

CITY OF ELK GROVE



Request for Proposals For Health and Wellness Services

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

Proposals Due by 4:00 PM, April 15, 2011

Introduction:

The City of Elk Grove is accepting proposals from qualified contractors that have demonstrated past excellence and knowledge in providing Health and Wellness Services to municipalities. The selected contractor shall be responsible for Health and Wellness services to be performed in accordance with the included specifications, terms, and conditions shown in this Request for Proposal (RFP). Prospective respondents are advised to read this information over carefully prior to submitting a proposal.

One signed original, two hard copies, and one CD copy of the proposals shall be submitted to the Office of the City Clerk by 4:00 PM, April 15, 2011. Proposal shall be submitted in a sealed envelope clearly marked Health & Wellness Services and addressed to:

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

Questions regarding this RFP are to be directed by e-mail to: Jacqui Langenberg, Management Analyst, at jlangerberg@elkgrovecity.org. Such contact shall be for clarification purposes only. The City must receive all questions no later than April 8, 2011. Material changes, if any, to the scope of services or proposal procedures will 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 by clicking "View" under View Details/Documents for the Bid announcement.

Proposals will not be accepted by fax or electronically.

Late Proposals:

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

Withdrawal or Modifications of Proposals:

Any proposal may be withdrawn or modified by a written request signed by the contractor and received by the City Clerk prior to the final time and date for the receipt of proposals.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

Proposal Acceptance and Rejection:

The City of Elk Grove reserves the right to accept any proposal, to reject any and all proposals if said rejection is deemed in the best interest of the City, to call for new proposals, and to award the contract to other than the lowest proposal if deemed "proposal most advantageous to the City".

Proposal Evaluation and Award:

Evaluation will be made based on the criteria noted in Attachment A, Evaluation and Selection Criteria. Award shall be made to the responsible contractor whose proposal is determined in writing to be the most advantageous to the City, taking into consideration adherence to the included specifications and price. The City will enter into a contract with the successful contractor for the specified services. All contractors that were not selected by the City shall be notified in writing. Nothing herein shall obligate the City to award a contract to any responding contractor.

Waiver of Irregularities:

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

Validity of Pricing:

Contractors are required to provide a fee structure including, if applicable, the hourly rate of the principals to be assigned to the matter, and proposed cost and expense reimbursement levels. No cost increases shall be passed onto the City after the proposal has been submitted. No attempt shall be made to tie any item or items contained in this RFP with any other business with the City.

Qualification/Inspection/Interviews:

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

Acceptance and Conditions

The services supplied in response to the RFP award shall remain the property of the Contractor until a physical inspection is made and the services are accepted to the satisfaction of the City. The services must comply fully with the terms of the RFP, be of the required quality and new unless specified by the City. Any substitute of services not meeting specifications will be rejected, and returned if applicable, at the Contractors expense. The City will make payment only after receipt and acceptance of services.

Payment Terms:

Payment on non-disputed invoices will be paid net 45 from date of receipt of invoice. In submitting proposals under these specifications, contractors' should take into account all discounts, both trade and time, allowed in accordance with the above payment policy.

Performance:

It is the intention of the City to acquire services as specified herein from a Contractor that will give prompt and convenient shipment and service. Any such contract will be non-exclusive, and the City reserves the right to seek services from other sources, in the City's sole discretion.

Term of Contract:

The term of the contract will be for a term of three (3) years, commencing upon contract execution. The contract may be extended by mutual agreement of the two parties.

Change Orders:

If, in the course of performance of the Contract, Contractor or the City proposes changes to the Project, and informal consultation with the other party indicates that a change in the terms and conditions of the Contract may be warranted, Contractor or the City may request a change in the Contract. The parties to the Contract will meet to discuss and negotiate the required change order documents. Upon completion of those negotiations, the negotiated change order documents will be submitted to the City for approval. Upon approval by the City, an "Order to Proceed" with the approved changes will be submitted to Contractor. Any Amendment to this Contract will not render ineffective or invalidate any unaffected portions of this Contract.

