

CITY OF ELK GROVE



Invitation to Bid

For

**Systems Enclosures for External
Mount Remote Cameras**

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

Bids Due by 2:00 PM January 24, 2018

Introduction:

The City of Elk Grove (City) is accepting Bids from qualified Supplier(s) for five (5) Systems Enclosures for External Mount Remote Cameras in accordance with the included specifications, terms, and conditions shown in this Invitation to Bid (ITB). Prospective respondents are advised to read this information over carefully prior to submitting a Bid.

One (1) signed Bid shall be submitted to the Office of the City Clerk no later than **2:00 PM Wednesday, January 24, 2018**. Any Bids received after the time specified shall be returned unopened. Bids shall be submitted in a sealed envelope clearly marked Systems Enclosures for External Mount Remote Cameras and addressed to:

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

Questions regarding this ITB are to be directed by e-mail to: Justin Ramirez, Sr. IT analyst jmramirez@elkgrovepd.org . Such contact shall be for clarification purposes only. The City must receive all questions no later than **5:00 PM Wednesday, January 17, 2018**. Material changes, if any, to the scope of work or Bid 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 Bid announcement.

Bids shall not be accepted by fax or electronically.

Late Bids:

Bids arriving after the specified date and time shall not be considered, nor will late Bids be opened. Each Supplier assumes responsibility for timely submission of its Bid.

Withdrawal or Modifications of Bids:

Any Bid may be withdrawn or modified by a written request signed by the Supplier and received by the City Clerk prior to the final time and date for the receipt of Bids.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

Bid Acceptance and Rejection:

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

Bid Evaluation and Award:

A contract may be awarded to the responsible Supplier with the lowest responsive Bid taking into consideration price and adherence to the included specifications, except as otherwise provided by the Elk Grove Municipal Code. The City shall enter into an agreement with the successful Supplier for the specified good and/or commodities. A contract may be awarded to the next lowest responsible Supplier if the successful Supplier refuses or fails to execute the contract. Bid results will be posted on the City's website under Proposals/Bids, Bid Results. Nothing herein shall obligate the City to award a contract to any of the responding Suppliers.

Register with the California Secretary of State:

Unless Supplier is a sole proprietorship, Supplier must be registered and in good standing with the California Secretary of State within 14 days following notification of the City's intent to award a contract to Supplier and prior to execution of a final contract. Failure to timely register with the Secretary of State may result in the City awarding the contract to another Supplier. Additional information regarding the registration process may be found on the Secretary of State's website at: <https://businesssearch.sos.ca.gov/>.

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 Bids that do not comply with the strict requirements of this ITB, and the City reserves the right to award a contract to a Supplier submitting any such non-compliant Bid, all in the City's sole discretion.

Local Vendor Preference:

A bid or proposal from a local vendor for commodities, equipment, and general services will be tabulated as if it were five (5%) percent below the figure actually set forth in the bid or proposal, up to a maximum preference of Fifty Thousand and no/100th (\$50,000.00) Dollars per bid or proposal, to account for the financial advantages accruing to the City by the award of a bid to a local vendor. Bids or proposals submitted in response to this ITB will be evaluated on the basis of a local preference of five (5%) percent of the bid or proposal price.

"Local vendor" means a person or legal entity which has a place of business (other than a post office box) within the City and has a valid, current business license issued by the City. To qualify as a local vendor for the purposes of Section 3.42.230 of this Code, the vendor shall submit with its bid or proposal a completed City-provided affidavit that documents the following: 1) the business has a facility with a City of Elk Grove address, 2) the business has, during at least one (1) year immediately preceding the submission of the bid or proposal, attributed sales tax to the City of Elk Grove, and 3) the business has had a City of Elk Grove business license for at least one (1) year prior to the submission of the bid or proposal. The affidavit can be obtained by accessing the Request for Bid and Bids section of the City web site, <http://www.elkgrovecity.org/community/request-for-Bid.asp>.

