor may terminate this Construction Contract or a Task Order only upon the occurrence of one of the following:

16.1.1 For Work Stoppage. The Work under a Task Order is stopped for sixty (60) consecutive Days, through no act or fault of Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor, due to issuance of an order of a court or other public authority other than City having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable. This provision shall not apply to any work stoppage resulting from the City's issuance of a suspension notice issued either for cause or for convenience.

16.1.2 For City's Non-Payment. If City does not pay Contractor undisputed sums within ninety (90) Days after receipt of notice from Contractor, Contractor may terminate the Construction Contract or the subject Task Order (30) days following a second notice to City of Contractor's intention to terminate the Construction Contract.

16.2 Damages to Contractor.

In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Paragraph 15.5.1 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

SECTION 17 ACCOUNTING RECORDS.

17.1 Financial Management and City Access.

Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Construction Contract in accordance with generally accepted accounting principles and practices. City and City's accountants during normal business hours, may inspect, audit and copy Contractor's records, books, estimates, take-offs, cost reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project. Contractor shall retain these documents for a period of three (3) years after the later of (i) Final Payment or (ii) final resolution of all Contract Disputes and other disputes, or (iii) for such longer period as may be required by law.

17.2 Compliance with City Requests.

Contractor's compliance with any request by City pursuant to this Section 17 shall be a condition precedent to filing or maintenance of any legal action or proceeding by Contractor against City and to Contractor's right to receive further payments under the Contract Documents. City may enforce Contractor's obligation to provide access to City of its business and other records referred to in Section 17.1 for inspection or copying by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

SECTION 18 INDEPENDENT PARTIES.

18.1 Status of parties.

Each party is acting in its independent capacity and not as agents, employees, partners, or joint ventures of the other party. City, its officers or employees shall have no control over the conduct of Contractor or its respective agents, employees, subconsultants, or subcontractors, except as herein set forth.

SECTION 19 NUISANCE.

19.1 Nuisance Prohibited.

Contractor shall not maintain, commit, nor permit the maintenance or commission of any nuisance in connection in the performance of services under this Construction Contract.

SECTION 20 PERMITS AND LICENSES.

Except as otherwise provided in the Special Provisions and Technical Specifications or an individual Task Order, the Contractor shall provide, procure and pay for all licenses, permits, and fees, required by the City or other government jurisdictions or agencies necessary to carry out and complete the Work. Payment of all costs and expenses for such licenses, permits, and fees shall be included in one or more Bid items. No other compensation shall be paid to the Contractor for these items or for delays caused by non-City inspectors or conditions set forth in the licenses or permits issued by other agencies.

SECTION 21 **WAIVER.**

A waiver by either party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

SECTION 22 **GOVERNING LAW AND VENUE; COMPLIANCE WITH LAWS.**

22.1 Governing Law and Venue.

This Construction Contract shall be construed in accordance with and governed by the laws of the State of California, without regard to conflict of law provisions, and venue shall be in a court of competent jurisdiction in the County of Santa Clara, California and no other place.

22.2 Compliance with Laws.

Contractor shall comply with all applicable federal and California laws and city laws, including, without limitation, ordinances and resolutions, in the performance of work under this Construction Contract.

22.2.1 Palo Alto Minimum Wage Ordinance. Contractor shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, Contractor shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, Contractor shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.

SECTION 23 **COMPLETE AGREEMENT.**

23.1 Integration.

This Construction Contract, including the Contract Documents incorporated herein, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This Construction Contract may be amended only by a written instrument, which is signed by the parties.

SECTION 24 **SURVIVAL OF CONTRACT.**

24.1 Survival of Provisions.

The provisions of the Construction Contract which by their nature survive termination or expiration of the Construction Contract or Final Completion, including, without limitation, all warranties, indemnities, payment obligations, and City's right to audit Contractor's books and records, shall remain in full force and effect after Final Completion of a Task Order or any termination or expiration of a Task Order or the Construction Contract.

