



RFP #2213-010522

**Request for Proposal for On-call Consultant Services
Architectural Services for the Façade Improvement Program for the
Economic Development Division**

Proposal must be received no later than:

JANUARY 27, 2022 @ 3:00 PM

Deliver proposal to the office of:
Rita Perez, Purchasing Manager
RITA.PEREZ@HAYWARD-CA.GOV
777 B Street (3rd Floor)
Hayward, CA 94541

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Attachments

1. Sample Agreement for Services
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A – Introduction

Following an extensive business engagement initiative and Hayward City Council approval, the City’s Economic Development Division established a three-year economic recovery plan called the “Hayward Upward Economic Recovery Plan”. This plan includes nine different programs designed to aid businesses as they recover and thrive in the post-COVID-19 marketplace.

The City is seeking to establish a professional services contract(s) with a vendor or vendors to implement the Hayward Restore and Reopen – A Façade Improvement Program and the Restaurant Relaunch & Outdoor Dining Program. These two programs have been created to assist small businesses with updating the look, feel and functionality of their business to align with new business expectations created by COVID. The City intends to enter into a professional service agreement with the selected consultant(s) and have this work be completed by the end of calendar year 2023.

The City of Hayward invites qualified firms to submit proposals to provide on-call consulting services for the following area:

1. Architectural Design and Project Management Support Services for the Restore and Reopen and Restaurant Relaunch Programs

The City of Hayward is seeking proposals from architectural firms, hereafter called “Proposer(s)”, to secure architectural design and construction administration services for the two Programs to be utilized at various locations throughout the City of Hayward.

Important Dates:

| Ref | Activity | Date |
|-----|--|--------------------------------|
| 1 | Issue RFP | January 6, 2022 |
| 2 | Deadline: Email RFP questions | January 14, 2022 at 5pm |
| 3 | City provides RFP question answers via email | January 19, 2022 |
| 4 | Deadline: Submit RFP Proposal | January 27, 2022 at 3pm |
| 5 | Finalist interviews (if necessary) | February 15, 2022 |
| 6 | Selection of Firm or Individual | March 6, 2022 |

B - Background and Project Objectives

In the Spring of 2021, Economic Development staff conducted a COVID-19 recovery needs survey of Hayward businesses. This survey found that the business community wanted assistance from the City on encouraging customers to return to brick-and-mortar stores, adapting to COVID regulation protocols, and updating the look and feel of their business to compete with larger corporate entities.

The objectives of both the Hayward Restore and Reopen – A Façade Improvement Program and the Restaurant Relaunch & Outdoor Dining Program are:

- Help to combat blight and activate older dilapidated centers.
- Upgrade buildings to support and retain existing retail and restaurant uses
- Create and enhance permanent and temporary parklets for outdoor dining
- Raise awareness of Hayward businesses and drive traffic to stores

To achieve this work, the Hayward Restore and Reopen – A Façade Improvement Program and the Restaurant Relaunch & Outdoor Dining Program will involve the use of architectural professionals to:

- Assist small businesses in creating a plan for repairs and exterior improvements including lighting, signage, windows, signs
- Providing technical assistance to restaurants geared toward: reconfiguring indoor and outdoor spaces and back-of-house workflow for safety
- Act as project managers for the proposed improvement projects including working with the City on any needed entitlements or permits, sourcing contractors, managing the construction process and final sign-off of project.

Proposers shall provide architectural services for pre-design, schematic design, design development, construction documentation and construction administration to complete façade improvements at selected small businesses within the City of Hayward.