Validity of Pricing:

Suppliers are required to provide line item descriptions and pricing, applicable sales tax, and a total final price. No cost increases shall be passed onto the City after the Bid has been submitted. All prices quoted shall be C.I.F. (Cost, Insurance, Freight) to the destination designated by the City, freight prepaid (Supplier pays and bears freight, insurance and unloading charges; Supplier owns goods in transit and must file any third-party claims for losses incurred during shipment). Each item must be listed separately. No attempt shall be made to tie any item or items contained in this ITB with any other business with the City; each Bid must stand on its own.

No Guarantee of Usage:

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

Samples and Demonstrations:

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

Use of Other Governmental Contracts:

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

Piggybacking:

“Piggybacking” is a form of intergovernmental cooperative purchasing in which an entity will be extended the same pricing and terms of a contract entered into by another entity.

Bidders are requested to indicate on the Bid if they will extend the pricing, terms and conditions of an awarded contract, based on this bid, to other government agencies. If the successful vendor agrees to this provision, participating agencies may enter into a contract with the successful vendor for the purchase of the service and commodities described herein based on the terms, conditions, prices, and percentages offered by the successful vendor to the City. Minor changes in terms and conditions may be negotiated by participating agencies during the term and following the award of the contract. Any such contract shall be entirely independent and separate from the City and City shall have no obligation relating to any third party contract.

Qualification/Inspection:

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

Delivery:

The successful Supplier will supply goods/commodities in compliance with the provisions of the contract and provisions of this ITB at the address listed below.

Delivery Address:

City of Elk Grove
Attn: Chris Hill, PD IT
8400 Laguna Palms Way
Elk Grove, CA. 95758

Acceptance and Conditions

The goods/commodities supplied in response to the ITB shall remain the property of the Supplier until a physical inspection is made and the goods/commodities are accepted to the satisfaction of the City. The goods/commodities must comply fully with the terms of the ITB, be of the required quality and new unless specified by the City. Any substitutes of goods/commodities not meeting specifications will be rejected, and returned if applicable, at the Supplier's expense. The City will make payment only after receipt and acceptance of goods/commodities.

Other Governmental Entities:

If the Supplier is awarded a contract as a result of this ITB, the Supplier shall, if the Supplier has sufficient capacity or quantities available, provide to other governmental agencies, so requesting, the goods/commodities awarded in accordance with the terms and conditions of the ITB.

Federal Requirements:

Should any portion of this procurement require the use of Federal funds, all Federal requirements shall apply and all Suppliers must consent to each certification and assurance, which will be incorporated into the contract.

Payment Terms:

Payment shall be made as set forth in the Contract attached hereto as Attachment B. In submitting Bids under these specifications, Suppliers 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 goods/commodities as specified herein from a Supplier that will give prompt and convenient service.

Amendments:

If, in the course of the performance of the contract, Supplier or the City proposes changes to the goods/commodities provided, and informal consultation with the other party indicates that a change in the terms and conditions of the contract may be warranted, Supplier 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.

New Merchandise:

Unless otherwise required by the specifications of this ITB all goods/commodities furnished must be new and unused.

Warranties:

The Supplier shall warrant all material, products and labor provided under the contract, in addition to any manufacturers' warranties that may also apply. **Warranty periods and terms must be included in responses to Bid.**

The awarded Supplier, as the contracting party, shall be considered primarily responsible to the City for all warranty service, parts, and labor applicable to the goods/commodities provided by Supplier irrespective of whether Supplier is an agent, broker, fabricator, or manufacturer's dealer. Supplier shall be responsible for ensuring that warranty work is performed at a local agency or facility convenient to the City, to the extent a local agency or facility is available, and that services, parts, and labor are available and provided to meet the City's schedules and deadlines. Supplier may establish a service contract with a local agency satisfactory to the City, to meet this obligation if Supplier does not ordinarily provide warranty service. All such non-contractor warranty service, parts, and labor must be clearly identified in the Bid.

Substitution:

If Supplier elects to propose an alternate manufacturer's item that is of the same or better quality, samples of the items to be substituted are to be submitted with the Bid. The sample must be readily identified with the manufacturer's name and model number or order number, along with the suppliers name and phone number. All substitutions must be proposed as options and clearly identified as a substitution.

