



CITY OF  
**HAYWARD**  
HEART OF THE BAY

**RFP #1705-101216**

**REQUEST FOR PROPOSALS**

**for**

**COLLECTION AGENCY SERVICES**

**ISSUE DATE: November 1, 2016**

**PROPOSAL DUE DATE: Monday, November 16, 2016 at 3:00 PM**

**CONTACT: Maria Carrillo**

**Purchasing Manager**

**Finance Department – Purchasing Division**

**777 B Street**

**Hayward, California 94541-5007**

**Tel: 510/583-4802 Fax: 510/583-3600**

**[maria.carrillo@hayward-ca.gov](mailto:maria.carrillo@hayward-ca.gov)**

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## RESOURCES

- Template for Agreement for Professional Services Between the City of Hayward and Contactor
- Nondiscriminatory Employment Practices Provisions
- Special Affirmative Action Provision for Supply & Services Contracts
- Nondiscriminatory Employment Practices and Affirmative Action Certification Statement
- Affirmation of Non-involvement in the Development or Production of Nuclear Weapons Form
- General Provisions for Purchases of Work and Services

## INTRODUCTION

This Request for Proposal (RFP) is issued by the City of Hayward (CITY) for collection services associated with accounts receivables for various City services. The Collection Agency Services Agreement will take effect January 1, 2017 and continue until terminated by the City.

## CITY BACKGROUND

The City of Hayward is an economically and ethnically diverse city of approximately 149,000 residents located on the eastern edge of the San Francisco Bay. An aspiring regional center of retail, industrial and public activities, Hayward combines a hometown atmosphere, an ideal climate, cultural attractions, park and recreational facilities, with easy access to suppliers and customers throughout the Bay Area and beyond.

The City is known as the “Heart of the Bay” because of its central location in Alameda County – 25 miles southeast of San Francisco, 14 miles south of Oakland, 26 miles north of San Jose and 10 miles west of the valley communities surrounding Pleasanton. Serviced by an extensive network of freeways and bus lines, Hayward has two BART stations, an Amtrak station and its own Hayward Executive Airport, with easy access to San Francisco, Oakland, and San Jose international airports. The city also boasts easy access to the Port of Oakland, the fourth busiest container port in the United States.

Additional information regarding the City of Hayward may be obtained at: <http://www.hayward-ca.gov/about.shtm>

## LAST DAY FOR QUESTIONS

All inquiries regarding this Request for Proposals must be submitted on or before **November 9, 2016, no later than 5:00p.m.**, and shall be submitted via email to **Maria Carrillo**, Purchasing Manager, at [maria.carrillo@hayward-ca.gov](mailto:maria.carrillo@hayward-ca.gov).

Bidders are advised that oral or written communication from the City not in the form of an official addendum do not alter the bid plans or specifications.

## NOTICE OF REQUEST FOR PROPOSALS

NOTICE IS HEREBY GIVEN that the City of Hayward (hereinafter referred to as "City") is seeking proposals for purposes of performing collection services, and will be accepting formal bids to be submitted no later than 3:00p.m., November 16, 2016. All proposals will be submitted via mail to:

Maria Carrillo- Purchasing Manager  
City of Hayward – Finance Division  
777 B Street, Hayward, CA 94541

Proposals must be clearly identified and sent in a sealed package. **It is the responsibility of the Responder to ensure timely delivery is made to the Purchasing Manager in the City of Hayward.**

Proposals must be valid for a period of 120 calendar days from the Closing Date and Time for Receipt of Proposals. No Proposal may be withdrawn after the submission date.

Each Responder must **provide three hard copies and one electronic version** of its proposal. **One copy is to be clearly marked as "original" on the outside cover and contains an original signature.**

The Responder's Proposal must not be marked as confidential or proprietary. The City may refuse to consider a Proposal so marked. Information in Proposals shall become public property and subject to disclosure laws. All Proposals shall become the property of the City. The City reserves the right to make use of any information or ideas in the Proposals.

By submitting a Proposal, the Responder represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of providing and performing quality work to achieve the City objectives.

The City shall not, in any event, be liable for any pre-contractual expenses incurred by Responders in the preparation of their Proposal.

