



**HAYWARD**

**RFP# 1921-062519**

**REQUEST FOR PROPOSALS FOR**

**Inspector of Record Services for  
Fire Station 6 and Fire Training Center**

**for the**

**City of Hayward**

**Public Works - Engineering**

Proposal must be received no later than:

**Thursday, October 10, 2019 @ 4:00pm**

Deliver proposal to the office of:

Maria Carrillo, Purchasing Manager

[MARIA.CARRILLO@HAYWARD-CA.GOV](mailto:MARIA.CARRILLO@HAYWARD-CA.GOV)

777 B Street (3<sup>rd</sup> Floor)

Hayward, CA 94541

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- Exhibits:
- Exhibit A - Authorized Agent Form
  - Exhibit B - City of Hayward Professional Services Agreement – EXAMPLE
  - Exhibit C - General Provision for Purchases of Goods or Services
  - Exhibit D - Affirmation on Non-Involvement in Development of Production of Nuclear Weapons

## **INTRODUCTION**

Voters approved Measure C which authorized the City of Hayward to increase the sales tax rate by one-half cent for twenty years for reconstruction and expansion of Fire Station 6 and the Fire Training Center located at 1401 W Winton Avenue in Hayward, CA. Construction consist of nine new buildings/structures plus site/landscape improvements: Fire House/Classroom Building, Apparatus Building, Hangar Building, Training Tower, Burn Building, Storage Buildings, Underground Search & Rescue (USAR)/BART Structure, Covered Break Area Building, and Entry Structure. The project is in partnership with Chabot – Las Positas Community College District (CLPCCD) who will own four of the buildings: Classroom Building, Apparatus Building, Hangar Building and Covered Break Area Building. The construction of the said four buildings owned by CLPCCD will be under the jurisdiction of DSA. The construction cost is estimated at \$57 million.

The City of Hayward is seeking Inspector of Record (IOR) services from Certified Project Inspectors certified by DSA to inspect CLPCCD owned and City of Hayward owned buildings/structures.

The City of Hayward has hired Kitchell to provide Construction Management and RossDrulisCusenbery Architecture (RDC) as the project Architect. Currently, the project is in the design phase at approximately 95% Construction Document Phase.

A tentative start of construction for this project in Jan 2020 with a 24-month construction duration. The start date and duration are subject to change, however, please use this timeline in your proposal.

## **SERVICES TO BE PROVIDED**

This Request for Proposal seeks submittals for IOR (Inspection of Record) services for the City of Hayward's Fire Station 6 and Fire Training Center project.

## **RESPONSIBILITIES/PROPOSALS INCLUDE THE FOLLOWING:**

The successful CONSULTANT will be called upon to provide Inspection of Record services and to perform any of the following tasks, in accordance with all applicable requirements of the California Building and Administrative Codes.

Each applicant SHALL submit Unit Price Fees along with the estimated number of hours for all inspection Services required for all four buildings under DSA jurisdiction AND all remaining buildings under City of Hayward jurisdiction.

### **AVAILABILITY OF PLANS FOR REVIEW:**

The 95% Construction Plans for the subject Project may be viewed on line at [https://haywardca.sharepoint.com/:f/s/External/PWET/Evz3PS\\_IzKdNkxbXoCg9uEQBZnbFrE25Q8Uffuaua3LA8A](https://haywardca.sharepoint.com/:f/s/External/PWET/Evz3PS_IzKdNkxbXoCg9uEQBZnbFrE25Q8Uffuaua3LA8A)

The City of Hayward will not be distribution point for plans.

# **INSTRUCTIONS FOR SUBMITTING PROPOSALS**

## **1. GENERAL**

The City intends to select a firm that best meets the City's needs to perform the services as described in this RFP. CONSULTANT's services may include, but are not limited to:

### **1.1. Scope of Inspection Services is as follows:**

- 1.1.1. Provide inspection services to ensure construction compliance in accordance with code, plans, specifications, and quality control required of Essential Service Buildings pursuant to Chapter 4 of the 2013 California Code of Regulations, Title 24, Part I including section 4-219. Perform all services required of the Project Inspector in the Construction Contract Documents and shall conform to all applicable laws, ordinances, rules and regulations. Issue correction and stop work notices and notify the City representative (Kitchell) or the City of Hayward in writing if work does not conform to contract documents, codes, plans, and specifications. If the Contractor fails to immediately correct the deviation, Consultant shall notify Kitchell or the City of Hayward in writing of the continued deviation and send copies of such notice to the architect.
- 1.1.2. The Project Inspector shall provide the on-site inspection under the general direction of the Architect and under the supervision of the local Building Official.
- 1.1.3. The Project Inspector shall provide competent, adequate and continuous inspection of all construction work as approved by the local Building Official, except for work that must be inspected by an approved special inspector. It is the Project Inspector's responsibility to monitor work performed by special inspectors and testing laboratories.
- 1.1.4. The Project Inspector shall make and sign monthly duly-verified reports to the local Building Official, showing that of his or her own personal knowledge the work during the period covered by the report has been performed and materials have been used and installed in every material respect in compliance with the approved plans and specifications, and setting forth such detailed statements of fact as shall be required.
- 1.1.5. Verify that Contractor's As-Built record documents are updated and review monthly prior to processing of Contractor's payment request.
- 1.1.6. Maintain liaison with the A/E team, Special Inspector's, Geotechnical Engineer, Testing Lab, Building Inspector's, Utility Inspector's, Kitchell or the City of Hayward and other regulatory agencies and governing bodies as necessary to maintain project continuity.
- 1.1.7. The Project Inspector shall maintain detailed comprehensive, organized, assessable, and timely documentation of all testing and inspection performed for the City of Hayward.
  - 1.1.7.1. A systematic record of the tests/inspections performed by the Project Inspector.
  - 1.1.7.2. A job log of the Project Inspector's time spent on the Site(s).
  - 1.1.7.3. Coordinate and log activities of other inspectors on the project.

- 1.1.7.4. Activities performed by the Contractors, and areas where work is performed, referenced to the plans and/ or specifications.
- 1.1.7.5. Manpower assigned to each Contractor and Subcontractor, including numbers of individuals in each trade and type of work performed.
- 1.1.7.6. Weather conditions.
- 1.1.7.7. Equipment and materials delivered to the site.
- 1.1.7.8. Construction equipment and vehicles utilized and duration on project.
- 1.1.7.9. Nature and location of the work being performed (starting and completion dates for various portions of the work).
- 1.1.7.10. Verbal communication and clarifications of the work given to the Contractor.
- 1.1.7.11. Inspection by representatives of regulatory agencies.
- 1.1.7.12. Occurrences or conditions that might affect Contract Sum or Contract Time.
- 1.1.7.13. Visitors to the site, titles, and reasons for visit.
- 1.1.7.14. Project Inspector's record journal to include "Pertinent Calls" relating to conflicting issues regarding changes to documents, i.e., Plans, specifications, change orders and job conditions affecting the interests of the City of Hayward.
- 1.1.7.15. Any work or material in place that does not correspond with the codes, drawings or specifications, as well as resulting action taken. List any other problems or abnormal occurrences that arise during each day, including notations of any particular lack of activity on the part of the Contractor. Note corrective actions taken.
- 1.1.7.16. Times of day the Consultant was present on site.
- 1.1.8. Notwithstanding anything expressed or implied to the contrary, the Consultant shall comply with all federal, state, county and local governmental requirements bearing on the performance of his/her work.
- 1.1.9. Review and monitor Contractor's construction methods and procedures during all construction activities.
- 1.1.10. Attend all meetings as required by the Construction Contract Documents or requested by Kitchell or the City of Hayward, e.g. pre-construction meetings, specification review meetings, coordination meetings, weekly progress meetings, pre-installation meetings, schedule review meetings, etc.
- 1.1.11. Assist Kitchell or the City of Hayward, in scheduling all required site tests and testing laboratory visitations required by the contract documents. Observe and record dates and times of all test procedures and results.