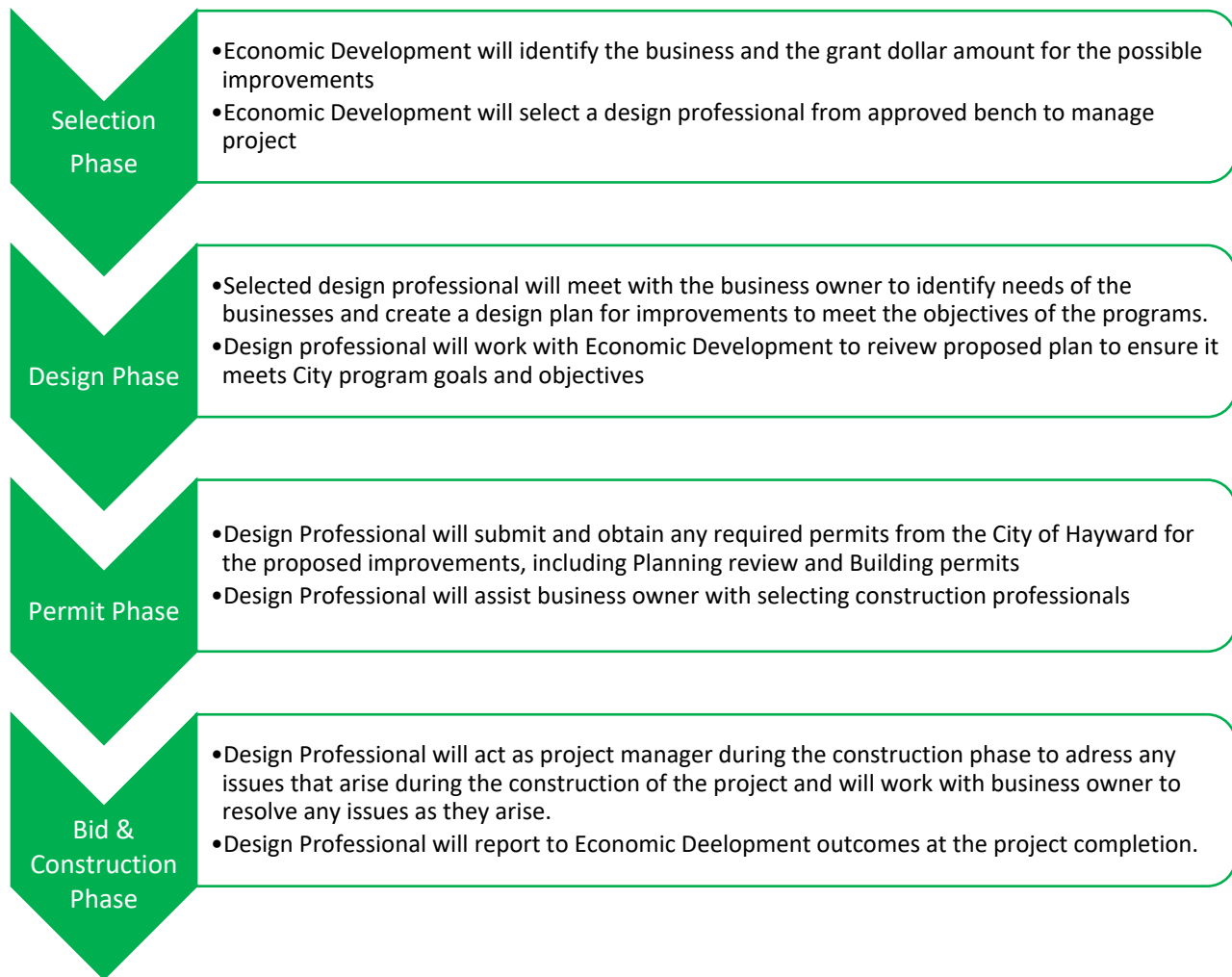
Through this Request for Proposals (RFP), the City Economic Development Division will select one or more qualified firms with which the City may contract to perform the services described in the RFP and which meet all relevant selection criteria, and with whom the City may contact to provide services related to this project on an as-needed basis. The purpose is to select a bench of consultants to provide design and technical expertise for the Façade Improvement Program.

