



CONTRACT DOCUMENTS FOR COMPETITIVELY BID
SOLICITATIONS AND PROCUREMENTS
(Applicable to certain Federally-assisted procurements)

CITY OF ELKO

WATER

DEPARTMENT

DATE: November 7, 2024

CONTACT: City of Elko Clerk

1751 College Avenue

Elko, NV 89801

775-777-7126

cityclerk@elkocitynv.gov

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SECTION I

INVITATION TO BID

Sealed bids, subject to the conditions contained herein (*City of Elko Water System Asset Management*) will be received by the Elko City Clerk at 1751 College Avenue, Elko, Nevada 89801 until (***Friday December 13, 2024 at 2:00 pm PT***), and then opened and read aloud.

The goal of this project is to develop and implement software that manages infrastructure asset-related data relating to field inspections, asset management, work order management, lifecycle management, asset criticality, and replacement planning and reporting. Essential features and functions of this software will:

- Host Response Management for the Utility
- Enable field operations via a mobile application related to GIS-based assets and related work management to perform and schedule preventative maintenance or inspection tasks
- Host a configurable application accessible via a standard Internet browser that enables automation of asset related tasks, inputs for asset criticality and other lifecycle analysis
- Standard and customizable reports, dashboards and metrics related to asset management
- Manage documents associated with specific assets and systems
- Integrate with GIS and use GIS-based attributes and related tables to system functions, calculations, and reporting
- Optimize pump operations to achieve operating efficiencies

Vendors may submit single solutions or entire packages of the requested software items listed above. Our goal is to have any and all solutions communicate or be compatible with one another.

The term “Bid Documents” means the Invitation to Bid; Instructions to Bidders; Bidder Information Sheet; Experience and Qualifications Sheet; Certification Regarding Certain Boycotts of Israel; Recycled Products Questionnaire; Certification Regarding Domestic Preference for Procurement, Declaration of Compliance Regarding Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms; Contract Specifications; Certification and Offer; Acknowledgment of Federal Regulatory Requirements; and Department of Labor Prevailing Wage Determination.

The term “Contract Documents” means the “Bid Documents,” together with the contract, performance bond (if applicable), and warranty (if applicable).

BIDDING AND CONTRACT DOCUMENTS

The complete set of Contract Documents can be downloaded from the Elko City Clerk's website at elkocity.com. All bidders must register with the Elko City Clerk via email or phone at cityclerk@elkocitynv.gov or (775)777-7126. **It is the bidder’s responsibility to review the website for amendments, addenda and changes to the Contract Documents before submitting the bid.**

All bids must be submitted in a sealed envelope and legibly marked City of Elko Water System Modernization Project. One copy of the bid proposal is required. City staff will thoroughly review all bids for conformance with the Bid Documents prior to making a written recommendation for award to the Elko City Council.

If the estimated annual amount required to perform the contract is more than \$50,000 but not more than \$100,000, the award will be made on the basis of price, taking into account the following minimum requirements of the bidder and methods for awarding the contract.

If the estimated annual amount required to perform the contract is more than \$100,000, the award will be made to the lowest responsive and responsible bidder. The lowest responsive and responsible bidder will be judged on the basis of:

- (a) Price;
 - (b) Conformance to the Bid Documents (including Contract Specifications);
 - (c) Qualifications of the bidder, including, without limitation:
 - (1) The possession of or limit on any required license of the bidder;
 - (2) The financial responsibility of the bidder;
 - (3) The experience of the bidder; and
 - (4) The ability of the bidder to perform the contract;
 - (d) Adequacy of the equipment of the bidder;
 - (e) Past performance;
 - (f) Performance schedule or delivery date;
 - (g) If the contract requires the delivery of goods, the total cost of ownership of the goods;
 - (h) If the contract requires the delivery of goods, the purpose for which the goods to be supplied are required;
 - (i) Conformance to applicable Federal and state requirements (including 2 CFR Part 200);
 - (j) The best interests of the public; and
 - (k) The following other criteria set forth by the City Council or its authorized representative:
-
-

Pre-Bid Conference: - All bidders are strongly encouraged to attend a Pre-Bid Conference at the following time and place:

November 20, 2024 at 10:00 AM local time (Pacific Time) at the Elko Water & Sewer Department, located at 1550 STP Road, Elko, NV 89801.

If bidders are unable to attend in person, they will be able to attend virtually, with the information below:

<https://us06web.zoom.us/j/87800467941?pwd=pfVgFxaWBT4lneflpbzVJKRNhKtImh.1>

Meeting ID: 878 0046 7941

Passcode: 288925

One tap mobile

- +13126266799,,87800467941#,,,,*288925# US (Chicago)
- +16468769923,,87800467941#,,,,*288925# US (New York)

Dial by your location

- +1 312 626 6799 US (Chicago)
- +1 646 876 9923 US (New York)
- +1 646 931 3860 US
- +1 301 715 8592 US (Washington DC)
- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 360 209 5623 US
- +1 386 347 5053 US
- +1 408 638 0968 US (San Jose)
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 669 444 9171 US
- +1 669 900 6833 US (San Jose)
- +1 689 278 1000 US
- +1 719 359 4580 US
- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)

Meeting ID: 878 0046 7941
Passcode: 288925

Find your local number: <https://us06web.zoom.us/j/87800467941>

If a Pre-Bid Conference is held, all bidders are strongly encouraged to attend.

Contents of Bid: Bidders must submit fully completed Bid Documents and all required information with their bids. Bidders must bid on all items listed in each schedule or as otherwise stated in the Bid Documents.

Award: The City Council may formally award the contract to the successful bidder at a regularly scheduled meeting at Elko City Hall at the following time, date and location: **After 4:00pm Local (PT) January 28, 2025, at 1751 College Avenue, Elko NV 89801.**

The City Council may, in its sole discretion, reject all bids.

Dated this 7th day of November, 2024.

Elko City Clerk
cityclerk@elkocitynv.gov.

City of Elko- Utilities Director

Dale Johnson

Publish Date: (*November 7, 2024*)

INSTRUCTIONS TO BIDDERS

1. Submission of Bids

- a. **The Bid Documents must be completed in their entirety (except as otherwise indicated) and included with the bid for the bid to be responsive.** Note that there are specific instructions based on the estimated amount required to perform the contract in applicable portions of the Bid Documents.
- b. Bids must be submitted in a sealed envelope to the following location: Elko City Hall, Council Chambers, 1751 College Avenue, Elko, Nevada 89801.
- c. Bids must be received at the above location on or before: December 13, 2024, at 2:00 p.m. local time, Elko City Hall, Council Chambers, 1751 College Avenue.
- d. The complete set of Contract Documents can be downloaded from the Elko City Clerk's website at: https://elkocitynv.gov/government/bidding_opportunities/index.php.
- e. All bidders must register with the Elko City Clerk via email or phone at cityclerk@elkocitynv.gov or (775) 777-7126.

2. Pre-Bid Conference

If applicable, a Pre-Bid Conference will be held at the time and location indicated in the Invitation to Bid.

