

**ORDINANCE NO. 21-2013**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 3.42 CONCERNING  
CONTRACTS AND PURCHASING**

**WHEREAS**, the City Council wishes to amend Chapter 3.42 of the Elk Grove Municipal Code concerning contracts and purchasing procedures.

**NOW, THEREFORE**, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose

The purpose of this Ordinance is to amend Elk Grove Municipal Code Chapter 3.42 concerning contracts and purchasing.

Section 2:

Chapter 3.42 of the Elk Grove Municipal Code is amended to read as set forth at Exhibit A, attached hereto and incorporated herein by reference.

Section 3: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 4: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 5: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take affect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally

incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

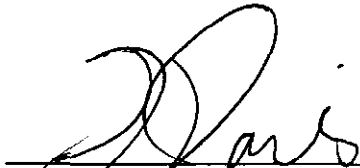
Section 6: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

Section 7: Sunset Clause

This Ordinance, and the amendments to Chapter 3.42 made herein, shall remain in effect only until one year from the effective date of this Ordinance, and as of that date are automatically repealed, unless a later enacted ordinance, enacted before the repeal date, deletes, modifies or extends that automatic repeal date. In the event of an automatic repeal of this Ordinance pursuant to this section, Chapter 3.42, as it existed immediately prior to the enactment of this Ordinance, shall automatically be reinstated as of the date of the automatic repeal of this Ordinance.

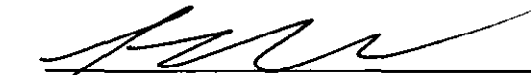
**ORDINANCE NO. 21-2013**  
INTRODUCED: October 9, 2013  
ADOPTED: October 23, 2013  
EFFECTIVE: November 22, 2013

  
\_\_\_\_\_  
GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: November 4, 2013

## **EXHIBIT A**

### **Chapter 3.42 CONTRACTS AND PURCHASING**

#### Sections:

#### **Article I. General**

- 3.42.010 Purpose.
- 3.42.020 Types of regulated contracts.
- 3.42.025 Exempt contracts.
- 3.42.030 Definitions.
- 3.42.040 Insurance and indemnification – City Attorney and budget approval – Execution.
- 3.42.050 Encumbrance of contracts.
- 3.42.060 Filing with City Clerk.
- 3.42.070 Voidability.
- 3.42.075 Splitting orders prohibited.

#### **Article II. Contract Authority**

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- 3.42.100 Department head authority.

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- 3.42.110 Authority – Definition.
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- 3.42.130 Procurement of services with a value from \$25,000.01 up to \$50,000.00.
- 3.42.140 Procurement of services with a value of \$50,000.01 or more.

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- 3.42.150 Applicability.
- 3.42.160 Purchases \$5,000.00 or less.
- 3.42.170 Purchases from \$5,000.01 up to \$50,000.00.
- 3.42.180 Purchases of \$50,000.01 or more.

#### **Article V. Purchasing of General Services**

- 3.42.182 Applicability.
- 3.42.184 Purchases of \$5,000.00 or less.
- 3.42.186 Procurement of general services with a value from \$5,000.01 up to \$50,000.00.
- 3.42.188 Procurement of general services with a value of \$50,000.01 or more.

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- 3.42.190 Applicability.
- 3.42.200 Equipment leasing.
- 3.42.210 Inspection, testing, interviews, and demonstrations.
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- 3.42.250 Prequalification of bidders.

## **Article VIII. Acquisition and Disposition of Interests in Real Property**

3.42.280 Leases of real property.

3.42.290 Acquisition of real property.

3.42.300 Disposition of real property.

## **Article IX. Surplus Commodities and Equipment**

3.42.310 Surplus commodities and equipment.

### **Article I. General**

#### **3.42.010 Purpose.**

The purpose of this chapter is to define the types of contracts regulated by this chapter, to provide for the authority of City officers to enter into certain contracts, and to set forth the procedural requirements for the various types of contracts. All purchases and contracts for contracted services, commodities, equipment, and other personal property required by any department or other organizational unit of the City shall be made on behalf of the City in accordance with this chapter, except as otherwise provided by state law. However, a purchase or contract may be initiated only if sufficient funds have been appropriated and for which there is an unexpended and unencumbered remaining balance sufficient to pay for the purchase or contract. This purchasing system implements Sections 54201 through 54205 of the California Government Code.

#### **3.42.020 Types of regulated contracts.**

The contracts regulated by this chapter are:

- A. Contracts for consultant or professional services;
- B. Contracts for the purchase of commodities and equipment;
- C. Contracts for the purchase of general services, including maintenance contracts, which may also include the purchase of commodities, equipment, and/or materials; and
- D. Contracts for public projects (public works) concerning prequalification of bidders, providing that nothing herein shall be interpreted to supersede any provision of state law concerning the bidding or awarding of contracts for public projects under the California Public Contract Code.