Records:

Contractor shall maintain complete and accurate records with respect to labor costs, material expenses, and other such information required by City that relates to the performance of services under 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 there from 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 years after receipt of final payment.

(See next page for Guidelines for Proposal)

Guidelines for Proposal

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

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

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

One signed original, two hard copies, and one CD copy of the proposals should be submitted to the Office of the City Clerk by 4:00 pm, April 15, 2011. Proposal shall be submitted in a sealed envelope clearly marked Health & Wellness Services and addressed to:

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

Proposals shall contain the following information in the order listed:

1. Introductory letter

The introductory letter should be addressed to:

Jacqui Langenberg, Management Analyst
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

The letter should state the prime contractor and include the contractor's name submitting the proposal, their mailing address, telephone number, and contact name. The letter shall address the contractor's understanding of the project based on this RFP and any other information the contractor has gathered. Include a statement discussing the contractor'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 contractor shall insert a comprehensive table of contents denoting sections three through eight of the proposal as indicated below.

3. Qualifications and Experience

Contractor's proposal shall address the following:

- Briefly introduce your firm, providing a summary of the administration, organization and staffing of your firm, including multiple offices, if applicable. Provide an organizational chart showing the entire organizational structure. This chart should indicate the

positions and names of the core team that will undertake this contract and their relationship to the contractor's overall organizational structure.

- Detailed resumes shall be submitted for all management, supervisory and key personnel to be assigned to the contract. Resumes shall be structured to emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope to those required by this RFP. Resumes shall clearly identify the individual's previous experience in completing similar contracts, the beginning and ending dates shall be given for each similar contract, and a description of the contract shall be given and shall demonstrate how the individual's work on the completed contract relates to the individual's ability to contribute. Include any professional designations and affiliations, certifications and licenses, etc.
- The contractor should include a list of backup contract personnel that may be called upon to assist or replace primary individuals assigned. Backup contract personnel must be clearly identified as backup contract personnel. In the event the contractor must hire management, supervisory and/or key personnel if awarded the contract, the contractor should include, as part of its recruitment plan, a plan to secure backup contract personnel in the event personnel initially recruited need assistance or need to be replaced during the contract term.
- Describe the experience of the firm in the last four to five years in performing Health & Wellness Services of similar size and scope. Reference only those experiences that were/are of an ongoing relationship in which the firm supplied full Health & Wellness Services on an ongoing basis as opposed to one-time projects. List no more than five contracts. For each contract listed, include contact names and current phone numbers for each contract. References may be contacted as part of the selection process in order to evaluate work quality and performance.

4. Work Plan

The work plan should indicate the contractor's ability to meet each specification as outlined in this document. The work plan should address the items of work as described in this RFP. The work plan should describe the various tasks and steps that the contractor plans to undertake, estimation of the time needed to complete each task or step, and how these tasks and steps lead to specific deliverables. The plan should be simple, easy to read and follow, and addresses and satisfies the objectives and specifications as listed in the Scope of Work in this RFP.

As part of your response to your Work Plan, state workspace and equipment needs for your personnel assigned to this contract. The City has Furniture, Fixtures, and Equipment (FFE) available for a lease fee of up to \$15,500 per year / per cubicle or office on site at Elk Grove City Hall. If Contract employees are located on site at City Hall, contractor shall be responsible for providing their own office supplies.

5. Conflict of Interest Statement

Any activities or relationships of the firm that might create a conflict of interest for the firm 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, etc in support of the contractor's qualifications.

7. Fees

This section should include the cost for requested services outlined in the Scope of Work. Please provide the following billing information:

- A copy of your company's proposed fee schedule for services provided
- A sample invoice
- Summary of the company's billing practices

Proposed Fees should be a firm fixed monthly fee based on the scope of work and services to be provided. The fee should be all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the City unless there is a change in the scope of work or additional work is authorized in writing by the City. Any additional work must be billed at an hourly rate based on the company's proposed fee schedule.

