

NOTICE TO BIDDERS

PROPOSALS RECEIVED

Elk River Municipal Utilities, Elk River Minnesota, will receive sealed bids in duplicate until 2:00 p.m., November 5, 2025, to furnish 46,750 LF of Electrical Wire as more fully described in the specifications. Bids will be opened and read at that time. Bids shall be endorsed: **"Proposal for Electrical Wire Bid"** on the exterior of the mail packaging.

The Elk River Utilities Commission will consider and possibly award a contract at its next regular scheduled monthly meeting. Proposals should be addressed:

Mark Hanson, General Manager
Elk River Municipal Utilities
13069 Orono Parkway
P.O. Box 430
Elk River, MN 55330-0430

BID BOND/ CERTIFIED CHECK

All bids must be submitted by the bidder on forms provided with the specifications and must be accompanied by a certified check/ surety bond from a company authorized to do business in the state of Minnesota made payable to Elk River Municipal Utilities, Elk River, Minnesota, in the amount of not less than five percent (5%) of the maximum bid, as a guarantee that if the bid is accepted, the bidder will comply and deliver in accordance with the specifications. Should any bidder whose bid has been accepted, fail to execute the contract and deliver satisfactory equipment / material it is understood and agreed that said check/ bond shall be forfeited as liquidated damages. Bids received after the time set for the opening of bids, will be returned to the bidder unopened. Certified checks/ bonds of the unsuccessful bidders will be returned immediately following the bid opening with the exception of the apparent low bidder and second apparent low bidder. These checks/ bonds will be held until the contract is executed and delivered to Elk River Municipal Utilities, at which time checks/ bonds will be returned.

LATE BIDS

Bids received after the time set for the opening of the bids will be returned to the bidder unopened.

REJECTION OF BIDS

Elk River Municipal Utilities Commission reserves the right to reject any or all bids and waive all technicalities.

SPECIFICATIONS

Specifications are on file and may be inspected or obtained at the office of the Elk River Municipal Utilities, Elk River, Minnesota. There is no charge for specifications provided to prospective bidders.

Elk River Municipal Utilities



John Dietz, Utilities Chair



Mark Hanson, P.E., General Manager

**ELK RIVER MUNICIPAL UTILITIES
INSTRUCTIONS TO BIDDERS**

1. PROPOSALS

Sealed bids in duplicate will be received and opened at the Elk River Municipal Utilities Office, Elk River, Minnesota at the time stated in the “Notice to Bidders” which is attached for: Electrical Wire.

All proposals shall be submitted by the Bidder in accordance with the “Notice to Bidders” on proposal forms provided by Elk River Municipal Utilities. Bids shall be endorsed: “**Proposal for Electrical Wire Bid**”

All proposals shall be submitted in duplicate in a sealed envelope addressed:

Mark Hanson, General Manager
Elk River Municipal Utilities
13069 Orono Parkway
P.O. Box 430
Elk River, MN 55330-0430

2. BID BOND/CERTIFIED CHECK

All proposals must be submitted by the bidder on proposal forms provided by Elk River Municipal Utilities and must be accompanied by a certified check / surety bond made payable to Elk River Municipal Utilities, Elk River, Minnesota in the amount of not less than five (5%) of the maximum bid, as a guarantee that if the bid is accepted, the bidder will execute the proposed contract within ten (10) days after award of the contract. Should any bidder, whose has been accepted, fail to execute contract and supply a satisfactory Performance Security, it is understood and agreed that said Certified Check/Bond shall be forfeited as liquidated damages. Certified checks/ bonds of the unsuccessful bidders will be returned immediately following the bid opening, with the exception of the apparent low bidder and the second apparent low bidder. These checks / bonds will be held until the final contract is executed and a satisfactory Performance Security is in the possession of the Elk River Municipal Utilities, at which time checks/ bonds will be returned.

3. LATE BIDS

Bids received after the time set for the opening of bids will be returned to the bidder unopened.

4. WITHDRAWAL OF BIDS

No bid may be withdrawn after the opening of bids without the consent of Elk River Municipal Utilities for a period of thirty (30) days after the scheduled time of opening bids.