- 1.1.12. When the Contractor's work or a designated portion thereof is substantially complete, prepare for Kitchell a list of incomplete or unsatisfactory items via a "punch list" and submit to Kitchell and the City of Hayward.
- 1.1.13. At completion of project, deliver a copy of all inspection records and any project correspondence to Kitchell.
- 1.1.14. Prior to commencement of work, Consultant will cooperate with Kitchell or the City of Hayward to develop an inspection plan for all inspection required for the construction of the Project(s).
- 1.1.15. At project completion Project Inspector will verify Record Documents have been accurately updated by Design Consultant using Contractor's and Project Inspector's As-Built record documents along with any project documentation necessary as reference.
- 1.2. If inspections are required beyond fifty (50) miles from the project, per diem and mileage will be paid at a rate less than or equal to the then current travel policy of the City of Hayward.
- 1.3. All invoices must be accompanied by the daily reports and laboratory test results for that month. Payment by the Owner will be withheld until the aforementioned are submitted.
- 1.4. Unit costs for testing and inspection include all necessary equipment, expendables, and any administration or profit. No other costs will be considered.
- 1.5. Project Inspector Certifications
  - 1.5.1. The Project Inspector shall provide the City of Hayward a copy of documents satisfactory to the City certifying that the Project Inspector and all of its employees, agents and subcontractors hold proper certification and licensing to perform the required testing and inspection Services required pursuant to this Agreement.
  - 1.5.2. The Project Inspector certifies that it is aware of the provisions of the California Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the work of this Agreement.

## **SUBMISSION**

Submittals should contain the following:

**Cover Letter:** Provide a one page cover letter on your letterhead which includes the address, voice and fax numbers, and e-mail address of the contact person or persons and an indication of who is authorized to represent the proposer in negotiations. Unless the proposer is an individual, all proposals must be signed with a firm/company/partnership/entity name and by a responsible officer or employee indicating that officer or employee's authorization to commit the proposer to the terms of the proposal. Obligations assumed by such signature must be fulfilled.

**Specified Content and Information:** Each proposal should include sections addressing the following information in the listed order. The proposer should be sure to include all information that it feels will enable the Evaluation Committee and, ultimately, the City of Hayward to make a decision. Failure of the proposer to provide specific, detailed information may result in its proposal being rejected in favor of a sufficiently-detailed proposal. Any necessary exhibits or other information, including information not specifically requested by this RFP but that you feel would be helpful, should be attached to the end of the proposal. Be sure your proposal is properly tabbed.

**1. Firm Qualifications and Experience:**

Provide a statement of qualifications for your organization, including an organization chart, a statement of the size of firm, a description of services provided by your organization, and a statement of the extent of experience/history providing the services requested by this RFP. Please indicate the following:

- Number of people in total employed by your company. Please delineate between employees and consultants.
- Number of full time employees (FTEs) assigned to this project if you are selected. Include name, title, and responsibility along with resumes listing the following project specifics:
  - a) Title of project
  - b) Type of facility
  - c) Name of the entity
  - d) Location
  - e) Brief description of the project
  - f) Value
  - g) Competition or project completion date
  - h) Client's names and means of contact

**2. Proposed Approach:**

This section describes your proposed approach for meeting the services required by the City of Hayward, as listed above. Relevant considerations include the quality and feasibility of your approach to meeting these needs, the manner in which you plan to provide adequate staffing (including planning for absences and back-up coverage, training, background checks, and monitoring, etc.), and equipment or other resources provided by you (if applicable). Keep these considerations in mind as you respond to the following:

- Describe how you will fulfill the needs of the Department included in this RFP. Please attach a project plan, if appropriate.
- List your needs for physical space and/or equipment at the City of Hayward during this engagement, if any, aside from space or equipment that would be provided by the City of Hayward as an obvious aspect of the requested services (for example, space to treat patients, computers to document services, etc.).
- Identify how you will meet all other aspects of the scope of work and related requirements listed above, and list any items you cannot provide.
- Describe the measurements/metrics/deliverables/assessments you will provide on at least an annual basis to allow the City of Hayward to assess the services you will provide.



- Provide information on any other pertinent services, if any, you can offer that will reduce costs or enhance the Revenue Cycle for the City of Hayward.

**3. Claims and Violations Against Your Organization:**

Please list any current violations or claims against you/your organization and those having occurred in the past five years, especially those resulting in claims or legal action against you.

**4. Cost:**

Provide a detailed explanation for all costs associated with your providing the requested services if you are selected. Provide Fee Schedule that breaks the scope down for buildings under DSA jurisdiction and buildings under City jurisdiction. Provide narrative with your approach to managing the projects.

Is travel time to the City of Hayward expected to be billable? If so, how will travel time invoices be calculated? Generally, proposals that do not include such travel time or expenses are preferred unless the services requested require travel as part of the service.

**UNIT PRICE FEES**

The amount to be paid to the Consultant, as prescribed herein, shall be total compensation for all services and expenses incurred in the performance of the work described in this RFP.

The following compensation rates include direct salary, mandatory costs, mileage traveled, applicable taxes, benefits, overhead and profit. This schedule is based on Consultant's proposed fees as negotiated and agreed by the City of Hayward.

Standard Rate                                 \$ \_\_\_\_ /Hour  
 Alternate Rate\*                                \$ \_\_\_\_ /Hour

\*(for Sundays and Holidays only, with prior approval)

Length of Agreement: The anticipated duration of the agreement is tied and aligned with the respective durations of each project.

Additional Requirements/Considerations: The City may request from the consulting firm any and all of the above tasks, according to the nature of the project assigned. The firm must be staffed as to render these services expeditiously upon request.

The selected consultant(s) will become an integral member of the City's capital projects implementation teams. The consultant(s) final selection maybe pending City of Hayward's City Council's approval of negotiated service agreements.

**5. References:**

List at least three business references for which you have recently provided similar services. Include contact names and phone numbers for all references provided.

Provide at least three client/patient references, if applicable and appropriate, for whom you

provide more than occasional services. Include names and phone numbers for these individuals.

## **EVALUATION**

All proposals received will be evaluated by an RFP Evaluation Committee. During the evaluation process, the City may require a proposer's representative to answer specific questions orally and/or in writing. The City may also require a visit to the proposer's offices, other field visits or observations by City representatives, or demonstrations as part of the overall RFP evaluation. Once a finalist or group of finalists is selected, additional interactions or information may be required. The most qualified individual or firm will be recommended to City management by the RFP Evaluation Committee based on the overall strength of each proposal, and the evaluation is not restricted to considerations of any single factor such as cost.

Proposals will be considered only from consultants who can demonstrate the following minimum qualifications:

1. Consulting firm has demonstrated experience as well as in-house resources necessary to effectively provide the required services.
2. The firm's personnel assigned to projects shall have experience in Essential Services projects to the types of facilities listed in the above project table within the last five years in the State of California and have certification by DSA.
3. Firms shall be capable of meeting the schedule set by the City of Hayward.

