

# **CITY OF ELK GROVE**



## **Request for Proposals**

**For**

**Diversity Audit, Inclusion Strategy, and Training**

**City Clerk's Office  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758**

**Proposals Due by Friday, October 13, 2017 (4:00 p.m.)**

**Introduction:**

The City of Elk Grove (City) is accepting proposals from qualified Consultants (Consultant(s)) for a Diversity Audit, Inclusion Strategy, and Training in accordance with the included specifications, terms, and conditions shown in this Request for Proposals (RFP). Prospective respondents are advised to read this information over carefully prior to submitting a proposal.

One signed original, one copy, and one USB Flash Drive copy of the proposals must be submitted to the Office of the City Clerk by Friday, October 13, 2017 at 4:00 p.m. Proposal shall be submitted in a sealed envelope clearly marked Diversity Audit, Inclusion Strategy, and Training and be addressed to:

**OFFICE OF THE CITY CLERK  
CITY OF ELK GROVE  
8401 Laguna Palms Way  
Elk Grove, CA 95758**

Questions regarding this RFP are to be directed by e-mail to: Kara Reddig, Deputy City Manager at [kreddig@elkgrovecity.org](mailto:kreddig@elkgrovecity.org). Such contact shall be for clarification purposes only. The City must receive all questions no later than October 6, 2017 at 5:00 p.m. Material changes, if any, to the scope of services or proposal procedures shall only be transmitted by written addendum and posted to the City web site. Addendums and answers to submitted questions will be available via the City of Elk Grove web site under "Notice" for the RFP announcement.

Proposals shall not be accepted by fax or electronically.

**Information Session:** There will be a non-mandatory Information Session regarding this RFP on August 23, 2017 at 2:00 p.m. in the City Council Chambers. Participants may RSVP to Kara Reddig at [kreddig@elkgrovecity.org](mailto:kreddig@elkgrovecity.org).

Elk Grove City Hall  
Council Chambers  
8400 Laguna Palms Way  
Elk Grove, CA 95758

**Late Proposals:**

Proposals arriving after the specified date and time shall not be considered, nor shall late proposals be opened. Each Consultant assumes responsibility for timely submission of its proposal.

**Withdrawal or Modifications of Proposals:**

Any proposal may be withdrawn or modified by a written request signed by the Consultant and received by the City Clerk prior to the final time and date for the receipt of proposals. Once the deadline is past, Consultants are obligated to fulfill the terms of their proposal.

**Proposal Acceptance and Rejection:**

The City reserves the right to accept any proposal, to reject any and all proposals, and to call for new proposals, or dispense with the proposal process in accordance with the Elk Grove Municipal Code.

**Proposal Evaluation and Award:**

Evaluation shall be made based on the criteria noted in Attachment A: Evaluation and Selection Criteria. A contract may be awarded to the responsible Consultant who best meets the City's needs by demonstrating the competence and professional qualifications necessary for the satisfactory performance of the required services, and shall not necessarily be based on the lowest price or proposal, taking into consideration adherence to the included specifications. A

contract may be awarded to the next responsible Consultant if the successful Consultant refuses or fails to execute the contract. All Consultants that were not selected by the City shall be notified in writing. Nothing herein shall obligate the City to award a contract to any responding Consultant. Any contract awarded will be non-exclusive, and the City reserves the right to seek services from other sources, in the City's sole discretion.

**Disclosure of Submitted Materials:**

After selection and execution of the contract(s), (or prior thereto if required by law) all information and materials provided in each submittal received is subject to disclosure through a public records request pursuant to the California Public Records Act, or otherwise as may be required by law. The City, in its sole discretion, may release any submitted materials, regardless of whether such materials are marked by respondents as confidential or otherwise as protected.

**Waiver of Irregularities:**

The City retains the right, in its sole discretion, to waive any irregularities in proposals that do not comply with the strict requirements of this RFP, and the City reserves the right to award a contract to a Consultant submitting any such non-compliant proposal, all in the City's sole discretion.