3. Late Bids

- a. Bids that are not received by the City of Elko at the location designated at Subsection 1(b), above, by the **exact** date and time indicated at Section 1(c) are late bids and will automatically be rejected as nonresponsive.
- b. Bidders are solely responsible for ensuring their bids arrive on time and are delivered to the location specified in Subsections 1(b), above.
- c. Late bids will be kept on file by the City of Elko as public records in accordance with NRS 239.121, *et seq.*

4. Waiver of Slight Noncompliance in Bids

The Elko City Council may waive certain informalities, minor technical defects or irregularities, obvious clerical errors, or erasures in bids, so long as the waiver does not give the bidder an unfair competitive advantage or otherwise defeat the goals of ensuring economy and preventing corruption in the public contracting process. The Elko City Council will consider the following two criteria in deciding whether to waive a specific noncompliance:

- a. Whether the effect of the waiver would be to deprive the City of Elko of its assurance that the contract will be entered into, performed, and guaranteed according to its specified requirements; and
- b. Whether the noncompliance is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

5. Rejection of Nonresponsive Bids

- a. Except as provided in Section 4, above, any bid that fails to conform to the requirements of the Bid Documents will be rejected as nonresponsive; provided, if the Invitation to Bid authorizes the submission of alternate bids and the items or services offered as alternates meet the requirements specified in the Bid Documents, the bid will be considered responsive.
- b. A bid will be rejected as nonresponsive if the bidder adds conditions to the bid that modify or condition the requirements of the Contract Documents or limit the bidder's liability to the City of Elko. The following are examples of modifications to or omissions in bids that will render bids nonresponsive, resulting in rejection:
 - (1) Any language with the intent or effect of protecting the bidder against future changes in conditions, such as increased costs, if total possible costs to the City of Elko cannot be accurately determined.
 - (2) Failing to state a price and indicating that price will be the "price in effect at time of delivery" or some other qualified or unspecified amount.
 - (3) Stating a price subject to a qualification of the amount that makes it subject to change, such as a price that is subject to increase based on the cost to the bidder.
 - (4) Making exceptions to the requirements contained in the Contract Documents.
 - (5) An insertion of the bidder's own terms and conditions.
 - (6) A limitation on the rights of the City of Elko in any way.
 - (7) Failing to properly complete any form per the instructions in the Bid Documents.
 - (8) Failure to include any form contained in the Bid Documents.
 - (9) Failure to supply any document, testing material, sample, item or information required by the Bid Documents.
- c. Pursuant to NRS 332.075, any response to a solicitation for a contract for which the estimated annual amount to perform a contract is more than \$100,000 may be rejected by the Elko City Council or its authorized representative if the Elko City Council or its authorized representative determines that the responding bidder is not responsive or responsible or that the quality of the services, supplies, materials, equipment or labor offered does not conform to requirements or if the public interest would be served by such a rejection.

6. Estimated Quantities

The quantities listed for each of the items in the bid schedule are only estimated quantities. Bidders are required to bid a firm unit cost for each item specified. The actual quantities ordered by the City of Elko may be more or less than those indicated in the Bid Documents. The unit prices proposed by each bidder will remain firm and will not be re-negotiated, even if the estimated quantities are not met or are exceeded. For bidding purposes, if there is a conflict between the extended total cost of an item and the unit price, the unit price will be used to calculate the amount of the bid.

7. Number of Copies

Each bidder must submit its fully completed, signed bid in a sealed envelope, marked as follows: *City of Elko Water System Asset Management*. The original bid must be signed in ink. One copy of the fully completed, signed bid must be included in the envelope.

8. Preparation of Bid

- a. Bidders must examine all Contract Documents, including drawings, specifications, proposed contract forms, terms and conditions, and all instructions and documents contained in the Bid Documents. The failure of a bidder to perform the foregoing examination will not relieve the bidder from its responsibility to know the contents of the Contract Documents.
- b. Bidders must ensure that they have checked all of their figures, calculations and other information contained in their bids. The City of Elko is not and will not be responsible for errors or omissions on the part of bidders in preparing their bids.
- c. Bids must be clearly written without erasures or deletions. The Elko City Council reserves the right to reject any bid containing erasures or deletions and is under no obligation to grant a waiver.
- d. All items, (unless the Bid Documents provide otherwise) including any additive or deductive alternates on the bid schedule, must be completely filled out or the bid will be deemed non-responsive and rejected.
- e. Bidders must declare that the person or persons signing the bid is/are authorized to sign on behalf of the bidder listed and that the signer(s) is/are authorized to fully bind the bidder to all the requirements of the Bid Documents.
- f. Bidders must certify that no person or firm other than the bidder (unless otherwise indicated) has any interest whatsoever in this bid or the contract that may be entered into as a result of the bid and that in all respects the bid constitutes a legally binding firm offer, submitted in good faith without collusion or fraud.
- g. By submitting bids to the City of Elko, bidders automatically certify that they have complied and will comply with all requirements of local, state, and federal laws, and that no legal requirements have been or will be violated in making the bid.
- h. If there is a discrepancy between the unit price and the total price, the unit price shall be used to determine the applicable total.
- i. Bids must include all descriptive data or printed specifications describing the services, supplies, materials, equipment or labor requested in the Bid Documents. Failure to include this information will result in the bid being rejected as nonresponsive.

9. Amendment to the Invitation to Bid

- a. If the Bid Documents are amended by the City of Elko prior to bid opening, then all specifications, terms and conditions which are not amended shall remain in place.
- b. Bidders must acknowledge receipt of any amendment to the Bid Documents in at least one of the following three ways: (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, or (3) by letter or facsimile.
- c. Acknowledgments of amendments by bidders must be received by the City of Elko prior to bid opening. Bidders are encouraged to include signed amendments or initialed acknowledgments of amendments with returned bids.

10. Bonding Requirements- Bid Bonds Will Not Be Required With This Project

- a. The City of Elko may require a performance bond, payment bond or other bond (or a combination thereof), issued by a surety bonding company authorized to do business in Nevada.
 - (1) Any such bonds may be to insure proper performance of the contract and save, indemnify and keep harmless the City of Elko against all loss, damages, claims, liabilities, judgments, costs and

expenses which may accrue against the City of Elko in consequence of the awarding of the contract.

- (2) If the City of Elko requires such a bond, it shall not also require a detailed financial statement from the bidder.

b. Bidders are hereby notified that, pursuant to 2 CFR § 200.326, for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (2) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (3) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

11. Basis of Award

If the estimated annual amount required to perform a contract is more than \$50,000 but not more than \$100,000, the City of Elko will award the contract on the basis of price, taking into account the minimum requirements of a bidder prescribed in the Invitation to Bid and the method prescribed in the Invitation to Bid for awarding the contract.

If the estimated annual amount to perform the contract is more than \$100,000, the City of Elko will award the contract to the lowest responsive and responsible bidder. The lowest responsive and responsible bidder will be judged on the basis of the criteria set forth in the Invitation to Bid.

12. Type of Contract

By advertising the Invitation to Bid, the City of Elko intends to award a firm fixed unit price contract based on estimated quantities. Contract unit prices shall remain firm and fixed throughout the contract performance period. Actual quantities used in contract performance will be used to determine contractor interim or progress payments (if applicable) and the final contract price.

13. Other Terms and Conditions (blanks to be completed by Elko City staff if applicable – indicate “N/A” if not applicable)

- a. If deviations from any of the requirements of this Invitation to Bid are permitted by the City of Elko, those permitted deviations shall be clearly indicated in the space provided on the bid form and, if additional space is required, on an attached separate sheet.
- b. Supplies, materials and/or equipment required under the contract must be delivered to the following location: 1550 STP Road, Elko, NV 89801.
- c. If awarded the contract, the successful bidder will ensure that the City of Elko is covered by the manufacturer's warranty for all supplies, materials and/or equipment required under the contract; provided, in the alternative, the City of Elko may require the successful bidder to provide the following warranty: Manufacturer Warranty.
- d. A copy of all manufacturers' warranties for the supplies, materials and/or equipment that are required under the contract must be furnished with the bid. The warranties must provide that warranty and recall work will be performed at an authorized service facility or on-site, as appropriate.
- e. Each bidder must be prepared to give a complete demonstration of the merits of the supplies, materials and/or equipment (including vehicles) described in the Invitation to Bid under the normal working conditions at any time prior to bid opening.
- f. The laws of the State of Nevada shall govern the validity, construction, performance and effect of the contract, which the successful bidder shall promptly execute after award.