The criteria used as a guideline in the evaluation will include, but not be limited to, the following:

- Firm qualifications and experience, including capability and experience of key personnel and experience with other public or private agencies to provide these services
- Proposed approach, including clarity of understanding of the scope of services to be provided and appropriateness of the proposed solution/services
- History of successfully managing other contracts with public or private agencies
- Ability to meet any required timelines or other requirements
- Claims and violations against you or your organization
- Cost
- References
- Compliance with City contractual requirements

The City may consider any other criteria it deems relevant, and the Evaluation Committee is free to make any recommendations it deems to be in the best interest of the City of Hayward and/or the City. Inaccuracy of any information supplied within a proposal or other errors constitute grounds for rejection of the proposal. However, the City may, in its sole discretion, correct errors or contact a proposer for clarification.

Note that the City reserves the right to evaluate proposals solely based on each vendor's written submission. In relation to written materials, evaluation will be performed only on the material included directly in the proposal itself unless otherwise indicated or requested by the City. The evaluation team will not access company web sites or read sales brochures, marketing materials, or white papers in evaluating vendor experience or proposed methodology unless doing so is in the City's best interest. You may submit additional materials or reference on-line information in your proposal if you wish, but these will not necessarily be considered during the proposal evaluation process.

The City reserves the right to accept other than the proposals with the lowest costs and to negotiate with proposers on a fair and equal basis when the best interests of the City are served by doing so.

The City of Hayward reserves the right to accept or reject any or all proposals, or to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any informality in the proposals. The City of Hayward retains the right at its sole discretion to select a consultant.

All proposals submitted in response to this RFP become the property of the City and public records and, as such, may be subject to public review.

The City reserves the right to cancel, in part or in its entirety, this RFP including, but not limited to: selection procedures, submittal date, and submittal requirements. If the City cancels or revises the RFP, all interested firms will be notified.

## **RIGHTS OF THE CITY**

The City reserves the right to:

- Make the selection based on its sole discretion
- Reject any and all proposals
- Issue subsequent Requests for Information
- Postpone opening proposals if necessary for any reason
- Remedy errors in the Request for Proposal process
- Approve or disapprove the use of particular subcontractors
- Negotiate with any, all, or none of the submitters
- Accept other than the lowest offer
- Waive informalities and irregularities in the proposals
- Enter into an agreement with another vendor in the event the originally selected Vendor defaults or fails to execute an agreement with the City
- An agreement will not be binding or valid with the City unless and until it is approved by the City Council and executed by authorized representatives of the City and of the vendor.

## **DOCUMENTS**

Plans 95% Construction Documents for Fire Station 6 and Fire Training Center. Plans are subject to change as the design develops.

## **GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS**

No proposals shall receive consideration by the City of Hayward for **RFP #1921-062519** unless made in accordance with the following instructions:

It is the responsibility of the bidder to assure that the proposal is received at the City of Hayward prior to the deadline date and time. Proposals received beyond the deadline will not be accepted and will be returned unopened. Late proposals, unsealed proposals, unlabeled proposals, incomplete proposals, or proposals otherwise not in compliance with the General Conditions of this Request for Proposal, will be rejected. By submitting a response, bidder acknowledges and accepts the City of Hayward's standard terms and conditions, General Conditions and all other terms and conditions contained in this RFP.

All proposals must include the company name and address and must be signed by an authorized representative of the company; signature must be an original signature, or an original signature stamp.

City of Hayward, at its sole option, may correct arithmetic or extension errors, and obtain clarification, if necessary.

If no terms discount is to be offered, the terms portion of the proposal shall state "NET". Proposal modifications, corrections, or additions received beyond the bid deadline will NOT be considered. Telephone or facsimile bids will NOT be accepted.

## **DEADLINE FOR RECEIPT OF PROPOSALS**

Proposals can be emailed to [MARIA.CARRILLO@HAYWARD-CA.GOV](mailto:MARIA.CARRILLO@HAYWARD-CA.GOV) OR delivered to the office of the Purchasing Manager, located at 777 B Street, Hayward, CA 94541 no later than Thursday, October 10, 2019 @ 4:00pm. It is the sole responsibility of the bidder to see that their bid is received in proper time. Any bid received after the scheduled deadline for receipt of bids will be returned to the bidder unopened.

## **CONTACT**

Any administrative questions regarding bidding procedures should be directed to: Maria Carrillo, Purchasing Manager via email at [Maria.Carrillo@hayward-ca.gov](mailto:Maria.Carrillo@hayward-ca.gov).

Questions relating to the project management may be directed to: Dave Hung via email at [Dave.Hung@hayward-ca.gov](mailto:Dave.Hung@hayward-ca.gov).

## **LAST DAY FOR QUESTIONS**

Questions regarding documents, discrepancies, omissions, or doubts as to meaning must be submitted in writing to the office of the Purchasing Department, Maria Carrillo; at [Maria.Carrillo@hayward-ca.gov](mailto:Maria.Carrillo@hayward-ca.gov), no later than **Thursday, September 26 at 12:00 p.m.**

## **WITHDRAWAL OF BID PROPOSALS**

Proposal may be withdrawn by the bidder prior to the time fixed for the evaluation of the proposals, but may not be withdrawn for a period of ninety (90) days after the evaluation of the proposals. A successful bidder shall not be relieved of the bid submitted without the City's consent or bidder's recourse to Public Contract Code sections 5100 et. seq.

## **ADDENDA OR BULLETINS**

Any addenda or bulletins issued during the time of the request for proposal shall form a part of the information and specifications issued to bidders for the preparation of their proposals and shall constitute a part of the contract documents. Initials of bidders on the proposal shall reflect receipt of all addenda prior to submittal of the bid.

## **AWARD OF CONTRACT**

The City will evaluate proposals based upon the consultant's proven ability to comply with the specifications contained herein, as well as price. In submitting a proposal, Consultant acknowledges that the City shall have the sole and final right to determine if a bid is in compliance with these specifications. The City will evaluate proposals and make an award to the firm whose proposal is in the best interest of the City.

The City reserves the right to reject any and all proposals, to contract work with whomever and in whatever manner the City decides, to abandon the work entirely and to waive any informality or non-substantive irregularity as the interest of the City may require and to be the sole judge of selection process. The City also reserves the right to negotiate separately in any manner to serve the best interest of the City.

A written purchase order mailed or otherwise furnished to the successful bidder within time for acceptance specified, results in a binding contract without further action by either party. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.

## **BID PROTEST**

Should any bidder question or protest the award of the contract, such question or protest must be furnished in writing to the Purchasing Manager no later than three (3) working days following the evaluation of the proposals. Such submittal must fully explain the basis of the objection supported by all relevant information facts and details. Letter must be signed by an authorized representative stating specific reason(s) for the protest including all relevant facts (law, rule, regulation, and criteria).

Questions or protests not furnished in writing as prescribed will not be accepted.

## **REJECTION OF BIDS**

The City reserves the right to accept or reject any and all bids or any portion or combination thereof, or award on the basis of the total bid. The City of Hayward reserves the right to reject any and all bids, or to waive any informality or non-substantial irregularity in any bid.

## **EXECUTION OF CONTRACT**

The successful bidder shall, within seven (7) working days of receiving notification of award of the contract, must sign and deliver to the City the executed contract along with appropriate bonds and insurance, if required. In the event the bidder to whom an award is made fails or refuses to execute the contract within ten (10) calendar days, the City may award the work to the next responsible bidder, or may reject all bids and call for new bids.

## **RIGHTS AND REMEDIES IN THE EVENT OF DEFAULT**

If the bidder defaults, the City may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due the bidder or by proceeding against a bidder's bonds, if any, or by suit against the bidder. The prices paid by the City shall be considered the prevailing market prices at the time such purchase is made.