### **3.42.025. Exempt contracts.**

A. Except as set forth below, and notwithstanding any other provision of law, the following contracts shall not be subject to this chapter:

1. Internships. Contracts under which an intern is provided to the City through an internship and/or educational program which has been reviewed and approved in writing by the City Manager. Such contracts may be entered into by the City Manager without prior City Council approval, provided there is adequate funding allocated in the City budget;

2. Annual Membership Dues. Membership dues for professional and civic organizations to which the City is a member, including, without limitation, the League of California Cities, the Chamber of Commerce, Sacramento Area Commerce and Trade Organization (SACTO), and such similar professional and civic organizations that may charge an annual or other membership fee. Such contracts may be entered into and/or membership fees paid at the direction of the City Manager, without prior City Council approval, provided there is adequate funding allocated in the City budget;

3. Public Works Contracts. Contracts for public projects (public works) governed by the California Public Contracts Code, except that the provisions of Article VII concerning prequalification of bidders shall continue to apply; and

4. Other Contracts. Such other contracts as the City Council, in its discretion, finds by resolution are not susceptible to the contracting procedures set forth in this chapter, provided that nothing herein shall relieve the City from any contracting procedures required by state or federal law.

### **3.42.030 Definitions.**

For the purpose of this chapter, the following definitions shall apply:

A. "Amendment" or "change order" means change, modification, or addendum to a contract after it has been executed.

B. Reserved.

C. 1. "Commodities" means any tangible goods or items such as supplies, parts, and materials. Generally, they are consumable in City operations, become part or a component of City equipment or City facilities, and/or have a useful life of one (1) year or less.

2. "Consultant or professional services" means the services of an architect,

attorney, landscape architect, engineer, doctor, financial consultant, planning or environmental consultant, investment advisor, banking and trustee services, or other similar professional services as defined in Section 37103 of the California Government Code, as may be amended from time to time.

3. "Contract" means any agreement to do or not do a certain thing. "Contract" and "agreement" are synonymous. The term "contract" includes, among other things, a purchase order, a contract for services, and an addendum or change order.

4. "Cost," means the amount charged, inclusive of sales tax, use tax, delivery charges, shipping and/or handling, and which will be incurred on a fiscal year basis.

D. Reserved.

E. "Equipment" means tangible personal property. It may be mobile, portable or fixed, and is an independent functioning unit, as opposed to parts which are components. Examples include, but are not limited to, office equipment, furniture, field equipment, shop, lab, and plant equipment, vehicles, and rolling stock.

F. Reserved.

G. 1. "General services" includes:

a. Any work performed or services rendered by an independent contractor, not otherwise qualifying as consultant or professional services, with or without the furnishing of associated commodities, equipment or materials, and excluding any work defined as a "public project" under Section 20161 of the Public Contract Code. Examples of general services include, but are not limited to, the following:

i. Maintenance or nonstructural repair of City buildings, structures or improvements which do not require engineering plans, specifications or design, including, but not limited to, unscheduled replacement of broken window panes, fire extinguisher maintenance, minor roof repairs, plumbing, electrical, mechanical, elevator maintenance, custodial services, and pest control;

ii. Installation, repair, modification, and maintenance of City property and equipment;

iii. Cleaning, analysis, testing, moving, removal or disposal

(other than by sale) of City supplies, equipment, and waste products;

iv. Providing other technical services to facilitate City operations such as communications, transportation, utilities, and which may also include providing related commodities, equipment, materials, and/or computer software;

v. Performing repair, demolition or other work required to abate nuisances under this code; and

vi. Leasing or rental of equipment (personal property) for use by the City;

H. Reserved.

I. 1. "Intern" means any part-time or full-time student currently enrolled in any curriculum at a college, university, trade school, or other technical or certificate program in fields relevant to the business of the City.

2. "Internship program" means any college, university, trade school, or other technical or certificate program that provides an intern(s) to the City. "Internship program" shall also include any nonprofit corporation affiliated with any college, university, trade school, or other technical or certificate program that recruits, screens, hires, and compensates interns.

J. Reserved.

K. Reserved.

L. "Local vendor" means a person or legal entity which has a place of business (other than a post office box) within the City and has a valid, current business license issued by the City. To qualify as a local vendor for the purposes of Section 3.42.230 of this Code, the vendor shall submit with its bid or proposal a completed City-provided affidavit that documents the following: 1) the business has a facility with a City of Elk Grove address, 2) the business has, during at least one (1) year immediately preceding the submission of the bid or proposal, attributed sales tax to the City of Elk Grove, and 3) the business has had a City of Elk Grove business license for at least one (1) year prior to the submission of the bid.

M. Reserved.

N. Reserved.



O. Reserved.

P. 1. "Post-consumer recycled materials" means materials and by-products which have served their intended end use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

2. "Public project" shall have the same definition as contained in Section 20161 of the Public Contract Code as may be amended from time to time.

Q. Reserved.

R. 1. "Recycled materials" means materials and by-products that have been recovered or diverted from solid waste and that can be utilized in place of raw or virgin materials in manufacturing a product. It is derived from post-consumer recycled materials, manufacturing waste, industrial scrap, agricultural waste, and other waste materials, but does not include those materials or by-products generated from, and commonly reused within, an original manufacturing process.