14. Bid Protest

A person who submits a response to an Invitation to Bid for which the estimated annual amount to perform the contract is more than \$100,000 may, after the responses are opened and within five (5) business days following the award, file with the City of Elko a notice of protest regarding the awarding of the contract.

- a. A notice of protest must include a written statement setting forth with specificity the reasons the person filing the notice believes the applicable provisions of law were violated.
- b. The notice of protest must be submitted in writing and delivered to the Elko City Attorney at the following physical address:

David M. Stanton
Goicoechea, DiGrazia, Coyle & Stanton, Ltd.
530 Idaho Street
Elko, NV 89801

The notice of protest must be received no later than 5:00 p.m. (Elko time) on the fifth (5th) business day following the award.

- c. A person filing a notice of protest may be required by the City of Elko, at the time the notice of protest is filed, to post a bond with a good and solvent surety authorized to do business in this State or submit other security, in a form approved by the City of Elko, to the Elko City Clerk, who shall hold the bond or other security until a determination is made on the protest. A bond posted or other security submitted with a notice of protest must be in an amount equal to the lesser of:
 - (1) Twenty-five percent of the total value of the response submitted by the person filing the notice of protest; or
 - (2) Two hundred fifty thousand dollars.
- d. A notice of protest filed in accordance with the provisions of this Section 14 operates as a stay of action in relation to the awarding of any contract until a determination is made by the Elko City Council on the protest.

- e. A person who submits an unsuccessful response may not seek any type of judicial intervention until the Elko City Council has made a determination on the protest and awarded the contract.
- f. The City of Elko is not liable for any costs, expenses, attorney's fees, loss of income or other damages sustained by a person who submits a response, whether or not the person files a notice of protest pursuant to this Section 14.
- g. If the protest is upheld, the bond posted or other security submitted with the notice of protest will be returned to the person who posted the bond or submitted the security. If the protest is rejected, a claim may be made against the bond or other security by the City of Elko in an amount equal to the expenses incurred by the City of Elko because of the unsuccessful protest. Any money remaining after the claim has been satisfied must be returned to the person who posted the bond or submitted the security.

15. Questions and Other Requests for Information

All questions or requests must be submitted to the City Clerk at the following physical address or email address no later than **December 4, 2024 by 3:00 pm** local time:

City of Elko
Elko City Clerk
1751 College Avenue
Elko, NV 89801
775-777-7126
Email: cityclerk@elkocitynv.gov

SECTION II BIDDER INFORMATION SHEET

1.	Bidder Name¹

2.	Bidder Address²	
	Street Address:	
	City, State, Zip Code:	

3.	Telephone Numbers			
		Area Code	Number	Extension
	Telephone:			
	Toll Free:			

4.	Contact Person for Questions and Other Communications (including address if different than above)	
	Name:	
	Title:	
	Address:	
	Email Address:	
	Telephone Number:	

5.	Licenses (if applicable)	
	City of Elko Business License Number	
	Contractor's License Number	

6.	Name of Individual Authorized to Bind the Bidder (if other than sole proprietorship)			
	Name:			
	Title:			
	Signature		Date:	

¹ If the bidder is a business association, such as a limited-liability company or corporation, indicate the type of business association and the state of formation, organization or incorporation, as applicable.

² This must include the mailing address for the bidder's principal place of business. If the bidder desires to receive written communications from the City of Elko at a different mailing address, the bidder must so indicate on a separate sheet.

EXPERIENCE AND QUALIFICATIONS SHEET

The bidder has been engaged in its current business under the present business name for _____ years.
 The following contracts have been satisfactorily completed in the last three (3) years for the persons and entities shown below:

YEAR	CONTRACT AMOUNT	TYPE OF EQUIPMENT	LOCATION & FOR WHOM	CONTACT NAME	PHONE #

By signing this form, the bidder verifies having never failed to satisfactorily complete a contract to which the bidder was a party, except as follows (attached additional sheets if required):

YEAR	CONTRACT AMOUNT	TYPE OF EQUIPMENT	LOCATION & FOR WHOM	CONTACT NAME	PHONE #

Signature: _____

Date: _____

CERTIFICATION REGARDING CERTAIN BOYCOTTS OF ISRAEL

Pursuant to NRS 332.065, the following certification is required if the estimated annual amount required to perform the contract is more than \$100,000:

The undersigned company hereby certifies that it is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.

1. "Boycott of Israel" means, except as otherwise provided in subsection 2, refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with or performing any other action that is intended to limit commercial relations with:

(a) Israel; or

(b) A person or entity doing business in Israel or in territories controlled by Israel,

➔ if such an action is taken in a manner that discriminates on the basis of nationality, national origin or religion.

2. The term "boycott of Israel" does not include an action that is described in Subsection 1 if the action:

(a) Is based on a bona fide business or economic reason;

(b) Is taken pursuant to a boycott against a public entity of Israel if the boycott is applied in a nondiscriminatory manner; or

(c) Is taken in compliance with or adherence to calls for a boycott of Israel if that action is authorized in 50 U.S.C. § 4607 or any other federal or state law.

3. "Company" means any domestic or foreign sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited-liability partnership, limited-liability company, or other domestic or foreign entity or business association, including, without limitation, any wholly owned subsidiary, majority owned subsidiary, parent company or affiliate of such an entity or business association, that exists for the purpose of making a profit.

Signature : _____

Date: _____

RECYCLED PRODUCTS QUESTIONNAIRE

If the estimated annual amount required to perform the contract is more than \$100,000, each bidder must complete the following questionnaire:

Will recycled products be provided? Yes No

If yes, do the following apply?

RECYCLED PRODUCT INFORMATION	YES	NO	N/A
The products meet applicable standards as set forth in the Bid Documents			
The products can be substituted for comparable non-recycled products			
The products do not cost more than comparable non-recycled products			
The products do not cost more than 5 percent more than the comparable non-recycled products			
For recycled paper products, ³ the products contain recycled paper that is not more than 10 percent higher than that of the comparable paper product made from virgin material			
For recycled paper products, the products are of adequate quality			
For recycled paper products, the products are available in a reasonable amount of time			

Signature: _____

Date: _____

³ "Recycled paper product" means any paper or wood-pulp product containing in some combination comprising at least 50 percent of its total weight: (1) Postconsumer waste; and (2) Secondary waste. The term does not include fibrous waste generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls, wood slabs, chips, sawdust or other wood residue from a manufacturing process. "Postconsumer waste" means a finished material which would normally be disposed of as solid waste having completed its life cycle as a consumer item. "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value.

CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENT

Each bidder must complete, sign and date this Certification.

2 CFR § 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

EXPLAIN HOW THE GOODS, PRODUCT, OR MATERIALS USED TO PERFORM THE CONTRACT WILL SATISFY THE DOMESTIC PREFERENCE REGULATION AT 2 CFR § 200.322:

Signature: _____

Date: _____

**DECLARATION OF COMPLIANCE REGARDING SMALL AND
MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES,
AND LABOR SURPLUS AREA FIRMS**

I _____, in my capacity as _____,
(First and Last Name) (Company Title/Position)

am authorized to sign on behalf of, and fully bind, _____. Accordingly, I
(Company Name)
swear to, and affirm the following:

INITIAL	REQUIREMENT
	Qualified small and minority businesses and women’s business enterprises will be placed on the bidder’s solicitation lists.
	The bidder will solicit small and minority businesses and women’s business enterprises whenever they are potential sources.
	The bidder will divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
	The bidder will establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
	Based on the Prime Contractor’s experience and expertise, the total requirements of the project were, and will continue to be, divided – when economically feasible – into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises.
	The bidder will use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
	The bidder will require any subcontractor to take the foregoing affirmative steps.

