

**RESOLUTION NO. 2004-62**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH  
DATAPROSE, INC. TO PROVIDE UTILITY BILLING SERVICES**

**WHEREAS**, the City of Elk Grove requires a Utility Billing vendor to supply complete printing services of the City's Utility bills; and


**WHEREAS**, the City Council authorized the City Manager to execute a contract with DataProse, Inc. for the commencement of Utility Billing services; and

**NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of Elk Grove authorizes the City Manager to execute a five-year contract with DataProse, Inc. to provide Utility Billing services related to the printing and mailing of Utility payments on behalf of the City in an amount not to exceed \$450,000.

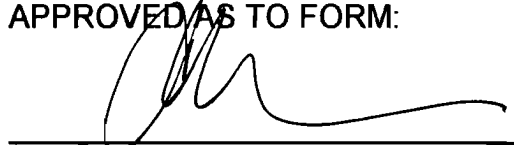
**PASSED AND ADOPTED** by the City Council of the City of Elk Grove on this 7<sup>th</sup> day of April, 2004.

  
\_\_\_\_\_  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

# CITY OF ELK GROVE



## CONTRACT FOR DATAPROSE INC.

Utility Billing Services to the City of Elk Grove



CONTRACT FOR  
DATAPROSE INC.

THIS CONTRACT is made and entered into between City of Elk Grove, a Municipal Corporation ("City") and DataProse Inc. ("Contractor"). City and Contractor agree as follows:

1. SCOPE, TERM AND STANDARDS:

A. CONTRACT. Contractor 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 AND STANDARDS FOR SERVICES, attached hereto and incorporated herein by this reference as Exhibit A, as requested by the City. Contractor shall, at its own cost, make any revisions of its own work as required by the City and re-do, at its own cost, any work which the City finds unsatisfactory due to Contractor's errors or omissions. Contractor represents and warrants that it has the qualifications, experience, and facilities to properly perform said services in a thorough, competent, and professional manner. This document shall be known as the "Contract." This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document 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. If either party to this contract deems that any portion of the Contract Documents shall be in conflict with any other portion, the Parties shall first attempt to informally reach an interpretation of those provisions so as to reconcile them. If after five (5) business days the Parties are unable to reach an informal resolution, the City shall issue in writing an interpretation resolving the conflicting provisions, which shall be provided to Contractor. The interpretation provided by the City shall become final and binding on the parties three (3) business days after it was provided to Contractor, and shall thereafter be an integrated term of this Contract and neither party shall be considered to be the drafter of the provision.

B. CONTRACTOR IS INDEPENDENT CONTRACTOR. Contractor enters into this Contract as, and shall at all times remain as to the City, an independent contractor and not as an employee of the City. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. The Contractor shall have no power or authority except by this Contract to bind the City in any respect. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees,



agents, contractors or subcontractors of the Contractor and not of the City. The personnel performing the services under this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Contract. Contractor shall not at any time or in any manner represent that it or any of its officers, or employees, or agents are in any manner officers, employees, of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. The City shall not be responsible, obligated, or liable in any way to pay any salary, wage, compensation, tax, withholding, benefit, injury, illness claims or other claims made against the Contractor and/or the City by any such employees, agents, contractors or subcontractors, or any other person arising from performance of this Contract. Additionally, Contractor shall be solely responsible, obligated, and liable for any and/or all salary, wage, compensation, tax, withholding, benefit, injury, illness claims or other claims made against Contractor and/or the City by any such employees, agents, contractors or subcontractors, or other person arising from performance of this contract, and Contractor shall indemnify, defend and hold harmless the City against such claims to the extent caused by Contractor's errors, omissions or negligence.

**C. NO PAY FOR ADDITIONAL SERVICES WITHOUT WRITING.**

Contractor shall not be compensated for any services rendered in connection with its performance of this Contract, which are in addition to those set forth herein or listed in Exhibit A, unless such additional services are authorized in advance and in writing by the City Manager or the City Manager's designee (hereinafter "City Manager" shall include the City Manager's designee). Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Contractor at the time City's express written authorization signed by the City Manager is given to Contractor for the performance of said services.