Pre-contractual expenses are defined as expenses incurred by the Responder in:

- preparing its Proposal in response to this RFP;
- submitting that Proposal to the City;
- negotiating with the City any matter related to the Responder's Proposal; and
- any other expenses incurred by the Responder prior to the date of award and execution, if any, of the Agreement.

Each Responder must submit its Proposal in strict accordance with all requirements of this RFP and compliance must be stated in the Proposal. Deviations, clarifications, and/or exceptions must be clearly identified and listed separately as alternative items for the City's consideration.

Each Responder is encouraged to be responsive to the requirements stated in this RFP. If, however, any Responder feels that it can offer substantial cost/benefit and/or performance advantages, the City of Hayward will consider and may accept *alternate* Proposals. *Alternate Proposals must specify how they deviate from the requirements and describe cost reduction or other benefits to be achieved. Alternate Proposals must meet or exceed the intent of the RFP's Attachment A, and must be submitted as separate Proposals clearly marked "alternate" on the outside cover.*

After the Closing Date and Time for Receipt of Proposals, evaluation and proposal clarification will commence.

Responders judged most responsive to the City's requirements may be asked to give a presentation of their Proposal including on-site demonstration to the City staff. Selected Responders should be prepared to make their presentation within five calendar days after notification and be prepared to discuss all aspects of their Proposals in detail, including technical questions regarding the Proposal. No Responder shall be allowed to alter or amend its Proposal through the use of the presentation process.

In the event the City deems it necessary to clarify or make any changes to this RFP, these changes shall be made in the form of a written addendum authorized and issued only by the City Purchasing Manager or authorized designee.

The City reserves the right to negotiate modifications with any Responder as necessary to serve the best interest of the City. Any Proposal may be rejected if it is conditional, incomplete or deviates from specifications in this request. The City reserves the right to waive, at its discretion, any procedural irregularity, immaterial defects or other improprieties, which the City deems reasonably correctable or otherwise not warranting rejection of the Proposal. Any waiver will not excuse a proponent from full compliance.

Submitted Proposals will become the property of the City and may be used by the City in any way deemed appropriate.

The work shall be done in compliance with the City's proposed contract language set forth in this Request for Proposals. Copies of the Request for Proposals are available from the City at the above- referenced address.

The general scope of work is to secure the services of a professional collection services agency to provide collection services and to facilitate payments on delinquent accounts owed to the City.

The City reserves the right to withdraw this Request for Proposals, reject or negotiate any and all proposals, and to waive any irregularity. In negotiating a final contract, the City may increase or decrease the Scope of Work including increasing or decreasing the work for any or all identified

tasks within the Scope of Work.

The City intends to award this contract to the firm that it considers will provide the best overall program services. The City reserves the right to accept other than the lowest priced offer based on the proposal that is in the best interest of the City and to reject any proposals that are not responsive to this request.

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# INSTRUCTIONS FOR AGREEMENT

## Required Elements

The following elements **must** be included in order to enter into an agreement with the City of Hayward:

- 1) **Cover Letter:** The cover letter should be on company letterhead and include the following:
  - i. Company name, address, phone and fax numbers.
  - ii. Designation of primary contact within the company who is authorized to answer questions regarding the assigned work, including their name, contact phone number and e-mail.
  - iii. Signature of an officer of the prime contractor. In case of joint venture or other joint-prime relationship, an officer of each venture partner shall sign.
  
- 2) **Contact & Customer Service:** Please describe all support services available from your company/business, specifically addressing the following issues:
  - i. Normal hours of availability
  - ii. Quality assurance program(s)
  - iii. Guaranteed response time
  - iv. Other support services
  
- 3) **References and Experience:** A list of three (3) references of current or past contracts for which the Contractor has performed or is performing work of similar type, scope, and complexity within the past five years. This list shall include the names, addresses, email addresses, and phone numbers of the contracting party as well as a description of services performed and the dollar amount of the contract. Upon further consideration of the Proposal, the City may request additional vendors
  
- 4) **Project Scope & Approach:** Provide a detailed plan for providing the services as described in Exhibit A.
  
- 5) **Prices:** Prices for provision of services that are "all-inclusive" of all costs, including but not limited to supervision, equipment, overhead-profit and all required insurances as specified in this document.
  