Guarantee of Continuity and Availability Products:

Unless the manufacturer discontinues the goods/commodities, all goods/commodities specified by the Supplier in their Bid shall be available to the City during the life of the contract and extensions. All material, color, labor, and construction shall equal or exceed the standards set forth in these specifications as accepted by the City.

Service and support:

All Suppliers shall explain how all on-going service and support shall be handled by the Supplier and the City of Elk Grove.

Records:

The Supplier shall maintain complete and accurate records with respect to labor costs, material expenses, and other such information required by City that relates to the delivery of goods/commodities under the contract. The Supplier shall maintain adequate records of goods/commodities delivered in sufficient detail to permit an evaluation of services and

goods/commodities. 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 Supplier 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 Bid)

Guidelines for Bid:

The following guidelines are provided for standardizing the preparation and submission of Bids. 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 ITB 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 ITB, and should not contain redundancies and conflicting statements.

Bids 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 (1) signed Bid shall be submitted to the Office of the City Clerk no later than **2:00 PM Wednesday January 24, 2018**. Any Bids received after the time specified shall be returned unopened. Bids shall be submitted in a sealed envelope clearly marked Remote Camera System Enclosures and addressed to:

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

Bids shall contain the following information in the order listed:

1. Introductory letter

The introductory letter should be addressed to:

Justin Ramirez
Sr. IT Analyst
Elk Grove Police Department
8401 Laguna Palms Way
Elk Grove, CA 95758

The letter shall include the Supplier's name submitting the Bid, their mailing address, telephone number, and contact name. The letter shall address the Supplier's understanding of the project based on this ITB and any other information the Supplier has gathered. Include a statement discussing the Supplier'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 supplier shall insert a comprehensive table of contents denoting sections three through nine of the Bid as indicated below.

3. Qualifications and Experience

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

4. Work Plan

The work plan must state the Supplier's ability to meet each specification as outlined in this

document. The work plan should address the items of work as described in this ITB. 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 ITB. **The work plan must include a description of the offered warranty periods, terms, and limitations if any.**

5. Conflict of Interest Statement

Any activities or relationships of the Supplier that might create a conflict of interest for the Supplier 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 Supplier's qualifications.

7. Pricing

This section should include the cost for requested goods/commodities outlined in the Scope of Work and must specifically itemize the costs for the goods/commodities listed under the Specifications section of the Scope of Work. Suppliers are required to provide line item descriptions and pricing, applicable sales tax, and a total final price. No cost increases shall be passed onto the City after the Bid has been submitted. Tax is to be listed as a separate line item.

8. Delivery

Indicate the approximate date of delivery to the City, at the specified address as listed in the ITB.

9. Secretary of State

Supplier shall acknowledge their understanding of needing to be registered with the California Secretary of State as noted in the ITB language above.

10. Sale of Goods Contract:

Attached to the ITB (Attachment B) is a copy of the City's standard Sale of Goods Contract (Contract). The City's standard Contract may be modified, in the City's sole discretion, to address the specific provisions of this ITB and Suppliers should note that any specifications or other requirements specific to this ITB 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 Bid any exceptions or alterations to the Contract. Alterations or changes to the Contract that are not in the Supplier's response shall not be allowed after the selection of the Supplier. 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.

TYPE	SINGLE LIMIT / OCCURRENCE	AGGREGATE	ENDORSEMENTS***
General Liability (1D)	\$1,000,000	\$2,000,000	Additional Insured
Work Comp (3B) Employer's Liability	Statutory \$1,000,000 each		

***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:

1.1 This specification describes new, unused, latest model, Systems Enclosures for External Mount Remote Cameras

1.2 Unit(s) shall be complete and delivered with all equipment and accessories necessary for safe and efficient operation. They are to be delivered as a complete unit and ready for operation.

2.0 GENERAL CONTRACT SPECIFICATIONS

2.1 Brand Names

Whenever in the specifications any material or process is indicated or specified by patent of proprietary name and/or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating descriptions of the material and/or process desired and shall be deemed to be followed by the words or "equivalent."

