

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 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 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 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 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:
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. 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.

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.

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 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.

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 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 _____

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].**