**D. TERM**

Except as provided in Sections 6 and 19, below the term of this Contract shall extend for a term of one year beginning with the execution of this contract. The City reserves the right to extend, in writing, this contract for an additional year each year thereafter, with total time of contract extension not to exceed five (5) years.

**E. INTENDED USE OF CONTRACTOR'S PRODUCT AND MATERIALS.**

It is expressly intended by the parties that the Contractor's work product and materials, whether or not in writing, shall be used for the purposes of providing utility billing services to the City of Elk Grove.

**2. EMPLOYMENT STATUS OF PERSONNEL**

**A. AGENT OF CITY.** For the purposes of performing the services provided for in this Contract, and for the purpose of giving official status to the performance thereof where necessary, every Contractor officer and employee engaged in the performance of any service under this Contract shall be deemed to be an agent of City while performing such services, provided that such services are within the



scope of this Contract and are purely municipal functions. Notwithstanding the agency relationship established by this subsection, City shall not be liable for any act or omission of any Contractor officer or employee performing the services provided for in this Contract, unless specifically provided for in this Contract.

B. EMPLOYEES OF CONTRACTOR. Any persons employed by Contractor for the performance of services pursuant to this Contract shall remain employees of Contractor, shall at all times be under the direction and control of Contractor, and shall not be considered employees of City. All persons employed by Contractor to perform services pursuant to this Contract shall be entitled solely to the right and privileges afforded to Contractor employees and shall not be entitled, as a result of providing services hereunder, to any additional rights or privileges that may be afforded to City employees.

C. INDEPENDENT INVESTIGATION. The Contractor agrees and hereby represents 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.

D. COMPLIANCE WITH EMPLOYMENT LAWS. The Contractor shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

E. UNLAWFUL DISCRIMINATION PROHIBITED. Contractor shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation.

### 3. TIME OF PERFORMANCE:

The services of Contractor are to commence upon execution of this Contract by City, and shall be undertaken and completed in a prompt and timely manner, in accordance with the Scope of Work referenced in Exhibit A.

### 4. COMPENSATION:

A. TERMS. Compensation to the Contractor shall be as set forth in Exhibit B attached hereto and made a part hereof. Total compensation to Contractor shall not exceed \$140,000.00 per contract year without the advance written consent of City.

B. TIME FOR PAYMENT. Payments shall be made within thirty (30) days after receipt of each invoice as to all undisputed fees. If City disputes any of Contractor's fees, it shall give written notice to Contractor within 20 days of receipt of an invoice of any disputed fees set forth on the invoice.



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5. SUPERVISION, LABOR AGREEMENTS AND PERSONNEL:

A. CONTRACTOR SUPERVISES PERSONNEL. The Contractor shall have the responsibility for supervising the services provided under this Contract, hiring of personnel, establishing standards of performance, assignment of personnel, determining and affecting discipline, determining required training, maintaining personnel files, and other matters relating to the performance of services and control of personnel. The City Manager may use any reasonable means to monitor performance and the Contractor shall comply with the City Manager's request to monitor performance.

B. LABOR RELATIONS. Contractor shall be responsible for negotiating and administering all labor relations agreements and personnel rules and procedures between Contractor and its employees rendering services pursuant to this Contract.

C. PERFORMANCE NOT SUBJECT TO EMPLOYMENT AGREEMENTS.

The City acknowledges that the Contractor may be obligated to comply with bargaining agreements and/or other agreements with employees and that the Contractor is legally obligated to comply with these Contracts. It is expressly the intent of the parties and it is agreed by the parties that the Contractor's performance shall not in any manner be subject to any bargaining agreement(s) or any other agreement(s) the Contractor may have covering and/or with its employees.

D. APPROVAL OF STAFF MEMBERS. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff assigned to perform the services required under this Contract. Contractor shall notify City of any changes in Contractor'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.

6. TERMINATION:

A. 90 DAYS NOTICE. The City, upon ninety (90) days written notice, may terminate this Contract, without cause, at any time. In the event of such termination, Contractor shall be compensated for non-disputed fees under the terms of this Contract up to the date of termination.