The Supplier may offer any material or process which shall be equal in every respect to that so indicated or specified, provided however, that if the material, process or article offered by the Supplier is not, in the opinion of the City, equal in every respect to that specified, then the Supplier must furnish the material, process or article specified or one that in the opinion of the City is the equal thereof in every respect.

2.2 Inspection

Unit(s) shall be inspected before acceptance by an authorized representative of the City for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of this specification. If deficiencies are found, it shall be the responsibility of the Supplier to make the necessary corrections and redeliver the unit(s) for re-inspection and acceptance. Payment and/or commencement of a discount period (if applicable) will not be made until corrective action has been made.

2.3 Warranty

Warranty period shall be for a minimum of 1 year and include full repair and/or replacement of parts and labor costs.

2.4 Payment Terms

Payment terms are net 45 days unless bidder otherwise quotes, and City agrees. All cash discounts if taken shall be computed from the date of pickup or completion and acceptance of material, or from date of receipt of invoice, whichever is latest. Invoices must be submitted as specified at the time of shipping authorization.

2.5 Quantities (additional)

The quantity specified, five (5), is based upon current known requirements and is subject to increase if mutually agreeable to both parties.

3.0 SYSTEM SPECIFICATIONS

3.1 Overview: The Systems Enclosures will be used to deploy various types of surveillance equipment remotely. This invitation to bid includes the enclosure and equipment listed

below. The actual cameras are external to the enclosure, will be provided by the City and are not required to be included on this Invitation to Bid.

- 3.2 The Systems Enclosures shall be delivered fully configured and ready for operation immediately upon the application of power and data communications services
- 3.3 The Systems Enclosures shall be of a modular design enabling easy installation, removal and maintenance of a variety of internal component sizes and types
- 3.4 The Systems Enclosures shall include an Intel NUC (or similar) edge computer system including these minimum specifications:
 - 1TB SSD
 - 8GB RAM
 - Intel Core i5 Processor
 - Windows 10 Professional Installed
- 3.5 The Systems Enclosures shall include the following internal network components
 - Sierra Wireless GX450 Verizon Wireless Modem
 - Dual High Gain Cellular Antennas installed internally
 - Internal 5 Port POE+ Capable Switch supplying 30w per port and overall POE Budget of 120W or greater
 - Managed router/switch with min 5 ports and port forwarding capabilities
 - 802.11 wireless b/g/n wireless with a minimum 1000mW rating
 - WebRelay Model X-WR-1R12-1I5-24I
- 3.6 The Systems Enclosures shall include the following environmental specifications:
 - Active push/pull dual fan cooling system
 - Remote monitoring of internal system temperatures
- 3.7 The Systems Enclosures shall include the following enclosure requirements:
 - Sealed/weather resistant Ethernet connections or cable pass-through for minimum of 4 external cameras/devices
 - Minimum of one IP67, Mini-Quick screw type AC Power Connector
 - No larger than 12" x 14" x 8"
 - Capable of mounting to pole and wall surfaces. Pole diameters of 1.5" – 30" shall be supported and require no adapters or additional mounts
 - Mounting Straps Supporting 1.5" – 16" Diameter Poles Shall Be Provided

(See next page for Attachment A: Pricing)

Attachment A: Pricing

**FOR FURNISHING THE CITY OF ELK GROVE WITH FIVE (5) SYSTEMS
ENCLOSURES FOR EXTERNAL MOUNT REMOTE CAMERAS
AS PER REQUIREMENTS STATED IN THIS ITB**

<u>DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>EXTENDED PRICE (x5)</u>
Systems Enclosures for External Mount Remote Cameras	\$ _____	\$ _____
	7.75% SALES TAX	\$ _____
	SHIPPING	\$ _____
	TOTAL	\$ _____

Unit price must be stated as an all-inclusive price, inclusive of all requirements and specifications stated in this ITB

“Piggybacking” Option:

Indicate that you will extend the pricing, terms, and conditions of an awarded contract, based on this bid, to other government agencies. Yes [] or No []

Prompt Payment Discount:

Will you offer a prompt payment discount? Yes [] or No [] (Net 45 days)

If Yes, the Payment Discount is _____% for payment within _____ calendar days, which will be computed from the date delivery is made and is accepted by the City, or the date a proper invoice is received, whichever is later.