## **GOVERNING LAW AND VENUE**

In the event of litigation, the bid documents, specifications and related matters shall be governed by and construed in accordance with the law of the State of California. Venue shall be with the appropriate state or federal court located in Alameda County.

## **TRANSFER OF INTEREST**

No interest in the contract shall be transferred to any other party without permission of the City.

## **PREVAILING WAGE**

Prevailing wages must be paid to all workers employed on a public works project when the public works project is over \$15,000. Prevailing Wages: The Work is subject to the payment of not less than prevailing wages under Labor Code Section 1770 et seq. Bidders are hereby notified that the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to perform the Work under the contract which will be awarded to the successful bidder. Copies are on file with and available upon request from the City Engineer or at <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

Bidders are further notified that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Further information on Compliance Monitoring Unit requirements can be found at <https://www.dir.ca.gov/dlse/cmu/cmu.html>.

No contractor or subcontractor may be listed on a bid proposal for a public works project submitted on or after March 1, 2015 unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5, with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a).

**No contractor or subcontractor may be awarded a contract for public work on a public works project awarded on or after April 1, 2015 unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.**

Contractor agrees to comply with all related provisions of the Labor Code, including but not limited to, the provisions of Labor Code Section 1775 relating to the payment of prevailing wages, Section 1777.5 relating to the employment of apprentices and Section 1811-1813 relating to the payment of Overtime.

Offsite Fabrication Of Materials and Components: Per the August 27, 2014 decision of the California Court of Appeals in sheet metal worker's international association, local 104 vs. Duncan, "offsite fabrication is not covered by the prevailing wage law if it takes place at a permanent, offsite manufacturing facility and the location and existence of that facility is determined wholly without regard to the particular public works project."

## **WORKERS' COMPENSATION**

In accordance with the provisions of Section 3700 of the Labor Code, Contractor shall secure the payment of compensation to his employees. Contractor hereby acknowledges the following statement:

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

The Contractor shall take out and maintain during the life of the contract, Statutory Worker's Compensation and Employer's Liability Insurance with limits not less than One Million Dollars (\$1,000,000) for all its employees to be engaged in the work on the project under the Contract. Should any work be sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance, all in strict compliance with State laws and to fully protect the City from any and all claims arising out occurrences on the work.

## **PROOF OF CARRIAGE OF INSURANCE**

The contractor shall take out and maintain during the life of the Agreement all the insurance required by this section and shall annually submit certificates for review and approval by the City. Acceptance of the certificates shall not relieve the contractor of any of the insurance requirements, and shall not decrease the liability of the contractor. The City reserves the right to require the contractor to provide insurance policies for review by the City.

Contractor shall not commence work nor shall contractor allow any subcontractor to commence work under this contract until all required insurance and certificates have been delivered in duplicate to and approved by the City. Certificates and insurance policies shall include the following clause:

"This policy shall not be canceled or reduced in required limits of liability or amount of insurance until notice has been mailed to the City stating date of cancellation or

reduction. Date of cancellation or reduction may not be less than ten (10) days after date of mailing notice."

Certificate of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date and cancellation and reduction notice. Contractor shall be solely responsible for:

1. Compliance of subcontractors with insurance requirements; and
2. Other insurance coverage including but not limited to loss, theft, fire, property damage, and glass breakage.

## **COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall take out and maintain in the name of the Contractor and as an additional insured, the City, during the life of the Contract, such Commercial General and Automobile Liability Insurance as shall protect the Contractor, the City, and its officials, officers, directors, employees and agents from claims which may arise from operations under this contract, whether such operations be by the Contractor, by the City, its officials, officers, directors, employees and agents, any subcontractors or by anyone directly or indirectly employed by any of them. Such coverage shall be at least as broad as: Insurance Service Office Commercial General Liability coverage (occurrence Form CG0001) and Insurance Service Form Number CA0001 (Ed.1/87) covering Automobile Liability, Code 1 (any auto). This liability insurance shall include but not limited to protection against claims arising from bodily and personal injury and damage to property, resulting from the Contractor's or subcontractor's operations, including the use of owned or non-owned automobiles, products and completed operations. The amounts of insurance shall not be less than the following:

- Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Employer's Liability Insurance: \$1,000,000 per occurrence.

The following endorsements must be attached to the policy:

- *The City must be named as an additional named insured under the coverage afforded with respect to the work being performed under the contract.*
- If the insurance policy covers on an "accident" or a "claims made" basis, it must be changed to "occurrence".
- The policy must cover Personal Injury as well as Bodily Injury.
- The policy must cover complete contractual liability. Exclusions of contractual liability. Exclusions of contractual liability as to bodily injuries, personal properties and property damages. **MUST BE ELIMINATED** from the basic policy endorsements. This endorsement may be satisfied by amending the definition of "incidental contract" to include written contract.
- Broad form property damage liability must be afforded. Permission is granted for deductible, which shall not exceed \$10,000 without special approval of the City.



- A certificate shall be provided which states that the coverage is PRIMARY INSURANCE and that no other insurance affected by the City will be called upon to contribute to a loss under this coverage.
- The policy must include a cross liability or severability of interest clause.
- Any failure of the Contractor to comply with the reporting provisions of the policies shall not affect coverage provided to the City, et al.
- Notice of Cancellation, non-renewal, reduction in limits, or material change, shall be sent to the City with at least thirty (30) days prior written notice by certified mail.
- Insurance is to be placed with California Admitted Insurers with a Best's rating of no less than A:XI.
- The policy covers use of Non-owned Autos.

Should any insurance policy be materially changed before final completion of the work, and the Contractor fail to procure other insurance as herein required, immediately, the City may procure such insurance and deduct the cost thereof from any amounts due to the Contractor.

Insurance is to be placed with insurers acceptable to the City of Hayward's Legal Department.

## **LOSS OR DAMAGE**

The Contractor shall take and assume all responsibility for the work. The Contractor shall bear all losses and damages which may occur to said work or any part or portion thereof and in connection therewith to persons and/or property, and shall fully indemnify the City from and against the same.

The Contractor, subject to the limitations of Civil Code Section 2782, shall assume the defense of and indemnify and save harmless the City, officers and employees from every expense, liability or payment by reason of injury (including death) to persons or damage to property suffered through any act or omission, including passive and/or active negligence, of the Contractor, or any Subcontractors or anyone directly or indirectly employed by either of them, or from the condition of the premises while in the control of the Contractor or any Subcontractors, or anyone directly or indirectly employed by either of them or arising in any way from the work called for by this contract, or any part of the premises.

## **INDEMNIFICATION**

Pursuant to Public Contract Code section 20103.6, any agreement with the Consultant shall include the following indemnity:

To the furthest extent permitted by California law, the Consultant shall defend, indemnify, and hold free and harmless the City of Hayward, it's City Council, managers and employees, agents, representatives, officers, consultants, employees, trustees, volunteers, Kitchell and RDC and their design consultants ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above are caused in whole or in part by the willful misconduct or negligent acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting

from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

The Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified parties in any Claim. Consultant shall also reimburse the City for the cost of any settlement paid by the City arising out of any Claim. Consultant shall reimburse the indemnified parties for any and all legal expenses and costs, including expert witness fees and consultant fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided to the extent caused by the above agreement to indemnify. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the indemnified parties. The City shall have the right to accept or reject any legal representation that Engineer proposes to defend the indemnified parties.

## **NON APPROPRIATION OF FUNDS**

Notwithstanding any of the foregoing provisions, if for any fiscal year of this agreement the governing body of the City fails to appropriate or allocate funds for future payments under the Agreement, City of Hayward will not be obligated to make any payments remaining unpaid beyond the fiscal period for which funds have been appropriate or allocated and either party hereto may terminate the Agreement as provided.