SECTION 25 **PREVAILING WAGES.**

This Construction Contract is not subject to prevailing wages and related requirements. Contractor is not required to pay prevailing wages and meet related requirements under the California Labor Code or California Code of Regulations in the performance and implementation of a Task Order if the Contract:

___ is not a public works contract as defined in Labor Code section 1720 et seq.;
___ is for a public works construction project of \$25,000 or less, per Labor Code Sections 1782(d)(1), 1725.5(f) and 1773(j);
___ is for a public works alteration, demolition, repair, or maintenance of \$15,000 or less, per Labor Code Sections 1782(d)(1), 1725.5(f) and 1773(j).

Or

This Construction Contract is subject to prevailing wages and related requirements as a “public works” contract under California Labor Code Sections 1720 et seq. and related regulations. Contractor is required to pay general prevailing wages as defined in California Labor Code Section 1773.1 and Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Pursuant to Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the Construction Contract for this Project and any Task Order issued pursuant to this Construction Contract from the State of California Department of Industrial Relations (“DIR”). Copies of these rates may be obtained at the City’s Purchasing Department office. The general prevailing wage rates are also available at the DIR, Division of Labor Statistics and Research, website (see e.g. <http://www.dir.ca.gov/DLSR/PWD/index.htm>) as amended from time to time. Contractor shall post a copy of the general prevailing wage rates at all Project job sites for each Task Order and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with all applicable provisions of Division 2, Part 7, Chapter 1 of the California Labor Code (Labor Code Section 1720 et seq.), including, but not limited to, Sections 1720, 1725.5, 1771, 1771.1, 1771.4, 1773.2, 1774, 1775, 1776, 1777.5, 1782, 1810, 1813 and 1815, and all applicable implementing regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq. (8 CCR Section 16000 et seq.), as amended from time to time.

SECTION 26 **NON-APPROPRIATION.**

26.1 Appropriations.

This Construction Contract is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Construction Contract will terminate without any penalty (a) at the end of any fiscal year in the event that the City does not appropriate funds for the following fiscal year for this event, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Construction Contract are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Construction Contract.

SECTION 27 **AUTHORITY.**

27.1 Representation of Parties.

The individuals executing this Construction Contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

SECTION 28 **COUNTERPARTS**

28.1 Multiple Counterparts.

This Construction Contract may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.

SECTION 29 **SEVERABILITY.**

29.1 Severability.

In case a provision of this Construction Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

SECTION 30 **STATUTORY AND REGULATORY REFERENCES.**

30.1 Amendments to Laws.

With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that the Contract was awarded by City, as may be amended from time to time, unless otherwise required by law.

SECTION 31 **WORKERS' COMPENSATION CERTIFICATION.**

31.1 Workers Compensation.

Contractor will maintain workers' compensation insurance for its employees as required by law, including Labor Code sections 1860 and 3700. Pursuant to Labor Code Section 1861, by signing this Construction Contract, Contractor certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

SECTION 32 **DIR REGISTRATION AND OTHER REQUIREMENTS.**

32.1 General Notice to Contractor.

City requires Contractor and its Subcontractors to comply with all applicable requirements of the California Labor Code including but not limited to Labor Code Sections 1720 through 1861, and all applicable related regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Additional information regarding public works and prevailing wage requirements is available on the DIR website (see e.g. <http://www.dir.ca.gov>) as amended from time to time.

32.2 Labor Code section 1771.1(a)

City provides notice to Contractor of the requirements of California Labor Code section 1771.1(a), which reads:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work

pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

32.3 DIR Registration Required.

City will not accept a bid proposal from or enter into this Construction Contract with Contractor without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work, subject to limited exceptions.

32.4 Posting of Job Site Notices; Compliance Monitoring.

City gives notice to Contractor and its listed subcontractors that Contractor is required to post all job site notices prescribed by law or regulation and Contractor is subject to -compliance monitoring and enforcement by DIR.