Quoting Supplier _____

Business Name _____

Business Address _____

Business Phone Number _____

SIGNED BY _____

TITLE _____

Attachment B: Sample Sale of Goods Contract

**CONTRACT BETWEEN THE CITY OF ELK GROVE
AND _____
FOR THE SALE OF GOODS**

This Contract for the Sale of Goods (“Contract”) is made and entered into this ____ day of _____ 20__ (“Effective Date”) by and between the City of Elk Grove, a municipal corporation (“City” or “Buyer”), and _____ (“Seller”).

RECITALS

A. City is in need of _____ (“Goods”) to support _____, a more detailed description of which is attached hereto as Exhibit A and incorporated herein by reference; and,

B. City has determined that Seller is capable of providing the Goods at a reasonable price and in a timely manner; and,

C. City agrees to purchase the Goods from Seller, subject to the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants and promises of City and Seller contained herein and the receipt of good and valuable consideration, the receipt of which is hereby acknowledged, City and Seller hereby agree as follows:

AGREEMENT

1. Recitals. The above Recitals are true and correct and incorporated herein by reference.

2. Purchase and Sale. Seller agrees to sell and City agrees to buy the Goods pursuant to the terms and conditions set forth in this Contract.

3. Term of Contract. 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 no later than _____, unless earlier terminated as provided for herein.

4. Purchase Price for Goods. The total price of the Goods, as further summarized on Exhibit B, shall not exceed _____ (\$ _____), without City’s prior written approval, signed by the City Manager.

5. Time of Payment. Seller shall invoice the City within thirty (30) calendar days of the Date of Acceptance for the goods as defined below. The City shall pay Seller for all accepted Goods invoiced within forty-five (45) calendar days of receipt of invoice following the Date of Acceptance.

6. Delivery of Goods. Seller shall deliver and install the Goods F.O.B. to the City's offices at _____, with shipping charges included in the price, after execution of this Contract by all parties. Delivery is to be within 30 days of City's request. The Goods shall be delivered by Seller to City free of any liens or encumbrances.

7. Inspection and Acceptance. The Goods shall be received by City subject to City's reasonable inspection, testing, approval, and acceptance of the Goods. If the Goods are rejected by the City as nonconforming, City may return the Goods to Seller at Seller's risk and expense, and the Goods shall not be replaced or repaired by Seller without written authorization from City. If City does not provide written acceptance or a list of deficiencies within the thirty (30) calendar days, the Goods shall be deemed accepted.

8. Title/Risk of Loss. Title, ownership, and risk of loss or damage of the Goods shall remain with Seller until the Goods are delivered to, inspected and accepted by City, except when such loss or damage is due to the fault or negligence of City. Once accepted by City, title, ownership, and risk of loss shall transfer to City.

9. Termination and Suspension. This Contract may be terminated by City, with or without cause, provided that City gives not less than thirty (30) calendar days' written notice to Seller (delivered by certified mail, return receipt requested) of City's intent to terminate. Upon termination, City shall be entitled to all work and goods received as of the date of termination, unless otherwise returned or rejected by the City. The City may temporarily suspend this Contract, with or without cause, at no additional cost to City, provided that Seller is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Seller shall immediately suspend its activities under this Contract. Notwithstanding any provisions of this Contract, Seller shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Contract by Seller, and City may withhold any payments due to Seller until such time as the exact amount of damages, if any, due City from Seller is determined. In the event of termination, Seller shall be compensated as provided for in this Contract.

10. Indemnification. To the fullest extent permitted by law, Seller 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, resulting from, or related to, this Contract, and/or 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, except where such loss or damage 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 the completion, termination or suspension of this Contract

City shall promptly notify Seller of the Claims and reasonably cooperate, assist and provide appropriate information (at Sellers's expense) for the defense of the action. Seller shall pay all damages and costs awarded therein against City but shall not be responsible for any compromise made without Seller's consent, which consent will not be unreasonably withheld.