**Validity of Pricing:**

Consultants are required to provide a fee structure including the hourly rate of the principals to be assigned to the matter, and proposed cost (line item descriptions and pricing), and expense reimbursements levels, and total costs. No cost increases shall be passed onto the City after the proposal has been submitted. No attempt shall be made to tie any item or items contained in this RFP with any other business with the City; each proposal must stand on its own.

**No Guarantee of Usage:**

Any quantities listed in this RFP are estimated or projected and are provided for tabulation and information purposes only. No guarantee of quantities is given or implied by the City. Consultant must furnish the City's needs as they arise.

**Demonstrations:**

When required, the City may request full demonstrations prior to award. When such demonstrations are requested, the Consultant shall respond promptly and arrange a demonstration at a convenient location. Failure to provide a demonstration as specified by the City may result in rejection of a proposal.

**Use of Other Governmental Contracts:**

The City reserves the right to reject any part or all of any proposals received and utilize other available governmental contracts.

**Qualification/Inspection:**

Proposals will only be considered from Consultants normally engaged in providing the types of services specified herein. By responding to this RFP, the Consultant consents to the City's right to inspect the Consultant's facilities, personnel, and organization at any time, or to take any other action necessary to determine Consultant's ability to perform. The City reserves the right to reject proposals where evidence or evaluation is determined to indicate inability to perform. The City reserves the right to interview any or all responding Consultants and/or to award a contract without conducting interviews.

**Other Governmental Entities:**

If the Consultant is awarded a contract as a result of this RFP, the Consultant shall, if the Consultant has sufficient capacity, provide to other governmental agencies, so requesting, the services awarded in accordance with the terms and conditions of the RFP.

**Payment Terms:**

Payment shall be made as set forth in the contract attached hereto as Attachment B. In submitting proposals under these specifications, Consultants should take into account all discounts, both trade and time, allowed in accordance with the payment terms.

**Performance:**

It is the intention of the City to acquire services as specified herein from a Consultant that will give prompt and convenient service.

**Term of Contract:**

The term of the contract will be for a specific period of time, commencing upon execution. The City anticipates the contract to be for a term of eight months to one year, depending on the scope sections proposed by the Consultant. The City reserves the right to set the term for a period deemed to be in the best interest of the City, and terminate the contract as set forth therein.

**Amendments:**

If, in the course of the performance of the contract, Consultant or the City proposes changes to the services provided, and informal consultation with the other party indicates that a change in the terms and conditions of the contract may be warranted, Consultant or the City may request a change in the contract. The parties to the contract will meet to discuss and negotiate the required documents. Upon completion of those negotiations, the negotiated documents will be submitted to the City for approval. Upon approval by the City, an amendment to the contract will be approved by all parties for the change to be implemented. An amendment shall not render ineffective or invalidate any unaffected portions of the Contract. Nothing in this section obligates the City to agree to any change order or other amendment, and the City may withhold such agreement in its sole discretion.

**Service and support:**

Consultants shall explain how all on-going service and support shall be handled by the Consultant and the City of Elk Grove.

**Records:**

The Consultant shall maintain complete and accurate records with respect to labor costs, material expenses, and other such information required by City that relates to the performance of services under the contract. The Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of the services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible and in a form acceptable to the City, which the City may specify and change from time to time. The Consultant shall provide free access to the representatives of City or its designees, at reasonable times, to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to the contract. Such records, together with supporting documents, shall be maintained for City's inspection for a period of at least three (3) years after receipt of final payment.

**(See next page for Guidelines for Proposal)**

## Guidelines for Proposal

The following guidelines are provided for standardizing the preparation and submission of proposals. The intent is to assist respondents in the preparation of their submissions and to assist the City by simplifying the review process providing standards for comparison of submissions.

Statements submitted in response to this RFP shall include a complete response to the requirements in this section in the order presented. Statements should be a straightforward delineation of the respondent's capability to satisfy the intent and requirements of this RFP, and should not contain redundancies and conflicting statements.