I swear and affirm that the above and foregoing representations are true and correct to the best of my information, knowledge, and belief.

Signature

Date

Printed Name

Title

CERTIFICATIONS AND OFFER

TO: City of Elko
(Water & Sewer Department)

1. The undersigned bidder hereby certifies reading and understanding the Contract Documents (including the schedules, form contract, plans and specifications) for the modernization of the water distribution system. The undersigned bidder further certifies having independently evaluated the conditions affecting the work. By signing below, the bidder agrees that if the bid is awarded by the City of Elko, the bidder will provide, at the bidder's own expense, all labor, insurance, supervision, machinery, facilities, materials, supplies, equipment, tools, apparatus, appliances, and means to perform the entire work, including work incidental thereto, in conformance with the Contract Specifications and other Contract Documents.
2. The undersigned bidder acknowledges that the Contract Documents consist of the following: Invitation to Bid; Instructions to Bidders; Bidder Information Sheet; Experience and Qualifications Sheet; Certification Regarding Certain Boycotts of Israel; Recycled Products Questionnaire; Certification Regarding Domestic Preference for Procurement, Declaration of Compliance Regarding Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms; Contract Specifications; Certification and Offer; Acknowledgment of Federal Regulatory Requirements; Department of Labor Prevailing Wage Determination; Contract; Performance Bond (if applicable); and Warranty (if applicable).
3. The following documents will be completed upon award, as applicable:
 - a. Notice of Award;
 - b. Contract (may be entitled "Purchase Agreement");
 - c. Attachments to Contract, including: Contract Completion Schedule, General Contract Specifications, Bid Documents, Other: _____;
 - d. Performance Bond (if applicable); and
 - e. Warranty (if applicable).
 - f. Notice to Proceed;
4. The undersigned hereby offers to do the work described in the Contract Documents according to the terms and conditions therein contained and to furnish all materials, tools, labor, and all appliances and appurtenances necessary for performance of the work at the following unit rates and prices:

TOTAL BID AMOUNT (This is the base bid calculated by multiplying all unit prices by estimated quantities, then determining the total):

Amount expressed in numeric form: \$ _____

Amount expressed in word form: _____

5. The undersigned bidder understands that any quantities of labor and/or materials indicated in the Contract Documents are approximate only and are intended principally to serve as a guide in evaluating the bids. Final project payments will be made on actual quantities and unit prices.
6. If the bid is accepted by the City of Elko, the undersigned bidder agrees that within thirty (30) calendar days following the award, the bidder will execute the Contract in accordance with the bid as accepted and provide the bonds and warranties indicated in the Bid Documents.
7. By submitting this bid, the bidder certifies that neither the bidder nor any subcontractor or any firm, corporation, partnership, or association in which such bidder or subcontractor has a substantial interest are in violation of the Davis-Bacon Act or any of the following statutes listed at 29 CFR § 5.1(a):
 - a. The Davis-Bacon Act (sec. 1–7, 46 Stat. 1949, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).
 - b. Copeland Act (40 U.S.C. 276c).
 - c. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).
 - d. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
 - e. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
 - f. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
 - g. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
 - h. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
 - i. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
 - j. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
 - k. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
 - l. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97–424).
 - m. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
 - n. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
 - o. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
 - p. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).
 - q. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
 - r. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

- s. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).
- t. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
- u. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).
- v. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).
- w. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).
- x. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).
- y. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).
- z. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).
- aa. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).
- bb. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).
- cc. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).
- dd. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).
- ee. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).
- ff. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).
- gg. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).
- hh. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c–3).
- ii. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).
- jj. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).
- kk. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).
- ll. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).
- mm. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).
- nn. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).
- oo. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).
- pp. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).
- qq. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).
- rr. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

- ss. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).
- tt. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).
- uu. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).
- vv. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).
- ww. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).
- xx. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).
- yy. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).
- zz. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).
- aaa. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).
- bbb. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).
- ccc. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).
- ddd. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).
- eee. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4)).

- 8. The undersigned hereby declares that the only parties interested in this proposal are the bidder (including the bidder's employees, agents and representatives) and the bidder's subcontractors and suppliers, that this proposal is made without collusion with any other person or corporation, and that no member of the Elko City Council, or employee, officer or agent of City of Elko, is -- directly or indirectly -- pecuniarily interested in this bid.

- 9. The current prevailing wage determination issued by the Department of Labor is included in the Bid Documents. The bidder hereby accepts the wage determination and will ensure that all subcontracts comply with the wage determination.

SIGNATURE OF BIDDER

Name and Title of Authorized Agent

Name of Bidder (indicate state of formation or incorporation, if applicable)

Address of Bidder

SECTION III

CONTRACT SPECIFICATIONS

The City of Elko is seeking a solution from a provider who can demonstrate that they possess the organizational, functional and technical capabilities to provide an Enterprise Asset Management (EAM)/ Computerized Maintenance Management System (CMMS) solution that meets the utility’s needs and can be integrated with the current ArcEsri GIS system in place.

The goal of this project is to develop and implement software that manages infrastructure asset-related data relating to field inspections, asset management, work order management, lifecycle management, asset criticality, and replacement planning and reporting. Essential features and functions of this software include:

- Enable field operations via a mobile application related to GIS-based assets and related work management to perform and schedule preventative maintenance or inspection tasks
- Host a configurable application accessible via a standard Internet browser that enables automation of asset related tasks, inputs for asset criticality and other lifecycle analysis
- Standard and customizable reports, dashboards and metrics related to asset management
- Manage documents associated with specific assets and systems
- Integrate with GIS and use GIS-based attributes and related tables to system functions, calculations, and reporting
- Optimize pump operations to achieve operating efficiencies

Please provide the following information about the proposed solution in the table below:

The formal name and software version being proposed for implementation.	
A narrative description of the proposed system, system components, and capabilities. Clearly state what is included in the base offering. Include:	
Request management (methods for intake requests; technology platforms supported; duplication avoidance)	
Work management (management of electronic work orders; tracking of work activities; project costing capabilities)	
Resource management (tracking of labor, equipment, and materials by asset; ability to incorporate multiple labor rates; expensing methodologies; materials inventory management)	
Asset management (ability to create asset inventories and track asset attributes;	

<p>performance curves to track asset condition and useful life; documentation of inspection results which impact asset condition; documentation of asset records and inspection records; support for preventative maintenance schedules on assets and trigger work based on asset condition, time, and usage)</p>	
<p>Discuss what interface mechanisms are available to facilitate integration with other utility systems.</p>	
<p>Describe your recommendations regarding the number and purpose of the environments that will be required during implementation and after go-live (e.g., production, development, testing, etc.).</p>	
<p>Provide information on cyber-security measures applicable to protect Elko's software and customer data.</p>	
<p>For a hosted solution, an overview of respective NOCs, including third-party cloud services, uptime percentage, physical locations, security (both physical and cyber), and redundancy.</p>	
<p>Provide documentation to support future scalability and expandability beyond what is initially required to support the implementation.</p>	
<p>Provide the implementation process for releasing and applying software and firmware upgrades, bug fixes, and patches. Include overall implementation timeframe, vendor effort/time/resources, and client effort/time/resources. Discuss the quality assurance (QA) procedures currently in place to ensure bug fixes, patches, and upgrades are fully tested and validated prior to release. Discuss QA procedures currently in place to ensure the identification and correction of system security vulnerability.</p>	
<p>Summarize the system maintenance agreement including terms and conditions. Provide a copy of proposer's user support Service Level Agreement (SLA) as an appendix. The SLA should clearly indicate the severity levels, description of each level, guaranteed response times, availability of maintenance and support staff, and associated cost.</p>	
<p>Describe algorithms to integrate with existing systems to support built-in pumping system</p>	

redundancy to meet constant availability and capacity requirements	
Describe capabilities to integrate energy, asset management, and operations through pumping optimization.	
Describe pumping optimization capabilities related to achieving gains in system efficiency, system availability, system capacity, time-of-use rate optimization, operating strategy, pumping system configurations/design basis/availability, and system intelligence and controls.	
Describe the system's ability to aid in response management in the event of unexpected events.	