11. Warranties. In addition to any other warranties set forth herein, Seller warrants that the Goods, including any component or replacement parts, furnished, manufactured or provided by Seller will be free from defects in material and workmanship for a period of one year (365 days) from Date of Acceptance of the Goods by City. Any additional warranties provided by law, including, but not limited to, the warranty of merchantability and warranty of fitness for a particular purpose shall remain in full force and effect and inure to the benefit of City. City reserves all rights and remedies provided by law for breach of any applicable warranty related to the Goods.

12. Remedies. In the event of a material breach of this Contract by Seller, City may avail itself of any other right and remedies available at law or in equity. Nothing herein shall limit City's rights to seek any available remedy including, but not limited to, damages and/or equitable relief, in a court of competent jurisdiction.

13. Compliance with Laws. Seller shall comply with all applicable governmental laws, ordinances, codes, rules, regulations, programs, plans, and orders in the performance of this Contract.

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

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

14. Evidence of Insurance Compliance. Seller 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 Seller's proof of insurance. Seller shall deliver copies of the actual insurance policies, renewals, or replacements directly to City or Processor upon their request.

15. Notice of Material Change in Business. Seller agrees that, if it experiences a material change in its business during the term of this Contract, including, without limitation, a reorganization, restructuring, leveraged buyout, and/or bankruptcy, Seller will immediately notify City of the change in writing.

16. Attorneys' Fees. If any party to this Contract shall take any action to enforce this Contract or for any relief against any other party, declaratory or otherwise, arising out of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in such action, suit and/or enforcement of any judgment granted

therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid by the losing party whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For purposes of this section, attorneys' fees shall also include, but not be limited to, fees incurred in the following: (a) appeals or post-judgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third party examinations; (d) discovery; and (e) bankruptcy litigation. The provisions of this section shall survive any termination of the Contract as provided for herein.

17. Notices. All notices, requests, demands, and other communications required to or permitted to be given under this Contract shall be in writing and shall be conclusively deemed to have been duly given (a) when hand delivered to the other party; (b) three (3) business days after the same have been deposited in a United States Post Office with certified mail, return receipt requested, postage prepaid and addressed to the parties as set forth below; or (c) the next business day after same have been deposited with a national overnight delivery service reasonably approved by the parties (Federal Express, UPS, and DHL WorldWide Express being deemed approved by the parties), postage prepaid, addressed to the parties as set forth below with next-business-day delivery guaranteed:

TO SELLER: _____

Telephone: () _____

TO CITY: CITY OF ELK GROVE
Attn: _____

Elk Grove, CA 95678
Telephone: _____

A party may change or supplement the addresses given above, or designate additional addresses, for purposes of this section by giving the other parties written notice of the new address in the manner set forth above.

18. Entire Agreement. This Contract contains the entire agreement between City and Seller in connection with the transaction contemplated hereby and the subject matter hereof and this Contract supersedes and replaces any and all prior and contemporaneous agreements, understandings, and communications between the parties, whether oral or written, with regard to the subject matter hereof or any course of dealing, course of performance, or usage of the trade. Parol evidence shall be inadmissible to show agreement by and between City or Seller to any term or condition contrary to or in addition to the terms and conditions contained in this Contract. Both parties acknowledge that each has not relied on any promise, representation or warranty, express or implied, not contained in this Contract.

19. Modification. This Contract shall not be modified in any manner except by a writing signed by both City and Seller.

20. Assignment. Seller shall not delegate or subcontract any duties or assign any rights or claims under this Contract without City's prior written consent.

21. Severability. If any term or provision of this Contract shall, to any extent, be held invalid or unenforceable, the remainder of this Contract shall not be affected.