2. "Recycled products" means materials and by-products which have served their intended end use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

S. Reserved.

T. Reserved.

U. Reserved.

V. Reserved.

W. Reserved.

X. Reserved.

Y. Reserved.

Z. Reserved.

**3.42.040 Insurance and indemnification – City Attorney and budget approval – Execution.**

Except for a contract for a public project, as defined herein, and unless otherwise authorized by the City Manager and the City Attorney, before a contract is signed by any City representative, or placed on a City Council agenda, the contract must: A) include appropriate insurance and indemnification provisions reviewed by the City's risk management officer or City Attorney; B) be approved as to form by the City Attorney; C) be approved as to budget availability and purchasing procedural compliance by the Finance Director or Budget Officer; and D) be signed by the other party (except in the instance of a public entity, in which instance it may be signed by the City representative first).

**3.42.050 Encumbrance of contracts.**

Each contract entered into under this chapter and requiring the payment of City funds, after execution, will be entered into the City financial system by an encumbrance against the appropriate budgeted funds.

**3.42.060 Filing with City Clerk.**

A signed original of each contract entered into under this chapter shall be filed with the City Clerk's office, except for transactions involving the purchase of commodities, equipment or general services documented with a purchase order, which is filed with the Finance Department. Contracts shall be retained in accordance with the City Council adopted retention schedule.

**3.42.070 Voidability.**

Any transaction failing to comply with this chapter in any respect is voidable at the discretion of the City Council.

**3.42.075 Splitting orders prohibited.**

It is unlawful to split into smaller orders the purchase of commodities, equipment or services for the purpose of evading the competitive bidding provisions of this article.

**Article II. Contract Authority**

**3.42.080 City Council authority.**

City Council approval is required for each contract regulated by this chapter unless

authority to sign the contract is granted to another City officer under this chapter. Such authority shall be exercised consistent with this chapter.

**3.42.090 City Manager authority.**

A. The City Manager is authorized to enter into and sign on behalf of the City, without the prior approval of the City Council, a contract:

1. Which contains an initial maximum compensation figure of up to Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars or less. As to a change order or contract amendment, the limit of authority may not exceed ten (10%) percent of the original contract amount not to exceed a cumulative total of Fifty-Five Thousand and no/100<sup>ths</sup> (\$55,000.00) Dollars. Cumulative additional change orders or contract amendments exceeding Fifty-Five Thousand and no/100<sup>ths</sup> (\$55,000.00) Dollars must be approved by the City Council; and

2. Which is not required by any applicable state law to be let to the lowest bidder.

B. The City Manager is authorized to enter into and sign agreements for right of entry onto real property.

C. In an emergency endangering the lives, property or welfare of the people of the City or the property of the City, the City Manager may authorize the expenditure of any unencumbered moneys, notwithstanding the fact that such moneys may not have been appropriated for such purpose, to the extent that other moneys have not been appropriated or are otherwise unavailable.

D. The City Manager shall report, in writing, every exercise of the purchasing authority granted by this chapter at a City Council meeting within thirty (30) days of exercise of the authority, or the next City Council meeting if such meeting does not occur within thirty (30) days.

**3.42.100 Department head authority.**

Department heads are authorized to enter into and sign on behalf of the City, without the prior approval of the City Manager or City Council, a contract that meets all of the following criteria:

A. Which is for the purchase or lease of commodities, equipment, general services, and/or professional services;

B. Which contains a maximum compensation amount up to Twenty-Five Thousand and no/100<sup>ths</sup> (\$25,000.00) Dollars. As to a change order or contract amendment, the

limit of authority is twenty-five (25%) percent of the original contract, not to exceed a cumulative amount of Thirty-One Thousand Two Hundred Fifty and no/100<sup>ths</sup> (\$31,250.00) Dollars; and

C. Which is not required by any state law to be let to the lowest responsible bidder.

### **Article III. Consultant and Professional Services**

#### **3.42.110 Authority – Definition.**

The City Manager and the department heads are each authorized to enter into a contract for consultant or professional services in accordance with the limits on their authority in Article II of this chapter. "Consultant or professional services" is defined in EGMC Section 3.42.030(C).

#### **3.42.120 Procurement of services with a value of less than \$25,000.00.**

For procurement of services with a value of Twenty-Five Thousand and no/100<sup>ths</sup> (\$25,000.00) Dollars or less, the procurement procedures shall be established by an administrative regulation of the City Manager.

#### **3.42.130 Procurement of services with a value from \$25,000.01 up to \$50,000.00.**

A. Informal Request for Proposal (RFP) Procedure. Except as set forth herein, the procurement of consultant or professional services with a value from Twenty-Five Thousand and 01/100<sup>ths</sup> (\$25,000.01) Dollars up to Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars shall be made following the procedure prescribed below:

1. Solicitation of Proposals. The department may solicit proposals by written (including e-mail) or verbal request to prospective consultants. Informal requests for proposals shall, whenever feasible, be based on at least three (3) proposals and shall be awarded to the best qualified and most responsible proposer, which may not necessarily be the lowest priced proposal. The dollar amount of the proposal shall be considered but the award need not be made to the lowest dollar proposal.
2. Retention of Proposal. The department shall retain all proposals in accordance with the City Council-approved retention schedule.
3. Award of Contracts. The City Manager is authorized to award a contract in accordance with the authorization granted in EGMC Section 3.42.090.