Proposals shall be printed double sided, submitted on 8-1/2" x 11" recycled paper, with easy to read font size and style. Pages shall be numbered, tabbed, and bound (spiral / comb / three ring binder). Tabbed dividers should separate and identify the response items described below.

One signed original, one copy, and one USB Flash Drive copy of the proposals must be submitted to the Office of the City Clerk by 4:00 p.m. on Friday, October 13. Proposal shall be submitted in a sealed envelope clearly marked Diversity Audit, Inclusion Strategy, and Training and be addressed to:

**OFFICE OF THE CITY CLERK  
CITY OF ELK GROVE  
8401 Laguna Palms Way  
Elk Grove, CA 95758**

Proposals shall contain the following information in the order listed:

1. Introductory letter

The introductory letter should be addressed to:

Kara Reddig  
Deputy City Manager  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758

The letter shall include the Consultant's name submitting the proposal, their mailing address, telephone number, and contact name. The letter shall address the Consultant's understanding of the project based on this RFP and any other information the Consultant has gathered. Include a statement discussing the Consultant's interest and qualifications for this type of work. A principal of the firm authorized to legally bind the firm shall sign the letter.

2. Table of Contents

The Consultant shall insert a comprehensive table of contents denoting sections three through eight of the proposal as indicated below.

3. Qualifications and Experience

Describe the Consultant's capability for actually undertaking and performing the work, including any professional licenses and certificates held by the Consultant. List types and locations of similar work performed by the Consultant in the last five (5) years that best characterizes the quality and past performance. Include names and current phone numbers for contact on work quality and performance. References may be contacted as part of the selection Process.

4. Work Plan

The work plan must state the Consultant's ability to meet each specification as outlined in this document. The work plan should address the items of work as described in this RFP. The plan should be simple, easy to read and follow, and address and satisfy the objectives and specifications as listed in the Scope of Work in this RFP.

5. Conflict of Interest Statement

Any activities or relationships of the Consultant that might create a conflict of interest for the Consultant or the City, and, if such activities or relationships exist, a description of the facts, legal implications, and possible effects sufficient to permit the City to appreciate the significance of the conflict and to grant any conflict waiver, if appropriate and necessary.

6. Supportive Information/References

This section may include graphs, charts, photos, resumes, references, and any other relevant information in support of the Consultant's qualifications.

7. Fee

This section should include the cost for requested services outlined in the Scope of Work. Consultants shall clearly describe and outline fees for the services to be provided for each task of the project. Fees should be linked to the tasks of the work plan as provided in Section 4, Work Plan. Upon completion of each task, the Consultant will notify the City and request payment for the products and services by submitting an invoice and a brief description of work performed during the billing period. Upon receipt of the invoice, the City will review in a timely manner the products and services noted, verify completion, and authorize payment. No cost increases shall be passed onto the City after the proposal has been submitted. No attempt shall be made to tie any item or items contained in this RFP with any other business with the City.

8. Professional Services Contract

Attached to the RFP (Attachment B) is a copy of the City's standard Professional Services Contract (Contract). The City's standard Contract may be modified, in the City's sole discretion, to address the specific provisions of this RFP and Consultants should note that any specifications or other requirements specific to this RFP shall be included in the Contract and Contract's exhibits following an award of the Contract. Please review the Contract carefully and note in your proposal any exceptions or alterations to the Contract. Alterations or changes to the Contract that are not in the Consultant's response shall not be allowed after the selection of the Consultant. This includes alterations, exceptions, or changes to the insurance and indemnity provisions. By requiring these requests up front, the City can compare all respondents on an equal basis. However, the City reserves the right, in its sole discretion, to accept or reject any and all proposed changes to the City's standard Contract. For reference, the insurance amounts that appear in the attached Contract are summarized below.