22. Waivers. A waiver or breach of a covenant or provision in this Contract shall not be deemed a waiver of any other covenant or provision in this Contract and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

23. Construction. The section headings and captions of this Contract are, and the arrangement of this instrument is, for the sole convenience of the parties to this Contract. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Contract. The singular form shall include plural, and vice versa. Unless otherwise indicated, all references to sections are to this Contract. All exhibits referred to in this Contract are attached hereto and incorporated herein by this reference.

24. Drafting. City and Seller acknowledge and agree that this Contract has been negotiated at arms length, that each party has been represented by independent counsel and/or has had an opportunity to consult with and be represented by independent counsel, that this Contract is deemed to be drafted by both parties, that no one party shall be construed as the drafter of this Contract, and that any rule of construction that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Contract.

25. Counterparts. This Contract may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

26. Time of the Essence. Seller and City hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision hereof, particularly, and without limitation of factors contributing to the need for timely compliance of this Contract.

27. Successors. This Contract shall inure to the benefit of and shall be binding upon the parties to this Contract and their respective heirs, successors in interest, and assigns. This Contract may only be assigned upon written approval and agreement of the parties, which approval will not be unreasonably withheld. Any purported assignment of this Contract without the prior written approval of all parties shall be null and void.

28. Governing Law. The parties acknowledge that this Contract has been negotiated and entered into in the State of California, County of Sacramento. The parties agree that this Contract shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. Venue for any action or proceeding relating to or arising out of this Contract shall be in the County of Sacramento.

29. No Third Party Beneficiary Rights. This Contract is entered into for the sole benefit of City and Seller. No other parties are intended to be direct or incidental beneficiaries of this Contract and no third party shall have any right in, under or to this Contract.

30. No Joint Venture, Partnership or Other Relationship Created. The relationship between City and Seller is that solely of a seller and a buyer and no joint venture, partnership or other relationship is created or implied by this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract in Sacramento, California, by affixing their signatures below, and this Contract shall be deemed effective as of the date on which each of the parties execute this Contract as indicated by the dates below. In the event that the parties do not execute this Contract on the same date, the effective date of this Contract shall be the latest date on which one of the parties executes this Contract.

“SELLER”
Name of Company

Dated: _____, 20__

By: _____

Name, Title

“CITY”
CITY OF ELK GROVE

Dated: _____, 20__

By: _____

Laura S. Gill, City Manager

APPROVED AS TO FORM:

Jonathan P. Hobbs, City Attorney

Date

ATTEST:

Jason Lindgren, City Clerk

Date

EXHIBIT A

DESCRIPTION OF GOODS

EXHIBIT B

PRICE

EXHIBIT C

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Contract, Seller 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. General Liability:

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

Each occurrence: (\$1,000,000)	One Million Dollars
Products & Completed Operations: (\$1,000,000)	One Million Dollars
Personal & Advertising Injury: (\$1,000,000)	One Million Dollars
Aggregate: (\$2,000,000)	Two Million Dollars
- e. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Seller, products and completed operations of the Seller, premises owned, occupied, or used by the Seller, or automobiles owned, leased, hired, or borrowed by the Seller on a separate endorsement acceptable to the Risk Manager.
- f. 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 Seller.
- g. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
- h. Provision or endorsement stating that for any claims related to this contract, the Seller's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or

volunteers shall be in excess of the Seller's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.

- i. Any failure to comply with reporting or other provisions of the policies on the part of the Seller, including breaches of warranties, shall not affect Seller's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.

2. Worker's Compensation

- a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Seller is a qualified self-insurer with the State of California), and Employers Liability coverage. The Seller 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 Seller 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 Seller 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 Seller.

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 Seller 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, Seller 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 Seller 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 Seller 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 Seller under the contract.
9. Failure of the City to obtain such insurance shall in no way relieve the Seller from any of its responsibilities under the contract.
10. The making of progress payments to the Seller shall not be construed as relieving the Seller 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 Seller are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Seller under the Contract.

EXHIBIT D

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

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

1. Seller 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 Seller 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 Seller fail to secure Workers' Compensation coverage as required by the State of California, Seller 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 Seller's successors, heirs and assigns.

SELLER

By:

Date:

Name:

Title:
