



HAYWARD

RFP#1811-102317

Request for Proposal

For the

Purchase and Development of City-owned Real Estate at

C and Main Street in Downtown Hayward

Proposals must be received no later than:

December 05, 2017 by 3:30pm PST

Deliver proposals to the office of:

Maria Carrillo, Purchasing Manager

maria.carrillo@hayward-ca.gov

777 B Street (3rd Floor)

Hayward, CA 94541

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1. Introduction

The City of Hayward is issuing this Request for Proposals (RFP) seeking responses from qualified developers for the purchase and development of three contiguous City-owned parcels. This rare development opportunity consists of a total of .79 acres of land located in Hayward's Historic Downtown and includes a vacant single-story office building.

The purpose of this RFP is to assist the City in identifying the opportunities available and supported by the marketplace for the future improvement or development of the site for public and private uses. The City intends to establish an exclusive negotiation rights agreement (ENRA) with the respondent deemed most qualified based on the evaluation criteria contained in this RFP and establish a development agreement between the City and Respondent.

Interested parties are responsible for reviewing and becoming familiar with all contents of this RFP including all attachments, background materials and addenda. The table below highlights key milestones for this offering and anticipated schedule.

| Action | Date |
|---|---------------------------|
| RFP Issuance | October 31, 2017 |
| Deadline for Submitting Written Questions | November 14, 2017 |
| Deadline for Submitting Proposals | December 05, 2017 |
| Interviews with Selected Respondents | Week of December 18, 2017 |
| Selection of Qualified Respondent | TBD |

2. Property Description

The development site (Site) is located at the corner of C Street and Main Street and consists of a total of .79 acres of land and includes a vacant 4,243 square foot single story office building. The parcel numbers and associated acreages are presented in the table below.

| APN | Street Address | Acreage |
|-----------------|-------------------|-------------|
| 428-0066-037-00 | 1026 C Street | 0.45 |
| 428-0066-038-01 | 1026 C Street | 0.2 |
| 428-0066-038-02 | 22696 Main Street | 0.14 |
| | TOTAL | 0.79 |

3. Project Objectives & Preferred Land Uses

The objective of this project is to activate the site and contribute to the economic resurgence occurring in the Downtown. The City is open to creative and adaptive development proposals that contain a mix of public and private uses.

Downtown Hayward is also designated as a Planned Development Area (PDA) given its proximity to mass transit and job center connections. Over time, the downtown area has developed into a vibrant, mixed-used community with an emphasis on destination retail, dining and new housing. The downtown Hayward area is connected by transit to the rest of the region through proximity to the Hayward BART station. The Hayward BART station is located 0.4 miles from the Site.

The Site carries a “Central City – Commercial” sub-district zoning designation. The intent of the zone is to establish a mix of business and other activities that will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses. A copy of the zoning district regulations, which identifies permitted uses, is included as Attachment A.

4. Background

The City of Hayward’s Downtown area was established in the late 1800’s. The City’s efforts to revitalize the downtown area includes the construction of a new City Hall adjacent to the Hayward BART station in 1998, the development of a full-sized grocery store in 2002, and implementation of various loan and grant programs to improve commercial buildings and facades on B Street, Foothill and Mission Boulevard.

The development of the Site will occur against a backdrop of currently underway and planned public and private investments and planning activities aimed at enhancing the downtown area. Key projects include:

- **City of Hayward 21st Century Library and Heritage Plaza Arboretum** - The construction of this new library will be completed in early 2018.
- **Maple & Main** – This new residential and medical office redevelopment project by Bay Area Property Developers is located 22336 Main Street and was approved in February 2017.
- **Lincoln Landing** – This large scale mixed-used project at the former Mervyns Headquarters site on Foothill Boulevard by Dollinger Properties will consist of over 474 units of housing and 80,000 square feet of commercial space and was approved in February 2017.
- **Downtown Hayward Senior Apartments** - Located at 808 A Street, this Meta Housing Project includes 60 apartments and is currently under construction.
- **Downtown Specific Plan** – The City is currently developing a downtown plan to further the goals and policies outlined in the City’s General Plan and Economic Development Strategic Plan. The Downtown Specific Plan will provide a community-supported vision for the Downtown, specific development and zoning standards, and implementation measures to realize the Plan’s goals

and objectives. Current information about the Downtown Specific Plan can be found at:
<https://www.hayward-ca.gov/content/downtown-specific-plan>