5. BOND / LETTER OF CREDIT

The successful bidder must, at the time of the execution of the contract, provide Elk River Municipal Utilities a performance and payment Bond or irrevocable letter of credit pursuant to the requirements of Minnesota Statutes Section 574.26 to 574.32, as amended.

6. CONTRACT DOCUMENTS

Specifications and other contract documents are on file and may be inspected and obtained at the offices of Elk River Municipal Utilities, Elk River, Minnesota.

7. REJECTION OF BIDS

Elk River Municipal Utilities reserves the right to reject any or all bids, excepting the one it deems to be the best interest of Elk River Municipal Utilities.

8. INTERPRETATION OF SPECIFICATIONS

If any bidder is in doubt as to the true intent and meaning of the specifications, they shall submit a written request to the Director of Operations of Elk River Municipal Utilities and a clarifying addendum will be issued and sent to all bidders. These requests shall be made no later than ten (10) days before bid opening.

9. INTENT OF SPECIFICATIONS

The specifications are intended to describe the type of material and general features of design required. No substantial or material deviations from specifications, alterations or substitutions will be considered. If bidder's proposal is not in strict accordance with specifications and other documents, bidder must list in detail the exceptions. Complete descriptive proposals covering material/equipment shall be filed with bid, deviations set out by descriptive material will only be interpreted as clarifying any exceptions to specifications and not in themselves constituting exceptions.

10. NON-COLLUSIVE BIDDING CERTIFICATIONS

By the submission of a bid, the bidder certifies that: (a) The bid has been arrived at by the bidder independently and has been submitted without collusion with any other vendor of materials, supplies or equipment of the type described in the invitation for bids; and (b) The content of the bid has not been communicated by the bidder, nor to its best knowledge and belief by any of its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the bid.

11. TERMS OF PAYMENT

Payment of materials shall be as follows: 30 days following receipt of all material / equipment.

12. CONTRACT FORM

The following documents shall be made part of the contract.

- a. Notice to Bidders
- b. Instructions to Bidders
- c. Technical Specifications
- d. Bid Proposal
- e. Bond
- f. Contract Agreement
- g. Certificate of Insurance

13. ELECTRICAL CONDUCTOR QUALIFICATION

Due to the critical nature and expected longevity of the material furnished under this contract, the conductor manufacturer shall have the following:

- a) Manufacture representative or sales representative with technical expertise shall office in Minnesota to resolve technical, shipping, and invoicing issues that may arise.
- b) Conductor being supplied shall be made and tested in the United States of America and have a documented successful performance of not less than 20 years. Please submit performance history with proposal. Performance history shall include, at a minimum, initial date of manufacturing for proposed cable design, and location of manufacturing facility.

TECHNICAL SPECIFICATIONS

1.0 UNDERGROUND CONDUCTOR

- 1.1 Furnish and deliver single conductor, TRXLPE 1/0 (tree retardant crosslinked polyethylene) insulated, shielded, grounded neutral jacketed power cable with a voltage rating of 15,000 volts, in the quantity(ies) and of the type(s) specified below and on the attached Bid Proposal form.

46,750 feet of 1/0 15KV primary URD, TRXLPE, jacketed, aluminum solid filled conductor, full neutral, 220 mil insulation on 2750' reels.

- 1.2 APPLICABLE STANDARDS The most recent issue of the following standards and specifications form a part of these specifications:

A) ASSOCIATION OF EDISON ILLUMINATING COMPANIES,
AEIC STANDARDS:

CS8-13 or latest revision

B) INSULATED POWER CABLE ENGINEERS ASSOCIATION,
ICEA STANDARDS:

S-94-649 or latest revision

C) AMERICAN SOCIETY FOR TESTING AND MATERIALS,
ASTM STANDARDS:

B 230, B 231, B 609, B 8 or latest revisions

1.3 GENERAL

- A) Supplier shall be responsible for insuring the compatibility of all components of the cable. The cable shall be suitable for general use on electrical distribution systems, in direct sunlight, in conduits, either above or below ground or directly plowed in the earth.
- B) Each phase of cable manufacturing and testing shall be accomplished with care and good workmanship in the United States of America. Approval as a supplier of cable covered by this specification includes approval of the specific design(s) and materials last submitted for approval.