SECTION IV

ACKNOWLEDGMENT OF FEDERAL REQUIREMENTS

By signing below, the bidder acknowledges reading and understanding the following Federal requirements:

Appendix II to Part 200, entitled “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards,” provides that in addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers

must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) Pursuant to 2 CFR § 200.323 (Procurement of recovered materials), a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste

management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(K) Pursuant to 2 CFR § 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment), (a) Recipients and sub-recipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. (c) See Public Law 115–232, section 889 for additional information. (d) See also § 200.471, which provides as follows:

§ 200.471 Telecommunication costs and video surveillance costs.

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:

(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or
- (3) Obtain the equipment, services, or systems.

(L) Pursuant to 2 CFR § 200.322 (Domestic preferences for procurement). (a) as appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all sub-awards including all contracts and purchase orders for work or products under this award. (b) For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

I hereby certify that I have read the above Federal requirements, acknowledge that these requirements will be included in the contract to the extent applicable, and agree to be bound by the same upon execution of the contract.

Signature

Date

Printed Name

Title

SECTION V

CONTRACT/PURCHASE AGREEMENT

PERFORMANCE BOND (IF APPLICABLE)

WARRANTY (IF APPLICABLE)

CONTRACT FOR PURCHASE OF GOODS
(FEDERALLY-ASSISTED PROCUREMENT)

THIS CONTRACT FOR PURCHASE OF GOODS (FEDERALLY-ASSISTED PROCUREMENT) (the "Contract") is entered into this ____ day of _____, 20 ____ (the "Effective Date"), by and between the CITY OF ELKO, NEVADA, a municipal corporation and political subdivision of the State of Nevada (the "City") and the following person(s):

(the "Vendor").

WHEREAS, the City desires to purchase Goods (defined below) from the Vendor;

WHEREAS, the purchase of the Goods is being partially or wholly funded with the Federal funds from the following agency and/or under the following Federal grant program:

_____;

WHEREAS, pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards," purchases funded with Federal funds may have additional contractual requirements or certifications that must be satisfied at the time the purchase request is placed or upon delivery;

WHEREAS, this Contract was awarded pursuant to a competitive bidding process based on an Invitation to Bid published by the City;

WHEREAS, the Vendor has been selected in accordance with Chapter 332 of the Nevada Revised Statutes for the purpose of selling Goods to the City.

NOW, THEREFORE, for and in consideration of the above recitals and the terms and conditions contained herein, the parties agree as follows:

I.

PURCHASE OF GOODS

The City will purchase from the Vendor the supplies, materials or equipment, generally referred to as the _____, described at **ATTACHMENT 4** (entitled "CITY OF ELKO, NEVADA EQUIPMENT TECHNICAL SPECIFICATIONS") (hereinafter referred to as the "Goods"). No substitutions shall be permitted without the prior written consent of the City. The following Attachments are incorporated into this Contract:

In the event of an inconsistency between this Contract document and the foregoing Attachments, the terms of this Contract document shall prevail.

II.

PURCHASE PRICE. PAYMENT AND TERM

A. DATE OF SALE AND DELIVERY. The Vendor will sell, transfer and deliver the Goods to the City on or before the following date:

B. PAYMENT. The City will pay to the Vendor the sum of:
\$ _____ (USD) (the "Price") on or before the following date(s) or event(s):

C. SUFFICIENCY OF CONSIDERATION. The Vendor acknowledges that the foregoing is sufficient consideration for its performance under this Contract.

D. TERM. The Term of this Contract shall commence on the Effective Date and shall end on either the date the Vendor delivers to Goods to the City or the date the City makes final payment to the Vendor, whichever is later.

III.

SHIPMENT AND DELIVERY OF GOODS

A. SHIPPING SCHEDULE AND SUBMITTAL DOCUMENTS. Following the receipt of “Notice of Award,” the Vendor shall immediately inform the City of the Vendor’s submittal and shipping schedule for the Goods (the “Schedule”). The Vendor shall further promptly thereafter provide all Submittal Documents, including shop drawings and other information required, specified in **ATTACHMENT 4** (Equipment Technical Specifications). The City may accept or reject the Schedule and/or Shipping Documents, in its sole discretion.

B. RECEIPT UPON DELIVERY. The Goods will be deemed received by the City when delivered to the City at the following location:

C. SHIPMENT. The Vendor shall be responsible for shipment and delivery by any generally accepted means, to include common carrier.

D. COST OF SHIPMENT. The Vendor shall be responsible for the cost of shipment.

E. RISK OF LOSS. The Vendor shall bear the risk of loss until delivery to the City.

IV.

PAYMENT OF TAXES, ASSESSMENTS, LIENS AND THE LIKE

The Vendor agrees to pay any and all taxes, fees or assessments of whatever nature or kind are levied, required or imposed as a consequence of its performance under this Contract. The Vendor shall pay in full for all material furnished to City property, and shall keep City property, free and clear of all materialmen’s, laborers and mechanics liens and all other liens, security interests and encumbrances arising from its performance under this Contract. If any such lien or liens shall be filed against City property, or any part thereof, the Vendor shall have the right to contest any such lien or liens, but shall, within ten (10) days after the filing of such liens, discharge every lien filed against City property by bonding or otherwise.

V.

WORK PERFORMED AT VENDOR'S RISK

The Vendor's performance under this Contract shall be at its own risk.

VI.

SUPPLEMENTAL TERMS AND CONDITIONS

The parties agree that any supplemental terms and conditions applicable to this Contract are contained in the following document(s) attached hereto:

- A. Contract Completion Schedule (**ATTACHMENT 1**);
- B. General Condition Specifications (**ATTACHMENT 2**);
- C. Bid Proposal Forms (**ATTACHMENT 3**);
- D. Equipment Technical Specifications (**ATTACHMENT 4**); and
- E. Civil Rights and Non-Discrimination (**ATTACHMENT 5**).

Except as otherwise specifically provided in this Contract, in the event of an inconsistency between the terms and conditions contained in this Contract and the document(s) attached at **ATTACHMENTS 1, 2, 3 and 4**, the terms and conditions contained in this Contract shall prevail. In the event of an inconsistency between the terms and conditions contained in this Contract and the document attached at **ATTACHMENT 5**, the terms and conditions contained in **ATTACHMENT 5** shall prevail.

VII.

WARRANTIES AND EXCEPTIONS

A. GOODS TO CONFORM TO SPECIFICATIONS. The Vendor warrants to the City that the Goods will conform with the specifications, drawings, and other descriptions supplied for the purposes for which they are intended, and that they will be of good material, design and workmanship, free from defects, and will satisfactorily perform under reasonably expected operating conditions.

B. REPLACEMENT OR REPAIR OF GOODS. At the request of the City, the Vendor shall promptly, at no cost to the City, either repair or replace (including prepayment of all packing and transportation costs) any Goods which within one (1) year after being placed in regular use by the City in normal use and service and under proper operation, fail to conform with the foregoing warranty of the Vendor. Any extended warranties offered to and accepted by the City shall be in addition to the one-year warranty stated in the preceding sentence.