5. Minimum Qualifications & Evaluation Criteria

Minimum Qualifications

The City will not consider or evaluate submittals from Respondents that do not meet these minimum requirements:

1. At least one team principal must have a minimum of ten (10) years of experience in real estate development.
2. Successful acquisition, construction and operation of at least three (3) real estate development projects of similar size and scope to the proposed project site within the last 5 years.
3. Strong credit history and demonstrated ability to finance the project proposed on commercially reasonable terms from financial institutions.
4. A development team that includes, but is not limited to, an experienced developer, an architect, landscape architect, and other technical experts needs to conduct relevant surveys and studies.

Evaluation Criteria

Evaluation of proposals that meet the minimum qualifications will focus on the capability of the respondent and the strength of the proposed development concept. The evaluation criteria below will be used to assess elements of each proposal.

1. Developer Experience

- a. Successful track record rehabilitating, developing or operating facilities similar to the proposed project.
- b. Experience with complex projects that include public land acquisition, development agreements, construction and management.
- c. Demonstrated ability to operate and maintain real estate projects once completed, including sustaining occupancy and maintaining site operations and character.
- d. Sufficient staff and consultant resources to deliver the project.
- e. Track record of local hiring and participation of locally-owned businesses in development projects.
- f. Demonstrated ability to solicit and incorporate stakeholder feedback from community organizations, businesses and residents.
- g. Demonstrated experience in incorporating green building standards into design and operation of a project.

2. Financial Capabilities

- a. Proven ability to possess or secure the equity and debt capital for projects similar in scope and size to the project concept as evidenced by:
 - i. Financing of comparable projects
 - ii. Access to sufficient debt and equity
 - iii. On-going relations with financial institutions.

3. Project Approach and Concept

- a. Formation of a comprehensive and experienced development team
- b. Consistency of the proposed project concept with the project objectives and preferred land uses described above.
- c. Fit and synergies of the proposed buildings and uses with surrounding land uses and City vision expressed in the General Plan
- d. Overall sensitivity to the surrounding context including multimodal traffic, parking and other physical elements including lighting and landscaping and public space.
- e. Overall ability of the proposed project to add to the vitality of the downtown and quality of life of residents.

4. Feasibility

Likelihood of respondent and proposed concept meeting the City objectives in an expedient manner. Factors include:

- a. Evidence of Respondent's ability to attract necessary public and/or private investment for the proposed concept.
- b. Probability of obtaining necessary approvals based on the project's design, density and regulatory constraints.
- c. Cash flow projections that demonstrate the project, once operational, will meet all lease, debt service or other operation expense obligations.
- d. Demonstrated strength of the real estate market to support specific uses proposed.

6. Submittal Instructions

Proposal Requirements

The following section outlines required elements of a responsive proposal.

1. Cover Letter

Submit a cover letter that introduces the development team and highlights the proposed project concept.

2. Development Team Qualifications & Experience

The following should be included in all proposals to assist the City in evaluating the experience and capacity of the development team:

- I. Developer Identification
 - a. Identify the development entity's name, street address, mailing address, telephone number, facsimile number, and e-mail address. Specify the legal form of the organization (e.g., corporation, partnership, joint venture, other), and identify persons with the authority to represent and make legally binding commitments for the development entity.
 - b. Identify the principal point of contact and relevant experience.
 - c. Identify other members of the development team including architects, engineers, contractors, financial or equity partners, lenders, and any known participating developer entities.
 - d. Provide relevant experience for each team member, a description of their previous projects, and their role in the cited projects.