1.4 CONDUCTORS

- A) The insulated conductors shall be Class B concentric lay compressed strand as specified in ASTM Standard No. B 231. Solid conductors shall be in accordance with ASTM B 230 or ASTM B 609.
- B) Completed conductors shall comply with the requirements of Part 2 of ICEA Standard No. S-94-649.

1.5 CONDUCTOR SHIELDING

The conductor shall be covered with a layer of extruded semi-conducting, thermosetting compound with a minimum point thickness in accordance with AEIC Standard No. CS8. The conductor shield shall be easily removable from the conductor and the outer surface of the extruded shield shall be firmly bonded to the insulation.

1.6 INSULATION

- A) Furnish loss in Watts per 1000' at 90 degrees C at 7200 volt to ground.
- B) The insulation shall be TRXLPE 1/0 (tree retardant crosslinked polyethylene) with a nominal thickness of 220 mils. The minimum and maximum insulation thickness at any point shall be .21" minimum and .250" maximum. In accordance with ICEA S-94-649.
- C) Insulation test voltage: AC-44KV
- D) Each reel of completed shielded power cable shall comply with the maximum partial discharge requirements of ICEA S-94-649.
- E) The outside diameters over the insulation and over the extruded insulation shield at any point shall be as with AEIC CS8.

1.7 NONMETALLIC INSULATION SHIELDING

- A) The nonmetallic insulation shielding material shall be a black, semi-conducting layer of thermosetting material extruded directly over the insulation.
- B) The insulation shield shall be in accordance with AEIC CS8, ICEA S-94-649, and the following table:

TABLE I

Calculated Minimum Diameter over the insulation	Minimum Point	Maximum Point
0 – 1.000 inches	30 mils	60 mils
1.001 – 1.500 inches	40 mils	75 mils
1.501 – 2.000 inches	55 mils	90 mils
2.001 – and larger inches	55 mils	105 mils

- C) The insulation shield shall be applied in such a manner that it will have uniform adhesion and will be removable without damaging the insulation, leaving no conducting material which cannot be readily removed. The tension which must be applied to remove the shielding shall be E-Z STRIP (same process as for standard strip except for typical strip tension values are 6 to 12 pounds per one-half inch strip when tested in accordance with paragraph D.1 in AEIC CS8.)

TABLE II

Size AWG or <u>KCMIL</u>	Diameter Over Insulation (Inches)		Diameter Over nonmetallic Insulation Shield (Inches)	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>

1/0	0.770	0.855	0.830	0.955
4/0	0.955	1.045	1.015	1.145
500	1.240	1.330	1.320	1.450
1000	1.575	1.670	1.685	1.820

1.8 CONCENTRIC NEUTRAL

A) A concentric neutral consisting of annealed copper wires shall be applied spirally over the insulation shielding with uniform spacing between the wires, in accordance with ICEA Standard No. S-94-649. The concentric conductors shall have a length of lay of not less than 6 or more than 10 times the diameter of the cable measured over the concentric wires.

B) The number and size of concentric conductors shall be as shown in Table III below.

TABLE III

Insulated Conductor Size AWG/KCMIL	Neutral Size	Number of Neutral Wires			
		16 AWG	14 AWG	12 AWG	10 AWG
1/0	full		16		
4/0	1/3	17*	11		
500	1/3		25*	16	
1000	1/3				20

*Acceptable Alternate Neutral Configuration

1.9 JACKET

A) The jacket shall be insulating encapsulated polyethylene with the following minimum and maximum point thickness in accordance with ICEA S-94-649.

TABLE IV

Calculated Minimum Diameter Over the Concentric Neutral	Minimum Point	Maximum Point
0 – 1.500 inches	45 mils	80 mils
1.501 and larger inches	70 mils	120 mils

1.10 MARKING

A) All finished cable is to be clearly marked and labeled as required in AEIC Standard No. CS8 including NESC Lightning Bolt Symbol.

B) In addition to the marking required by AEIC Standard No. CS8, the cable shall be marked with durable sequential footage marking. Marking shall be accomplished by surface printing, indent printing or other approved means and shall be clearly legible. The sequential marks shall be made at least every two feet along the length of the cable.

- C) The outer jacket shall have NESC lightning bolt symbol and three extruded red stripes spaced 120 degrees apart to identify power cables from other cables in a common trench. The stripes shall be nominally one quarter inch wide.
- D) The inside end footage mark shall be made with a permanent, fade-resistant paint or ink on the side of the shipping reel or provided on a firmly attached weather resistant label.