The City anticipates entering into an agreement via a bench contract with the selected firm(s). Scope and fee will be negotiated on a project-to-project basis. The cumulative compensation for all projects cannot exceed \$75,000 on an annual basis per bench contract. Work is not guaranteed but as the need for professional services arises, the city will contact the firm(s) to negotiate a scope and fee for the specific work tasks. The term of the contract is two (2) years.

Proposers shall submit their proposals no later than January 27, 2022 at 3:00 PM to the following location: Economic Development Division – 777 B Street, Hayward, CA 94541. The proposals shall be clearly labeled “Request for Proposal – Architectural Services – Façade Improvement Program.”

C – Scope of Services

The City of Hayward is seeking proposals from architectural firms in order to provide design, contract administration and other architectural services for the Hayward Restore and Reopen – A Façade Improvement Program and the Restaurant Relaunch & Outdoor Dining Program. The programs can consist of the improvement of business facades and the replacement of deteriorated or poor-quality exterior façade, including but not limited to doors, windows, sidings, awnings, and commercial signs. The programs are managed through the effort of the City of Hayward Economic Development Division. The chart below provides a brief explanation of the envisioned process for these two programs:



As a result of this solicitation, the City of Hayward may request a combination of architectural services related to pre-construction, construction, and closeout phases of the project. Proposals provided in response to this request shall address the respondent’s ability to provide the various services required for each project phase which would include, but not be limited to the following:

1. Programming Phase - Create a program of project elements

- Facilitate meetings with City staff and business owners as needed to develop and communicate basic components of façade improvement program, including standard building systems, equipment and materials, code compliance, and zoning ordinance requirements
- Exterior elements that improve the aesthetics of the building
- Exterior painting
- Removing inappropriate or incompatible exterior finishes and materials
- Restoring exterior finishes and materials
- Installation of safety glass
- Recessing/reconfiguring of existing doors and entrances
- Repairing or replace existing storefront window systems
- Signs attached to buildings (new, repair, replace, and or more)
- Exterior building and sign lighting, exterior lighting fixture, display area lighting
- Awning- new, repairs, or replacement of existing
- Provide a schematic cost estimate and conceptual project schedule.
- Prepare and submit program plan for Building and Planning Department review and approval

2. Design Development Phase

- Work with City staff on project elements design options and recommendations
- Estimate construction costs
- Facilitate meetings with City staff and business owners to review space square footage and space utilization needs to develop preliminary design documents
- Conduct design-development meetings with City staff and business owners and address points of clarification regarding the project
- Prepare and submit preliminary project design documents, preliminary specifications, preliminary cost estimate and schedule to the City for review and approval

3. Construction Document Phase

- Prepare complete construction documents and specifications.
- Submit construction documents for review
- Correct plans to reflect issues noted by review

4. Bid Phase

- Assist with the preparation of bid documents suitable for public bidding and conduct a pre-bid conference.
- Respond in writing to questions from bidders and prepare addenda as necessary.

- Distribute plans and bid documents to interested bidders and keep record of plan holder's list.
- Assist in evaluation of bids based upon bidders' qualifications, compliance with bid requirements and price

5. Construction Administration Phase

- Conduct a pre-construction meeting and conduct regular construction progress meetings.
- Coordinate, review, and process all request for change proposals, change orders, etc. including maintaining a log of all such documents.
- Provide direction for questions and concerns from the contractor in resolution of problems.
- Monitor construction progress, cost, and general conformance with the contract documents throughout the construction process. Conduct substantial completion inspection including City inspections coordinate and prepare punch list, substantiate those items noted are completed, and issue substantial completion certificate.

D – Minimum Qualifications

The following lists the minimum qualification requirements of the consultant(s):

- Active California architect license and related certifications in good standing
- At least 4 years of experience providing similar consulting services.
- At least 3 references of clients currently/previously served; at least one of the references to be a city and at least one to be a project completed or underway in the last two years
- Thorough knowledge of the City of Hayward and Zoning Ordinance, building codes, and all applicable state statutes, building codes and regulations
- Current relevant working experience designing exterior facades of small businesses.
- Comprehensive working knowledge of commonly accepted business facility standards.
- Strong interpersonal, communication, and presentation skills
- Experience with conducting public participation within the community, specifically working with an ethnically diverse set of stakeholders and English-as-a-second language business owners.
- Consultants are encouraged to contact their insurance carriers during the proposal stage to ensure that the insurance requirements can be met if selected. Required insurance includes: Commercial general liability insurance, worker's compensation insurance, professional liability insurance, automobile liability insurance, and excess/umbrella liability insurance

E – Submittal Context, Format, and Instructions

Proposals should include the following sections and information:

1. **Cover Letter:** Proposals must include a cover letter signed by the person authorized to bind the firm into an agreement.
2. **Corporate Information:** Proposals shall provide the Complete legal name, address, telephone number, email address of the firm and the primary point of contact. Bidders shall also provide their DUNS number and Tax Identification Number.
3. **Corporate Overview:** Briefly identify your firm (s), the date established, organizational structure, number of employees and support resources available to complete the Scope of Services outlined in the RFP
4. **Consultant Firm Qualifications:** Provide a brief overview of the Consultant’s experience performing the requested services, their qualifications in working with local municipal departments, serving on, or appearing before commissions, elected officials and community members, and a description of any special services, expertise, or abilities that the Consultant can provide in the performance of the services described here in. List the qualifications of key personnel who would be assigned to this project including relative experience, degrees, certifications, professional affiliations, and a description of the approach the consultant will employ in carrying out the work described in the Scope of Services.
5. **Relevant Project Experience Examples:** The submittal must describe the firm’s pertinent project experience, including a list of performed relevant projects, past performance, individual or team accomplishments, and examples of similar work in the San Francisco Bay Area, including experience working with City staff, local community groups and decision makers. A preference for rehabbed commercial space projects should be considered. Before and after photos are encouraged.
6. **References:** Proposals shall include at least three (3) references of past clients with similar Summary of Services conducted and the period that was involved to complete the client’s projects. Include company name, address, contact name, and phone number.
7. **Team Organization & Staffing Qualifications:** Proposals shall include an organization chart that identifies the key members of the project team, their title, and assigned role and specializations within the project team. Proposals shall include brief biographies for assigned project staff identifying relevant project experience, projects and skill sets that meet the requirements of the Scope of Services.
8. **Proposed Budget:** Provide a complete project and hourly rate for staff person(s) (by staff position/title). In addition, provide the budget amounts associated with the “Relevant Project Experience Examples” including costs associated with your Design Firm and Construction costs for project.

F – Proposal Delivery and Submission

9. Provide one (1) original and four (4) copies of the proposal response. Only printed material will be accepted. The pages must be numbered. All components must be contained in a binder no more than 1” thick. In addition, one electronic copy shall be submitted on a thumb drive.
10. Deliver the Proposal to Rita Perez, Purchasing Manager, City of Hayward Finance Department, 777 B Street, 3rd Floor, Hayward, CA 94541
11. Proposal submission deadline is 3:00 PM on January 27, 2022. Late or incomplete submittals will be rejected.

G - Proposal Evaluation Criteria

The City of Hayward reserves the right to award the contract generated from this RFP to the consultant that presents a proposal that best meets the specifications as listed herein and represents the most beneficial procurements as determined by the City. The award will be made by the City Council and shall be based on the consultant’s qualifications including, but not limited to, the following:

- Corporate experience & capacity
- Understanding of work to be performed
- Understanding of Consolidated Plan and program goals
- Professional expertise of team
- Prior experience relative to project
- Completeness, feasibility, and quality of scope of services
- Schedule of proposed activities with timeline and proposed completion date(s)
- Project completion timeline for individual activities, written responses, reports, etc.
- Clarity and conciseness of presentations
- Plan for public participation
- Complete cost breakdown by individual activity and overall project

The City reserves the right to waive any minor deviation in proposal responses received when such waiver is in the best interests of the City, and reserves the right to modify any requirements, terms, or conditions as outlined in this RFP when such modification(s) is in the best interest of the City.

Proposals will be accepted from thoroughly competent, experienced, and financially qualified individuals or firms as determined solely by the City of Hayward. Consultants are responsible for submission of accurate, adequate, and clear descriptions of the information requested. Omissions, vagueness or inaccurate descriptions or responses shall not be interpreted in favor of the consultant and shall be grounds for rejection.

The City of Hayward reserves the right to modify, revise or cancel this RFP. This document is not an offer to contract but is an RFP as defined herein, to satisfy specific user requirements of the City of Hayward. Neither the issuance of the RFP, preparations, and submission of a response, nor the subsequent receipt and evaluation of any response by the City of Hayward, will commit the City to award a contract to any consultant even if all of the user requirements in the RFP are met. The City may modify these requirements in whole or in part and/or seek additional consultants to submit responses. Only the execution of a written contract will obligate the City in accordance with the terms and conditions contained in such contract.

Consultants may be required to make an oral presentation of their qualifications to the Economic Development Division staff.

H – Rights to Proposals

All proposals, upon submission to the City of Hayward, shall become the City's property for its use as deemed appropriate. By submitting a proposal, the consultant covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. Nothing contained in this RFP shall create any contractual relationship between the consultant and the City of Hayward. The City accepts no financial responsibility for costs incurred by any consultant in responding to this RFP.

The City of Hayward has the following prerogatives with regard to proposals submitted:

- To accept or reject any or all proposals
- To award all or part of the project at its discretions
- To adopt any or all parts of a proposal
- To utilize any or all ideas from proposals submitted
- To request additional information for the purpose of clarification
- To correct any arithmetic errors in any or all proposals submitted
- To change the deadline for submitting proposals upon appropriate notification to all consultants receiving the RFP
- To accept or negotiate any modifications to the scope and fee of any proposal following the deadline for receipt of all proposals and prior to contract award.
- To waive any irregularity or any non-conformity of proposals with this RFP, whether of a technical or substantive nature.

I - Agreement for Services

The consultant will enter into an Agreement for Services with the City of Hayward based upon the contents of the RFP and the consultant's proposal. The consultant must include with the proposal a description of any exceptions requested to the standard contract. If there are no exceptions requested, a statement to that effect must be included in the proposal.

J - Insurance Requirements

Prior to executing an Agreement for Services, the consultant will be required to provide to the City proof of the required insurance and endorsement. Consultants are encouraged to contact their insurance carriers during the proposal stage to ensure that the insurance requirements can be met if selected.

K - Business License

The City of Hayward requires the consultant and any subcontractors to have a business license to work in the city.

L - Contact Person

There will be no pre-bid meeting for this proposal. All questions must be submitted via email by 5pm January 14, 2022 to Catherine Ralston, Economic Development Specialist, catherine.ralston@hayward-ca.gov and Paul Nguyen, Economic Development Manager, paul.nguyen@hayward-ca.gov and Rita Perez, Purchasing Manager rita.perez@hayward-ca.gov No questions regarding this RFP will be answered over the phone.

AGREEMENT FOR PROFESSIONAL SERVICES [or use the term CONSULTING SERVICES, or ENGINEERING SERVICES, or other appropriate descriptive title] 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.

[You may include other, more specific recitals if you believe it will help provide a context and therefore correct interpretation or easier administration of the agreement.]

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

AGREEMENT:

Scope of Service.

[Option 1: Specify here the services to be provided. For example: "Consultant agrees to provide legal services to City as requested by the City's City Attorney in conjunction with the acquisition of certain properties through eminent domain proceedings. The manner and timing of such services are to be determined by the City Attorney or any member of the City Attorney's staff designated in writing to act for the City Attorney."]

[Option 2: Refer to services specified in an attachment. For example, "Subject to the terms and conditions set forth in this agreement, Consultant shall provide to City the services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A."]