- II. Relevant Development Experience
 - a. List and describe the development entity's experience in developing and managing comparable development projects in California, with emphasis on the following:
 - i. The precise role that the entity and principals of the entity played in each project's development.
 - ii. Project description, including dates of commencement/completion, location, concept, land uses, size and cost.
 - iii. Financial structure of the project, including amount and source of equity and debt financing.
 - iv. Architecture, landscape design and photographs of projects.
 - v. Experience with the implementation of affordable housing requirements pursuant to inclusionary housing requirements. Describe how the requirements were met and who on the development team has experience in this area.
 - vi. Length of time to complete such projects.
 - vii. Public/private ventures, including experience working with California local government entities.
 - b. Provide the names and telephone numbers of any references for each project discussed.

3. Narrative Description of the Project

All proposals should include a written description of the proposed development concept, including layout, size, key design elements and materials, scale of development (number and

type of residential units and amount of area devoted to retail, office, and open space), and information describing the proposed character and quality of the development. The anticipated sales price range or, if applicable, rental cost range for residential units, office, retail or other uses, should be included. A timeline for construction is required. Applicants are also encouraged to discuss how Green Building elements will be incorporated in the proposed project.

4. Graphic Illustrations and Elevations

All proposals should provide graphic illustrations of the proposed development, consisting of preliminary site plans, and preliminary architectural elevations. The illustrations should reflect excellence in architectural design and site development, and should be consistent with the Downtown Hayward Design Plan. The Downtown Hayward Design Plan is available online at:

<https://www.hayward-ca.gov/sites/default/files/Downtown%20Hayward%20Design%20Plan.pdf>

Graphics should also depict auto and pedestrian circulation patterns, landscaped areas and recreation/public areas. If construction of the buildings is to be done in consecutive phases, please illustrate such phases graphically.

All drawings should be submitted in 11 x 17-inch format.

5. Preliminary Financing Plan, Pro Forma Analysis & Purchase Offer

The proposals must include a preliminary financing plan, an estimate of total project development costs, and a preliminary pro forma analysis of gross and net income expectancy. Proposals must contain a statement of market conditions for the proposed project in order to establish and justify the developer's pro forma and cash flow assumptions.

Proposals should contain the developer's proposed financial terms for purchase of the Site from the City.

6. Financial Capacity of Developer

Proposals should provide evidence that the development entity has the financial capacity to carry out the proposed project, and should include the following information:

- a. Financial statements of the most recent calendar or fiscal year, for the development entity or for each of the principal parties (in the case of a company formed specifically for the project).
- b. Letters from the developer's lenders attesting to the developer's capacity to undertake this project, including the magnitude of available lines of credit.

- c. List and explain any litigation or disputes that the development entity, or any named individual in the proposed project, is involved in that could result in a financial settlement having a materially adverse effect on the ability to execute this project.
- d. List of all projects that the development entity is currently involved in, and highlight those that are located within the Site's market area.

State whether the development entity, or any of the named individuals in the proposed project, ever filed for bankruptcy or had projects that have been foreclosed. If yes, please list the dates and circumstances.

The City recognizes the sensitive nature of the financial information requested. Therefore, such information may be submitted in a sealed envelope and labeled "Confidential." This information will be used solely for purposes of evaluation and will be kept confidentially as allowed by law.

7. Anticipated Schedule of Performance

A timetable should be provided, showing projected start-dates and completion-dates for developer due diligence and all major design and site planning activities, including regulatory approvals and permit reviews. Further describe the time of major implementation actions, including bidding, financings, land transfer, construction phases, completion dates and assumptions concerning sales period.

8. Disposition of the Completed Development

Proposals should indicate whether the developer intends to sell portions or all of the completed improvements or retain ownership. If the developer intends to retain ownership, please provide information on experience leasing and managing properties similar to the proposed development.