B. OBLIGATIONS SURVIVE TERMINATION. Notwithstanding any termination of this Contract, Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by Contractor, and the City may withhold any payments due to Contractor until such time as the exact amount of damages, if any, due the City from Contractor is determined. All of the indemnification, defense and hold harmless obligations in this Contract shall survive termination.

7. CHANGES:

The City or Contractor may, from time to time, request changes in the scope of the services of Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation and/or changes in the schedule must be authorized in advance by both



Parties in writing. Mutually agreed changes shall be incorporated in written amendments to this Contract. Any increase in the amount of Contractor's compensation and/or changes in Exhibit A and or Exhibit B must be authorized in advance by the City Manager.

8. PROPERTY OF CITY:

A. MATERIALS PREPARED EXCLUSIVE PROPERTY OF CITY.

It is mutually agreed that all materials prepared by the Contractor under this Contract are upon creation and shall be at all times the exclusive property of the City, and the Contractor shall have no property right therein whatsoever. City agrees that Contractor shall bear no responsibility for any modifications made to, or reuse of, the materials prepared by the Contractor if used for purposes other than those expressly set forth in the Intended Use of Contractor's Products and Materials section of this Contract. Contractor shall not disseminate any information or reports gathered or created pursuant to this Contract without the prior written approval of City including without limitation information or reports required by government agencies to enable Contractor to perform its duties under this Contract and as may be required under the California Public Records Act excepting therefrom as may be provided by court order. Contractor will be allowed to retain copies of all deliverables.

B. CONTRACTOR TO DELIVER CITY PROPERTY.

Immediately upon termination, or upon the request by the City, the City shall be entitled to, and the Contractor shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials and property of the City as may have been prepared or accumulated to date by the Contractor in performing this Contract. Contractor will be allowed to retain copies of all deliverables to the City.

9. CONFLICTS OF INTEREST

A. CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Contract. Contractor further covenants that in the performance of this Contract, Contractor shall take reasonable care to ensure that no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Contract. Contractor agrees to include language similar to this Section 9(A) in all contracts with subcontractors and agents for the work contemplated herein.

B. CITY understands and acknowledges that Contractor is, as of the date of execution of this Contract, independently involved in the performance of non-related services for other governmental agencies and private parties. Contractor is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.



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10. CONFIDENTIAL INFORMATION

A. ALL INFORMATION KEPT IN CONFIDENCE. All information gained by Contractor in performance of this Contract shall be considered confidential and shall not be released by either party without the other's prior written authorization, including without limitation, that information which is a public record and subject to disclosure pursuant to the California Public Records Act Government Code §6250, et. seq. Neither the City nor the Contractor, its officers, employees, agents, or subcontractors, shall without written authorization given by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Contract or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary", provided Contractor or City gives notice to the other party of such court order or subpoena.

B. REIMBURSEMENT FOR UNAUTHORIZED RELEASE. If City or Contractor or any of its officer, employees, or subcontractors does voluntarily provide information in violation of this Contract, the other party has the right to reimbursement and indemnity from party releasing such information for any damages caused by the releasing party's, including the non-releasing party's attorney's fees and disbursements, including without limitation expert's fees and disbursements.

C. COOPERATION. City and Contractor shall promptly notify the other party should Contractor or City, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Contract and the work performed thereunder or with respect to any project or property located within the City. City and Contractor each retains the right, but has no obligation, to represent the other party and/or be present at any deposition, hearing or similar proceeding. Contractor and City agree to cooperate fully with the other party and to provide the other party with the opportunity to review any response to discovery requests provided by Contractor or City. However, City and Contractor's right to review any such response does not imply or mean the right by the other party to control, direct, or rewrite said response.

11. PROVISION OF LABOR, EQUIPMENT AND SUPPLIES

A. CONTRACTOR PROPERTY. Contractor shall furnish all necessary labor, supervision, equipment, communications facilities, and supplies necessary to perform the services required by this Contract. City acknowledges that all equipment and other tangible assets used by Contractor in providing these services are the property of Contractor and shall remain the property of Contractor upon termination of this Contract.