<b>TYPE</b>	<b>SINGLE LIMIT / OCCURRENCE</b>	<b>AGGREGATE</b>	<b>ENDORSEMENTS***</b>
Work Comp (3A) Employer's Liability	Statutory \$1,000,000 each		Waiver of Subrogation
Professional Liability (4A)	\$1,000,000	\$1,000,000	(1 year tail) (Retro Date)

\*\*\*Must be actual endorsements. Typed statements on Certificates of Liability are unacceptable.

This is a summary only. Please refer to the insurance section and/or exhibit of this contract for specific requirements.

**(See next page for Scope of Work)**

## SCOPE OF WORK

### Background

On May 10, 2017, the Elk Grove City Council was presented a Gender and Ethnic Diversity Report prepared by City staff, of which a copy can be found here:

[Gender and Ethnic Diversity Report 051017](#)

During that meeting, the City Council created a Council Ad Hoc Committee comprised of two members of the City Council. The Ad Hoc Committee invited members of the Public to provide input on next steps related to the Gender and Ethnic Diversity Report. Subsequently, the Ad Hoc Committee requested staff prepare and release an RFP for a Diversity Audit, Inclusion Strategy, and Training.

As of the most recent State of California Department of Finance Demographics Research Unit report completed in January 2017, the City of Elk Grove had a population of 171,059. Incorporated in 2000, the City of Elk Grove is one of the newer incorporated cities in California. Elk Grove is a general law city and operates under a City Council/City Manager form of government. Elk Grove provides a variety of high-quality services to its residents through a mix of full time employees (FTE) and contracts to supplement staffing needs. Annually, the City bases its budget on core goals that guide the activity of the City Council and staff. For the current fiscal year, the City operates on an all-funds budget of \$345 million, of which over \$65 million represents the General Fund. The current budget reserve is 25% of the General Fund. The City, through a FTE staff of 313 employees and approximately 200 contract staff, provides public safety, public works, development services, transit, solid waste and general administration services for the Elk Grove community.

The City of Elk Grove Diversity Audit, Inclusion Strategy, and Training should be comprehensive and include all key diversity areas. The scope can be bid separately by section. Work in section 1 shall commence in mid-December 2017 and is expected to be completed by June 1, 2018. All work in section 2 will be coordinated at the completion of section 1.

### **DIVERSITY AUDIT AND INCLUSION STRATEGY – Section 1**

The Diversity Audit shall include the past five (5) years of data from the City's OneSolution payroll database as well as available information from the contract<sup>1</sup> staff (to the extent available) and their associated contracts, and it shall include the following information:

- A. Job Analysis of all City job classifications to ensure they are in the appropriate Equal Employment Opportunity ("EEO") job categories from the City's OneSolution database.
- B. Evaluation of all internal classifications, by EEO job categories, by gender, ethnicity, and any additional group as recommended by the Consultant.
- C. Evaluate internal and external recruitments, promotions, transfers, separations, terminations and retention by EEO job categories, by gender, ethnicity, and any additional group as recommended by the Consultant.
- D. Evaluate all EEO reporting practices and reports.
- E. Review targeted recruiting outreach and resources.
- F. Review recruitments and all applicable applicant tracking data.
- G. Review current recruiting selection process.
- H. Review current policies, procedures, practices and determine legal compliance, competencies, and effectiveness.
- I. Conduct a nepotism analysis and review all pertinent policies.

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<sup>1</sup> For purposes of this study, Contract Staff includes all contracted staff working for other entities (e.g. consultants) assigned to work within City facilities and/or drive city owned or operated vehicles. Contract Staff also includes those persons directly serving the City through the City's contracted solid waste provider, Allied Waste Services of North America, LLC, dba Republic Services.

- J. Review the current salaries by gender, ethnicity, and any additional group as recommended by the Consultant.
- K. Review internal training programs and recommend best practices.
- L. Conduct an organizational and cultural survey from a diversity, equity and inclusion perspective.
- M. Evaluate barriers and specific ways in which policies, management, leadership and the culture are supporting or acting as barriers to diversity.
- N. Conduct an external workforce analysis.
- O. Complete a final Diversity Audit that includes a trend analysis of similarly situated organizations and recommendations on best practices.
- P. Evaluate the City's current contracts and contract staff diversity and recommend best practices to promote diversity consistent with applicable legal limitations.