Contractor will request payment for the services by submitting a detailed invoice. Upon receipt of the invoice, the City will review in a timely manner the services noted, verify work and services performed, and authorize payment. No cost increases shall be passed onto the City after the proposal has been submitted. No attempt shall be made to tie any item or items contained in this RFP with any other business with the City.

8. Professional Services Contract:

Attached to the RFP (Attachment B) is a copy of the City of Elk Grove's standard Professional Services Contract. Please review this document carefully and note in your proposal any exceptions or alterations to the contract. Alterations or changes to the contract that were not in the contractor's response will not be made after the selection of the contractor. 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.

(See next page for Scope of Work)

SCOPE OF WORK

BACKGROUND:

Since the formation of the City's Police Department in 2006, the City has offered a comprehensive health and wellness program to reduce the severity, frequency and cost of injuries and illnesses. All City employees are encouraged to participate in an effort to enhance the overall health and wellness of the employees.

The City of Elk Grove ("City") is soliciting proposals from qualified professional firms for a Health and Wellness Program. The City is seeking a vendor that can provide on-site coaching, nutritional counseling, exercise classes, and support. Basic duties will include, but not limited to, the following:

The comprehensive Health and Wellness Program elements consist of:

1. Health evaluations
2. Fitness/Exercise Classes
3. Special Fitness Events
4. Fitness for Duty/Return to Work
5. Ergonomics
6. Program Performance Measurements/Results
7. Data Collection and Reporting

This voluntary program has been in existence since January 2007. During this period the program has seen success in accomplishing its overall health and wellness and physical fitness targets.

Currently there are approximately 286 City employees who are eligible to participate in the program. Participation in the program has grown to approximately 155 participants.

DUTIES AND RESPONSIBILITIES

The on-site Consultant will be responsible for the day-to-day advising, implementing and coordinating of the following City's Health and Wellness Program. Basic duties will include, but not limited to, the following:

- Assists in planning, developing, coordinating, implementing, promoting, and evaluating the City's worksite Health & Wellness Program and associated initiatives and activities. Collaborates in developing and establishing program objectives, priorities, and performance targets.
- Assists in planning, implementing, and coordinating promotional strategies. Publicizes the program through health fairs, presentations, meetings, training programs, intranet, and special events.
- Performs community outreach liaisons and develops partnerships and establishes linkages with community groups, businesses, and other resources and service providers. Serves as liaison to other wellness-related committees and task forces as needed, serves as liaison between the workplace and partnered resources, recruits, and trains coordinates department wellness ambassadors. Chairs, staffs, and/or serves on committees and groups involved with employee wellness activities.
- Monitors the effectiveness of wellness initiatives, activities, and delivery; collects, compiles analyzes and reports on program effectiveness, related activities, and administrative matters; and prepares management and operational reports and documentation.

- Researches potential new programs and program changes and makes recommendations to management on design, cost, and/or administrative changes.
- Maintains confidential information, files and records.

Consultant shall manage and coordinate the day-to-day administration of the City's Health and Wellness Program. The specific hours of work will be mutually agreed upon by consultant and the City. Coordinator will provide the necessary hours each week to ensure the success of the program, but not less than 40 hours per week. Consultant's work schedule shall be flexible to accommodate various City employee work schedules.

The City reserves the right to approve or disapprove of the Consultant's selection for the Health & Wellness Coordinator.

PROGRAM SPECIFICS

- Track program participation
- Conduct one-on-one consultations
- Coordinate and/or teach health programs consisting of: stress management, smoking cessation and weight loss programs
- Provide fitness sessions weekly Monday through Friday; no fitness sessions shall be provided on City holidays
- Present monthly, quarterly and annual reports showing status of obtaining projected results in fitness, health classes and/or activities
- Teach nutrition and weight management programs
- Administer fitness testing, following American College of Sports Medicine (ACSM) guidelines
- Support Wellness Committee
- Publish Quarterly Health Promotion Newsletter
- Coordinate a cooperative agreement with a local fitness center
- Promote and encourage employees to participate in wellness programs and activities
- Communicate with and coordinate the scheduling of external resources
- Deliver program services and activities to ensure maximum accessibility and participation
- Ensure the City's fitness center and equipment are periodically inspected, maintained and inventoried.