B. SPECIAL SUPPLIES. City shall be responsible for supplying or cause to be supplied any special supplies, stationary, notices, forms or similar items that it requires to be issued with a City logo. All such items shall be approved by the City Manager and shall be provided at City's sole cost and expense.





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12. COMPLIANCE WITH LOCAL LAW:

A. COMPLIANCE REQUIRED. Contractor shall keep itself informed of applicable local, state, and federal laws and regulations which may affect those employed by it or in any way affect the performance of its services pursuant to this Contract. Contractor shall observe and comply with all applicable laws, ordinances, regulations 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. Contractor shall at all times hold a valid contractor's license if performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the California Business and Professions Code, and Contractor shall provide a copy of the license(s) upon the request of the City. The City, its officials, officers, elected officials, appointed officials and employees shall not be liable at law or in equity as a result of any failure of Contractor to comply with this section.

B. PREVAILING WAGES. In the event it is determined that the Contractor is required to pay prevailing wages for the work performed under this Agreement, the Contractor shall pay all penalties and wages as required by applicable law.

13. REPRESENTATION:

Contractor agrees and represents that it is qualified to properly provide the services set forth in Exhibit A in a manner which is consistent with the generally accepted standards of Contractor's profession. Contractor further represents and agrees that it will perform these services in a legally adequate manner in conformance with applicable federal, state and local laws and guidelines.

14. SUBCONTRACTING:

None of the services covered by this Contract shall be subcontracted without the prior written consent of the City Manager. Contractor shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Contractor.

15. ASSIGNABILITY:

Contractor shall not assign or transfer any interest in this Contract whether by assignment or novation. However, claims for money due or to become due Contractor from the City under this Contract may be assigned to a financial institution, but only with prior written consent of the City Manager. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City. The rights and benefits under this agreement are for the sole and exclusive benefit of the City and this Contract shall not be construed that any third party has an interest in the Contract.

16. INTEREST IN CONTRACT:

Contractor covenants that it shall take reasonable care to ensure that neither it, nor any of its employees, agents, contractors, subcontractors have any interest, nor shall they acquire any interest,



direct or indirect, in the subject of the Contract, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder.

17. FINDINGS CONFIDENTIAL:

All of the materials prepared or assembled by Contractor pursuant to performance of this Contract are confidential and Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order. However, Contractor shall not be deemed for any purposes a confidential employee of the City.

18. LIABILITY OF CONTRACTOR:

Contractor shall be responsible for performing the work under this Contract in a manner which is consistent with the generally accepted standards of Contractor's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The 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 Contractor or its employees, agents, contractors or subcontractors.

19. INDEMNITY AND LITIGATION COSTS:

A. CONTRACTOR IS SKILLED. Contractor represents it is skilled in the services necessary to perform the duties agreed to hereunder by Contractor, and City relies upon the skills and knowledge of Contractor. Contractor shall perform such duties consistent with the standards generally recognized as being employed by agencies or contractors performing similar service in the State of California.

B. CONTRACTOR SHALL INDEMNIFY. Contractor is an independent contractor and shall have no authority to bind City nor to create or incur any obligation on behalf of or liability against City, whether by contract or otherwise, unless such authority is expressly conferred under this Contract or is otherwise expressly conferred in writing by City. City and their elected and appointed officials, officers, agents, employees, and volunteers (individually and collectively, "Indemnities") shall have no liability to Contractor or to any other person for, and Contractor shall indemnify, defend, protect, and hold harmless the Indemnities from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs, and expenses of whatever nature, including reasonable attorneys' fees and disbursement, including without limitation expert's fees and disbursements (collectively "Claims"), which the Indemnities may suffer or incur or to which the Indemnities may become subject by reason of 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, to the extent caused by a negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, occurring as a result of or allegedly caused by the performance or failure to perform by Contractor of Contractor's service under this Contract or the negligent or willful acts or omissions of Contractor, its agents, officers, directors, or employees, in performing any of the services under this Contract, except such loss or damage which was caused by the active negligence or willful misconduct of the City.