9. Exclusive Right to Negotiate Deposit

It is anticipated that after developer selection and approval by the Council, an Exclusive Right to Negotiate Agreement (ENRA) will be entered into by the City and the selected developer. This ENRA will enable the City and the developer to negotiate a comprehensive Agreement to develop the Site during a 180-day negotiating period. The deposit for the ENRA will be Fifty Thousand Dollars (\$50,000.00) to be paid by the selected developer upon the execution of the ENA in the form of a cashier's check, payable to the City of Hayward. During the negotiation period, the ENRA deposit will become non-refundable to the extent necessary to pay costs of

the City (e.g., legal counsel, surveys, engineering, consultants, etc.) until there is an executable Agreement. Determination of appropriate costs will be at the sole discretion of the City.

After the initial 180-day negotiation period, the deposit remaining after deducting the above noted costs would either apply towards the development of the Site if an Agreement is executed, or be refunded if the Agreement is not executed. If mutually agreeable, the City and selected developer will have the right to extend the negotiation period. The usage of such additional deposit will be governed as stipulated above.

Proposals must acknowledge the above terms.

Number and Form of Proposals

Respondents must submit One (1) original and five (5) printed copies of the proposal as well an electronic version provided on a CD-ROM in Adobe PDF format.

Proposals must be prepared and submitted in an organized manner. Information must be printed double-sided to the extent possible. Pages numbers and a table of contents are required. Tab dividers are encouraged.

Submission Deadline & Delivery Information

Proposals are to be delivered to:

Maria G. Carrillo, Purchasing Manager
777 B Street (3rd Floor)
Hayward, CA 94541

The deadline for proposals is 3:30 PM on December 05, 2017.

Questions and Additional Information

Questions and requests for additional information must be received by Tuesday, November 14, 2017 by 11:00 am. Please direct questions/clarifications to Maria Carrillo, Purchasing Manager at maria.carrillo@hayward-ca.gov and copy to the Micah Hinkle, Economic Development Manager at micah.hinkle@hayward-ca.gov.

Anticipated Schedule

The table below highlights key milestones for this offering and anticipated schedule.

| Action | *Date |
|---|---------------------------|
| RFP Issuance | October 31, 2017 |
| Deadline for Submitting Written Questions | November 14, 2017 |
| Deadline for Submitting Proposals | December 05, 2017 |
| Interviews with Selected Respondents | Week of December 18, 2017 |
| Selection of Qualified Respondent | TBD |

***Schedule is subject to change**

7. Disclosures & Reservations

Disclosures

1. The information contained in this RFP regarding the development site is believed to be reliable; however, interested parties should rely on their own experts to verify site conditions.
2. All proposals submitted to the City are subject to public disclosure. A record shall not be withheld from disclosure unless it is clearly exempt under applicable laws, or unless the public interest is served by not making the record public clearly outweighs the public interest served by disclosure of the record. The City, in accordance with Government Code Section 6250-6270, has ten (10) days to respond to any request for public documents by indicating whether or not the documents exist and will be made available. Materials submitted that may be confidential in nature should be labeled as such. The City will attempt to maintain the confidentiality of materials, namely financial information, to the extent permitted by law.

City Reservations

The City reserves the right to select the proposal which, in its sole judgment, best meets the needs of the City. The lowest proposed cost will not be the sole criterion for recommending the contract award. The recommended selection of the evaluation committee is final and subject only to review and final approval by the City Manager and the City Council.

The City reserves the right to reject any or all proposals and to waive technicalities and informalities when such waiver is determined by the City to be in the City's best interest.

The City reserves the right to retain all accepted proposals, including proprietary documentation, regardless of which proposal is selected. No proposals will be returned to proposers.