B. Exceptions. The City Manager (within the monetary limitations of this chapter) may dispense with the Informal RFP Procedure, in whole or in part, or reject any proposals received as part of any Informal RFP Procedure, whether the Informal RFP Procedure has been initiated or not, for the reasons set forth at EGMC Section 3.42.140(B).

**3.42.140 Procurement of services with a value of \$50,000.01 or more.**

A. Formal Request for Proposal (RFP) Procedures. Except as set forth herein, the City shall procure consultant or professional services with a value of Fifty Thousand and 01/100<sup>ths</sup> (\$50,000.01) Dollars or more following the procedure prescribed below:

1. Request for Proposals. The request for proposals (RFP) shall include a general description of the services to be procured, a proposed professional services agreement, and the time and place for submission of proposals. To the extent feasible, a notice inviting proposals shall be distributed to at least three (3) consultant firms. It shall also be posted on the City's website at least ten (10) days prior to the deadline for submission of proposals. Proposers shall submit sealed proposals and shall identify them as proposals on the envelope;

2. Evaluation of Proposals. All responsive proposals shall be reviewed and evaluated by the City in order to determine which proposer best meets the City's needs by demonstrating the competence and professional qualifications necessary for the satisfactory performance of the required services, and shall not necessarily be based on the lowest price or bid. The criteria by which the City shall evaluate proposals will be set forth in the request for proposals. The City reserves the right to reject any and all proposals or waive any irregularities in any proposal or the proposal process; and

3. Award of Contract. The City Council shall award a contract for services with a value equal to, or greater than, Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars.

B. Exceptions. The City Manager or the City Council (as applicable within the monetary limitations of this Chapter) may dispense with the Formal RFP Procedure, in whole or in part, or reject any proposals received as part of any Formal RFP Procedure, whether the Formal RFP Procedure has been initiated or not, under the following circumstances:

1. In an emergency;

2. When the services can be obtained from only one (1) source which has been reviewed and approved in writing by the City Manager;

3. When, in the judgment of the City Manager or City Council (as applicable given the monetary limitations of this Chapter), compliance with the procedure is not in the best interest of the City;
4. When processed through a cooperative purchasing agreement with another public agency whose procurement process is substantially consistent with the provisions of this chapter; or
5. Contracts for City-managed professional services in an amount up to One Hundred Thousand and no/100<sup>ths</sup> (\$100,000.00) Dollars if the following criteria are met: a) a third party has entered into a reimbursement agreement, approved as to form by the City Attorney, requiring reimbursement of such costs to the City, b) an applicant for development entitlements has deposited the full amount of the contract with the City, and c) the funds are to be used for development-related studies, such as an environmental impact report.

#### **Article IV. Purchasing Commodities and Equipment**

##### **3.42.150 Applicability.**

This article applies to the purchase of commodities and equipment purchased on behalf of the City except for those supplies or materials governed by the Public Contract Code. The purpose of this article is to establish efficient procedures for the purchase of commodities and equipment at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function, and to assure the quality of purchases.

##### **3.42.160 Purchases of \$5,000.00 or less.**

For purchases of Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars or less, the purchasing procedures shall be established by an administrative regulation of the City Manager.

##### **3.42.170 Purchases from \$5,000.01 up to \$50,000.00.**

A. Informal Bidding and Quotation Procedure. The purchase of commodities and equipment from Five Thousand and 01/100<sup>ths</sup> (\$5,000.01) Dollars up to Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars may be made in the open market, following the informal bidding and quotation procedure prescribed below:

1. Minimum Number of Quotations. Open-market purchases shall, whenever feasible, be based on at least three (3) bids or quotations and shall be awarded

to the lowest responsible quotation.

2. Notice Inviting Bids or Quotations. The department making the purchase shall solicit bids or quotations by written (including e-mail) or verbal request to prospective vendors.

3. Bids and Quotations. Bids or quotations shall be submitted in writing (including facsimile and e-mail) to the department, which shall keep a record of all open-market orders and quotes for a period of six (6) months after the submission of quotes or the placing of orders. This record is open for public inspection.

4. Award of Contracts. The department head is authorized to award a contract for Twenty-Five Thousand and no/100<sup>ths</sup> (\$25,000.00) Dollars or less when the City Council has budgeted funds for the item(s) and the amount of the award is not more than the budgeted amount.

5. Award of Contracts. The City Manager is authorized to award a contract of up to Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars when the City Council has budgeted funds for the item(s) and the amount of the award is not more than the budgeted amount.

B. Exceptions. The City Manager (within the monetary limitations of this chapter), may dispense with the informal bidding and quotation procedure, in whole or in part, or reject any bids/quotations received as part of any process, whether the procedure has been initiated or not, for the reasons set forth at EGMC Section 3.42.180(B).

### **3.42.180 Purchases of \$50,000.01 or more.**

A. Formal Bidding Procedures. The City shall purchase commodities and equipment of a value equal to or greater than Fifty Thousand and 01/100<sup>ths</sup> (\$50,000.01) Dollars following the formal bidding procedure prescribed below:

1. Notice Inviting Bids. The notice inviting bids shall include a general description of the commodities or equipment to be purchased, and shall state where bid forms and specifications may be secured and the time and place for opening bids.