C. LIMITS OF INSURANCE NOT LIMITING INDEMNIFICATION. If any action or proceeding is brought against the Indemnities by reason of any of the matters against which Contractor has agreed to indemnify the Indemnities as above provided, Contractor, upon notice from the City, shall defend the Indemnities at Contractor's expense. The Indemnities need not have first paid any of the matters as to which the Indemnities are entitled in order to be indemnified. The Contractor should assure that the insurance required to be maintained by Contractor under this Contract shall ensure Contractor's obligations under this paragraph, but the limits of such insurance shall not limit the liability of Contractor hereunder. The provisions of Sections 19(B) and 19(C) shall survive the expiration or early termination of this Contract.

20. CONTRACTOR TO PROVIDE INSURANCE:

A. CONTRACTOR SHALL MAINTAIN INSURANCE.

Contractor shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Contract the policies of insurance and bond specified in this Section. Such insurance and bond must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A:VII.

B. CONTRACTOR TO PROVIDE EVIDENCE OF INSURANCE.

Prior to execution of this Contract and prior to commencement of any work, the Contractor shall furnish to the City, and the City must approve, original certificates of insurance and endorsements effecting coverage for all policies required by the Contract. The certificates shall be signed by a person authorized by the insurer, or insurers, to bind coverage on their behalf. Certificates of insurance and endorsements shall be on standard Acord, Department of Insurance, and Insurance Services Office approved forms or on forms approved by the City. As an alternative to providing the City with approved forms of certificates of insurance and endorsements, the Contractor may provide complete, certified copies of all required insurance policies, including endorsements, effecting the coverage required by this Section. At anytime at the written request of the City, the Contractor agrees to furnish one or more copies of each required policy including declarations pages, conditions, provisions, endorsements, and exclusions. Such copies shall be certified by an authorized representative of each insurer. Approval of the insurance by the City shall not relieve or decrease any liability of Contractor.

C. CITY MAY OBTAIN INSURANCE AT CONTRACTOR'S EXPENSE.

In addition to any other remedy the City may have, if Contractor fails to maintain the insurance coverage as required in this Section 20, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due Contractor under this Contract.

D. NO SUSPENSION OF INSURANCE. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled, terminated by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City, except in the event of non-payment of premium, in



which case no less than ten (10) days' prior written notice by certified mail, return receipt requested, must be given to the City.

E. DEDUCTIBLES. Any deductibles exceeding five thousand dollars (\$5,000) must be declared to, and approved by, the City.

F. COVERAGES SHALL NOT LIMIT OBLIGATIONS. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Contractor are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Contractor under the Contract.

G. REQUIRED LIMITS. Contractor and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance or work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by Contractor and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of Contractor or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Contract.

(1) Workers' Compensation and Employer's Liability Insurance

Contractor shall maintain Workers' Compensation insurance as required by Labor Code Section 3700 of the State of California and Employer's Liability Act's, including Longshoremen's and Harbor Workers' Act ("Acts"), if applicable. Employer's Liability limits shall not be less than one million dollars (\$1,000,000) per occurrence. The Contractor shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in the Contract Documents.

If an injury occurs to any employee of the Contractor 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 Contractor 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 Contractor. 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 Contractor.

(2) Commercial General and Automobile Liability Insurance.

The insurance shall include, but not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than one million dollars (\$1,000,000) per occurrence/five thousand dollars (\$5,000) medical per occurrence, and two million dollars (\$2,000,000) per policy aggregate. As an alternative to the per policy aggregate the Contractor may have an aggregate limit of one million dollars (\$1,000,000) per project apply. Coverage shall be at least



as broad as Insurance Services Office "occurrence form CG 00 01 (ed. 10/03)" covering commercial general liability or its equivalent, and Insurance Services Office "form CA 00 01 (ed. 06/92) covering automobile liability, Code 1 "Any Auto".

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate Certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the insurance requirements stated herein. Commercial general liability coverage shall include independent contractor's coverage, and the Contractor shall be responsible for assuring that all subcontractors are properly insured.