- 6) **Insurance:** A copy of an insurance certificate(s), or a letter of intent to provide insurance from the issuing company (including a description of types of coverage and dollar amount limits) providing the coverage described in Appendix B.
  
- 7) **Current City Business License:** The contractor selected for this project shall obtain or provide proof of having a valid City of Hayward business license.

8) **Required Forms:** Attach the following required forms:

- i. Cover Letter
- ii. Proposal
- iii. Contactor Agreement
  - 1) Exhibit A. Scope of Work
  - 2) Exhibit B. Insurance
  - 3) Exhibit C. Certifications

### **City Standard Services Agreement**

The selected company is expected to execute the City's Standard Professional Services Agreement. The City's service agreement language is attached for reference.

### **Pre-Contractual Expenses**

The City shall not be liable for any pre-contractual expense incurred by Contractor in the preparation of its proposal and prior to the date of award. Contractor shall not include any such expense as part of its proposal.

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## Schedule

The following schedule indicates the anticipated dates for steps in the selection process. The City reserves the right to modify this schedule as circumstances may require.

1. Last day to submit questions is **Wednesday, November 9, 2016 @ 5:00 p.m.** This will allow time for any addenda to be issued by the City to all bidders.
2. Candidates will submit written proposals via mail to the Purchasing Manager at 777 B Street, Hayward, CA 94541, no later than **3:00 p.m. on Wednesday, November 16, 2016**, in accordance with requirements set forth in this RFP.
3. The top-ranked candidates may be asked to present their approach to the RFP in person or via telephone interview, during the week of **November 28, 2016**.
4. A mutually acceptable contract will be negotiated between the City and the Contractor(s). The Contractor(s) will be required to comply with the City's nondiscrimination and affirmative action provisions. The Contractor will need to stipulate its noninvolvement in the development or production of nuclear weapons. The Contractor will also be required to carry insurance in the amount of \$1,000,000 for each of the following: general liability, automotive liability, workers' compensation, and employers' liability. Professional liability insurance for errors and omissions will also be required and the City's Living Wage Ordinance.
5. If the City and the selected Contractor(s) team cannot agree on a satisfactory contract, the City reserves the right to terminate negotiations. The City will then negotiate an agreement with the next highest ranking responsible bidder.
6. Following is the tentative schedule for selection and award of the contractor contract:

<b>Selection Process Timeline</b>	<b>Date</b>
1. RFP issued	November 1, 2016
2. Proposals due	November 16, 2016
3. Staff Complete Review of Proposals	November 28, 2016
4. Finalist Interviews-if necessary	December 2, 2016
5. Contract award	December 13, 2016
4. Work begins	January 1, 2017

\*Dates subject to change as determined appropriate by the City of Hayward

## Review of Proposals

After the Proposals are received and opened by the City, the City shall review and evaluate all Proposals for completeness and responsiveness to this RFP in order to determine whether the Contractor possesses the professional qualifications necessary for the satisfactory performance of the services required. The City shall also investigate qualifications of all Contractors to whom the award is contemplated. It is anticipated that this review period will last approximately two weeks. The City will not be responsible for any of the Contractor's cost for the preparation of a Proposal in response to the RFP. The City reserves the right to reject any or all proposals submitted.

Factors to be considered in the selection process include:

- Quality & thoroughness of the proposal.
- Experience and past performance in completing projects of a similar type, size and complexity.
- Demonstrated capacity to deliver high-quality work within a preset timeline.
- Results of reference checks
- Cost & budget proposal

## MISCELLANEOUS

Requests for Supplemental Information: The City reserves the right to require the submittal of additional information that supplements or explains proposal materials.

Reimbursement of Costs: No reimbursement whatsoever will be made by the City for any costs incurred by candidates related to the preparation or presentation of proposals.

Property of the City: All materials submitted become the property of the City of Hayward, and will not be returned. Funds awarded are public funds and any information submitted or generated is subject to public disclosure requirements.

State Provisions: The Fair Political Practices Act and/or California Government Code Section 1090, among other statutes and regulations may prohibit the City from contracting with a service provider if the service provider or an employee, officer or director of the service or firm, or any immediate family of the preceding, or any subcontractor or contactor of the service provider, is serving as a public official, elected official, employee, board or commission member of the City who will award or influence the awarding of the contract or otherwise participate in the making of the contract. The making of a contract includes actions that are preliminary or preparatory to the selection of a contactor such as, but not limited to, involvement in the reasoning, planning and/or drafting of solicitations for bids and RFPs, feasibility studies, master plans or preliminary discussions or negotiations.

## **Changes / Modifications**

The City reserves the right to order changes in the scope of work and resulting contract. The Contractor has the right to request an equitable price adjustment in cases where modifications to the contract under the authority of this clause result in increased costs to the contractor. Price adjustments will be based on the unit prices proposed by the Contractor. Any contract resulting from this solicitation may be modified upon written and mutual consent of both parties.

## **Award of Contract**

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

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# EXHIBIT A - SCOPE OF SERVICES

## GENERAL INFORMATION

### 1. INTRODUCTION

The Scope of Services is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project.

#### **Purpose**

This Request for Proposal (RFP) is issued by the City of Hayward (CITY) to request proposals from qualified firms or agencies to provide collection services for the City on an ongoing basis.

The Collection Services Agreement will take effect January 1, 2017 and continue until terminated by the City.

#### **Scope of Services**

The City provides billing for utilities (water/sewer), business licensing, excise tax, and other city services. The purpose of this RFP is to solicit prospective agencies that are interested in providing their collection services. While attempting to maximize the City's collections, it is critical that this objective be achieved without negative exposure to the City and with careful consideration of consumer's rights. The City firmly believes in a positive approach in dealing with debtors. The agency chosen shall conduct its collection business in a professional manner, which will preserve the dignity of the City and its relationship with its residents. Furthermore, the City's commitment to a customer-focused approach must be honored throughout the collection cycle.

The successful bidder may be involved in the collection of accounts receivables for various City services including, but not limited to:

1. Utility Billing
2. Business License
3. Excise Tax
4. DBIA (Downtown Business Improvement Association)
5. Returned Checks
6. Miscellaneous Receivables

#### **Requirements**

For consideration, agencies are required to submit the following:

- A. Company Overview

1. How long has your company been in business?
2. Provide the history of your agency, key members of management/collection team, and include the makeup of the agency and experience with municipal accounts.
3. In what geographic territories do you collect?
4. Where is the nearest physical location of your office to our jurisdiction?
5. Where would the account representative be located?
6. Provide a statement of your firm's background and experience in providing collection services to both governmental organizations and the private sector. Be very specific about relevant California experience in collection services.
7. Provide a listing of five municipal governments in California that your firm has provided services to over the last five years. Indicate each organization's name and address, contact person, reference telephone number, nature of services provided, and the dates of engagement. The City may contact each of these municipalities as references.

## B. Work Plan and Staffing

1. How many collectors do you currently employ? Please describe your requirements and procedures for hiring new collectors.
2. Describe training for collectors, including an initial training program and any ongoing training/monitoring.
3. Describe collector compensation and incentive programs.
4. Specify your office/collection hours.
5. Do you have a toll-free number for customers to call?
6. Describe the normal method used to collect accounts, including specific work standards based on balance ranges, and include the number of both written and telephone collection attempts.
7. Detail skip tracing procedures for skip accounts, including dollar thresholds for different levels of efforts.
8. Describe the procedures for accounts that will be pursued through legal action and any parameters for these accounts, such as minimum balance for suit, etc. If fees differ for legal accounts, detail when the increase takes place (at in-house legal, when sent to attorney, when suit filed, etc.)
9. Describe your policy or procedure on complaint handling.
10. Provide samples of all forms/correspondence to be used for collection.

## C. Reporting and Processing

1. How often do you provide a collection status report?
2. In what format do you provide the report?
3. Please provide a complete sample of all reports.
4. What online information/reporting is available?
5. What would be the process for the City to forward an account?
6. How are collected funds transmitted to the City?
7. What is the process for cancelling an account submitted for collection?
8. What payment options are provided for customers?

D. Narrative outlining the agency's general collection process, including:

1. How the agency will successfully achieve reasonable collection targets, while balancing a heightened scrutiny of public and elected officials
2. Specify the dollar threshold where various levels of follow-up occur (e.g. small balance accounts)

E. Overview of customer service training and complaint resolution process

F. Overview of client relations with City staff, including:

1. How will the City communicate requests or issues?
2. What is the expected turn-around time for responses?
3. What type of back-up resources are available if the City's main contact person is away?

G. Information system requirements needed to send and receive account information electronically

H. Overview of security processes to ensure protection of any confidential information

J. Schedule of remitting payments to the City

K. Proposed Fees – The City intends to award this contract to the agency that it deems both the most responsive and the most capable at providing comprehensive and high-quality service to the City. The City reserves the right to accept a proposal that is not the lowest price offer, if that agency will provide a higher level of service. Fee information is to include the following:

1. The basis of the fee
2. The fee for each of the major categories listed in the Scope of Services
3. The fee or manner in which a fee would be negotiated for any other accounts not specifically listed in this RFP the City may assign for collections
4. The fee for any accounts referred by the agency for legal action to their in-house attorney or to an attorney the agency contracts for legal services
5. Any other fees that could be charged to the City

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**ACKNOWLEDGEMENT AND SIGNATURE OF AUTHORIZATION**

I \_\_\_\_\_, \_\_\_\_\_ have read and understand the  
(Full Printed Name) (Title)  
the RFP document, and I am duly authorized to commit my company to sell/perform the products/services described herein. I understand by signing this RFP I am not obligating the City to make this procurement, nor am I signing a contract to sell/perform this product/service. **By signing this document, I agree to comply with all specifications, scope of services, requirements, prices, terms and conditions described herein, unless specifically noted.** This RFP is firm for 120 days from the due date identified on the cover page of this RFP.

**Authorized Representative:**

---

Signature

Date

**CITY OF HAYWARD STATEMENT OF NON-COLLUSION BY CONTRACTOR**

Failure to complete and submit this Worksheet with the Proposal response will render the Proposal non-responsive and will not be considered for award.

The undersigned who submits herewith to the City of Hayward a Bid or proposal does hereby certify that:

- a. All statements of fact in such bid or proposal are true;
- b. Such bid or proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;
- c. Such bid or proposal is genuine and not collusive or sham;
- d. Bidder has not, directly or indirectly by agreement, communication or conference with anyone, attempted to induce action prejudicial to the interest of the City of Hayward or of any other bidder or anyone else interested in the proposed procurement;
- e. Bidder did not, directly or indirectly, collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham bid or proposal, or that anyone should refrain from bidding or withdraw his bid or proposal;
- f. Bidder did not, in any manner, directly or indirectly seek by agreement, communication or conference with anyone to raise or fix the bid or proposal price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of his bid or proposal price, or that of anyone else;
- g. Bidder did not, directly or indirectly, submit his bid or proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member agent thereof, or to any individual or group of individuals, except to the City of Hayward, or to any person or persons who have a partnership or other financial interest with said bidder in his business.
- h. Bidder did not provide, directly or indirectly to any officer or employee of the City of Hayward any gratuity, entertainment, meals, or anything of value, whatsoever, which could be construed as intending to invoke any form of reciprocation or favorable treatment.
- i. No officer or principal of the undersigned firm is employed or has been employed, either full or part time, by the City of Hayward, either currently or within the last two (2) years, or is related to any officer or employee of the City by blood or marriage within the third degree. An exception to this section may be granted by approval of the City Council prior to contract award.
- j. No officer or principal of the undersigned firm nor any subcontractor to be engaged by the principal has been convicted by a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy or any other act in violation of any state or federal antitrust law in connection with the bidding on, award of, or performance of, any public work contract, with any public entity, within the last three years.

I certify, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this certification was executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Location)

Business: By: \_\_\_\_\_ (Signature)

Address: \_\_\_\_\_ (Print Name & Title)

**CITY OF HAYWARD AGREEMENT FOR INDEMNIFICATION BY CONTRACTOR/VENDOR AND ACCEPTANCE AND ACKNOWLEDGMENT OF PROCUREMENT PRACTICES OF THE CITY OF HAYWARD**

Failure to complete and submit this Worksheet with the Proposal response will render the Proposal non-responsive and will not be considered for award.

The City of Hayward requires contractors and suppliers of services to the City to agree to indemnify and hold the City of Hayward harmless for claims or losses arising from, or in connection with, the contracting party’s work for the City of Hayward before a Purchase Order is issued.

To reduce the possibility of misunderstanding between contracting parties and the City in case of a claim or lawsuit, the City of Hayward is requiring that contracting parties who perform services for the City sign this letter. This letter will act as and become a part of each Contract/Purchase Order between the City of Hayward and the contracting parties signing the letter for the duration of the contract term and any extensions thereto.

**In consideration of the opportunity of doing work for the City of Hayward and benefits to be received thereby, the contracting party to this agreement agrees as follows:**

1. That where a contract, purchase order or confirming order is issued by the City of Hayward awarding a contract, this Letter Agreement is to be considered part of that contract.
2. Contractor agrees to indemnify the City of Hayward, and any officer, employee or agent, and hold the City of Hayward, and any officer, employee or agent, thereof harmless from any and all claims, liabilities, obligations and causes of action, of whatsoever kind or nature, for injury to, or death of, any person (including officers, employees and agents of the City of Hayward), and for injury or damage to or destruction of property (including property of the City of Hayward), resulting from any and all actions or omissions of contractor or contractor’s employees, agents or invitees, or any subcontractor of contractor or any of such subcontractor’s employees, agents or invitees.
3. That the contracting party specifically waives the benefits and protection of Labor Code Section 3864 which provides: “If an action, as provided in this chapter, is prosecuted by the employee, the employer, or both jointly against the third person results in judgment against such third person or settlement by such third person, the employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in the absence of a written agreement so to be executed prior to the injury.” This waiver will apply to the contracting party to this letter to any contracts awarded by the City of Hayward during the term of this Agreement and any extensions thereto.
4. That this Agreement has been signed by an authorized representative of the contracting party, and such representative has the authority to bind the contractor/vendor to all terms and conditions of this Agreement.
5. That this Agreement shall be binding upon the successors and assignees of the contracting party to any contract with the City of Hayward. As a condition precedent to acceptance, any contacts from the City of Hayward and contracting party agree to advise its successors or assignees of this Agreement and to obtain their consent to it in writing before the work of the representative successor or assignees begins. Such assignment shall not be effective without the prior written consent of the City of Hayward.
6. To promptly notify the City of Hayward of any change in ownership of the contracting party while this Agreement is in force.

This letter Agreement cannot be modified or changed without the express written consent of the City of Attorney of the City of Hayward.

I agree to the terms of this Letter Agreement on behalf of:

Business: \_\_\_\_\_ By: \_\_\_\_\_  
(Signature)

Address: \_\_\_\_\_  
(Print Name & Title)

Date: \_\_\_\_\_

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

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

RECITALS:

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

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

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

AGREEMENT:

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

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

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

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

Billings. Consultant shall submit monthly bills to the City describing its services and costs provided during the previous month. Except as specifically authorized by City, Consultant shall not

bill City for duplicate services performed by more than one person. Consultant's monthly bills shall include the following information to which such services or costs pertain: a brief description of services performed, the date the services were performed, the number of hours spent and by whom, and a brief description of any costs incurred, and the Consultant's signature. In no event shall Consultant submit any billing for an amount in excess of the maximum amount of compensation provided above.

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

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

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

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

Insurance. On or before beginning any of the services or work called for by any term of this agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor.

- (a) Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Consultant shall be provided with limits not less than one million dollars. In the alternative, Consultant may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive

all rights of subrogation against the City for loss arising from work performed under this agreement.

- (b) Commercial General and Automobile Liability. Consultant, at Consultant's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims

arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.
- (ii) The insurance shall cover on an occurrence basis, and not on the basis of an accident or claims made.
- (iii) The insurance must cover personal injuries as well as bodily injuries. Any exclusion of contractual liability in personal injury provisions of the policy or any endorsement to it must be eliminated.
- (iv) The insurance must cover complete contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement.

- (v) Any explosion, collapse, and underground property damage exclusion must be deleted.
  - (vi) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.
  - (vii) The policy must contain a cross liability or severability of interests clause.
  - (viii) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
  - (ix) Broad form property damage liability must be afforded. A deductible that does not exceed \$25,000 may be provided.
  - (x) Insurance is to be placed with California- admitted insurers with a Best's rating of no less than A:VII.
  - (xi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.
- (c) Professional Liability. Consultant, at Consultant's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than one million dollars covering the licensed professionals' errors and omissions, as follows:
- (i) Any deductible shall not exceed \$100,000 per claim.
  - (ii) Notice of cancellation or non-renewal must be received by the City at least thirty days prior to such change.
  - (iii) If the professional liability coverages are written on an occurrence form, the policy must contain a cross liability or severability of interest clause.
  - (iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:
    1. The retroactive date of the policy must be shown and must be before the date of the agreement.

2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.
  3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the agreement or the work.
  4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.
- (d) Deductibles and Self-Insured Retentions. During the period covered by this agreement, upon express written authorization of City's City Attorney,
- Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Consultant may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
- (e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.
- (f) In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
  - (ii) Order Consultant to stop work under this agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
  - (iii) Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Consultant's failure to maintain insurance or secure appropriate endorsements.

Indemnification - Consultant's Responsibility.

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

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

Nondiscriminatory Employment Practices. In the performance of this agreement, Consultant agrees to comply with the requirements of Hayward Municipal Code, Chapter 2, Article 7,

Nondiscriminatory Employment Practices by City Contractors, a summary of which is attached hereto as Exhibit B.

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

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

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

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

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

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

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

Amendments. This agreement may be modified or amended only by a written document executed by both Consultant and City's City Manager and approved as to form by the City

Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this agreement.

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

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

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

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

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

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

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

Conflict of Interest. Consultant warrants and covenants that the **[principal]** provider(s) of services presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this agreement a violation of any applicable state, local, or federal law. If any **[principal]** provider of services is a "consultant" for the purposes of the Fair Political Practices Act (Gov. Code § 81000 et seq.), each such person shall comply with Form 721 Statement of Economic Interests filing requirements in

accordance with the City’s local Conflict of Interest Code. In addition, if any other conflict of interest should nevertheless hereinafter arise, **[principal]** provider of services shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this agreement.

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

Copyright. Upon City's request, Consultant shall execute appropriate documents to assign to the City the copyright to work created pursuant to this agreement. The issuance of a patent or copyright to Consultant or any other person shall not affect City's rights to the materials and records prepared or obtained in the performance of this agreement. City reserves a license to use such materials and records without restriction or limitation consistent with the intent of the original design, and City shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by City shall continue for a period of fifty years from the date of execution of this agreement unless extended by operation of law or otherwise.

Dated: \_\_\_\_\_ By \_\_\_\_\_  
Its

Dated: \_\_\_\_\_ By \_\_\_\_\_  
City Manager

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

Whole Agreement. This agreement has twelve \_\_\_\_ pages excluding the exhibits described on its signature page. This agreement constitutes the entire understanding and agreement of the parties. This agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Multiple Copies of Agreement. Multiple copies of this agreement may be executed

but the parties agree that the agreement on file in the office of City's City Clerk is the version of the agreement that shall take precedence should any differences exist among counterparts of the document.

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

Consultant

Attest: \_\_\_\_\_  
City Clerk

Approved as to form and procedure:

City Attorney \_\_\_\_\_

Attachments:

- Exhibit A: **[insert here the name of the first exhibit]**, consisting of [ ] pages
- Exhibit B: Hayward Municipal Code, Nondiscriminatory Employment Practices by City Contractors
- Exhibit C: Affirmation on Non-Involvement in Development of Production of Nuclear Weapons
- Exhibit D: General Provisions for Purchases of Work and Services (4 pages)

## 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.**

Th

e

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 B

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 it 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.

(rev. 06/26/02)



CITY OF  
**HAYWARD**  
HEART OF THE BAY

Exhibit B

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 ( )

Subcontractor ( )

Professional Services ( )

Supplier of Goods ( )

Supplier of Services ( )



CITY OF  
**HAYWARD**  
HEART OF THE BAY

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

# CITY OF HAYWARD

## GENERAL PROVISIONS FOR PURCHASES OF WORK AND SERVICES

Exhibit D

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 twodirection- 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 nonowned- 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 NonInvolvement- 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 hazardfree- 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)