1.11 TESTING AND TEST REPORTS

- A) All cable shall be tested in accordance with AEIC Standard No. CS8, and ICEA S-94-649.
- B) QUALIFICATION TESTS: Supplier shall furnish with the Bid Proposal certified copies of each test required for qualification as a Supplier in accordance with AEIC Standard No. CS8 and ICEA S-94-649.
- C) APPARENT DISCHARGE TEST: Each reel of completed cable shall be tested and shall not produce more apparent discharge than specified in Section 2.6 of this specification. Results from this test shall be furnished along with shipment of the cable.
- D) The outside diameters over the insulation and over the extruded insulation shield at any point shall be as shown in AEIC CS8. At least one measurement from each 10,000 feet of major portion thereof shall be recorded and reported prior to shipment of the cable. Any value less than the minimum or greater than the allowable maximum will be cause for rejection.
- E) Supplier shall furnish, prior to shipment of the cable, copies of certified reports of each test specified in AEIC Standard No. CS8, applicable paragraphs of ICEA publications, any test listed in this Specification, and any other applicable tests. Test reports and data shall include the actual numerical results of required tests.

2.0 SHIPPING AND DELIVERY

- A) All underground cable ends shall be sealed to prevent damage to the cable due to moisture.
- B) All cable shall be delivered F.O.B. Destination Elk River Municipal Utilities, 19020 Elk Lake Road, Elk River, MN, 55330 via Open Flat-Bed Truck. The Utilities shall be notified by telephone at (763) 635-1349 at least 24 hours in advance of shipment. Alternate number (612) 819-0079.
- C) Desired Shipping Schedules is on or before May 1, 2026, but not prior to January 1, 2026

D) IMPORTANT!

SUPPLIER SHALL INSTRUCT THE FREIGHT CARRIER TO SECURE ALL REELS AS UNMOVABLE, BLOCKED, AND IN AN UPRIGHT POSITION **(NOT LAID ON SIDES)** WHILE IN TRANSIT TO PREVENT DAMAGE TO THE CONDUCTOR.

3.0 PREFERRED CABLE LENGTHS

- A) All reel sizes and shipping lengths shall be as specified on the attached Bid Proposal form. Each reel shall be clearly labeled as to conductor size and voltage rating.
- B) Following is a list of cable sizes and preferred cable lengths. Tolerance of plus or minus 5% per reel is acceptable. A tolerance of plus or minus 1% per shipment is acceptable. Whenever possible the following table be applied:

1000 KCMIL	2000' reels
500 KCMIL	2750' reels
4/0	2750' reels
1/0	2750' reels

- C) The tag end of the cable shall be covered and securely fastened in place to prevent movement during unreeling operation.

4.0 INFORMATION TO BE SUBMITTED For each type of cable specified, the following information shall be submitted:

- a) A completed Bid Proposal form.
- b) Literature covering the cable which Bidder proposes to furnish.
- c) Complete electrical data.
- d) Complete mechanical data.
- e) All test reports as specified in Paragraph 2.11 of this specification.
- f) Written exceptions, if any, to the Specifications and other Proposal documents.
- g) Any additional information as may be requested on the Bid Proposal form.

5.0 BID EVALUATION In evaluating the Bid Proposals, the following factors will be considered:

- a) Price shall be bid two ways:
 - 1) Firm price, no escalation.
 - 2) Variable price with price escalation based upon \$4.79 lb./copper, \$ 1.24 lb./aluminum as base price.
- b) Quoted delivery F.O.B. Destination Elk River, MN.
- c) Electric and mechanical information.
- d) Compliance with Specifications and other Proposal documents.
- e) Loss evaluations on cable.

BID PROPOSAL

Elk River Municipal Utilities Elk River, Minnesota

To the Elk River Municipal Utilities Commission Date _____

Pursuant to the advertisement inviting bids for furnishing and delivering approximately 46,750 LF of Electrical Cable to the Elk River Municipal Utilities in Elk River, Minnesota, the undersigned bidder, being familiar with all conditions affecting the cost of the work and materials, does hereby agree to furnish the required material and do all work required to complete the construction for which this proposal is submitted, in accordance with plans and specifications on file with Elk River Municipal Utilities; and binds themselves upon the acceptance of this bid to execute a contract, of which this proposal, the said advertisement, agreement, information for bidders, plans and specifications shall be part of the performing and completing of said work within the time required in the agreement, and at a price named in the schedules which follow, which are part of this proposal.