32.5 Payroll Records.

Contractor shall furnish certified payroll records directly to the Labor Commissioner (DIR) in accordance with Subchapter 3, Title 8 of the California Code of Regulations Section 16461 (8 CCR Section 16461).

City requires Contractor and its Subcontractors to comply with the requirements of Labor Code section 1776, including, but not limited to:

32.5.1 Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, Contractor and its Subcontractors, in connection with the Project.

32.5.2 The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of Contractor and its Subcontractors, respectively.

32.5.3 At the request of City, acting by its Project Manager, Contractor and its Subcontractors shall make the certified payroll records available for inspection or furnished upon request to the City's Project Manager within ten (10) days of receipt of City's request.

City requests Contractor and its Subcontractors to submit the certified payroll records to the City's Project Manager at the end of each week during the Project.

32.5.4 If the certified payroll records are not produced to the project manager within the 10-day period, then Contractor and its listed subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and City shall withhold the sum total of penalties from the progress payment(s) then due and payable to Contractor. This provision supplements the provisions of Section 15 hereof.

32.5.5 Inform the project manager of the location of contractor's and its listed subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to the project manager within five (5) business days of any change of location of those payroll records.

32.6 Employment of Apprentices.

Contractor shall comply with the statutory requirements regarding employment of apprentices including without limitation Labor Code Section 1777.5. The statutory provisions will be enforced for penalties for failure to pay prevailing wages and for failure to comply with wage and hour laws.

IN WITNESS WHEREOF, the parties have caused this Construction Contract to be executed the date and year first above written.

CITY OF PALO ALTO

Purchasing Manager
 City Manager

APPROVED AS TO FORM:

City Attorney or designee

APPROVED:

Chief Transportation Official

BEAR ELECTRICAL SOLUTIONS, INC.

Officer 1

By: _____

Name: _____

Title: _____

Date: _____

Officer 2

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "A-1"
TASK ORDER FORM

Contractor hereby agrees to perform the Work detailed below in accordance with all the terms and conditions of the Construction Contract referenced in Item 1A below. All attachments listed in Item 7 are incorporated into this Task Order by this reference. The Contractor shall furnish the necessary labor, equipment, and materials required by this Task Order as described below, and as further specified in the Contract Documents.

CONTRACT NO.

ISSUE DATE

Purchase Requisition No.

1A. TASK ORDER CONSTRUCTION CONTRACT NUMBER
1B. TASK ORDER NO.
2. CONTRACTOR
3. CONTRACT TIME: START: COMPLETION:
4. TASK ORDER COMPENSATION AMOUNT: \$ _____
BALANCE REMAINING IN CONTRACT SUM: \$ _____
5. BUDGET CODE: _____ COST CENTER: _____ COST ELEMENT: _____ WBS/CIP: _____ PHASE: _____
6. CITY PROJECT MANAGER'S NAME/DEPARTMENT: _____
7. ATTACHMENTS: A: Task Order Scope of Work B (if any): _____

**I hereby authorize the performance of
the work described above in this Task Order.**

**I hereby acknowledge receipt and acceptance
of this Task Order and warrant that I have
authority to sign on behalf of Consultant.**

APPROVED:
CITY OF PALO ALTO

BY: _____
Name _____
Title _____
Date _____

APPROVED:
CONTRACTOR NAME: _____

BY: _____
Name _____
Title _____
Date _____

**Contractor must sign and return this Task Order in PDF form via email to the Project Manager at
_____@CityofPaloAlto.org within two days following the Issue Date set forth above.**

EXHIBIT "A-1"
TASK ORDER FORM

Attachment A – Task Order Scope of Work

- 1. DESCRIPTION OF WORK TO BE PERFORMED.**

- 2. SCHEDULE FOR PERFORMANCE OF WORK.**

- 3. BASIS FOR TASK ORDER COMPENSATION AMOUNT.**

- 4. SUBMITTAL REQUIREMENTS.**

- 5. ADDITIONAL PROVISIONS.**