The City reserves the right to request any supplementary information it deems necessary to evaluate proposer's experience or qualifications. This may include supplemental financial information, additional interview(s), and/or additional presentation by the proposer.

The City reserves the right to reconsider any proposal submitted at any stage of the procurement. It also reserves the right to meet with select proposers at any time to gather additional information. Furthermore, the City reserves the right to delete or add functionality (i.e., modules and components) until the final contract signing.

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

The City reserves the right to revise the RFP prior to the date that proposals are due. The City will communicate changes through addendum to this RFP. All registered proposers will be notified of revisions to the RFP. The City reserves the right to extend the date by which the proposals are due.

The City reserves the right to split the award from this RFP between multiple proposals when such split award is determined to be in the best interests of the City.

The City reserves the right, in its sole discretion, to reject any and all proposals and to waive informalities and minor irregularities in any proposals received. Failure to furnish all information requested or to follow the format requested herein may disqualify the proposer, in the sole discretion of the City. False, incomplete, misleading or unresponsive statements in a proposal may also be sufficient cause for a proposal's rejection.

This RFP does not commit the City to award a contract. All proposals submitted in response to this RFP become the property of the City and public records, and as such, may be subject to public review.

The City shall not be liable for any pre-contractual expenses incurred by prospective vendors or selected contractors, including but not limited to costs incurred in the preparation or submission of proposals. The City shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

If the successful proposer defaults, the City may award this RFP to the next best proposal and may recover the loss occasioned by the successful proposer against a surety bond, if any, or by suit against the successful proposer.

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

Protest

Should any proposer question or protest the award of the contract, such question or protest must be furnished in writing to the City Manager within three (3) calendar days after the City notifies all proposers of its intent to award. Such submittal must fully explain the basis of the objection supported by all relevant information facts and details. Letter must be signed by an authorized representative stating specific reason(s) for the protest including all relevant facts (law, rule, regulation, and criteria).

Attachment A:

City Land Use Designation Information

All interested parties are encouraged to research the property development allowances within the City of Hayward Permit Center.

The City's General Plan and Zoning regulations are available online and in person during business hours of the City of Hayward Permit Center, located at 777 B Street, Hayward, California. Links to online resources are provided below.

Zoning: CC-C: Central-City – Commercial Subdistrict:

<http://cityofhayward-ca.gov/CITY-GOVERNMENT/DEPARTMENTS/CITY-CLERK/ZONING/sec%2010-1.1520%20central%20city-commercial.pdf>

General Plan: CC-ROC: City Center – Retail and Office Commercial:

<http://www.hayward2040generalplan.com/goal/LU2>

AGREEMENT BETWEEN THE CITY OF HAYWARD
AND _____ & _____

THIS AGREEMENT, dated for convenience this ____ day of _____, is by and between _____, ("Contractor") and the CITY OF HAYWARD, a public body of the State of California ("City");

RECITALS:

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

WHEREAS, Contractor is willing to render such as defined in those specifications entitled Banking Services, dated (month) (date), 201X.

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

AGREEMENT:

Scope of Service. Subject to the terms and conditions set forth in this agreement, Contractor shall provide to City with _____ Services as described in the Specifications for _____ Services. Contractor shall provide said services at the time, place and in the manner specified therein

Compensation. City hereby agrees to pay Contractor: the prices and amounts set forth on the "Bid Form", as submitted by the Contractor in response to the City's Request for Proposal for _____ Service. This schedule of compensation shall remain in effect for the initial term of this agreement. If the term of this agreement is extended, the schedule of compensation may be amended upon mutual consent of the City and Contractor.

Effective Date and Term. The effective date of this agreement is _____, and it shall terminate no later than (month) (date), 201X.

Independent Contractor Status. It is expressly understood and agreed by both parties that Contractor, 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. Contractor expressly warrants not to represent, at any time or in any manner, that Contractor is an employee of the City.