The undersigned bidder understands that the Elk River Municipal Utilities Commission reserves the right to reject any or all bids, accepting the one it deems to be in the best interest of Elk River Municipal Utilities. No bids may be withdrawn after the start of opening bids.

Submit with this bid, brochures and manufacturers information reflecting items in the bid. Price to furnish and deliver F.O.B. Destination Elk River, MN the following:

46,750 LF of 1/0 15KV primary URD, TRXLPE, jacketed, aluminum solid filled conductor, full neutral, 220 mil insulation on 2750' reels.

Description _____
Manufacturer _____ Catalog # _____
Reel Size _____ Delivery Date _____
Firm Price per foot _____ Firm Total Price _____
Escalated Price per foot _____ Escalated Total Price _____

Reel removal and disposal included: Yes ☐ No ☐

Accompanying our bid is a certified check/bid bond in the amount of \$ _____ which is five percent (5%) of our total bid.

Dated _____
Subscribed and sworn to before me this
_____ Day of _____

Firm _____

Address _____

By _____

Notary public

My commission expires _____

Title _____

Phone Number _____

AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2025, between the **ELK RIVER MUNICIPAL UTILITIES**, a Minnesota Municipal Utility ("ERMU"), and _____ ("Vendor").

IN CONSIDERATION OF THE MUTUAL UNDERTAKINGS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

1. CONTRACT DOCUMENTS. The following documents shall be referred to as the "Contract Documents", all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Agreement
- B. Specifications
- C. Notice and Instructions to Bidders
- D. Vendor's Bid

In the event of conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts with Contract Document "A" has the first priority and Contract Document "D" having the last priority.

2. OBLIGATIONS OF THE VENDOR. The Vendor shall deliver the underground primary cable described in the Contract Documents in good condition and free of physical defects in accordance with the terms of the Contract Documents.

3. OBLIGATIONS OF ERMU. ERMU shall pay the Vendor the sum of \$_____ inclusive of sales tax.

4. PATENTS. Vendor warrants that the sale or use of the Material being purchased by ERMU herein, will not infringe or contribute to the infringement of any patents, trademarks or copyrights either in the United States. Vendor agrees to defend, protect and save harmless ERMU, its successors, assigns, customers and users of its goods, equipment/material or services and those for who ERMU may act as an agent, against all suits at law or in equity, and from all damages and expenses resulting from claims and demands for actual or alleged infringement of any patent, trademark or copyright by reason of the sale or use of the goods covered hereby. ERMU reserves the right to control or participate in any such infringement action brought against it.

5. ASSIGNMENT. Neither party may assign, sublet, or transfer any interest or obligation in this Contract without the prior written consent of the other party, and then only upon such terms and conditions as both parties may agree to and set forth in writing.

6. TIME OF PERFORMANCE. The Material must be delivered to ERMU, 19020 Elk Lake Road, Elk River, Minnesota 55330

7. PAYMENT. When the Material has been delivered, inspected, and accepted, the ERMU will certify such fact so proper payment may be made. Such payment shall be made not later than thirty (30) days after completion, certification thereof, and invoicing by the Vendor.

8. INDEMNIFICATION

8.1. The Vendor shall indemnify, defend, and hold harmless ERMU and its officials, agents, representatives and employees from any loss, claim, liability, and expense (including reasonable attorney's fees and expenses of litigation) with respect to: (a) Worker's Compensation benefits payable on account of injury or death to any Vendor employee or to any employee of Vendor's subcontractors, where the injury or death arises out of or is in any way related to the work performed or to be performed under the Contract; (b) claims for personal injury, death, or property damage or loss asserted by a Vendor or subcontractors or any of their officers, agents, representatives or employees where the injury, death, damage, or loss arises out of or is in any way related to the work performed or to be performed under the Contract; and (c) claims for personal injury, death, or property damage or loss as asserted by third-parties at the work site, where the claim is based in the whole or in any part on, or is in any way related to, any act or omission by Vendor, or Vendor's subcontractors, agents, employees, or delegates, or ERMU's negligence or willful misconduct.