The commercial general and automobile liability insurance coverage shall also include, or be endorsed to include, the following:

a. Provision or endorsement naming the City and each of its officers, employees, and agents, as additional insureds in regards to: liability arising out of the performance of any work under the Contract; liability arising out of activities performed by or on behalf of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

b. Provision or endorsement stating that for any claims related to this project, the Contractor'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 Contractor's insurance and shall not contribute with it.

c. Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.

d. Provision or endorsement stating that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) Professional Liability.

The Contractor and its contractors and subcontractors shall secure and maintain in full force, during the term of this Contract professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Contract. The limits of such professional liability insurance coverage shall not be less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. As an alternative there may be a limit of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) per project aggregate. If any professional liability policy is written on a "claims made" basis, such policy, and any succeeding policy must be specifically endorsed to show that "prior acts" occurring at anytime after the inception date of this Contract will be covered. Upon termination of the Contract with the City, the same



professional liability insurance requirements will apply for a three (3) year period following such termination. A "tail" policy may be purchased as an alternative to satisfy this requirement.

21. RECORDS.

Contractor shall maintain complete and accurate records with respect to labor costs, material expenses, parcels abated or serviced and other such information required by City that relates to the performance of services under this Contract. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of 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. Contractor 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 therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to this Contract. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

22. MISCELLANEOUS PROVISIONS:

A. NONDISCRIMINATION/NONPREFERENTIAL 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.

B. UNAUTHORIZED ALIENS. Contractor 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 Contractor 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, Contractor 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.

C. GOVERNING LAW. The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Contract and also govern the interpretation of this Contract. Any litigation concerning this Contract shall take place in the Sacramento Superior Court, federal diversity jurisdiction being expressly waived.

D. ASSIGNMENT OR SUBSTITUTION. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Contractor by this Contract. In recognition of that interest, neither any complete nor partial assignment of this Contract, may be made by Contractor nor changed, substituted for, deleted, or added to without the prior written consent of City which consent shall not be unreasonably withheld. Any attempted assignment or substitution shall be ineffective, null, and void, and constitute a material breach of this Contract entitling



City to any and all remedies at law or in equity, including summary termination of this Contract. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Contract.

E. ENTIRE CONTRACT. This Contract constitutes the entire Contract and understanding between the parties relative to the services specified herein and there are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in this Contract and this Contract supersedes all prior understandings, agreements, courses of conduct, prior dealings among the parties and documentation of any kind without limitation.

F. AMENDMENTS. This Contract may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by each of the parties. The parties agree that this requirement for written modifications cannot be waived and any attempted waiver shall be void.

G. CONSTRUCTION AND INTERPRETATION. Contractor 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 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. NOTICES. All invoices, payments, notices, demands, requests, comments, or approvals that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties (deemed to have been received three (3) business days after deposit in the U.S. Mail) at the following addresses:

City: City of Elk Grove  
City Manager  
8380 Laguna Palms Way  
Elk Grove, CA 95758

Contractor Data Prose Inc.  
John Garcia  
125 Mountview Terrace  
Benicia, CA 94510

City of Elk Grove  
**DataProse Inc.**  
Re: Services



Each party may change the address at which it gives notice by giving ten (10) days advance, written notice to the other party.

K. AUTHORITY TO EXECUTE. The person or persons executing this Contract on behalf of Contractor 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 Contractor to the performance of its obligations hereunder.

AGREED to this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by the parties as follows.

Approved as to form:

**CONTRACTOR**

\_\_\_\_\_  
Counsel for Contractor

By: \_\_\_\_\_  
Glenn Carter, President

Approved as to form:

**CITY OF ELK GROVE**

By: \_\_\_\_\_  
Anthony B. Manzanetti, City Attorney

By: \_\_\_\_\_  
John Danielson, City Manager





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**CERTIFICATE OF COMPLIANCE**  
**WITH LABOR CODE § 3700**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I have complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor C. §§1860, 1861.)