## **TERMINATION**

This Agreement may be terminated by City or Consultant at any time upon thirty (30) days written notice. In the event of termination, the Consultant shall be entitled to compensation for services performed to the effective date of termination, provided, however, that City may condition payment of such compensation upon delivery to the City by Consultant of any and all documents and materials prepared pursuant to this Agreement.

## **FAILURE TO PERFORM**

The City of Hayward, upon written notice to the Contractor, may immediately terminate this Contract should the Contractor fail to perform properly any of its obligations hereunder. In the event of such termination, the City may proceed with the work in any reasonable manner it chooses. The cost to the City of completing the Contractor's performance shall be deducted from any sum due to the Contractor under this Contract, without prejudice to the City's rights to recover damages.

## **SUCCESSFUL BIDDER NOT AN AGENT OF THE CITY OF HAYWARD**

The right of general supervision of the City of Hayward shall not make the Successful Bidder an agent of the City; and the liability of the Successful Bidder for all damages to persons or to public or private property arising from the Successful Bidder's execution of The Work shall not be lessened because of such general supervision.

## **PUBLIC RECORDS**

All responses to this RFP will become the property of the City. Once a final award is made, all bid responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City shall not in any way be liable or responsible for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act.

## **ATTORNEY'S FEES**

In the event suit is brought by either party in connection with this agreement, the prevailing party shall have judgment for court costs and a reasonable attorney's fee.

END OF PROPOSAL

## EXHIBITS

***\*THIS DOCUMENT MUST BE COMPLETED, EXECUTED AND SUBMITTED WITH THE PROPOSAL FORM\****

THE REPRESENTATIVES MADE HEREIN ARE MADE UNDER PENALTY OF PERJURY  
NO PROPOSAL IS VALID UNLESS SUBMITTED ON THIS FORM AND SIGNED BY AUTHORIZED AGENT  
FOR YOUR COMPANY.

SUBMITTED BY:

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_  
(Authorized Agent)

NAME: \_\_\_\_\_  
(Please Print)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

NOTE: If proposer is a corporation, the legal name of the corporation shall be set forth above, together with the signature of authorized officers or agents; if bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partnership; and if bidder is an individual, his signature shall be placed above.

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF HAYWARD AND (NAME OF Consultant) \_\_\_\_\_

THIS AGREEMENT, dated for convenience this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, is by and between (name of consultant) \_\_\_\_\_, a [insert here a description of the capacity of the contractor such as a sole proprietorship, a California corporation, or a limited partnership] \_\_\_\_\_, \_\_\_\_\_ ("Consultant") and the CITY OF HAYWARD, a public body of the State of California ("City");

RECITALS:

WHEREAS, Consultant is specially trained, experienced, and competent to perform the special services which will be required by this agreement; and

WHEREAS, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, Consultant and the City agree as follows:

AGREEMENT:

Scope of Service. Subject to the terms and conditions set forth in this agreement, Consultant shall provide to the City, the services described in Exhibit \_\_\_\_\_. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit \_\_\_\_\_.

Compensation. City hereby agrees to pay Consultant as provided in Exhibit \_\_\_\_\_. Total compensation for Consultant's services and expenses incurred pursuant to this agreement shall not exceed the sum of \$\_\_\_\_\_.

Effective Date and Term. The effective date of this agreement is \_\_\_\_\_] and it shall terminate no later than \_\_\_\_\_.

Independent Contractor Status. It is expressly understood and agreed by both parties that Consultant, while engaged in carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and not an employee of the City. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee of the City.

Billings. Consultant shall submit monthly bills to the City describing its services and costs provided during the previous month. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant's monthly bills shall include the following information to which such services or costs pertain: a brief description of services performed, the date the services were performed, the number of hours spent and by whom, and a brief description of any costs incurred, and the Consultant's signature. In no event shall Consultant submit any billing for an amount in excess of the maximum amount of compensation provided above.

Advice and Status Reporting. Consultant shall provide the City with timely advice of all significant developments arising during performance of its services hereunder orally or in writing.

Designation of Primary Provider of Services. This agreement contemplates the services of Consultant firm, [Name, Name, and Name] \_\_\_\_\_. The primary provider of the services called for by this agreement shall be [insert here the name of the individual who will provide the services to the City] \_\_\_\_\_, who shall not be replaced without the written consent of City's Director of Finance.

Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this agreement. In the event that City, in its sole discretion, at any time during the term of this agreement, desires the removal of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

Assignment and Subcontracting. It is recognized by the parties hereto that a substantial inducement to City for entering into this agreement was, and is, the professional reputation and competence of Consultant. Neither this agreement nor any interest therein may be assigned by Consultant without the prior written approval of City's Director of Finance. Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's Director of Finance.

Insurance. On or before beginning any of the services or work called for by any term of this agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the agreement, and

provide proof thereof that is acceptable to the City the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor.

- (a) Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Consultant shall be provided with limits not less than one million dollars. In the alternative, Consultant may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this agreement.
- (b) Commercial General and Automobile Liability. Consultant, at Consultant's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles.
- Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto).
- Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:
- (i) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.
  - (ii) The insurance shall cover on an occurrence basis, and not on the basis of an accident or claims made.
  - (iii) The insurance must cover personal injuries as well as bodily injuries. Any exclusion of contractual liability in personal injury provisions of the policy or any endorsement to it must be eliminated.
  - (iv) The insurance must cover complete contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement.
  - (v) Any explosion, collapse, and underground property damage exclusion must be deleted.
  - (vi) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.
  - (vii) The policy must contain a cross liability or severability of interests clause.
  - (viii) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents,

- and volunteers.
- (ix) Broad form property damage liability must be afforded. A deductible that does not exceed \$25,000 may be provided.
  - (x) Insurance is to be placed with California- admitted insurers with a Best's rating of no less than A:VII.
  - (xi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.
- (c) Professional Liability. Consultant, at Consultant's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than one million dollars covering the licensed professionals' errors and omissions, as follows:
- (i) Any deductible shall not exceed \$100,000 per claim.
  - (ii) Notice of cancellation or non-renewal must be received by the City at least thirty days prior to such change.
  - (iii) If the professional liability coverages are written on an occurrence form, the policy must contain a cross liability or severability of interest clause.
  - (iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:
    1. The retroactive date of the policy must be shown and must be before the date of the agreement.
    2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.
    3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the agreement or the work.
    4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.
- (d) Deductibles and Self-Insured Retentions. During the period covered by this agreement, upon express written authorization of City's City Attorney, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Consultant may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
- (e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.
- (f) In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
  - (ii) Order Consultant to stop work under this agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
  - (iii) Terminate this agreement.
- Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Consultant's failure to maintain insurance



or secure appropriate endorsements.

Indemnification - Consultant's Responsibility.