8.2. Vendor shall agree that the indemnities stated above shall be construed and applied in favor of indemnification. Vendor also agrees that if applicable law limits or precludes any aspect of the stated indemnities, then the indemnities will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnities continue until all applicable statutes of limitations have run.

8.3. If a claim arises within the scope of the stated indemnity, the ERMU may require Vendor to furnish a written acceptance of tender of defense and indemnity from Vendor. Vendor will take the action required by ERMU within fifteen (15) days of receiving notice from ERMU.

9. **Insurance Requirements.** The Vendor, at its expense, shall procure and maintain in force for the duration of this Agreement the following minimum insurance coverages:

A. **General Liability.** The Vendor agrees to maintain commercial general liability insurance in a minimum amount of \$1,000,000 per occurrence; \$2,000,000 annual aggregate. The policy shall cover liability arising from premises, operations, products completed operations, personal injury, advertising injury, and contractual liability. The City shall be endorsed as additional insured.

B. **Automobile Liability.** If the Vendor operates a motor vehicle in performing the Services under this Agreement, the Vendor shall maintain commercial automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum liability limit of \$1,000,000 combined single limit.

C. **Workers' Compensation.** The Vendor agrees to provide workers' compensation insurance for all its employees in accordance with the statutory requirements of the State of Minnesota. The Vendor shall also carry employers liability coverage with minimum limits as follows:

- \$500,000 – Bodily Injury by Disease per employee
- \$500,000 – Bodily Injury by Disease aggregate
- \$500,000 – Bodily Injury by Accident

The Vendor shall, prior to commencing the Services, deliver to the City a Certificate of Insurance as evidence that the above coverages are in full force and effect.

The insurance requirements may be met through any combination of primary and umbrella/excess insurance.

The Vendor's policies shall be the primary insurance to any other valid and collectible insurance available to the City with respect to any claim arising out of Vendor's performance under this Agreement.

The Vendor's policies and Certificate of Insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days advanced written notice to the City.

10. WARRANTY. In addition to manufacturer's warranties and the warranty in the contract specifications, Vendor warrants that all goods, equipment/material or services delivered will be new and of good quality, material and workmanship, merchantable and free from all defects and conform strictly and in all respects to the instructions, specifications, drawings, samples, data and/or other descriptions specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by the ERMU of the goods, equipment/material or services. The foregoing warranties of merchantability made by Vendor shall inure to the ERMU and its customers and shall be in effect as to all goods or equipment/material furnished, serviced or repaired or services rendered for a period provided by the manufacturer as stated in the quote. Neither acceptance nor payment, nor both, shall affect Vendor's obligation under the foregoing warranties or any other warranty, whether express or implied, provided for herein or by law. Notification of breach of any such warranty may be given to Vendor at any time during the warranty period, and at the ERMU's discretion. Vendor shall thereupon, at the ERMU's sole option: (a) repair, replace or cure the defective goods, equipment/material or services; or (b) agree to an equitable adjustment in the Contract price. If such breach causes injury, loss or injury other than to the goods, including loss or damage to business reputation of the ERMU and/or its customers, the Vendor shall compensate the ERMU and its customers for all direct costs, loss or injury to the extent covered by the manufacturer. The Vendor further warrants that the designs and performance of all goods, equipment/material or services being purchased herein conform with the requirements of all applicable government health and safety regulations, including but not limited to regulations administered by OSHA and the EPA. The obligations contained herein apply to products provided by the Vendor, its sub Vendor or any third party involved in the creation of the products to be delivered to the ERMU under the Contract. Failure to comply with any of the obligations contained herein may result in the ERMU availing itself of all its rights under the law and under the Contract, but not limited to, its rights pertaining to termination or default. In no event will either party be liable to the other for indirect, incidental, liquidated, special, or consequential damages of any kind. Vendor's cumulative liability shall not exceed 100% of the original purchase order price.

11. WAIVER. In the particular event that either party shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or any succeeding breach of this Contract by either party, whether of the same or any other covenant, condition, or obligation.