2. Published Notice. The notice inviting bids shall be published at least ten (10) days before the date of the opening of the bids. Notice shall be published at least once in a newspaper of general circulation.

3. Bidders' List. The City shall also solicit sealed bids from responsible

prospective suppliers whose names are on the bidders' list.

4. **Bidders' Security.** When deemed necessary, the City shall require bidders' security. Bidders' security shall be in accordance with the provisions of the California Public Contract Code.

5. **Bid Opening Procedure.** Bidders shall submit sealed bids to the City Clerk and shall provide the project number or other reference and identify them as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.

6. **Rejection of Bids.** At its discretion, the City Council may reject any and all bids presented, and may re-advertise for bids.

7. **Award of Contracts.** The City Council shall award a contract for the purchase of commodities or equipment with a value of Fifty Thousand and 01/100<sup>ths</sup> (\$50,000.01) Dollars or more. A contract shall be awarded to the responsible bidder with the lowest responsive bid, except as otherwise provided here. A contract may be awarded to the next lowest responsible bidder if the successful bidder refuses or fails to execute the contract.

8. **Tie Bids.** If two (2) or more bids received are for the same total amount or unit price and quality, service, and delivery being equal, and if the public interest will not permit the delay of re-advertising for bids, the City Manager or City Council may accept the one it chooses, or accept the lowest good faith offer by negotiation with the tie bidders.

9. **Performance Bonds.** The City has the authority to require a performance bond before entering into a contract, in such amount as is reasonably necessary to protect the best interest of the City. If a performance bond is required, the form and amount of the bond shall be described in the notice inviting bids.

B. **Exceptions.** The City Manager or City Council (as applicable given the monetary limitations of this Chapter) may dispense with the formal bidding procedure, in whole or in part, or reject any bid received as part of any procedure, whether the process has been initiated or not, under the following circumstances:

1. In an emergency;

2. When the purchase can be obtained from only one (1) source which has been reviewed and approved in writing by the City Manager;



3. When, in the determination of the City Council, compliance with the procedure is not in the best interest of the City for those commodities or equipment, the costs of which equal or exceed Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars; or

4. When processed through a cooperative purchasing agreement with another public agency whose procurement process is substantially consistent with the provisions of this chapter.

## **Article V. Purchasing of General Services**

### **3.42.182. Applicability.**

This article applies to the purchase of general services on behalf of the City except for those supplies or materials governed by the Public Contract Code. The purpose of this article is to establish efficient procedures for the purchase of general services at the lowest reasonable cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function, and to assure the quality of purchases.

### **3.42.184. Purchases of \$5,000.00 or less.**

For purchases of Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars or less, the purchasing procedures shall be established by an administrative regulation of the City Manager.

### **3.42.186. Procurement of general services with a value from \$5,000.01 up to \$50,000.00.**

A. Informal Request for Proposal (RFP) Procedures. Except as set forth herein, the procurement of general services with a value from Five Thousand and 01/100<sup>ths</sup> (\$5,000.01) Dollars up to Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars shall be made following the informal request for proposal procedure prescribed below:

1. Solicitation of Proposals. The department may solicit proposals by written (including e-mail) or verbal request to prospective service providers. Informal requests for proposals shall, whenever feasible, be based on at least three (3) proposals and shall be awarded to the best qualified and most responsible proposer, which may not necessarily be the lowest priced proposal. The dollar amount of the proposal shall be considered but the award need not be made to the lowest dollar proposal.

2. Retention of Proposal. The department shall retain all proposals in accordance with the City Council approved retention schedule.

3. Award of Contracts. The City Manager is authorized to award a contract in accordance with the authorization granted in EGMC Section 3.42.090.

B. Exceptions. The City Manager (as applicable given the monetary limitations of this Chapter) may dispense with the informal request for proposal procedure, in whole or in part, or reject any proposal received as part of any procedure, whether the informal request for proposal procedure has been initiated or not for the reasons set forth at EGMC Section 3.42.188(B).

### **3.42.188. Procurement of general services with a value of \$50,000.01 or more.**

A. Formal Request for Proposal (RFP) Procedures. Except as set forth herein, the City shall procure general services with a value of Fifty Thousand and 01/100<sup>ths</sup> (\$50,000.01) Dollars or more following the formal request for proposal procedure prescribed below:

1. Request for Proposals. The request for proposals (RFP) shall include a description of the general services to be procured, a proposed services agreement, and the time and place for submission of proposals. To the extent feasible, a notice inviting proposals shall be distributed to at least three (3) providers. It shall also be posted on the City's website at least ten (10) days prior to the deadline for submission of proposals. Proposers shall submit sealed proposals and shall identify them as proposals on the envelope.

2. Evaluation of Proposals. All responsive proposals shall be reviewed and evaluated by the City in order to determine which proposer best meets the City's needs by demonstrating the competence and qualifications necessary for the satisfactory performance of the required services, shall not necessarily be based on the lowest priced proposal, but shall be based on a determination of which services offered serve the best interests of the City. The criteria by which the City shall evaluate proposals shall be set forth in the request for proposals, and may include a ranking system identifying factors considered important by the City. The City reserves the right to reject any and all proposals or waive any irregularities in any proposal or the proposal process.