- (a) It is understood and agreed that Consultant has the professional skills, experience, and knowledge necessary to perform the work agreed to be performed under this agreement, that City relies upon the professional skills of Consultant to do and perform Consultant's work in a skillful and professional manner, and Consultant thus agrees to so perform the work.
- (b) Acceptance by City of the work performed under this agreement does not operate as a release of said Consultant from such professional responsibility for the work performed. It is further understood and agreed that Consultant is apprised of the scope of the work to be performed under this agreement and Consultant agrees that said work can and shall be performed in a fully competent manner.
- (c) Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend, and hold harmless City, and its officers, employees, agents, and volunteers, from and against all claims, demands, costs, or liability arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, or agents during the performance this Agreement, or from any violation of any federal, state, or municipal law or ordinance to the extent caused, in whole or in part, by the negligence, reckless, or willful misconduct of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, excepting only liability arising from the sole negligence, active negligence, or intentional misconduct of City, its officers, employees, agents, and volunteers. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of Consultant, its employees, agents, or subcontractors by federal or state law, Consultant warrants that such license has been obtained, is valid and in good standing, and shall keep in effect at all times during the term of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

Nondiscriminatory Employment Practices. In the performance of this agreement, Consultant agrees to comply with the requirements of Hayward Municipal Code, Chapter 2, Article 7, Nondiscriminatory Employment Practices by City Contractors, a summary of which is attached hereto as Exhibit B.

Termination. This agreement may be cancelled at any time by the City for its convenience upon written notification to Consultant. In the event of termination, the Consultant shall be entitled to compensation for services performed to the effective date of termination; provided, however, that the City may condition payment of such compensation upon Consultant's delivery to the City of any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this agreement.

Notices. Notices required by this agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Consultant:                   (Consultant Name)\_\_\_\_\_

  (Address)\_\_\_\_\_

\_\_\_\_\_

To the City:                      City Manager  
  777 B Street, 4<sup>th</sup> Floor  
  Hayward, CA 94541-5007

# CITY OF HAYWARD

## GENERAL PROVISIONS FOR PURCHASES OF WORK AND SERVICES

Exhibit C

If these general provisions are incorporated by reference into a Purchase Order for work and/or services, all references to "Bidder" or "Successful Bidder" shall be construed to mean the Seller from whom work and services are purchased by the City. The work and services described in the accompanying Request for Quotation or Purchase Order hereinafter shall be designated as "The Work".

### 1.00 Legal Relations and Responsibilities

1.01 Laws to be Observed: The Bidder shall keep itself fully informed of all existing and future State and Federal laws, including O.S.H.A. standards, and all municipal ordinances and regulations of the City of Hayward which in any manner affect those engaged or employed in The Work or the materials used in The Work, or which in any way affect the conduct of The Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

1.02 Labor Discriminations: No discrimination shall be made in employment of persons upon The Work because of the race, color or religion of such persons, and any Successful Bidder which violates this Section is subject to all the penalties imposed for a violations of Chapter 1, Part 7, Division 2, of the Labor Code of the State of California in accordance with the provisions of Section 1735 thereof.

1.03 Prevailing Wage: The Successful Bidder hereby stipulates that Sections 1771 and 1777.5 of the Labor Code of the State of California shall be complied with and shall forfeit as a penalty to the City of Hayward not more than fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the general prevailing rates of per diem wages as determined by the Department of Industrial Relations for such work or craft in which such worker is employed on The Work in violation of the Labor Code of the State of California, in particular the provisions of Sections 1770 to 1780, Inclusive, thereof.

Copies of the general prevailing wage rates are on file in the office of the City Engineer and are available to any interested parties on request.

1.03.1 Certified Payroll Records: Bidder shall maintain certified payroll records as required by Section 1776 of the Labor Code. Copies of certified payroll records shall be provided to the City of Hayward within ten (10) days of written request by the City. Failure to provide copies of certified payroll within the time prescribed by statute shall result in imposition of monetary penalties or withholding of progress payments due under the contract.

1.04 Permits and Licenses: Any person doing business in the City of Hayward is required by Chapter 8, Section 1 of the Municipal code to pay a business license tax. The successful bidder shall have or procure a business license and, prior to initiation of work, show evidence thereof to the Revenue Department. The successful bidder shall, in addition, procure all permits, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of The Work.

1.05 Encroachment Permit: The Successful Bidder shall obtain and/or comply with any encroachment permits as set forth in the order.

1.06 Patents: The Successful Bidder shall assume all responsibilities arising from the use of patented materials, equipment, devices, or processes used on or incorporated in The Work.

1.07 Public Convenience and Safety: Attention is directed to all applicable Sections of Chapter 7, Article 2, STREETS, "Disturbance of Streets," of the City of Hayward Municipal Code.

Traffic control procedures stated herein and traffic control standard plans shall be the MINIMUM accepted in the City of Hayward. Any variations shall be approved by the Engineer prior to use. In no way shall compliance with

these specifications and standards relieve the Successful Bidder of any liability for claims or damages arising from his work.

All streets within the project limits shall remain open to traffic at all times during the construction period. Between the hours of 5:00 PM and 8:00 AM, all lanes remain open to traffic. Adequate traffic warning and control devices shall be provided and maintained by the Successful Bidder during the construction period in accordance with the "State of California Manual of Warning Signs, Lights and Devices for Use In Performance of Work upon Highways" dated 1973. When inadequate traffic warning and control devices have been installed, the City shall provide whatever facilities are deemed necessary and will charge the Successful Bidder for the costs thereof as provided in Section 7, Article 2 of the Hayward Municipal Code.

Traffic control signs, (regulatory, warning or construction type) conforming to the State of California Standards, and any special-legend signs required, except "NO PARKING" signs, shall be furnished by the Successful Bidder as directed by the Engineer.

The Successful Bidder shall install and maintain all signs.

Any obstructions which will remain in the roadway after darkness MUST BE adequately outlined with barricades with flashers or delineators along with other warning devices. All barricades and delineators shall conform to State of California Manual of Warning Signs, Lights, and Devices for Use in Performance of Work upon Highways.

Safe and convenient pedestrian access shall be provided at all times.

Flagmen are mandatory at locations where equipment is intermittently blocking a traffic lane or where only one lane is available for two-direction traffic. One flagman is required for each direction of traffic affected where only one lane is available for over 100 feet or when required by the Engineer. When less than 20 feet of street width is available for traffic, a flagman will be required. Flagman shall wear distinctive clothing, such as a RED jacket.

All work specified herein shall be considered to be at the Successful Bidder's expense.

1.08 Responsibility for Damage: The Successful Bidder shall take all responsibility for the Work, shall bear all losses and damages directly or indirectly resulting to the Bidder, to any subcontractor, to the City, to City employees, or to parties designated in any purchase order provision, on account of the performance or character of The Work, unforeseen difficulties, accidents, occurrences or other causes predicted on active or passive negligence of the City, or of parties designated in any purchase order provisions. Said Bidder shall assume the defense of and shall indemnify and hold harmless the City, its officers, officials, directors, employees and agents from and against any or all loss, liability, expense, claim, costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance of The Work.

Approval of the insurance contract does not relieve the Successful Bidder or subcontractors from liability under this clause.

1.09 Responsibility for Work: Except as provided above, until the formal acceptance of The Work by the City, the Successful Bidder shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the nonexecution of The Work. The Successful Bidder shall rebuild, repair, and restore, and make good all injuries or damages to any portion of The Work occasioned by any of the above causes before final acceptance and shall bear the expense thereof, except such injuries or damages occasioned by acts of the Federal

Government or of the public enemy.

**1.10 No Personal Liability:** Neither the City Council, officers, employees or agents of the City of Hayward, nor any other officer or authorized assistant or agent shall be personally responsible for any liability arising from or in connection with The Work.

**1.11 Responsibility of City:** The City of Hayward shall not be held responsible for the care or protection of any material or parts of The Work prior to final acceptance, except as expressly provided for in these specifications.

**1.12 Successful Bidder Not an Agent of the City of Hayward:** The right of general supervision of the City of Hayward shall not make the Successful Bidder an agent of the City; and the liability of the Successful Bidder for all damages to persons or to public or private property arising from the Successful Bidder's execution of The Work shall not be lessened because of such general supervision.