12. GOVERNING LAW. The laws of the State of Minnesota govern the interpretation of this Contract.

13. SEVERABILITY. If any provision, term, or condition of this Contract is found to be or become unenforceable or invalid, it shall not affect the remaining provisions, terms, and conditions of this Contract, unless such invalid or unenforceable provision, term, or condition renders this Contract impossible to perform. Such remaining terms and conditions of the Contract shall continue in full force and effect and shall continue to operate as the parties' entire contract.

14. ENTIRE AGREEMENT. This Contract represents the entire agreement of the parties and is a final, complete, and all-inclusive statement of the terms thereof, and supersedes and terminates any prior agreement(s), understandings, or written or verbal representations made between the parties with respect thereto.

15. DELIVERY. Time and quantity are of the essence in this Contract and if delivery of the Material is not made at such time and in such quantity as provided in this Contract or in supplemental schedules furnished by the ERMU, the ERMU reserves the right, without liability and in addition to its other rights and remedies, to terminate this Contract in whole or in part by notice effective when received by the Vendor, for stated goods or equipment/material not yet shipped or services not yet rendered and to purchase substitute goods or equipment/material or services elsewhere and to charge the vendor with any loss incurred. Vendor agrees that the ERMU may return all or part of any shipment so made, at Vendor's risk and expense, and may charge Vendor with any direct loss, expense or injury sustained as a result of such shipment. If at any time either party has reason to believe that delivery will not be made as scheduled in this Contract, it shall immediately give written notice to the other and set forth the cause of the anticipated delay. Any goods or equipment/material shipped or received in advance of schedule or in excess of quantity ordered, may be returned by the ERMU to the Vendor at Vendor's risk and expense. Any goods or equipment/material to be delivered or services to be rendered in installments under this Contract shall not be construed as making the obligation of the Vendor severable.

16. DISPUTES AND REMEDIES. The rights and remedies provided to the ERMU hereunder shall be cumulative and in addition to any other rights and remedies provided by law, equity or otherwise. Nothing contained herein shall be construed to limit the rights and remedies to which the ERMU may be entitled to at law, equity or otherwise. Waiver by the ERMU of a breach of such provision hereunder by Vendor shall not be deemed a waiver of future compliance and such provision, as well as all other provisions, shall remain in full force and effect. This Contract shall be governed by and construed and enforced in accordance with the laws of the State of Minnesota and all proceedings with respect to this Contract shall be commenced in a state or federal court in Sherburne County, Minnesota. Additionally, this contract is agreed by the Vendor to be made and performed in the State of Minnesota. In any legal proceeding, the prevailing party is entitled to recover from the other party's reasonable attorneys' fees. If any provision or portion of any provision shall be deemed unenforceable or invalid for any reason whatsoever, this Contract shall be deemed amended to exclude any such provision or portion and the balance of this Contract shall remain in full force and effect.

17. PROMPT PAYMENT TO SUB VENDOR. Minnesota Statute § 471.425, Subd. 4a, is incorporated herein by reference. The Vendor shall pay any sub Vendor within ten (10) days of Vendor's receipt of payment from the ERMU for undisputed services provided by the sub Vendors. The Vendor shall pay interest at 1½ percent per month or any part of a month to the sub Vendor on any undisputed amount not paid on time to the sub Vendor. The maximum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Vendor shall pay the actual penalty due to the sub Vendor. A sub Vendor who prevails in a civil action to collect interest penalties from Vendor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

18. GOVERNMENT DATA PRACTICES ACT. The Vendor must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the ERMU pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by the Vendor pursuant to this Agreement. The Vendor is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event the Vendor receives a request to release data, the Vendor must immediately notify the

ERMU. The ERMU will give the Vendor instructions concerning the release of the data to the requesting party before the data is released. Vendor agrees to defend, indemnify, and hold the ERMU, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Vendor's officers', agents', owners', partners', employees', volunteers', assignees' or sub Vendor' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

19. VENDOR SUBJECT TO AUDIT. Pursuant to Minnesota Statutes, § 16C.05, Subdivision 5, the Vendor agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the City, and involve transactions relating to this Agreement. The Vendor agrees to maintain these records for a period of six years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the parties have signed this Contract as of the date and year first above written.

ELK RIVER MUNICIPAL UTILITIES

By: _____
Name: _____
Title: _____

VENDOR:

By: _____
Name: _____
Title: _____