3. Award of Contract. The City Council shall award a contract for general services with a value equal to, or greater than, Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars.

B. Exceptions. The City Manager or the City Council (as applicable given the

monetary limitations of this chapter), may dispense with the formal request for proposal procedure, in whole or in part, or reject any proposal received as part of any procedure, whether the formal request for proposal procedure has been initiated or not, under the following circumstances:

1. In an emergency;
2. When the services can be obtained from only one (1) source which has been reviewed and approved in writing by the City Manager;
3. When, in the judgment of the City Manager or City Council (as applicable given the monetary limitations of this Chapter), compliance with the procedure is not in the best interest of the City; or
4. When processed through a cooperative purchasing agreement with another public agency whose procurement process is substantially consistent with the provisions of this chapter.

#### **Article VI. Provisions Applicable to Purchasing Commodities, Equipment, and General Services.**

##### **3.42.190. Applicability.**

The provisions set forth in this article shall apply to the purchase of commodities, equipment, and general services under this chapter.

##### **3.42.200 Equipment leasing.**

A. Leasing of equipment shall be in accordance with the authority limits set forth in Article II of this chapter, depending upon the annual cost of the lease.

B. Each contract for the leasing or rental of equipment for the City shall contain a provision permitting the City to terminate the contract at the end of any fiscal year during the term of the contract upon not less than thirty (30) days' written notice to the other party.

##### **3.42.210 Inspection, testing, interviews, and demonstrations.**

The City may inspect and evaluate supplies, equipment, and/or services delivered or to be delivered, conduct interviews, and request demonstrations to determine their conformance with the specifications set forth in the request for bid or proposals, the responsiveness of the bid or proposal, and/or the responsibility of the bidder or

proposer. A department head has the authority to require chemical and physical tests of samples submitted with bids, and samples of deliveries which are necessary to determine their quality and conformance with specifications.

#### **3.42.220 Cooperative purchasing agreements with other public agencies.**

Nothing in this article prohibits the voluntary participation by the City in any cooperative purchasing agreements or programs entered into between the City and the State, County, or other public agencies, including, but not limited to, the California Multiple Award Schedule ("CMAS"), U.S. Communities, and Houston/Galveston Area Council. The City Manager is authorized to act under the provisions of this article to procure for the City supplies and equipment in conjunction with such voluntary cooperative purchasing agreements or programs as may be entered into by the City. All formal contract and bidding procedures to be followed in such cases shall be those specifically enumerated in the voluntary cooperative purchasing agreement or program.

#### **3.42.230 Local vendor preference.**

A bid or proposal from a local vendor for commodities, equipment, and general services will be tabulated as if it were five (5%) percent below the figure actually set forth in the bid or proposal, up to a maximum preference of Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars per bid or proposal, to account for the financial advantages accruing to the City by the award of a bid to a local vendor. The City, when seeking bids or proposals for commodities or equipment, will notify bidders or proposers that bids or proposals will be evaluated on the basis of a local preference of five (5%) percent of the bid or proposal price.

#### **3.42.240 Use of recycled products.**

At the option of the department making the purchase, the bid specifications may include a five (5%) percent price preference to be given to recycled products. If included, the price preference shall be determined based upon the lowest price quoted by suppliers offering recycled products and the maximum amount of the price preference shall not exceed Ten Thousand and no/100<sup>ths</sup> (\$10,000.00) Dollars per purchase. Persons submitting proposals or bidding to provide products or services to the City shall be notified of the City's preference for the use of recycled products, including the price preference. Bidders shall be asked to identify in writing to the City the types of recycled materials that will be used and to certify in writing the percentage and contents of recycled material and post-consumer recycled material in the product.

#### **3.42.245. On-Line reverse auctions.**

Notwithstanding any other provision of this chapter, as an alternative to the purchasing

procedures set forth in this chapter, the City may utilize the services of on-line reverse auctions, by which the City identifies the commodities, equipment, and/or general services desired, and vendors bid on the commodities, equipment, and/or general services in an auction-like setting. Prior to City staff utilizing these services, the City Manager shall provide written authorization to do so, identifying the commodities, equipment, and/or general services to be obtained, and finding that the use of the on-line reverse action is within the City's best interest. Nothing herein is intended to modify the monetary limits of contracting authority set forth in this chapter.

## **Article VII. Public Projects Subject to the Public Contract Code**

### **3.42.250 Prequalification of bidders.**

A. Purpose. This section is enacted pursuant to Section 20101 of the California Public Contract Code, which authorizes the City to establish a system for prequalification of prospective bidders on public works construction and maintenance projects. In addition, pursuant to the City's general police powers under California Constitution Article 11, Section 7, the City desires to apply this process to the award of public works maintenance contracts in order to ensure that bidders are qualified to perform City public works maintenance.

#### **B. Prequalification of Bidders.**

1. The City hereby establishes a system for prequalification of prospective bidders for public works construction and maintenance projects. The City may use the prequalification system identified in this section for any public works project.