C. LIMITATION ON VENDOR'S RESPONSIBILITY. The Vendor shall not be responsible for repairs made to the Goods by the City unless the Vendor has been given written notice of such failure and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing warranties.

D. MANUFACTURER'S WARRANTIES. To the extent available to the Vendor, the Vendor shall deliver to the City guarantees or warranties provided by the manufacturers of specific products or components installed in or incorporated into the Goods.

VIII.

LIMITATION ON DISCLOSURE OF PROPRIETARY INFORMATION SUPPLIED BY THE VENDOR

Except as otherwise provided in NRS 332.061(1) and NRS 239.0115, proprietary information does not constitute public information and is confidential. The City will not disclose proprietary information unless: (a) the disclosure is made for the purpose of a civil, administrative or criminal investigation or proceeding; and (b) the person receiving the information represents in writing that protections exist under applicable law to preserve the integrity, confidentiality and security of the information. "Proprietary information" means: (a) Any trade secret or confidential business information that is contained in a response submitted to the City on this Contract; or (b) any other trade secret or confidential business information submitted to the City by the Vendor and designated as proprietary by the City. "Confidential business information" means any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost, price, or the customers of the Vendor which is submitted in support of a response to the City. The term "Confidential business information" does not include the amount of a response submitted to the City.

IX.**LIQUIDATED DAMAGES AND OTHER REMEDIES IN INSTANCES****WHERE VENDOR VIOLATES OR BREACHES CONTRACT TERMS****A. LIQUIDATED DAMAGES FOR FAILURE TO MEET DEADLINES IN CONTRACT COMPLETION**

SCHEDULE. It is acknowledged that the Vendor's failure to perform by the dates indicated in the Contract Completion Schedule at **ATTACHMENT 1** will cause the City to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the City of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Vendor agrees that liquidated damages may be assessed and recovered by the City as against the Vendor in the event of delayed completion and without the City being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore Vendor shall be liable to the Owner for payment of liquidated damages in the amount of **Five Hundred Dollars (\$500.00)** for each calendar day that performance is delayed beyond the dates stated in the Contract Completion Schedule.

B. INTEREST. Interest shall accrue on all unpaid liquidated damages at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of the liquidated damages accrue, plus 2%. The rate shall be adjusted accordingly on each January 1 and July 1 thereafter until the liquidated damages are paid in full.

C. CITY'S RIGHT OF OFFSET. In the event there are sums due to the Vendor from the City subsequent to the date upon which liquidated damages begin to accrue, the City may thereafter offset and deduct from such sums the amount of any liquidated damages then accrued and the Vendor shall not thereafter be entitled to recover the difference from the City.

D. REMEDY NOT EXCLUSIVE. Liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Vendor shall pay liquidated damages to the City without limiting the City's right to terminate this Contract for default as provided elsewhere herein. Liquidated damages only represent damages for administrative costs, overhead and loss of public use caused by the Vendor's delay. The imposition or recovery of liquidated damages by the City shall in no manner affect the City's ability to recover any other damages caused by the Vendor's default to include, without limitation, the cost of procuring substitute goods from another vendor in the event of the Vendor's breach.

X.

TERMINATION

A. TERMINATION FOR CONVENIENCE OF THE CITY.

(a) The City may terminate performance of work under this Contract in whole or, from time to time, in part if the City determines that a termination is in the City's interest. The City shall terminate by delivering to the Vendor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the City, the Vendor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the City, to the extent directed by the City, all right, title, and interest of the Vendor under the subcontracts terminated, in which case the City shall have the right (but not the obligation) to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the City, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the City, transfer title and deliver to the City -

(i) The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the City.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the City may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Vendor and in which the City has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the City, any property of the types referred to in paragraph (b)(6) of this section; provided, however, that the Vendor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the City. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the City under this Contract, credited to the price or cost of the work, or paid in any other manner directed by the City.

(c) The Vendor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the City's representative upon written request of the Vendor within this 120-day period.

(d) The Vendor may submit to the City a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the City. The Vendor may request the City to remove those items or enter into an agreement for their storage. Within 15 days, the City will accept title to those items and remove them or enter into a storage agreement. The City may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Vendor shall submit a final termination settlement proposal to the City in the form and with the certification prescribed by the City. The Vendor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the City upon written request of the Vendor within this 1-year period. However, if the City determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Vendor

fails to submit the proposal within the time allowed, the City may determine, on the basis of information available, the amount, if any, due the Vendor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Vendor and the City may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The Contract shall be modified, and the Vendor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Vendor and the City fail to agree on the whole amount to be paid because of the termination of work, the City shall pay the Vendor the amounts determined by the City as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The Contract price for completed supplies or services accepted by the City (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of-

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the City to be fair and reasonable; however, if it appears that the Vendor would have sustained a loss on the entire Contract had it been completed, the City shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements);
and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the City expressly assumed the risk of loss, the City shall exclude from the amounts payable to the Vendor under paragraph (g) of this clause, the fair value as determined by the City, for the loss of City property.

(i) The City's cost principles and procedures shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Vendor shall have the right of appeal to the Elko City Council from any determination made by the a member of City staff under paragraph (e), (g), or (l) of this clause, except that if the Vendor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Vendor under this clause, there shall be deducted-

(1) All unliquidated advance or other payments to the Vendor under the terminated portion of this Contract;

(2) Any claim which the City has against the Vendor under this Contract (to include a claim for liquidated damages); and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Vendor or sold under the provisions of this clause and not recovered by or credited to the City.

(l) If the termination is partial, the Vendor may file a proposal with the City for an equitable adjustment of the price(s) of the continued portion of the Contract. The City shall make any equitable adjustment agreed upon. Any proposal by the Vendor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the City.

(m)

(1) The City may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Vendor for the terminated portion of the Contract, if the City believes the total of these payments will not exceed the amount to which the Vendor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Vendor shall repay the excess to the City upon demand, together with interest computed at the rate established under NRS 99.040(1), which requires that when there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1, or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due.

Interest shall be computed for the period from the date the excess payment is received by the Vendor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Vendor's termination settlement proposal because of retention or other disposition of termination inventory until 10 business days after the date of the retention or disposition, or a later date determined by the City because of the circumstances.

(n) Unless otherwise provided in this Contract or by statute, the Vendor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Vendor's costs and expenses under this Contract. The Vendor shall make these records and documents available to the City, at the Vendor's office, at all reasonable times, without any direct charge. If approved by the City, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

B. TERMINATION FOR CAUSE.

(a) The City may terminate this Contract for cause. A termination for cause may include charging the Vendor with excess costs resulting from repurchase.

(b) If the Vendor asserts that the failure was excusable, the Vendor may appeal a termination decision made by City staff to the Elko City Council.

(c) If the Vendor is charged excess costs, the following apply:

(1) Any repurchase shall be made in accordance with NRS Chapter 332. Copies of all repurchase orders, except the copy furnished to the Vendor or any other commercial concern, shall include the notation:

Repurchase against the account of _____ [insert vendor's name] under Order _____ [insert number, if applicable] under Contract _____ [insert number or title].

(2) When excess costs are anticipated, the City may withhold funds due the Vendor as offset security. The City shall minimize excess costs to be charged against the Vendor and collect or set-off any excess costs owed.

(d) Only the City may terminate for cause any, or all, supplies or services covered by the Contract. If the City has terminated any supplies or services covered by Contract, no further orders may be placed for those items. Orders placed prior to termination for cause shall be fulfilled by the Vendor, unless terminated for the convenience of the City.

XI.