Fitness sessions are to be designed for both active law enforcement personnel and non-sworn City employees. The number of sessions per month will be determined and agreed upon between City and Consultant.

Fitness sessions for active law enforcement personnel are to be designed to actively challenge participant's effort and coordination in a movement-based fitness sessions. The fitness sessions are to be designed based on the performance standards set forth by the Cooper Institute for Law Enforcement or comparable fitness standards. The desired results are an increase in fitness as well as improved

metabolism, body composition, and exercise technique. The program shall reduce individual employees' risk factors that result in heart attack, high blood pressure, stroke or diabetes, and reduce frequency and severity of injuries and illnesses.

In addition, fitness sessions for active law enforcement personnel shall combine a range of athletic-based activities designed to improve full body strength, function, shape and definition. These sessions shall be outlined in the work plan to include, at the minimum, the following activities:

- A series of stretching, mobility and coordination drills to activate the muscles, elevate the heart rate and prepare your body to sweat.
- Calisthenics and cardio drills combined with jump rope, bungee cord, step and medicine ball work for a full force, high-intensity interval workout that tests your stamina, willpower and every muscle in your body.
- Circuit training utilizing medicine balls, free weights and other resistance equipment to build core body strength and joint stability while improving muscle tone and definition.
- Flexibility: Time used at the end of the session to cool down and stretch.

MINIMUM QUALIFICATIONS OF THE QUALIFIED HEALTH & WELLNESS COORDINATOR)

A Health & Wellness Coordinator assigned to the City of Elk Grove should be able to demonstrate their abilities to perform the duties of the role through their education and experience. (Experience can be substituted for education on a year-for-year basis.) Typical ways to obtain the knowledge and abilities would be:

Education:

A bachelor's degree in exercise science, exercise physiology or closely related field; and

Experience:

Four years of experience administering a comprehensive health and wellness programs in a public or private environment.

Required: Candidate must be authorized to work in the United States.

Candidate must have a First Aid, CPR, and AED certificate. Additionally, candidate must have a valid California Drivers License and an appropriate vehicle to transport exercise equipment between City facilities.

Preferred:

A bachelor's degree in exercise science, exercise physiology or closely related field, and one or more of the following fitness certifications (ACSM, NSCA, and NASM). Additionally, a certification may be substituted for one year of experience.

CITY TO PROVIDE:

1. For a fixed fee of up to \$15,500per year / per cubicle/office space, City shall provide office space, furniture, telephone service, utilities, computers, printers, software,
2. Incentive awards, health and wellness educational materials for the program participants,
3. Any materials, equipment or services used in connection with the Health and Wellness Program, seminars, screenings and other scheduled activities.

STRATEGIC INCENTIVES/OBJECTIVES/DESIRED RESULTS

1. Promote and encourage employees to have a healthy and balanced lifestyle
2. In a positive, caring and confidential manner integrate the Health and Wellness Program into the day-to-day City business operations
3. Decrease frequency and severity of injuries and illness
4. Decrease the risk factors that result in heart attack, stroke, high blood pressure, or diabetes.
5. Increase participation and employee satisfaction of the Health and Wellness Program

(See next page for Attachments)

ATTACHMENTS

Attachment A: Evaluation and Selection Criteria

Evaluation Criteria

Proposals will be evaluated using five (5) categories listed below. The evaluation criteria for the award of the contract will be weighted as follows. A score of one (1) through ten (10) will be assessed in each category, and then weighted according to the percentage assigned to each category. The following represent the principal selection criteria, which will be considered during the evaluation process:

Firms Qualifications, Experience, and References. (20%)

Experience in performing work of a closely similar nature and size; experience working with public agencies; experience and understanding of Health & Wellness Services utilized in governmental agencies; strength, stability, experience, and technical competence; assessment by client references.

Contract Personnel. (20%)

Qualifications and experience of proposed personnel for requested services.

Work Plan. (20%)

Depth of contractor's understanding of City's requirements; overall quality and logic of work plan.

