

**CONTRACT BETWEEN  
THE CITY OF ELK GROVE  
AND**

**FOR THE PROVISION OF GOODS AND SERVICES**

This Contract for the Sale of Goods and Services (“Contract”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2009 (“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 \_\_\_\_\_; and,
- B. Seller provides the \_\_\_\_\_; and,
- C. City has determined that Seller is capable of providing the required \_\_\_\_\_ services at a reasonable price and in a timely manner; and,
- D. Seller proposes to provide to City \_\_\_\_\_ (“Services”) and Equipment (“Equipment”), a more detailed description of the Services and Equipment is described on Exhibit A, which is attached hereto and incorporated herein by reference; and,
- E. City agrees to accept the Equipment and Services 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 & Exhibits. The above Recitals, and Exhibits identified herein, are true and correct and incorporated into this Contract by reference.
- 2. Purchase and Sale. Seller agrees to provide and Seller agrees to accept the Equipment and Services pursuant to the terms and conditions set forth in this Contract.
- 3. Price. The total value for the Equipment and Services is \_\_\_\_\_ (\$ \_\_\_\_\_), which includes all applicable sales tax that shall be itemized on the invoice sent to City. An itemized breakdown of the Equipment and Services is identified on Exhibit B.
- 4. Equipment. Seller shall provide City with \_\_\_\_\_, as described on Exhibit A.
  - a. Change Orders. Once a complete order has been submitted to Seller, the City will have five (5) business days to make any changes to the layout of the

furniture, the colors of the furniture or the order in general. After five (5) days, Seller may charge a change order fee of \$500.

5. Services. Seller shall provide \_\_\_\_\_ for the City, as described on Exhibit A.

6. Delivery of Goods. Seller shall deliver the Equipment F.O.B. to the Buyer's offices at 8400 Laguna Palms Way, Suite 100, Elk Grove, CA 95678, with shipping charges included in the price, within sixty (60) days of the full execution of this Contract by all parties, and Seller shall completely install the Equipment at Buyer's offices, in a fully functioning manner consistent with the manufacturer specifications and Exhibit B, all to the complete satisfaction of Buyer. The City's Dispatch Manager shall coordinate with Seller to identify the exact date the Equipment will be delivered and installed. The Equipment shall be delivered by Seller to Buyer free of any liens or encumbrances.

7. Inspection and Acceptance. The Equipment shall be received by Buyer subject to Buyer's reasonable inspection, testing, approval, and acceptance of the Equipment. If the Equipment is rejected by the Buyer as nonconforming, Buyer may return the Equipment to Seller at Seller's risk and expense, and the Equipment shall not be replaced or repaired by Seller without written authorization from Buyer. Upon written notice to Buyer that the Equipment has been installed, Buyer shall have thirty (30) calendar days to inspect and accept the Equipment. If Buyer does not provide written acceptance or a list of deficiencies within the thirty (30) calendar days, the Equipment shall be deemed accepted.

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

9. Workers' Compensation. For all installation, maintenance or other work related to the Services performed by Seller in conjunction with this Contract, Seller shall maintain Workers' Compensation insurance as required by California law.

10. Indemnification. To the fullest extent permitted by law, Seller shall defend, indemnify, protect, and hold harmless the Buyer and its employees, officers, and agents from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs, and expenses of whatever nature ("Claims"), including reasonable attorneys' fees, costs, and disbursement arising out of or related to Seller's installation and/or maintenance of the Equipment or Services, except as to those Claims arising the sole negligence or willful misconduct of the City. Seller shall defend, indemnify and hold harmless Buyer, and its officers, employees, and agents from all Claims arising out of or related to any infringement of any patent right, copyright or trademark of any person as a consequence of the use by Buyer or any of its officers, employees or agents, of the Equipment or any component parts.

Buyer shall promptly notify Seller of the Claim and reasonably cooperate, assist and provide appropriate information (at Seller's expense) for the defense of the action. Seller shall pay

all damages and costs awarded therein against Buyer but shall not be responsible for any compromise made without Seller's consent, which consent will not be unreasonably withheld. Seller may, at any time it is reasonably concerned over the possibility of patent, copyright, trademark, or other intellectual property infringement, at its option and expense, replace or modify the aforementioned products so that infringement will not exist, or remove the products involved and refund to Buyer the price thereof as depreciated or amortized by an equal annual amount over the lifetime of the products as established by Seller.

11. Warranties. Except as limited herein, Seller warrants that the Equipment, including any component or replacement parts, furnished, manufactured or provided by Seller will be free from defects in material and workmanship for life, provided that the City owns the Equipment. All Equipment with such defects will be replaced by Seller at no charge to the City, but all associated labor and installation expenses for defective Equipment will be provided to the City for three years from the effective date of this Contract. All defective adjustment mechanisms, TCS components, monitor arms, task lighting, and heating devices shall be replaced at no charge to the City for the three years after the effective date of this Contract. 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 Buyer. Buyer reserves all rights and remedies provided by law for breach of any applicable warranty related to the Equipment.

12. 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, attached hereto and incorporated herein by reference.

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

14. 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.

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 Buyer 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) when received if sent by telex or facsimile at the address and number set forth below; (c) 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 (d) the next business day after same have been deposited with a national overnight delivery service reasonably approved by the parties (Federal Express, Golden State Couriers, 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO BUYER: CITY OF ELK GROVE  
ATTN: \_\_\_\_\_  
Elk Grove Police Department  
\_\_\_\_\_ Laguna Palms Way  
Elk Grove, CA 95678  
Telephone: (916) \_\_\_\_\_

A party may change or supplement the addresses given above, or designate additional addresses, for purposes of this section 18 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 Buyer 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 Buyer 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 Buyer and Seller.

20. Assignment. Seller shall not delegate or subcontract any duties or assign any rights or claims under this Contract without Buyer'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. Buyer 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 Buyer 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 Buyer 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 Buyer 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.

*End of text on this page.*



**EXHIBIT A**  
**DESCRIPTION OF SERVICES**

**EXHIBIT B**  
**COST OF SERVICES**

## EXHIBIT C

### 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. 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:	One Million Dollars (\$1,000,000)
Products & Completed Operations:	One Million Dollars (\$1,000,000)
Personal & Advertising Injury:	One Million Dollars (\$1,000,000)
  - e. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
  - f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
  
2. Automobile Liability:
  - a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
  - b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).
  - c. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars
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(\$1,000,000)
  - d. If General Liability coverage, as required above, is provided by the Commercial General Liability form, the Automobile Liability policy shall include an endorsement providing automobile contractual liability.

3. 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. 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.
4. 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 and two million dollars (\$2,000,000) aggregate.
5. Other Insurance Provisions:
  - a. The General Liability and Automobile Liability, shall contain the following provisions and endorsements:
  - b. 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 Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant on a separate endorsement acceptable to the City Attorney.
  - c. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
  - d. Provision or endorsement stating that for any claims related to this project, the Consultant'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 Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.

- e. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect Consultant's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.
  - f. The Consultant's Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
  - g. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after **30 days prior written notice** by certified mail has been given to the City. Ten days prior written notice by certified mail shall be given to the City in the event of cancellation due to nonpayment of premium.
6. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**
7. 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.
8. 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 anytime 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.
9. 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.
10. 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.
11. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
12. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or it's Sub-Consultants or agents of responsibility for loss

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

13. 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.
14. 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.