Compensation. City hereby agrees to pay Consultant: **[Remaining provisions of this section depend upon negotiated agreement between the parties. Payment may be by a lump sum payable at the commencement or completion of work, at an hourly rate, upon completion of different phases of the work, or by some other arrangement. Also, travel and incidental**

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expenses may or may not be compensated by the City. Specification of a cap can be useful. For instance: "Total compensation for Consultant's services and expenses incurred pursuant to this agreement shall not exceed the sum of _____." Last, you may or may not wish to require submission of logs or time sheets to verify costs and expenses. Copies of contracts with different approaches to compensation provisions are available in the City Attorney's Office.]

Effective Date and Term. The effective date of this agreement is _____. [Except in very unusual circumstances and with specific written approval of the City Attorney and City Manager, the effective date inserted should not precede the date the agreement is fully executed] and it shall terminate no later than _____. [If the termination date is later than the end of the fiscal year, the agreement must provide that continuation of the agreement beyond that date will be contingent upon lawful encumbrance or appropriation of new funds.]

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. [Language in this section depends upon means of compensation specified in section (2) above. For example, where compensation is on an hourly basis, and on-going, the following language may be used: "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." The following may also be appropriate if there is a maximum payment (a "not to exceed" amount) in (2): "In no event shall Consultant submit any billing for an amount in excess of the maximum amount of compensation provided in section (2)({insert in the second set of parentheses the subsection designation, typically it is (c), in which the payment limitation is provided in section (2)})."]

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

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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 **[insert here the appropriate title such as City Manager, Director of Public Works, etc.]**. **[This section of the standard form of agreement should only be used when you want to designate a specific person to perform or supervise the services called for in the agreement. If you use the standard form of agreement in disk form, note that the automatic numbering feature of WordPerfect has been used so that if you delete this section the following sections will automatically be renumbered for you.]**

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 **[insert here the title of the appropriate City official to make this determination]**. **[If the consultant will not be using a subcontractor that you have already approved, go directly to the sentence in regular type face that follows. If you have approved the use of one or more subcontractors, insert the following prefatory clause without using the quotation marks: "Except for the subcontract with (Name) for (type of service provided by subcontractor) as specified in section () {fill in the appropriate number} of this agreement {or use a paragraph # in Exhibit A, if that is the more appropriate reference for the specific contract you are drafting},"]** Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's **[insert here the title of the appropriate City official to make this determination]**.

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

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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.

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- (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 B:XI.
- (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:

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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 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

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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. It is understood and agreed that Consultant has the **[professional]** skills **[experience, 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.

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.

Consultant shall indemnify, defend, and hold City, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Consultant, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising solely out of the active negligence, sole negligence, or willful misconduct of the City, its officers, employees, agents, or 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.

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Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis. All nondiscrimination rules or regulation required by law to be included in the Agreement are incorporated by this reference.

OR

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. [Specify here the termination provisions appropriate for the agreement. One example is: "This agreement may be terminated by the City immediately for cause or upon fifteen days written notice without cause." Another example is: "This agreement may be cancelled at any time by City for its convenience upon written notification to Consultant." Next, insert a clause concerning payment for services rendered prior to termination. Language of this provision will depend upon how compensation is provided by section (2) above. For example, where hourly compensation is contemplated, the following language may be applicable: "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)
(Address _____)
_____)

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

[Note: The City Manager may authorize notice to a subordinate staff member at his or her discretion. You should not revise the designation of the City Manager as the official to

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receive notice under an agreement without having the City Manager's explicit authorization to do so.]

Each party shall provide the other party with telephone and written notice of any change in address as soon as practicable.

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Consultant pursuant to this agreement shall be the property of the City at the moment of their completed preparation. **[In some agreements, particularly agreements for engineering design products, you may wish language such as: "All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this agreement, shall be delivered to and become the property of City. All materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this agreement, shall be made available, upon request, to City at no additional charge and without restriction or limitation on their use consistent with the intent of the original design."]**

Amendments. This agreement may be modified or amended only by a written document executed by both Consultant and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this agreement.