Billings. Contractor shall submit invoices to the City describing its services and costs in the manner set forth in the Specifications for Banking Services. [Language in this section depends upon means of compensation specified in section (2) above]. For example, "Contractor shall submit monthly bills to the City describing its services and costs provided during the previous month. Except as specifically authorized by City, Contractor shall not bill City for duplicate services performed by more than one person. Contractor'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 Contractor's signature."

Advice and Status Reporting. Contractor 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 _____. The primary provider of the services called for by this agreement shall be _____, who shall not be replaced without the written consent of City's Purchasing Manager.

Assignment of Personnel. Contractor 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, Contractor 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 Contractor. Neither this agreement nor any interest therein may be assigned by Contractor without the prior written approval of City's Purchasing Manager. Contractor shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's Purchasing Manager.

Insurance. On or before beginning any of the services or work called for by any term of this agreement, Contractor, 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. Contractor shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Contractor 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 Contractor shall be provided with limits not less than one million dollars. In the alternative, Contractor 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 Contractor, 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. Contractor, at Contractor'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 Contractor; including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor. 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 Contractor 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. Contractor, at Contractor'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 claim made policy form with a retroactive date that precedes the date of this agreement, Contractor 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, Contractor may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Contractor may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Contractor 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, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than five days after Contractor is notified of the change in coverage.
- (f) In addition to any other remedies City may have if Contractor 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 Contractor to stop work under this agreement or withhold any payment which becomes due to Contractor hereunder; or both stop work and withhold any payment, until Contractor 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 Contractor's failure to maintain insurance or secure appropriate endorsements.

Indemnification- Contractors' Responsibility. It is understood and agreed that Contractor has the experience, necessary to perform the work agreed to be performed under this agreement, that City relies upon the skills of Contractor to do and perform Contractor's work in a skillful manner, and Contractor 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 Contractor from such professional responsibility for the work performed. It is further understood and agreed that Contractor is apprised of the scope of the work to be performed under this agreement and Contractor agrees that said work can and shall be performed in a fully competent manner.

Other than in the performance of professional services by a design professional, which law shall be solely as addressed in subparagraph (c) above, and to the fullest extent permitted by law, Contractor shall indemnify, protect, defend, and hold harmless City, and its officers, employees, agents, and volunteers, from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, interest, defense costs, and expert witness fees) arising out of the performance of this Agreement by Contractor, its officers, employees, agents, and sub-Contractors, excepting only that resulting from the sole negligence, active negligence, or intentional misconduct

of City, its officers, employees, agents, and volunteers. It is understood that the duty of Contractor 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 Contractor 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 Contractor, its employees, agents, or subcontractors by federal or state law, Contractor 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. Contractor 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. This agreement may be cancelled at any time by City for its convenience upon written notification to Contractor. In the event of termination, the Contractor 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 Contractor's delivery to the City of any or all documents, materials provided to Contractor or prepared by or for Contractor 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 Contractor:

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

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 Contractor pursuant to this agreement shall be the property of the City at the moment of their completed preparation.

Amendments. This agreement may be modified or amended only by a written document executed by both Contractor 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 Contractor. In the event the Contractor ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Contractor 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, Contractor 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.

Contractor 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. Contractor 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 " Contractor " 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. Contractor 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 D and made a part hereof.

Copyright. Upon City's request, Contractor 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 Contractor 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. Contractor 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.

Whole Agreement. This agreement has ten 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, Contractor has executed this Agreement, and the City, by its City Manager, who is authorized to do so, has executed this Agreement.

CONTRACTOR:

[Insert Name]

By: _____

Its: _____

Dated: _____

CITY OF HAYWARD

Recommended by:

Stacey Bristow
Interim Director of Development Services

By: _____
KELLY McADOO
City Manager

Dated: _____

Approved as to form:

MICHAEL LAWSON
City Attorney

Attest: _____
MIRIAM LENS
City Clerk

Attachments:

- Exhibit B: General Provisions for Purchases of Work and Services (4 pages)
- Exhibit C: Non-discriminatory Employment Practices and Affirmative Action Certification Statement (3 pages)
- Exhibit D: Affirmation on Non-Involvement in Development of Production of Nuclear Weapons (one page)

CITY OF HAYWARD

GENERAL PROVISIONS FOR PURCHASES OF WORK AND SERVICES

Exhibit B

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)



NONDISCRIMINATORY EMPLOYMENT PRACTICES PROVISION

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, and 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 or other forms 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, advising such 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 subcontractor agrees to seek the inclusion in all union agreements, to which it is a party, clauses prohibiting discrimination based upon race, color, religion, and national origin, and 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, sex, 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 shall 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 of such notice of intent.

6. **VIOLATIONS.**

The City Manager shall deem a finding of willful violation of the Nondiscriminatory 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 of 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 a willful violation of the California 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.

(REV. 11/5/92)



CITY OF HAYWARD

SPECIAL AFFIRMATIVE ACTION PROVISION FOR SUPPLY AND SERVICE CONTRACTS

Exhibit C

In accordance with section 2-7.04 of the Hayward Municipal Code (HMC), this provision shall be included in every nonconstruction contract estimated by the City to equal or exceed \$10,000 annually, where the contract has a potential for more than one delivery on City request and the Contractor employs more than ten (10) persons, and for every other nonconstruction contract equal to or in excess of \$25,000 (whether paid in one sum upon delivery or completion, or paid periodically and such periodical payments are estimated by the City to total \$25,000 or more in one year) the following requirements must be met in addition to those set out in The City of Hayward Nondiscriminatory Employment Practices Provision (Sec. 2-7.02, HMC):

1. IN THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES AS FOLLOWS:

(a) The contractor that submits the apparent low bid shall, on behalf of itself and those of its subcontractors, if any, where the dollar amount of such subcontract exceeds \$10,000, furnish the City Manager such information concerning its employment practices and existing and projected work forces in the form and manner as may be requested by the City Manager.

(b) The contractor that submits the apparent low bid and each of its subcontractors, if any, where the dollar amount of such subcontract is \$10,000 or more, may be required to attend a conference with the City Manager at such time and place as may be fixed by the City Manager to determine whether the information earlier submitted shows compliance with the nondiscrimination requirements of this article.

In making such determination, the City Manager shall consider the following factors:

- (1) The size of the contractor's or subcontractor's existing work force;
- (2) The size of the anticipated work force necessary for the contractor or subcontractor to perform the contract or subcontract for or on behalf of the City;
- (3) The projected turnover, vacancies, or work force expansion that the contractor or subcontractor expects to occur during the term of the contract;
- (4) The specific plans of the contractor or subcontractor to recruit applicants for employment and to select, train, and promote employees hired to complete the contract with or on behalf of the City in like proportion to their numbers in the contractor's or subcontractor's typical, geographic labor market;
- (5) An analysis showing the projected work force that would be expected, after all necessary selection is completed, to perform the contract or subcontract with or on behalf of the City absent any discriminatory employment practices;
- (6) Any other qualitative or quantitative data which would assist the City Manager in determining the contractor's or subcontractor's commitment to meet the nondiscriminatory employment practices requirements of this contract.

(c) Following such conference, the apparent low bidder shall enter into a memorandum of understanding with the City in a form agreed to by such contractor and the City Manager, which memorandum of understanding shall set forth the measures that the contractor and its subcontractors who have attended the conference shall take in furthering and meeting its nondiscrimination employment practices commitment during the performance of the contract.

(d) In the event the apparent low bidder fails to submit the requested written information, appear at the conference, or enter into a memorandum of understanding that is acceptable to the City Manager, the City Manager shall,

after giving notice and an opportunity to respond to the apparent low bidder, contact the second lowest bidder for the purpose of conducting the procedure set out in subsections (a) through (c) herein.

2. IMPLEMENTING RULES AND REGULATIONS, ENFORCEMENT PROCEDURE, AND DELEGATION OF RESPONSIBILITY. (Sec. 2-7.05, HMC)

The City Manager shall promulgate all rules, regulations, and forms necessary to implement the provisions of this article. So far as is practical, such rules, regulations, and forms shall be similar to those adopted pursuant to federal Executive Order 11246 and the Fair Employment Practices Act of the State of California.

The City Manager shall monitor the performance of the contractors and subcontractors in their achievement of the nondiscriminatory employment practices requirements provided herein, conduct on-site inspection of their work forces and employment records and submit periodic reports on such performances to the City Council and Human Relations Commission for advisory review to the City Council regarding modifications of this article so as to ensure its effectiveness.

The City Manager shall designate a Contract Compliance Officer and may, at his discretion, delegate responsibility and authority for administering the provisions of this article to the Contract Compliance Officer and to such other officers or employees of the City as necessary for proper administration of this program.

3. EXEMPTIONS. (Sec. 2-7.06, HMC)

The following contracts are exempt from the provisions of this article:

- (a) Contracts with other governmental jurisdictions;
- (b) Contracts with manufacturers whose principal place of business is located outside the United States;
- (c) Contracts with the United States manufacturers whose principal place of business is located outside the State of California;
- (d) Contracts with any single or sole source supplier of any goods or service; and
- (e) Contracts resulting from exigent emergency requisitions where any delay in completion or performance of the contract would jeopardize the public health, safety, or welfare of the citizens of the City of Hayward, or where in the judgment of the City Manager the operational effectiveness of a significant City function would be significantly threatened if the contract were not entered into expeditiously.

4. CONTRACTS SUBJECT TO EXECUTIVE ORDER 11246. (Sec. 2-7.07, HMC)

No provision of this article shall be construed to apply to any federally assisted construction contract entered into by the City that is subject to Executive Order 11246 or any order amending or superseding Executive Order 11246, the rules and regulations promulgated pursuant to said order, or the Federal Equal Employment Opportunity Bid Conditions for Alameda County.

5. OTHER REMEDIES. (Sec. 2-7.08, HMC)

The provisions of this article shall not be construed to prevent the City from pursuing and obtaining any remedy or relief as may be prescribed by law.

6. CONTACT

City of Hayward Purchasing and Contract Compliance Specialist, (510) 583-4802.



CITY OF
HAYWARD
HEART OF THE BAY

NONDISCRIMINATORY EMPLOYMENT PRACTICES
AND
AFFIRMATIVE ACTION CERTIFICATION STATEMENT

The Respondent to a City of Hayward Request for Proposals/Request for Quotation hereby certifies that it is in compliance with all executive orders, federal and state laws regarding fair employment practices and nondiscrimination in employment.

1. That it shall demonstrate compliance with the requirements established in the Affirmative Action provisions (EEO) for supply and services contracts.
2. That it fully understands that the provisions contained in the City's special Affirmative Action provisions shall be considered a part of its contractual agreement with the City in the event of award of contract.
3. That it is in compliance with all executive orders, federal, state and local laws (including Hayward Municipal Code Chapter 2, Article 7) regarding fair employment practices and nondiscrimination in employment.

(Print/Type Name of Company Official)

(Title)

(Signature of Company Official)

(Date)

Name of Project: _____

Name of Firm: _____

Address: _____
Street Address City/State/Zip

Telephone: () _____ () _____

Please check below as appropriate:

- | | | | |
|-----------------------|-----|----------------------|-----|
| Prime Contractor | () | Supplier of Goods | () |
| Subcontractor | () | Supplier of Services | () |
| Professional Services | () | | |



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

The undersigned hereby certifies:

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

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

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

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

Print/Type Company Name

Print/Type Official Name & Title

Company Address

Signature of Company Official

City/State/Zip Code

Date