**1.13 Inspection and Payments Constitute No Waiver of Order Provisions:** Neither the Inspection by the City Engineer nor by an inspector or other City representative, nor any payment of money, nor acceptance of any part or whole of The Work by the City of Hayward or its agents shall operate as a waiver of any provision of the order.

**1.14 Insurance Requirements:** Successful Bidder shall promptly obtain, at the Bidder's own expense, all the insurance required by this section and shall submit a completed copy of Coverage Verification signed by the Successful Bidder's agent or broker to the City's Purchasing Division for review and approval by the City. Insurance requirements must be met prior to issuance of purchase order. It is highly recommended that Bidders confer with their insurance carrier or broker to determine in advance of bid submission the availability of insurance coverage and endorsements as prescribed and provided herein. If an apparent successful bidder fails to comply with the insurance requirements, that Bidder may be disqualified.

(1) The Successful Bidder shall take out and maintain during the life of the purchase order statutorily sufficient Workers' Compensation and Employer's Liability Insurance for all of the Bidder's employees to be engaged on The Work. Should any work be sublet, the Successful Bidder shall require the subcontractor similarly to provide Workers' Compensation and Employer's Liability Insurance, all in strict compliance with State laws and to fully protect the City from any and all claims arising out of occurrences on The Work.

(2) The Successful Bidder shall take out and maintain in the name of the Successful Bidder and the City as a Named Insured during the life of the purchase order, such Public Liability Insurance as shall protect itself, the City, its officials, officers, directors, employees and agents from claims which may arise from operations under the purchase order, whether such operations be the Bidder, by the City, its officials, officers, directors, employees and agents, any subcontractors, or by anyone directly or indirectly employed by either of them. This Liability Insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from the Successful Bidder's, City's or subcontractor's operations, use of owned or non-owned automobiles, products, and completed operations. The amounts of insurance shall not be less than the following:

Single Limits Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

If Commercial General Liability Insurance or other form with a General Aggregate Limit is used, either the General Aggregate Limit shall apply separately to the project/location or the General Aggregate Limit shall be twice the required occurrence limit.

The following endorsements must be attached to the policy:

(a) If the Insurance policy covers on an "accident" basis, it must be changed to "occurrence".

(b) The policy must contain a Cross Liability or Severability of Interest Clause.

(c) The policy must cover complete Contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property MUST BE ELIMINATED from the basic policy endorsements.

(d) Broad Form property damage liability must be afforded. Permission is granted for deductible which shall not exceed \$10,000 without special approval of the City.

(e) Any failure to comply with reporting or other provisions of the policies including brochures of warranties shall not affect coverage provided to the City, its Officials, Officers, Directors, Employees, or Agents.

(f) An endorsement shall be provided which states that the coverage is PRIMARY INSURANCE and that no other insurance effected by the City will be called upon to contribute to a loss under this coverage.

(g) Cancellation, non-renewal or reduction in limits shall be sent to the City with at least 10 days prior written notice, by certified mail, return receipt requested.

(h) Insurance is to be placed with California Admitted Insurers with an A.M. Best's Rating of no less than A:XI.

Successful Bidder shall not commence work until such insurance has been approved by the City. The Successful Bidder shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained. Such insurance shall remain in full force and effect at all times during the prosecution of The Work and until the final completion and acceptance thereof.

**1.15 Disposal of Material Outside the Public Right of Way:** The Successful Bidder shall make his own arrangements for disposing of materials outside the public right of way, and he shall pay all costs involved.

**1.16 Preservation of Property:** Attention is directed to Section 1.08, "Responsibility for Damage." Due care shall be exercised to avoid injury to existing improvements or facilities, adjacent property and real or personal property that is not to be removed.

**1.17 Cooperation:** Should work be performed by other firms, within or adjacent to The Work specified, or should work of any other nature be underway by other forces within or adjacent to said limits, the Successful Bidder shall cooperate with all such other firms or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

When two or more firms are employed on related or adjacent work, each shall conduct his operation in such a manner as not to cause any unnecessary delay or hindrance to the other. Each firm shall be responsible to the other for all damage to work, to persons or property caused to the other by his operations and for loss caused the other due to his unnecessary delays or failure to finish The Work within the time specified for completion.

**1.18 Assignment:** The performance of The Work may not be assigned except upon the written consent of the Purchasing Agent. Consent will not be given to any proposed assignment which would relieve the Successful Bidder or its surety of their responsibilities under the order. The Successful Bidder may assign monies due or to become due it under the order and such assignment will be recognized by the City, if given proper notice thereof, to the extent permitted by law. That any assignment of money shall be subject to all proper set-offs in favor of the City, and to all deductions provided for in the order, and particularly all money withheld, whether or not assigned, shall be subject to being used by the City for the completion of The Work, in event that the Successful Bidder should be in default therein.

**1.19 Time of Completion:** The Successful Bidder shall complete all or any designated portion of The Work in all parts and requirements within the time set forth in the order.

**1.20 Care and Protection:** The Successful Bidder shall be entirely responsible for any damage to the City's or adjacent property due to hauling materials or other causes attributable to the conduct of his work, and all such damage will be repaired by the Successful Bidder when and as directed by the City's representative, and as required to place the property in as good condition as before the commencement of The Work.

**1.21 Nondiscriminatory Employment Practices:** In the performance of this contract the contractor or subcontractor agrees as follows:

**(1) AFFIRMATIVE ACTION - GENERAL**

The contractor or subcontractor shall not discriminate against any applicant for employment or employee on the grounds of race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability. The contractor or subcontractor will take affirmative action to ensure that its recruitment, selection, and evaluation practices do not discriminate against any applicant for employment or employee. The contractor or subcontractor shall also ensure that its personnel policies, practices and procedures, including, but not limited to, the transfer, promotion, demotion, suspension, layoff, or termination, rates of pay and other form of compensation, and the selection for training programs, apprenticeship, and on-the-job training do not discriminate against any employee. The contractor or subcontractor shall post in conspicuous places that are accessible to applicants for employment and employees notices setting forth this Nondiscriminatory Employment Practices Provision.

**(2) RECRUITMENT**

(a) Non-union employees. Advertising placed with any media shall include the notation, "An Equal Opportunity Employer." Advertisements shall be placed with media having large circulation among minority groups or at school placement centers having large minority student enrollments. The contractor or subcontractor will send to each source of employee referrals, other than labor unions or workers' representatives, a notice in such form and content as shall be furnished or approved by the City, advertising said source of employee referrals of its commitments under Chapter 2, Article 7, of the Hayward Municipal Code, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

Recruitment of non-union employees shall, to the maximum extent possible, utilize the services of minority organizations likely to be referral sources for minority group employees.

(b) Union employees. Union employees shall be recruited in accordance with applicable labor agreements. The contractor or subcontractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, in such form and content as shall be furnished or approved by the City, advising said labor union or workers' representatives of its commitments under Chapter 2, Article 7, of the Hayward Municipal Code, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or sub contractor agrees to seek the inclusion in all union agreements to which it is a party, clauses prohibiting discrimination based upon race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability. To the maximum extent consistent with applicable labor agreements, the contractor or subcontractor will attempt to recruit applicants without regard to race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability.

**(3) EQUAL EMPLOYMENT OPPORTUNITY OFFICER**

The contractor or subcontractor shall designate one of its management employees as its Equal Employment Opportunity Officer and assign such officer the responsibility and authority to administer and promote an active program to put the contractor's or subcontractor's nondiscriminatory employment practices commitment into practice.