Development of an effective Diversity Inclusion Strategy should cover all key diversity areas including, but not limited to:

- A. Create a Diversity and Inclusion Statement.
- B. Identify organizational strengths, weaknesses, opportunities, and threats in relation to diversity.
- C. Recommend best practices for EEO reporting process and controls.
- D. Recommend action-oriented goals that include specific rationale and/or benefits tied to each goal.
- E. Develop relevant and necessary policies and procedures concerning diversity.
- F. Identify diversity training for all levels of employees (provide an optional fee to conduct said training – see Section 2 below).
- G. Develop a process for managing and monitoring implementation of the strategy.
- H. Completion of a Diversity Inclusion Strategy

#### **TRAINING – Section 2**

- A. If your firm can provide training in the identified areas, please include pricing.
- B. Please specify if the training offered would be one-time or an ongoing training program.

**(See next page for Attachments)**

# **ATTACHMENTS**

## **Attachment A: Evaluation and Selection Criteria**

### Evaluation Criteria

The following represent the principle selection criteria, which will be considered during the evaluation process:

Firms Qualifications, Experience, and References: Experience in performing work of a closely similar nature and size; experience working with public agencies; strength, stability, experience, and technical competence; assessment by client references.

Qualifications and Experience of Personnel and Staffing: Qualifications and experience of proposed personnel for requested services.

Work Plan: Depth of Consultants understanding of City's requirements; overall quality and logic of work plan.

Quality and Responsiveness of the Proposal: Completeness of response in accordance with the RFP instructions.

Rates and Fees: Reasonableness and competitiveness of the rates and fees proposed; adequacy of data in support of figures quoted, basis on which rates and fees are quoted.

### **Review and Selection Process**

The City will evaluate the merits of the proposals received in accordance with the evaluation factors stated in this RFP and formulate a recommendation. For each evaluation criteria, proposals will be evaluated on their relative strengths, deficiencies, and weaknesses.

# CITY OF ELK GROVE



CONSULTANT CONTRACT FOR

**CONSULTANT**

Title of Contract

## CONTRACT FOR SERVICES

THIS CONTRACT is made on \_\_\_\_\_, 20\_\_, by and between the City of Elk Grove, a municipal corporation (the “City”) and \_\_\_\_\_, a \_\_\_\_\_ (the “Consultant”), collectively referred to as the “Parties.”

### WITNESSETH

WHEREAS, the Consultant has presented a proposal to provide services, which services are identified in the Scope of Work attached hereto and incorporated herein by this reference as **Exhibit A**, and by reason of its qualifications, experience, and facilities, is duly authorized to perform the type of services contemplated herein; and,

WHEREAS, the City desires to hire Consultant to perform the Scope of Work pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, City and Consultant agree to as follows:

### **1. SCOPE OF SERVICES**

A. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to complete the services described in the Scope of Work. This Contract and its exhibits shall be known as the “Contract Documents.” Terms set forth in any exhibits shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control.

B. The Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

### **2. TERM OF CONTRACT**

A. This Contract shall be effective as of the date executed by the Parties and approved as to form by the City Attorney and shall terminate on \_\_\_\_\_, unless earlier terminated pursuant to Section 11 of this Contract.

### **3. SCHEDULE FOR PERFORMANCE**

City and Consultant agree that time is of the essence and Consultant agrees that services shall be undertaken and completed in accordance with the schedule of performance (the “Schedule of Performance”), attached hereto and incorporated herein by reference as **Exhibit B**. Deviations from the time schedule stated in the Schedule of Performance may be made with the written approval of the City Manager, or his/her authorized representative. Consultant’s failure to complete work in accordance with the Schedule of Performance may result in delayed compensation as described in Section 4.