FEDERAL REQUIREMENTS

A. FEDERAL STATUTORY AND REGULATORY REQUIREMENTS INCORPORATED HEREIN. Federal funds will or may be used to pay for all or part of the Price. The Vendor shall comply with all Federal requirements applicable to its performance under this Contract and accepts full financial responsibility for any requirements imposed by the Vendor's failure to comply with such applicable Federal requirements. The

following Federal requirements, to include those set forth in Appendix II to 2 CFR Part 200 (“Contract Provisions for Non-Federal Entity Contracts Under Federal Awards”) are, without limitation, incorporated into this Contract:

1. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Contract, the Vendor agrees to comply with the provisions of 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” to include the following:

(a) The Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Vendor will, in all solicitations or advancements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The Vendor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Vendor’s legal duty to furnish information.

(d) The Vendor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor

union or workers' representative of the Vendor's commitments under Section 202 of Executive Order No. 11246 (Equal Employment Opportunity) of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The Vendor will comply with all provisions of Executive Order No. 11246 (Equal Employment Opportunity) of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The Vendor will furnish all information and reports required by Executive Order No. 11246 (Equal Employment Opportunity) of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further City in accordance with the procedures authorized in Executive Order No. 11246 (Equal Employment Opportunity) of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 (Equal Employment Opportunity) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Vendor shall include the provisions of paragraphs XI(A)(1)(a) through (g), above, in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 (Equal Employment Opportunity) of September 24, 1965, so that such provisions will be binding upon each subcontractor or contractor. The Vendor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Vendor becomes involved in, or is threatened with, litigation with a subcontractor or contractor as a result of such direction, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.

The Vendor shall file, and shall cause each of its subcontractors to file, Compliance Reports with the City or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

2. DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141-3148). If this Contract is in excess of \$2,000, the Vendor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the Vendor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Vendor is required to pay wages not less than once a week. **A copy of the current prevailing wage determination issued by the Department of Labor was included in the Bid Documents for this Contract; the Vendor hereby accepts that wage determination.** The City will report all suspected or reported violations to the Federal awarding agency.

3. COPELAND ANTI-KICKBACK ACT. The Vendor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The City will report all suspected or reported violations to the Federal awarding agency.

4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708). If this Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, the Vendor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Pursuant to 40 U.S.C. 3702 of the Act, the Vendor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. Notwithstanding the foregoing, these requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and this Contract is with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the City will comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT. If this Contract is funded under the Clean Air Act (42 U.S.C. 7401-7671q.) or the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, and if the Contract or sub-grant is in an amount in excess of \$150,000, the City will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) or the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) (as applicable). The City will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). The Vendor represents that it is not listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. If required, the Vendor will certify that the Vendor and subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this project by any Federal department or agency. This certification is made pursuant to regulations implementing Executive Order 12549, Department and Suspension, 28 C.F.R. pt. 67, §67.510, as published as pt. VII of May 26, 1988, Federal Register (pp. 19150-19211). The Vendor will disclose, in a timely manner, in writing to the City, all violations of Federal criminal law involving fraud, bribery or gratuity violations potentially affecting the Federal award. The Vendor may be required to report certain civil, criminal and administrative proceedings to the Federal System for Award Management (SAM). Failure to make required disclosures can result in any of the remedial activities described in 2 C.F.R. 200.338 including suspension and debarment.

8. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352). If the amount of this Contract exceeds \$100,000, the Vendor must file the required certification(s). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

9. SOLID WASTE DISPOSAL ACT (PROCUREMENT OF RECOVERED MATERIALS). Pursuant to 2 CFR § 200.323 (Procurement of recovered materials), the City and the Vendor will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent

with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. Pursuant to 2 CFR § 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment): (a) The City is prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) The parties acknowledge that in implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs are required to prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. (c) See Public Law 115-232, section 889 for additional information. (d) See also § 200.471, which provides as follows:

§ 200.471 Telecommunication costs and video surveillance costs.

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:

(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems.

11. DOMESTIC PREFERENCE FOR PROCUREMENT. Pursuant to 2 CFR § 200.322 (Domestic preferences for procurement): (a) as appropriate and to the extent consistent with law, the City should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section are incorporated herein and shall be included in all contracts and purchase orders for work or products under the award. (b) For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

B. FEDERAL COMPLIANCE CERTIFICATION. The Vendor certifies that neither the Vendor nor any subcontractor or any firm, corporation, partnership, or association in which such Vendor or subcontractor has a substantial interest are in violation of the Davis-Bacon Act or any of the following statutes listed at 29 CFR § 5.1(a):

- (a) The Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).
- (b) Copeland Act (40 U.S.C. 276c).
- (c) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
- (d) National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
- (e) Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
- (f) Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

- (g) Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
- (h) Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
- (i) National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
- (j) National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
- (k) Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
- (l) The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).
- (m) Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
- (n) Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
- (o) Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
- (p) Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

- U.S.C. 1246(a)(6)).
- (q) State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
- (r) Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).
- (s) Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).
- (t) Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
- (u) National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).
- (v) Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).
- (w) Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).
- (x) Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).
- (y) Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).
- (z) Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).
- (aa) Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

(bb) Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

(cc) National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

(dd) U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

(ee) Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

(ff) Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

(gg) Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

(hh) Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

(ii) Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

(jj) Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

(kk) Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

- (ll) Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

- (mm) Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

- (nn) Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

- (oo) Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

- (pp) Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

- (qq) New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

- (rr) Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

- (ss) Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

- (tt) Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

- (uu) Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

- (vv) National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

(ww) Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

(xx) Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

(yy) Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

(zz) Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

(aaa) Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

(bbb) Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

(ccc) Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

(ddd) Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

(eee) National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4)).

B. TITLE VI COMPLIANCE. The Vendor shall comply with the requirements set forth in the document attached hereto at **ATTACHMENT 5** entitled "Civil Rights and Non-Discrimination."

C. AUDITS. If applicable, the Vendor will comply with Title 2 of the C.F.R. and any guidance in effect from the Office of Management and Budget (OMB) related (but not limited to) audit requirements for grantees that expend \$750,000 or more in federal awards during the grantee's fiscal year, including the requirement that grantees must have an annual audit prepared by an independent auditor in accordance with the terms and requirements of the appropriate circular. The Vendor will, without limitation and to the extent

applicable, comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in 2 CFR Part 200, or any reasonably equivalent procedures and requirements that may be prescribed.

D. USE OF ASSETS. The Vendor shall adequately account for and safeguard all assets used in the performance of this Contract and ensure that they are used solely for authorized purposes.

XII.

CERTIFICATION REGARDING CERTAIN BOYCOTTS OF ISRAEL

Pursuant to NRS 332.065, the following certification is required if the estimated annual amount required to perform the contract is more than \$100,000:

The undersigned company hereby certifies that it is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.

1. "Boycott of Israel" means, except as otherwise provided in subsection 2, refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with or performing any other action that is intended to limit commercial relations with:

(a) Israel; or

(b) A person or entity doing business in Israel or in territories controlled by Israel,

➡ if such an action is taken in a manner that discriminates on the basis of nationality, national origin or religion.

2. The term "boycott of Israel" does not include an action that is described in Subsection 1 if the action:

(a) Is based on a bona fide business or economic reason;

(b) Is taken pursuant to a boycott against a public entity of Israel if the boycott is applied in a nondiscriminatory manner; or

(c) Is taken in compliance with or adherence to calls for a boycott of Israel if that action is authorized in 50 U.S.C. § 4607 or any other federal or state law.

3. "Company" means any domestic or foreign sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited-liability partnership, limited-liability

company, or other domestic or foreign entity or business association, including, without limitation, any wholly owned subsidiary, majority owned subsidiary, parent company or affiliate of such an entity or business association, that exists for the purpose of making a profit.

Signature: _____ Date: _____, 20 ____

XIII.