Abandonment by Consultant. In the event the Consultant ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Consultant shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment.

Waiver. The waiver by either party of a breach by the other of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this agreement.

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No Third-party Rights. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this agreement or of any duty, covenant, obligation, or undertaking established herein.

Severability. Should any part of this agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

Compliance with Laws. In the performance of this agreement, Consultant shall abide by and conform to any and all applicable laws of the United States, the State of California, and the City Charter and Ordinances of City.

Consultant warrants that all work done under this agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including but not limited to Cal/OSHA regulations.

Controlling Law. This agreement and all matters relating to it shall be governed by the laws of the State of California.

Conflict of Interest. Consultant warrants and covenants that the **[principal]** provider(s) of services presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this agreement a violation of any applicable state, local, or federal law. If any **[principal]** provider of services is a "consultant" for the purposes of the Fair Political Practices Act (Gov. Code ' 81000 et seq.), each such person shall comply with Form 721 Statement of Economic Interests filing requirements in accordance with the City=s local Conflict of Interest Code. In addition, if any other conflict of interest should nevertheless hereinafter arise, **[principal]** provider of services shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this agreement.

Nuclear Free Hayward. Consultant agrees to comply with the requirements imposed by Ordinance No. 87-024 C.S., establishing a "Nuclear Free Hayward." An executed copy of the Affirmation of Non-Involvement in the Development or Production of Nuclear Weapons is attached hereto as Exhibit **[insert here the designation of the exhibit]** and made a part hereof.

Copyright. Upon City's request, Consultant shall execute appropriate documents to assign to the City the copyright to work created pursuant to this agreement. The issuance of a patent or copyright to Consultant or any other person shall not affect City's rights to the materials

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and records prepared or obtained in the performance of this agreement. City reserves a license to use such materials and records without restriction or limitation consistent with the intent of the original design, and City shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by City shall continue for a period of fifty years from the date of execution of this agreement unless extended by operation of law or otherwise.

Time is of the Essence. Consultant agrees to diligently prosecute the services to be provided under this agreement to completion and in accordance with any schedules specified herein. In the performance of this agreement, time is of the essence.

Liquidated Damages. The parties to this agreement agree that, in the event that the services described in this agreement are not completed on time, City will sustain damage and that it will be impracticable and extremely difficult to ascertain the actual damage which City will sustain. In the event that Consultant fails to complete all of the services described in this agreement on or before the completion dated listed in section ___ above, or within the period of any authorized extension, Consultant shall pay as and for liquidated damages, the sum listed in section ___ above for each calendar day that completion is delayed. **[Whether or not to use this provision is determined on a case-by-case basis.]**

Whole Agreement. This agreement has twelve **[insert here the number of pages of the agreement if different from 12]** pages excluding the exhibits described on its signature page. This agreement constitutes the entire understanding and agreement of the parties. This agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Multiple Copies of Agreement. Multiple copies of this agreement may be executed but the parties agree that the agreement on file in the office of City's City Clerk is the version of the agreement that shall take precedence should any differences exist among counterparts of the document.

IN WITNESS WHEREOF, Consultant has executed this agreement, and the City, by its City Manager, who is authorized to do so, has executed this agreement.

CONSULTANT

Dated: _____

By _____

Its _____

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CITY OF HAYWARD

Dated: _____

By _____
City Manager

Attest: _____
City Clerk

Approved as to Form and Procedure:

City Attorney

Attachments: Exhibit A **[insert here the name of the first exhibit]**, consisting of [] pages.
Exhibit B **[continue with listing a description of each of the exhibits to the agreement, including the number of pages of each].**

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CITY OF HAYWARD

GENERAL PROVISIONS FOR PURCHASES OF WORK AND SERVICES

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)