CONTRACTOR

---

Glenn Carter, President



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## **EXHIBIT A**

### **Scope of Work**

The primary responsibility of the Contractor will be to provide professional and technical services for furnishing billing services, materials and supplies, which consist of printing, folding, insertion, and mailing of customer utility bills, both residential and commercial, for the City of Elk Grove, California. The Contractor will provide for Utility Billing Services that are cost-effective, timely, and accurate. The Contractor will provide the City a complete Utility Billing System. The Contractor will provide a turnkey system to include complete printing service of the utility bills (forms and content), bill inserts, and envelopes, bill collation, inserting, postage, and direct mailing to utility customers. The Contractor must meet the current needs of the City, offer opportunities to continually improve operations, as well as be flexible enough to grow and adapt as the City evolves and changes.

The billing cycle is a bimonthly cycle (six billings per year) with delivery to the Post Office within 24 hours. Quantities indicated, if any, are estimates only and are not to be construed as a minimum nor maximum quantity the City may purchase under this contract.

Contractor will prepare a print program for billing format as designed by the City. Variable data Utility Bill to be printed on side one of blank stock with perforation for return bill stub. Printed on the reverse side, side two shall contain static utility billing rate info, etc. Bill to be folded and inserted along with Number 9 Courtesy Reply window envelope, into the Number 10 envelope. Separate optional pieces to be printed and inserted in addition to the above as requested by the City.

Finished Utility Bills must be sealed, properly addressed, and affixed with first class postage, and delivered to the Post Office within twenty-four (24) hours following receipt of customer billing data. Vendor to notify City upon receipt of customer billing data and upon delivery to Post Office. Vendor must provide on line internet access allowing the City to monitor the utility billing process.

Contractor to provide all artwork, typesetting, and invoice proofs as well as including all file and artwork setup fees in transaction costs. City to provide input into the basic layout and static language of the Utility Bill as well as the language and format of the envelopes. The Contractor shall maintain a prepaid postage account at the post office for mailing the utility bills. The City requires that the Contractor be capable of receiving the customer billing file data in a format acceptable to the City transmitted via the internet or other electronic means.

Printed bill will be of laser quality. The quantities printed under "Account Number" and "Amount Due" on the return portion of the program must be printed with a compatible MICR/OCR font. The Contractor's billing print program must be capable of generating and imprinting U.S. Postal Service Delivery Point bar code requirements, commonly referred to as post net, in the address block of each bill. Further, Contractor's billing print program will provide a detailed listing of items contained in the mailing to include both five and four digit zip code presort sequence as required by the Domestic Mail Manual (DMM). Bills and envelopes are to be imprinted with recycled paper emblem designations as appropriate.



## EXHIBIT B

### Compensation and Method of Payment

PaperBill	Data processing, laser printing, folding, inserting, presort, metering, postage and delivery to USPS included.	Approximate Bi-Monthly Volume = 32,000
	<b>DP Standard – Non Recycled Stock</b> Duplex, 2-color Laser Imaging 8.5x11 white paper with perforation #10 double window envelope #9 single window reply envelope	\$0.425 per statement- postage included @ \$0.301
Options /Additional Charges	Additional Impressions (2nd, 3rd, 4th page) Additional Inserts (supplied/folded) Conditional Logic or Special Programming (after initial set-up) Introduction “ Your New Bill” Insert Search & View Bill Fastforward (USPS address correction service) Additional 8.5” x 11” insert (10% p.c. 24# stock 1/1) Standard 8.5” x 11” insert 24# stock 1/1 One time set-up charge (design & programming)	\$0.035 per Impression \$0.015 per Bill \$125.00 per Hour \$0.10 per Insert \$0.015 per Record \$0.50 per Reported Change \$0.10 per insert \$0.08 per insert No Charge

In no event shall the total compensation paid under this Contract exceed the amount specified in Paragraph 4.A.



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**CERTIFICATION**  
**ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-62**

**STATE OF CALIFORNIA            )**  
**COUNTY OF SACRAMENTO    )**     **ss**  
**CITY OF ELK GROVE         )**

***I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 7<sup>th</sup> day of April 2004 by the following vote:***


**AYES 5:     COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper, Leary**

**NOES 0:     COUNCILMEMBERS:**

**ABSTAIN 0: COUNCILMEMBERS:**

**ABSENT 0: COUNCILMEMBERS:**



  
\_\_\_\_\_  
**Peggy E. Jackson, City Clerk**  
**City of Elk Grove, California**