Rates and Fees. (35%)

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

Quality and Responsiveness of the Proposal. (5%)

Completeness of response in accordance with the RFP instructions.

(Attachment A continued next page)

Attachment A (Cont'd) – Evaluation Criteria

CONTRACTOR: _____

#	CRITERIA	RATING (1-10)	MULTIPLIER	SCORE
1.	Firms Qualifications, Experience, and References		20%	
2.	Contract Personnel		20%	
3.	Work Plan		20%	
4.	Rates and Fees		35%	
5.	Quality and Responsiveness of the Proposal		5%	
TOTAL WEIGHTED SCORE:				

Un-weighted Scoring Range: Excellent = 10 Unsatisfactory = 0

Rating Performed By: _____

Print name

Signature

Date

Attachment B: Professional Service Contract

CITY OF ELK GROVE



CONSULTANT CONTRACT FOR

CONSULTANT'S NAME

Project

CONTRACT FOR SERVICES

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

WITNESSETH

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

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

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

1. SCOPE OF SERVICES

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

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

2. TERM OF CONTRACT

A. This Contract shall be effective as of the date executed by the Parties and approved as to form by the City Attorney and shall continue until all services provided for in this Contract have been performed, unless earlier terminated pursuant to Section 11 of this Contract.

3. SCHEDULE FOR PERFORMANCE

City and Consultant agree that time is of the essence and Consultant agrees that services shall be undertaken and completed in accordance with the schedule of performance (the “Schedule of Performance”), attached hereto and incorporated herein by reference as **Exhibit B**. Deviations from the time schedule stated in the Schedule of Performance may be made with the written approval of the City

City of Elk Grove
Consultant's Name
Re:



Manager, or his/her authorized representative. Consultant's failure to complete work in accordance with the Schedule of Performance may result in delayed compensation as described in Section 4.

4. COMPENSATION

A. The Consultant shall be paid monthly as set forth in **Exhibit C**, "Compensation and Method of Payment," incorporated herein by reference, for the actual fees, costs and expenses for the time and materials required and expended, and approved by the City, but in no event shall total compensation under this Contract exceed **(\$00.00)**, without City's prior written approval.

B. Said amount shall be paid upon submittal of a monthly invoice showing completion of the tasks that month, including the services rendered, the costs incurred for materials, the person(s) rendering performed services, the amount of time spent by such person(s), and the applicable hourly rate.

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

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

5. NOTICES

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

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

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

() _____



6. PROFESSIONAL SERVICES

Consultant agrees that services shall be performed and completed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and its subcontractors or agents are engaged. Consultant shall not, either during or after the term of this Contract, make public any reports or articles, or disclose to any third party any information, confidential or otherwise, relative to the work of City or the operations or procedures of City without the prior written consent of City.

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

7. INDEPENDENT CONTRACTOR

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

B. Consultant's assigned personnel shall not be entitled to any benefits payable to employees of City.

C. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the Contract, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

D. Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished.

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

F. Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Contract.

8. AUTHORITY OF CONSULTANT

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

9. CONFLICT OF INTEREST

Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Contract. Consultant



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

10. AMENDMENTS, CHANGES OR MODIFICATIONS

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

11. TERMINATION

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

B. The City may temporarily suspend this Contract, at no additional cost to City, provided that Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Contract.

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

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

12. FUNDING

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



13. NOTICE TO PROCEED

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

14. EXTENSIONS OF TIME

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

15. PROPERTY OF CITY

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

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

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

16. COMPLIANCE WITH LAW

Consultant shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract. As applicable, it shall be City's responsibility to obtain all rights-



of-way and easements to enable Consultant to perform its services hereunder. Consultant shall assist City in providing the same.

17. REPRESENTATIONS

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

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

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

D. Consultant shall provide corrective services without charge to City for services which fail to meet the above professional and legal standards and which are reported to Consultant in writing within sixty (60) calendar days of discovery. Should Consultant fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and Consultant shall be liable for any expenses thereby incurred.