BONDING REQUIREMENTS

A. BOND(S) REQUIRED. Vendor shall maintain in full force and effect the following performance bond, payment bond or other bond (or a combination thereof), issued by a surety bonding company authorized to do business in Nevada to insure proper performance of the contract and save, indemnify and keep harmless the City of Elko against all loss, damages, claims, liabilities, judgments, costs and expenses which may accrue against the City of Elko in consequence of the awarding of the contract.

(Indicate "N/A" if no bond is required).

B. ALTERNATIVE FINANCIAL STATEMENT. If no bond is required, the Vendor shall submit a detailed financial statement meeting the requirements of the City.

XIV.

GENERAL TERMS AND CONDITIONS

The following general terms and conditions shall apply to this Contract:

A. TERMS TO BE EXCLUSIVE. The entire Contract between the parties with respect to the subject matter hereunder is contained in this Contract, including the exhibits hereto. The provisions of this Contract are exclusively for the benefit of the parties hereto and not for the benefit of any other person, persons or legal entities.

B. WAIVER OR MODIFICATION INEFFECTIVE UNLESS IN WRITING. No waiver, alteration or modification of any of the provisions of this Contract shall be binding unless in writing and signed by the parties hereto or their duly authorized representatives.

C. ASSIGNMENT. This Contract may not be assigned to any other person without the consent of the Elko City Council or its Authorized Representative (as defined in NRS 332.025(1)). Notwithstanding the foregoing, under no circumstances shall this Contract be assigned to any person who was declared by the Elko City Council or its Authorized Representative (as defined in NRS 332.025(1)) not to be a responsible person to perform the Contract.

D. GOVERNING LAW. This Contract or any dispute arising under or in connection with this Contract shall be governed by all applicable Federal and State of Nevada laws, to include, without limitation, Chapter 332 of the Nevada Revised Statutes, and all Federal statutes and regulations cited herein.

E. JURISDICTION AND VENUE. The parties agree that in the event of a dispute arising under or in relation to this Contract, the Fourth Judicial District Court for the County of Elko, State of Nevada, shall have jurisdiction and venue over said dispute.

F. INTEGRATION. This Contract and the exhibits hereto constitute the entire contract between the parties with respect to the purchase of the Goods and supersede all prior agreements, offers and negotiations (to include, without limitation, the Invitation to Bid and Instructions to Bidders, unless otherwise specifically provided herein) and may not be amended except by a contract in writing signed by the parties.

G. COMPLIANCE WITH APPLICABLE LAWS. The Vendor shall at all times comply in all material respects with all municipal, State and Federal ordinances, rules and statutes applicable to the Vendor's performance hereunder.

H. ATTORNEY FEES. Should either party pursue legal action to enforce any term of condition of this Contract, or any legal action arising from or in relation to the performance of services under this Contract, the prevailing party shall be entitled to reasonable attorney fees and costs.

I. CONSTRUCTION OF DOCUMENT. The parties agree that they were each represented by legal counsel in connection with the preparation of this instrument or had the opportunity to consult with legal counsel; accordingly, the parties waive the usual rule of construction that Contracts are to be strictly construed against the drafting party.

J. BINDING EFFECT. This Contract is binding upon and shall inure to the benefit of the parties' heirs, administrators, successors and assigns, subject to the restriction on assignment herein contained.

K. NOTICE. Service of all notices pursuant to this Contract shall be sufficient if made by certified mail to the specific party involved herein at the respective addresses hereinafter set forth or as such party may provide from time-to-time in writing:

CITY:

VENDOR:

Elko City Clerk
1751 College Avenue
Elko, NV 89801

L. SURVIVAL OF OBLIGATIONS. All duties and obligations of the Vendor contained herein shall survive the Term and shall continue thereafter in perpetuity unless and until satisfied or except as otherwise provided herein.

M. SUCCESSORS. References to the Vendor in this Contract shall include its respective successors, heirs, assigns, agents, employees, vendors, representatives, affiliates, parent companies and subsidiaries. The term "successor" shall mean any person, firm, corporation or other business entity which at any time by merger, purchase or otherwise shall acquire all or substantially all of the assets or business of either party.

N. COUNTERPARTS. This Contract may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same.

O. SIGNATURES. A facsimile, electronic or PDF signature may be used in lieu of an original signature.

P. PARTIAL INVALIDITY. If any term or provision of this Contract, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Contract or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be effected thereby, and each remaining term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

Q. NO WAIVER. No waiver of any right under this Contract shall be effective for any purpose unless in writing, signed by the party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Contract. Moreover, the failure to enforce at any time any of the provisions of this Contract or to require at any time performance by any party any of the provisions hereof shall in no way be construed to be a waiver of such provisions or to affect either the validity of this Contract or any part hereof, or the right of each party thereafter to enforce each and every provision in accordance with the terms of this Contract.

R. FORCE MAJEURE.

1. FORCE MAJEURE, SCOPE AND DEFINITION. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Contract in the event that and to the extent that such party's performance of the Contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without

limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

2. EXCLUSIONS. Force majeure shall not include the following occurrences: (a) late delivery of Goods caused by congestion at a third-party manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences; or (b) late performance by a subcontractor, so long as the occurrence is not caused by the Vendor's fault or negligence.

3. NOTIFICATION. If either party is delayed at any time in the progress of its performance by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via overnight mail by means of any national courier services (to include the United States Postal Service, Federal Express or United Parcel Service) and shall make a specific reference to this clause, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing by hand delivery or certified mail when it has done so. The time of completion shall be extended by Contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the Contract.

S. BREACH OF REPRESENTATIONS AND COVENANTS. Each party shall be responsible to the other for any claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, loss, costs and expense (including but not limited to attorneys' fees) arising or resulting from, or suffered, sustained or incurred as a result (direct or indirect) of the material untruth or inaccuracy of any of the matters represented and warranted by one party to the other or the material breach of any of the covenants, representations, and warranties of the parties as set forth herein.

T. REMEDIES. This Contract and any of the requirements contained herein may be enforced by an action at law or in equity to include, without limitation, an action for specific performance.

U. AUTHORITY. The Vendor warrants to the City that entering into this Contract is within its authority, does not violate any contract to which it is a party and does not require the consent of any other person.

V. TIME IS OF THE ESSENCE. Time is of the essence with respect to all provisions of this Contract that specify a time for performance.

W. LIMITATION ON VENDOR'S DAMAGES. The Vendor's only remedy against the City for a breach of this Contract shall be recovery of an amount equal to no more than the Price plus any reasonable costs actually incurred in shipping the Goods to the City. The Vendor shall not be entitled to recover incidental, consequential, punitive or exemplary damages from the City.

X. INDEMNIFICATION. The Vendor shall hold harmless, defend and indemnify the City from and against all liability to others and all claims, causes of action and suits of others, including without limitation employees, subcontractors or agents of the City for personal injury (including death) or property damage, arising out of acts or omissions of the Vendor, or its employees, contractors, or agents; or arising out of defects in the Goods; or based on a claim that the manufacture, use or sale of the Goods constitutes infringement of any patent, copyright, trademark, or proprietary information rights of others.

Y. FURTHER DOCUMENTS. The parties agree to execute all documents necessary to complete the Contract described herein.

Z. APPROVAL BY CITY COUNCIL AND EXECUTION BY CITY OFFICIAL(S). Notwithstanding any other provision herein contained, this Contract shall not be binding on the City until it has been approved by the City Council and executed by its authorized official(s).

CITY OF ELKO

VENDOR

By: _____

REECE KEENER, MAYOR

By: _____

Its: _____

By: _____

DALE JOHNSON, UTILITIES DIRECTOR

ATTEST:

ANNETTE ROBINSON

ELKO CITY CLERK