#### **4. COMPENSATION**

A. The Consultant shall be paid monthly as set forth in Exhibit C, "Compensation and Method of Payment," attached hereto and incorporated herein by reference, for the actual fees, costs and expenses for the time and materials required and expended, and approved by the City, but in no event shall total compensation under this Contract exceed \_\_\_\_\_ (\$\_\_\_\_\_), without City's prior written approval. Said amount shall be paid upon submittal of a monthly invoice showing completion of the tasks that month, including the services rendered, the costs incurred for materials, the person(s) rendering performed services, the amount of time spent by such person(s), and the applicable hourly rate.

B. If Consultant's performance is not in conformity with the Scope of Work or Schedule of Performance, payments may be delayed or denied, unless otherwise agreed to by the City in writing.

C. If the work is halted at the request of the City, compensation shall be based upon the proportion that the work performed bears to the total work required by this Contract, subject to Section 11.

#### **5. NOTICES**

A. Consultant shall transmit invoices and any notices, with copy to City Attorney, required by this Contract, to City as follows:

City of Elk Grove  
Attn: Finance Department  
8401 Laguna Palms Way  
Elk Grove, California 95758

B. City shall transmit payments on invoiced amounts, and any notices required by this Contract to Consultant as follows:

#### **6. PROFESSIONAL SERVICES**

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

Consultant further agrees that it shall not, during the term of this Contract, take any action that would affect its impartiality or professionalism due to the City whether perceived or actual.

## **7. INDEPENDENT CONTRACTOR**

A. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto.

B. Consultant'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 Consultant under the provisions of the Contract, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

D. Consultant, 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 party person(s) employed by Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.

F. Consultant 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 Contract.

## **8. AUTHORITY OF CONSULTANT**

Consultant shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligations whatsoever.

## **9. CONFLICT OF INTEREST**

Consultant 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 Contract. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Contract. Consultant further agrees to complete any statements of economic interest if required by either City ordinance or State law.

## **10. AMENDMENTS, CHANGES OR MODIFICATIONS**

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the Parties hereto and shall be signed by the persons authorized to bind the Parties.

## **11. TERMINATION**

A. This Contract may be terminated by City, provided that City gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of City.

B. The City may temporarily suspend this Contract, at no additional cost to City, provided that Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Contract. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.

C. Notwithstanding any provisions of this Contract, Consultant shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Contract by Consultant, and City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due City from Consultant is determined.

D. In the event of termination, Consultant shall be compensated as provided for in this Contract, except as provided in Section 11C. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of City.

## **12. FUNDING**

Consultant agrees and understands that renewal of this Contract in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII B of the California Constitution and that the City Council may determine not to fund this Contract in subsequent years.

## **13. NOTICE TO PROCEED**

Prior to commencing work under this Contract, Consultant shall receive a written "Notice to Proceed" from City. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay Consultant for any services prior to issuance of the Notice to Proceed.

## **14. EXTENSIONS OF TIME**

Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions must be authorized in advance by City, in writing, and at City's sole discretion. Such extensions, if authorized, shall be incorporated in written amendments to this Contract or the attached Scope of Work in the manner provided in Section 10.

## **15. PROPERTY OF CITY**

A. It is mutually agreed that all materials prepared by Consultant under this Contract shall become the property of City, and Consultant shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and Consultant shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Consultant in performing this Contract which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to City which is in Consultant's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this Contract must be approved in writing by City.

B. Additionally, it is agreed that the Parties intend this to be a contract for services and each considers the products and results of the services to be rendered by Consultant hereunder to be work made for hire. Consultant acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by the City.

C. Nothing herein shall constitute or be construed to be any representation by Consultant that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.

## **16. COMPLIANCE WITH LAW**

Consultant shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract.

## **17. REPRESENTATIONS**

A. Consultant agrees and represents that it is qualified to properly provide the services set forth herein, in a manner which is consistent with the generally accepted standards of Consultant's profession.