18. APPROVAL OF STAFF MEMBERS

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

19. ASSIGNMENT AND SUBCONTRACTING:

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



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

20. MATERIALS CONFIDENTIAL

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

21. LIABILITY OF CONSULTANT—NEGLIGENCE

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

22. INDEMNITY AND LITIGATION COSTS

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

In any contract that Consultant enters into with any subcontractor in any capacity related to any and all duties under this Contract, there must be an indemnification provision identical to the one provided in Section 22 applicable to the subcontractor requiring the subcontractor to assume the defense, indemnify and save harmless the City to the same extent as Consultant. Consultant's failure to include such an indemnification provision in any contract with a subcontractor shall constitute a material breach of this Contract. In the event Consultant fails to obtain such indemnity obligations from others as



required herein, Consultant agrees to be fully responsible and indemnify, and save harmless the City as prescribed under this Section.

23. EVIDENCE OF INSURANCE COVERAGE

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

24. EVIDENCE OF INSURANCE COMPLIANCE

Consultant or its insurance broker shall provide 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 shall be delivered to City's representative Ebix BPO (Ebix) as set forth below prior to execution of this Contract. Upon City's or Ebix's request, Consultant shall submit copies of the actual insurance policies or renewals or replacements to Ebix. Unless otherwise required by the terms of this Contract, all certificates, endorsements, coverage verifications and other items required pursuant to this Contract shall be provided to:

By MAIL

Certificate Holder: The City of Elk Grove

c/o Ebix BPO

PO Box 257, Ref. # (Zxxxxxxx)

Portland, MI 48875-0257

By FAX

(517)647-7900

By E-MAIL

CertsOnly@periculum.com

All certificates and endorsements shall include the EBIX reference number (Zxxxxxx).

25. EMPLOYMENT PRACTICES

Consultant, by execution of this Contract, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.



26. UNAUTHORIZED ALIENS

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

27. LICENSES, PERMITS, AND OTHER APPROVALS

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

28. RECORDS AND INSPECTION

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

29. MISCELLANEOUS PROVISIONS

A. Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and all litigation expenses, including, but not limited to expert's fees and disbursements.

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

C. Enforceability: If any term or provision of this Contract is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Contract shall remain binding.



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

E. Binding: This Contract shall bind and inure to the heirs, devisees, assignees and successors in interest of Consultant and to the successors in interest of City in the same manner as if such parties had been expressly named herein.

F. Survivorship: Any responsibility of Consultant for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Contract shall not be invalidated due to the expiration, termination or cancellation of this Contract.

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

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

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

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

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

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

M. Dispute Resolution: Prior to either party commencing any legal action under this Contract, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute

City of Elk Grove
Consultant's Name
Re:



has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

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

30. ENTIRE AGREEMENT

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

AGREED to this _____ day of _____, 20____, by the Parties as follows:

Approved to as form:

CONSULTANT

By: _____
Attorney for Consultant

By: _____
Consultant, Title

Approved to as form:

CITY OF ELK GROVE

By: _____
Susan Burns Cochran, City Attorney

By: _____
Laura S. Gill, City Manager

Attest to:

Jason Lindgren, City Clerk

City of Elk Grove
Consultant's Name
Re:



EXHIBIT A
Scope of Work

City of Elk Grove
Consultant's Name
Re:



EXHIBIT B
Schedule of Performance

City of Elk Grove
Consultant's Name
Re:



EXHIBIT C

Compensation and Method of Payment

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



EXHIBIT D

Insurance Requirements

Prior to commencement of any work under this Contract, Consultant shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Contract, at its sole cost and expense, policies of insurance as set forth herein:

1. 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 (\$1,000,000)
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- 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: The General Liability and Automobile Liability, shall contain the following provisions and endorsements:
 - a. 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.
 - b. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
 - c. 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.
- d. 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.
 - e. 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.
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. The Consultant shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
11. 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.

12. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
13. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
14. 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.
15. 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.

City of Elk Grove
Consultant's Name
Re:



EXHIBIT E

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 Code §§1860, 1861.)

CONSULTANT

Consultant, Title