2. The City Engineer is authorized to adopt and apply a uniform system of rating bidders for each project based on: a) the requirements of Section 20101 of the California Public Contract Code, and b) the model guidelines and standardized questionnaire created by the State of California Department of Industrial Relations, as modified at the City Engineer's discretion to address the needs of the particular project, or projects, to which they are to be applied.

3. a. Prequalification of prospective bidders shall be conducted for public works projects that involve the construction, retrofitting, remodeling, renovation or expansion of public buildings, water or wastewater treatment facilities, water works; maintenance of roadways, drainage facilities, roadway landscaping, or parks; or require significant specialized experience or expertise, unless the City Engineer determines that it is in

the best interests of the City to forego prequalification of prospective bidders on a particular project. In making his or her determination whether it is in the best interests of the City to forego prequalification of prospective bidders on a particular project, the City Engineer's decision shall be supported by one (1) or more of the following reasons:

- i. Prequalification of prospective bidders is likely to unreasonably adversely affect the cost of the project;
- ii. The complexity, scale or cost of the project does not warrant use of this prequalification process;
- iii. There is an urgent need, based upon concerns for the health and safety of the public, to pursue the project on an expedited basis;
- iv. The particular project is of such a specialized nature that there is a very limited pool of qualified potential bidders, and for this reason the purposes of the prequalification process may be accomplished by use of a bid questionnaire; or
- v. The project will not be competitively bid.

b. Notwithstanding subsection B.3.a. of this section, the City Engineer is authorized to require prequalification of prospective bidders on any public works project or to engage in a program of prequalification of prospective bidders, on public works projects on a recurring basis as provided in Section 20101 of the California Public Contract Code.

4. If prequalification of prospective bidders is required for a particular project, the City Engineer shall determine which bidders are qualified to bid that project based upon the uniform system of rating bidders. If the City Engineer determines any bidder is not qualified to bid a project, the City Engineer shall provide to the bidder written notice that includes the basis for the determination and an identification of any supporting evidence therefor, and an opportunity for the bidder to appeal the determination pursuant to subsection C of this section. A copy of all prequalification determinations shall be filed with the City Clerk at least ten (10) days prior to the scheduled bid opening.

#### C. Appeals.

1. Any person aggrieved by a determination made by the City Engineer pursuant to subsection B.4. of this section may appeal the determination only by

complying with the requirements set forth in this subsection. Such an aggrieved person shall be referred to herein as "appellant." Without a timely appeal, the appellant waives any and all rights to challenge the decision of the City Engineer, whether by administrative process, judicial process or any other legal process or proceeding.

2. The appellant shall submit a written notice of appeal to the City Clerk, along with a complete written description of all factual and legal bases for the appeal and accompanied by a fee in the amount established by resolution of the City Council, no later than ten (10) days after the City has mailed written notice of the determination made by the City Engineer. Should the appellant prevail in its appeal, the deposit shall be returned to the appellant and the City shall bear the costs of the appeal. If the appellant does not prevail, the deposit shall be used to pay all costs associated with the appeal. If the deposit is insufficient to pay the entirety of the costs of the appeal, the appellant shall pay the remaining costs within thirty (30) days after the decision. Any failure by the appellant to timely pay any outstanding appeal costs, as required herein, shall be considered by the City in future prequalification proceedings.

3. If the appellant gives the required notice of appeal, provides the necessary deposit, and requests a hearing, the hearing shall be conducted so that it is concluded no later than five (5) business days prior to the last date for the receipt of bids on the project or twenty (20) days following the City's receipt of the notice of appeal, whichever is sooner. The hearing shall be an informal process conducted by an arbitrator, who shall be an attorney experienced in public works and construction matters. The arbitrator may be selected by the mutual consent of the appellant and the City. If an agreement cannot be reached regarding the selection of the arbitrator, the appellant and the City shall each exchange a list of three (3) arbitrators they would be willing to accept. In turn, beginning with the appellant, each party shall strike one (1) name from the other party's list until only one (1) name remains and that remaining person shall be the arbitrator. If the arbitrator selected is unavailable, the parties shall repeat the process until they succeed in selecting an available arbitrator.

4. At the hearing, the appellant and the City shall each be provided an opportunity to be represented by legal counsel and to present or rebut any evidence bearing upon the issues presented in the appeal. Each party shall bear his, her, its, or their own attorneys' fees, regardless of the outcome of the appeal.

5. The arbitrator shall consider relevant evidence presented during the hearing and provide a written decision on the appeal to the City, with a copy to

the City Clerk, and the appellant within one (1) business day after the close of the hearing. The time identified in this section for providing the arbitrator's decision may be extended only by consent of the City and the appellant and such an extension shall not affect or require a delay in a scheduled time for opening of bids for any public works project. Failure by the arbitrator to render a timely decision shall be deemed a denial of the appeal.