**(4) ACCESS TO RECORDS**

The contractor or subcontractor shall permit access during normal business hours to its records of employment, employment advertisements, completed application forms, and other pertinent data and records when requested to do so by the City Manager or any representative of the Fair Employment Practices Commission of the State of California.

**(5) COMPLIANCE REVIEW PROCEDURES**

(a) The contractor or subcontractor shall, upon request of the City Manager, submit its official payroll records together with a monthly cumulative summary of all employee hours worked in performance of its contract with or on behalf of the City identified as to minority status.

(b) The contractor or subcontractor shall submit to a formal, thorough review of its records, books, reports, and accounts concerning its employment practices for the purpose of determining whether they are nondiscriminatory. This review will be performed at intervals during the performance of the contract as may be specified by the City Manager.

Each review shall be followed within 30 days by either a written notice to the contractor or subcontractor that it is in apparent compliance with the Nondiscriminatory Employment Practices Provision of its contract or by a citation of apparent deficiency, summary of findings, and a statement of remedial commitment for signature by the contractor. If the contractor or subcontractor fails to meet the commitments it has made in executing such statement, the City Manager shall issue a notice of intent to initiate an action against the contractor or subcontractor with the Fair Employment Practices Commission for willful violation of the Nondiscriminatory Employment Practices Provision and the California Fair Employment Practices Act in not less than 30 days or such notice of intent.

**(6) VIOLATIONS**

The City Manager shall deem a finding of willful violation of the Nondiscrimination Employment Practices Provision and the California Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the contractor or subcontractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426, which has become final, or obtained relief under Labor Code Sections 1429 and 1429.1, or an appropriate federal commission or agency, or a court of the State of California, or if the United States Government finds, in any action or proceeding to which the contractor or subcontractor is a party, that it discriminated against employees or applicants for employment in the performance of this contract. Upon receipt or such notice or final judgment, the City Manager shall notify the contractor or subcontractor that unless it demonstrates to the satisfaction of the City Council within a stated reasonable period that the violation has been corrected, said contractor or subcontractor shall be subject to the remedies hereinafter provided.

**(7) REMEDIES FOR WILLFUL VIOLATION**

The contractor or subcontractor agrees that a finding of willful violation of the California State Fair Employment Practices Act or of this Nondiscriminatory Employment Practices Provision shall be regarded by the City Council as a basis for determining whether or not it is a responsible bidder as to future contracts for which such contractor or subcontractor may submit bids. The contractor or subcontractor further agrees that such disqualification by said City Council shall remain in effect for one year or until it demonstrates to the satisfaction of the City Manager that its employment practices are in conformity with the nondiscrimination provisions of the article.

The contractor or subcontractor further agrees that the contractor or subcontractor shall, as a penalty to the City of Hayward, forfeit for each calendar day or portion thereof an amount not to exceed \$250 or 1 percent of the total contract amount, whichever is greater. Such penalty may be deducted from any sums due to the contractor or subcontractor or recovered by the City through maintenance of an action in any court of competent jurisdiction.

Prior to making any determination with respect to reinstatement of a contractor or subcontractor as a responsible bidder, the City Council may refer the matter to the Human Relations Commission of the City of Hayward for a report and recommendation. The contractor or subcontractor agrees to cooperate to the fullest extent with said Human Relations commission in its exercise of the authority here conferred, including, but not limited to, promptly furnishing reports requested by the commission's review of matters relating to such reinstatement.

**1.22 Acceptance and/or Rejection of Bids:** The City reserves the right to reject any or all bids, or to accept separate items in a bid. In addition the City reserves the right to cancel a Request for Bids or an award at any time.

**1.23 Waiving Minor Irregularities:** The City may waive any minor irregularities in a bid or in the bidding process and make award accordingly.

**1.24 Nuclear Affirmation Requirements:** A purchase order has no force or effect until the person to which it is issued has on file with the City or executes and returns to the City of Hayward's Purchasing Manager an Affirmation Of Non-Involvement In Development Or Production Of Nuclear Weapons. City of Hayward Ordinance 87-024 C.S. defines "nuclear weapons" as "any device the intended explosion of which results from the energy released by fission or fusion reactions involving atomic nuclei." The ordinance defines "person" as "any person, private corporation, institution or other entity."

**1.25 Hazardous Material Requirements:** The contractor shall comply with all government laws, rules and regulations concerning the use of hazardous materials and the disposal of hazardous wastes at the job site, including but not limited to the following:

(1) The contractor shall not bring hazardous materials onto the job site or deliver hazardous materials without providing the City, in advance, the Material Safety Data Sheets for each hazardous material introduced. Where applicable, materials must be labeled in accordance with Section 5194, Title 8, of the California Administrative Code. The contractor is required to include a Material Safety Data Sheet prepared in accordance with Section 5194 (g) with each shipment of all such materials to the City. No hazardous material will be introduced onto the job site until the City gives written approval for each hazardous material.

(2) All hazardous material shall be stored and used in a safe manner and shall not be stored or used in any vehicular or pedestrian traffic lanes.

(3) Any hazardous products, waste or empty containers used or generated shall not be poured down any drain or sewer nor disposed of in any trash container or dumpster.

(4) The contractor will be considered to be the hazardous waste generator and will be responsible for the legal transport and disposal of all hazardous waste. No containers or trash will be left in any building or on any job site.

(5) The contractor shall not disturb or damage any existing pipe lagging or equipment insulation or other asbestos material on the job site. If any asbestos material is disturbed or damaged, the contractor shall immediately notify the City and the situation will be considered an "asbestos release" under State and Federal Regulations. The job will be shut down immediately until all appropriate State and Federal notifications have been complete and all testing completed to determine if any asbestos fibers have been released.

(6) Violation of any of the above procedures shall be sufficient cause for the City to stop all work. Any expense incurred by the City caused by the work stoppage will be borne by the contractor. These expenses will include all costs to return the job site and all other areas contaminated by the contractor to a hazard-free condition.

(7) The contractor will be solely responsible for all the costs, including fines and penalties, for the investigation and cleanups of any suspected hazardous materials the contractor used, left on the job site, or dumped down a City drain or sewer, and any damage to property and/or injury to any person.

**1.26 Recycled Materials:** It is the policy of the City of Hayward to encourage the use of recycled materials, reusable products, and products designed to be recycled. Contractors and suppliers shall use or provide such materials or products to the maximum extent practicable and allowable within the specifications prepared by the City, provided however, that the performance or operational effectiveness of the product or material is not detrimentally effected nor the health and safety of the citizens or employees of the City of Hayward negatively impacted by the use of such products or materials.

(REV. 01/31/13)



AFFIRMATION ON NON-INVOLVEMENT IN  
DEVELOPMENT OF PRODUCTION OF NUCLEAR WEAPONS

The undersigned hereby certifies:

That it understands that City of Hayward Ordinance No.87024 C.S. prohibits award of contract to, or purchase of goods or services from, "any person which is knowingly or intentionally engaged in the development or production of nuclear weapons."

That it understands the ordinance defines "Nuclear Weapon" as "any device the intended explosion of which results from the energy released by fission or fusion reactions involving atomic nuclei."

That it understands the ordinance defines "Person" as "any person, private corporation, institution or other entity..."

As the owner or company official of the firm identified below, I affirm that this company is not knowingly or intentionally engaged in such development or production.

\_\_\_\_\_  
Print/Type Company Name

\_\_\_\_\_  
Print/Type Official Name & Title

\_\_\_\_\_  
Company Address

\_\_\_\_\_  
Signature of Company Official

\_\_\_\_\_  
City/State/Zip Code

\_\_\_\_\_  
Date