B. Consultant agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and local law.

C. Consultant shall designate a project manager who at all times shall represent the Consultant before the City on all matters relating to this Contract. The project manager shall continue in such capacity unless and until he or she is removed at the request of City, is no longer employed by Consultant, or is replaced with the written approval of City, which approval shall not be unreasonably withheld.

D. Consultant shall provide corrective services without charge to City for services which fail to meet the above professional and legal standards and which are reported to

Consultant in writing within sixty (60) calendar days of discovery. Should Consultant fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and Consultant shall be liable for any expenses thereby incurred.

## **18. APPROVAL OF STAFF MEMBERS**

A. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Contract. Consultant shall notify City of any changes in Consultant's staff to be assigned to perform the services required under this Contract and shall obtain the approval of the City Manager of a list of all proposed staff members who are to be assigned to perform services under this Contract prior to any such performance.

## **19. ASSIGNMENT AND SUBCONTRACTING:**

A. Except as expressly authorized herein, Consultant's obligations under this Contract are not assignable or transferable, and Consultant shall not subcontract any work, without the prior written approval of the City. However, claims for money due or which become due to Consultant from City under this Contract may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to City.

B. Consultant shall be as fully responsible to City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by Consultant.

## **20. MATERIALS CONFIDENTIAL**

All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If Consultant or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

## **21. LIABILITY OF CONSULTANT—NEGLIGENCE**

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

## **22. INDEMNITY AND LITIGATION COSTS**

To the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this Contract on the part of Consultant, except such loss or damage which was caused by the sole negligence, or willful misconduct of the City, as determined by a Court of competent jurisdiction. Unless and until such judicial determination is made, or as otherwise agreed by the parties, Contractor shall remain obligated to defend, indemnify, and hold harmless the City, its officers, officials, employees, volunteers, and agents pursuant to this Agreement. The provisions of this section shall survive termination or suspension of this Contract.

In any contract that Consultant enters into with any subcontractor in any capacity related to any and all duties under this Contract, there must be an indemnification provision identical to the one provided in this Section applicable to the subcontractor requiring the subcontractor to assume the defense, indemnify and save harmless the City to the same extent as Consultant. Consultant's failure to include such an indemnification provision in any contract with a subcontractor shall constitute a material breach of this Contract. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, and save harmless the City as prescribed under this Section.

## **23. EVIDENCE OF INSURANCE COVERAGE**

Prior to commencement of any work under this Contract, Consultant shall provide and maintain in effect during the term of this Contract evidence of insurance coverage as set forth in **Exhibit D**, attached hereto and incorporated herein by reference. These insurance requirements are summarized as follows:

Furthermore, Consultant shall certify its compliance with Labor Code Section 3700 in the form attached hereto and incorporated by reference, as **Exhibit E**.

## **24. EVIDENCE OF INSURANCE COMPLIANCE**

Consultant or its insurance broker shall deliver the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage to City. City may designate an insurance certificate processor ("Processor") to accept and process Consultant's proof of insurance. Consultant shall deliver copies of the actual insurance policies, renewals, or replacements directly to City or Processor upon their request.

## **25. EMPLOYMENT PRACTICES**

Consultant, by execution of this Contract, 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.

## **26. UNAUTHORIZED ALIENS**

Consultant hereby promises and agrees to comply with all of the provisions of the federal immigration and nationality act (8 U.S.C.A. § 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Contract, and should the federal government impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

## **27. LICENSES, PERMITS, AND OTHER APPROVALS**

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

## **28. RECORDS AND INSPECTION**

Consultant shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Contract in accordance with generally accepted accounting principles and practices. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

## **29. 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 Contract, the prevailing party shall be entitled to reasonable attorneys' fees and all litigation expenses, including, but not limited to expert's fees and disbursements.

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

C. Enforceability: If any term or provision of this Contract 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 Contract shall remain binding.

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

E. Binding: This Contract shall bind and inure to the heirs, devisees, assignees and successors in interest of Consultant 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 Consultant for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Contract shall not be invalidated due to the expiration, termination or cancellation of this Contract.