6. The arbitrator's decision shall be final.

## **Article VIII. Acquisition and Disposition of Interests in Real Property**

### **3.42.280 Leases of real property.**

A. **City-Owned Real Property.** The City Council shall be the authorizing authority for all leases and licenses of City-owned property. If consideration for a lease or license is in excess of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars per year, the property shall be leased or licensed by means of competitive proposals unless the City Council finds that an award without competitive proposals is in the best interests of the City. If competitive proposals are solicited for leases or licenses of City-owned property, the City shall have discretion to determine the proposal process and to determine the proposal which best meets the needs of the City, which may not necessarily be the highest priced proposal.

B. **City Lease of Private Property.**

1. Leases with a total lease amount of Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars or more shall be authorized by the Council.

2. Leases with a total lease amount less than Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars may be authorized by the City Manager.

### **3.42.290 Acquisition of real property.**

The acquisition of real property, whether by negotiation, dedication, or eminent domain, shall be in accordance with state law. The limits set forth in Article II of this chapter shall apply to acquisitions of real property.

### **3.42.300 Disposition of real property.**

A. Procedures for the disposition of real property shall be in accordance with state law. In accordance with Section 65402(a) of the California Government Code, the Council hereby determines that the provisions of that section shall not apply to:



1. The disposition of the remainder of a larger parcel which was acquired and used in part for street purposes;
2. Acquisitions, dispositions, or abandonments for street widening; or
3. Alignment projects, provided such dispositions for street purposes, acquisitions, dispositions, or abandonments for street widening or alignment projects are of a minor nature.

B. The report of the planning commission regarding the conformance of a capital improvement project with the general plan made pursuant to Section 65401 of the California Government Code shall also constitute the report required by Section 65402(a) of the California Government Code regarding each acquisition or disposition of real estate, street abandonment or vacation, or public building or structure included in that capital improvement project.

C. The disposition of real property shall be by competitive proposals unless the City Council determines that disposition without competitive proposals is in the best interests of the City. If competitive proposals are solicited for the disposition of City-owned property, the City shall have discretion to determine the proposal process and to determine the proposal which best meets the needs of the City, which may not necessarily be the highest priced proposal.

## **Article IX. Surplus Commodities and Equipment**

### **3.42.310 Surplus commodities and equipment.**

A. Each department shall submit to the Finance Director, at such times and in such forms as the Finance Director prescribes, reports showing all commodities and equipment which are no longer used or which have become obsolete or worn out. The Finance Director has the authority to sell or otherwise dispose of all commodities and equipment which cannot be used by any department or which have become unsuitable for City use, or to exchange the same for or trade the same in on new commodities and equipment. The Finance Director also has the authority to make transfers between departments of any useable surplus commodities or equipment.

B. Disposition may include abandonment, destruction or donation to public bodies, charitable, civic or nonprofit organizations, and may include City property which has no commercial value or for which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Sales procedures may include negotiated sales, acceptance of sealed bids or public auction.

Services of a paid auctioneer may be used, as appropriate.

C. The City Manager shall approve the disposition of commodities and/or equipment when the estimated value of an individual item is less than Two Thousand and no/100<sup>ths</sup> (\$2,000.00) Dollars; however, City Council approval is needed if the value is equal to or exceeds Two Thousand and no/100<sup>ths</sup> (\$2,000.00) Dollars.

D. 1. Except for surplus police canines and police duty weapons of retiring officers, no officer, agent or employee of the City assigned to the purchasing function or responsible for surplus commodities and equipment declarations shall either *directly or indirectly* submit a bid for or purchase unneeded surplus personal property.

2. Whenever a police canine is removed from active service except for illness, viciousness, or some similar situation, the dog will be offered to the handler for the sum of One and no/100<sup>ths</sup> (\$1.00) Dollar. Upon such disposition, the new owner shall sign a waiver and release of legal liability, releasing the City of Elk Grove, the City of Elk Grove Police Department, and City and departmental personnel, agents, officers, and employees from all liability or responsibility for anything which concerns the animal from that day forward. The new owner receiving the dog must, as a condition of his or her receipt of the dog, immediately relicense the dog in the new owner's name at their expense. The City shall provide all pedigree papers to the new owner receiving the canine.

3. An honorably retiring police officer may purchase his or her duty weapon from the City pursuant to policies approved by the City Manager and Chief of Police, which policies shall include, without limitation, a waiver and release of liability of the City of Elk Grove, the City of Elk Grove Police Department, and City and departmental personnel, agents, officers, and employees as to all matters concerning the duty weapon.

E. Property acquired by the City as a result of a lawful seizure or forfeiture shall be disposed of as *authorized by, and in accordance with*, applicable state and/or federal law and shall be exempt from this section except that no officer, agent or employee of the City shall either directly or indirectly submit a bid for or purchase property acquired by seizure or forfeiture.

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 21-2013**

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

*I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on October 9, 2013 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on October 23, 2013 by the following vote:*


**AYES :**        **COUNCILMEMBERS:**        *Davis, Detrick, Cooper, Hume, Trigg*

**NOES:**        **COUNCILMEMBERS:**        *None*

**ABSTAIN:**   **COUNCILMEMBERS:**        *None*

**ABSENT:**    **COUNCILMEMBERS:**        *None*

***A summary of the ordinance was published pursuant to GC 36933(c) (1).***

  
\_\_\_\_\_  
**Jason Lindgren, City Clerk  
City of Elk Grove, California**