G. Construction and Interpretation: Consultant and City agree and acknowledge that the provisions of this Contract have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Contract and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Contract shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Contract.

H. Waiver: The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Contract shall not be deemed a waiver with respect to any subsequent default or other matter.

I. Severability: The invalidity, illegality or unenforceability, of any provision of this Contract shall not render the other provisions invalid, illegal or unenforceable.

J. No Third Party Beneficiary: It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the City and Consultant. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the City and the Consultant that any such person or entity, other than the City or Consultant, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.

K. Non-Discrimination/Non-Preferential Treatment Statement: In performing this Contract, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

L. Authority to Execute: The person or persons executing this Contract on behalf of the Consultant warrant and represent that they have the authority to execute this Contract on behalf of their agency and further warrant and represent that they have the authority to bind Consultant to the performance of its obligations hereunder.

M. Dispute Resolution: Prior to either party commencing any legal action under this Contract, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

N. Force Majeure: Neither party shall be in default by reason of any failure in the performance of this Contract if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, mechanical difficulties with equipment which could not have been reasonably forecasted or provided for, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.

### 30. ENTIRE AGREEMENT

This instrument and any attachments hereto constitute the entire Contract between City and Consultant concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof.

AGREED to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the Parties as follows:

Approved to as form:

**CONSULTANT**

By: \_\_\_\_\_  
Attorney for Consultant

By: \_\_\_\_\_

Approved as to form:

**CITY OF ELK GROVE**

By: \_\_\_\_\_  
Jonathan P. Hobbs, City Attorney

By: \_\_\_\_\_  
Laura S. Gill, City Manager

Attest to:

By: \_\_\_\_\_  
Jason Lindgren, City Clerk

Dated: \_\_\_\_\_

**EXHIBIT A**

**Scope of Work**

**EXHIBIT B**

**Schedule of Performance**

**EXHIBIT C**  
**Compensation and Method of Payment**

Under no circumstances shall the aggregate amount paid under this Contract exceed the amount specified in Section 4A above and if the Contract is approved by the City Manager, all compensation paid to Consultant each year shall meet the cost limitation set forth in City of Elk Grove Municipal Code Chapter 3.42.

## EXHIBIT D

### Insurance Requirements

Prior to commencement of any work under this Contract, Consultant shall provide to the City proof of, and 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. Worker's Compensation
  - a. Worker's 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 Employers Liability coverage. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit E.
  - b. Employer's Liability Coverage shall not be less than the statutory requirements.
  - c. If an injury occurs to any employee of the Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Consultant.
  - d. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.
2. Errors and Omissions; Malpractice; Professional Liability. Errors and omissions, malpractice, or professional liability insurance with coverage of not less than \$1,000,000 per occurrence. Upon termination of this agreement, the same insurance requirements in Section 2 of this Exhibit will apply for a one (1) year period following such termination. A "tail" policy may be purchased as an alternative to satisfy this requirement.
3. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII**.
4. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.

5. The Consultant shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Contract. At the written request of the City, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
6. 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.
7. The Consultant shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
8. If the Consultant fails to procure or maintain insurance as required by this section, 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.
9. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
10. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
11. 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.
12. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

**EXHIBIT E**

**Certificate of Compliance With Labor Code § 3700, Release and Indemnification**

The undersigned, on behalf of and as the duly certified representative of Consultant, certifies as follows:

1. Consultant is 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 Consultant has complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor Code §§1860, 1861.)
2. Should Consultant fail to secure Workers' Compensation coverage as required by the State of California, Consultant shall release, hold harmless, defend and indemnify the City of Elk Grove from and against any damage, liability, claim, cause of action and any other loss, including without limitation, court costs, reasonable attorney's fees and costs resulting from any failure to take and/or maintain Workers' Compensation insurance as required by law. The provisions of this Exhibit shall survive termination, suspension and/or completion of this Contract. It is further understood and agreed that this release and assumption of risk is to be binding on Consultant's successors, heirs and assigns.

CONSULTANT

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_