



HAYWARD FIRE DEPARTMENT

Request for Proposal

Hayward Fire Department Vegetation Management Services

RFP # 2215-012122

Proposal Due: March 18, 2022 by 3:00pm PST

Email to:

Rita.Perez@hayward-ca.gov
Rita Perez, Purchasing Manager

Norma.Marples@hayward-ca.gov
Norma Marples, Senior Secretary

Cc: Shanalee.Gallagher@hayward-ca.gov
Shanalee Gallagher, Project Manager

City of Hayward
777 B St.
Hayward, CA 94541

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OBJECTIVE

The City of Hayward Fire Department (hereinafter referred to as "City") is seeking an experienced and qualified contractor who is specially trained, experienced, and competent to perform on-call chipping services, and defensible space creation on private and public property in accordance with the standard terms, conditions, and specifications per the Hayward Fire Department (HFD). The work shall be done in compliance with the City's proposed contract language set forth in this Request for Proposal.

The objectives for this proposal are to identify a qualified contractor to:

- Perform on-call tree limb chipping services.
- Participate in planning meetings with fire department staff.
- Perform activities that contribute to the creation of one or more large-scale defensible space project(s).
- Remove and properly dispose of rubbish from properties.
- Perform services within timelines requested by city staff.
- Maintain records of work performed and all related correspondence.
- Provide invoices for services rendered within 48 hours of project completion.

SUBMISSION

HFD will be accepting proposals to be submitted via email no later than **3:00 p.m., Friday, March 18, 2022**. All proposals shall be submitted in accordance with the format and information listed in this RFP. Respondents will absorb all costs incurred in the preparation and presentation of their proposal.

DUE DATE: Proposal submissions for this RFP must be received via email no later than **Friday, March 18, 2022, by 3PM PST**.

Please email Rita.Perez@hayward-ca.gov and Norma.Marples@hayward-ca.gov with copy to Shanalee.Gallagher@hayward-ca.gov to:

1. Confirm your intent to bid,
2. Receive a complete list of questions asked by you and other vendors, along with the City's response, and
3. Submit your proposal.

Please note important proposal dates below:

Ref	Activity	Date
1	Issue RFP	January 24, 2022
3	Deadline: Email RFP questions	February 21, 2022 by 12PM PST
4	City provides RFP question answers via email	March 3, 2022 by 5PM PST
5	Deadline: Email Proposal	March 18, 2022 by 3PM PST

- It is the sole responsibility of the proposing firm to ensure that proposals are received prior to the closing date and time, as late proposals will not be accepted.
- Submitted proposals will become the property of the City and may be used by the City in any way deemed appropriate.
- The City hereby affirmatively ensures that minority, or women business enterprises will be afforded full opportunity to submit proposals in response to this Notice and will not be discriminated against based on race, religion, creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex.
- The City reserves the right to withdraw this Request for Proposal, 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 will be receiving Federal funding through the Federal Emergency Management Agency (FEMA) for the Scope of Work and, if so, winning bids will subject the Contractor to Federal procurement standards as described in Title 2 Code of Federal Regulations 200.318-200.326) and FEMA Hazard Mitigation Assistance Procurement Standards.

SCOPE OF WORK

The Contractor shall supply all labor, materials, and equipment necessary to provide the City of Hayward Fire Department with the services listed in the scope of work set forth. The Hayward Fire Department's Vegetation Management Program consists of on-call tree limb chipping service, residential assistance program for defensible space, and large-scale defensible space projects, as needed.

All work will be located throughout the Hayward Hills and adjacent unincorporated community of Fairview Fire Protection District, including Five Canyons, map of area is attached.

Chipping Services

The Hayward Fire Department runs a 6-8 week on-call tree limb chipping service twice per calendar year, (Spring and Fall). Contractor must be able to start this year's chipping program by May 1, 2022 and be available on-call through the end of October.

Properties are serviced on a first come first serve basis. HFD will provide the selected Contractor the list of addresses to schedule on a weekly basis, by Thursday of each week. The Contractor will put the weekly list of addresses in order, for service in the following week. Contractor will convey schedule back to HFD representative by the next day (Friday). Contractor will chip tree limbs up to 8" in diameter that have been cut by homeowners, stacked in piles along the edge of their property. Unless specified by the homeowner Contractor will legally dispose of materials off site as green waste. Where homeowners have made specific arrangements with an HFD representative, contractor will deposit chipped materials in a pile on site as directed by homeowner. Chipping sites shall be left clean of any debris, unless pile has been deemed as "unchippable." "Unchippable" materials shall not be disturbed, and Contractor must immediately inform HFD representative.

Homeowners will be instructed to place tree limbs or brush at curb, with the cut side of the limbs facing the street. Contractor employees shall not go beyond the street right-of-way to collect the debris. Homeowners will be instructed that piles shall be free of rocks, dirt, wire, lumber, spiny plants, poison oak and blackberries, and that the chipper cannot chip piles of pine needles or leaves. HFD will work with the selected Contractor(s) to provide homeowner additional instructions to optimize Contractor chipping production.

Resident Assistance Program

Contractor will assist homeowners approved for the Resident Assistance Program to prepare materials for chipping as well as perform other defensible space services deemed necessary during the onsite visit with HFD personnel, contractor, and homeowner. This will include but is not limited to, pruning tree limbs, cutting brush, clearing down/dead vegetation, and stacking cut materials for pick up as part of the chipping program. Contractor will meet with HFD representative and homeowner to finalize scope of work at each approved property. Contractor will then submit to the HFD representative an itemized scope of work per property for approval of the work.

Large-Scale Defensible Space Project

During the course of the contract, HFD will choose properties within the project area, detailed in this scope of work, to perform defensible space work. These projects are to be used as an example to properties owners of what defensible space should look like.

Defensible Space is defined as follows: 30ft firebreak is made by the complete removal all brush, flammable vegetation, or combustible growth which is located 30ft from such building or structure or to the property line, whichever is nearer. This includes the cutting and removal of all grass to 4 inches or less, complete removal of all dead or dying vegetation, limbing trees to at least 6ft up to 15ft depending on slope and total removal of shrubs under tree canopy. The Fire Department may determine a 100ft clearance is needed depending on extra hazardous conditions. Which would also include the cutting and removal of grass to 4 inches, removal of dead or dying vegetation, limbing trees up to 15ft, thinning of tree crowns, and the removal of bushes and shrubs below tree canopy.

Work periods

Work periods will generally be limited to Monday through Friday. No work will be scheduled on weekends and City holidays. The number of chipping days and Residential Assistance Program will be determined by public participation and the availability of funding for the program. The large-scale defensible space project, and Resident Assistance Program is on an as needed basis for the term of signed Professional Services Agreement.

Terms/Billing

Selected Contractor is expected to execute the City's Standard Professional Services Agreement and abide by contract provisions outlined in CFR 200 Appendix II for contracts under federal awards. The City's service agreement, Title 2 CFR 200.318-200.326) and FEMA Hazard Mitigation

Assistance Procurement Standards. A contract with a not to exceed amount will be furnished to the successful Contractor within the time for acceptance specified. The contract shall be interpreted, construed, and given effect in all respects according to the laws of the State of California. COH terms of payment are N30 from date of invoice.

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 Contractor.

Payments shall be made at the unit prices indicated and said payments shall include full compensation for furnishing all labor, materials, tools, equipment, transportation, and incidentals necessary to complete on-call chipping service, Resident Assistant Program, large defensible space project, and as needed abatement to the satisfaction of the City and no additional payments will be made.

Contractor shall submit chipping invoices on a weekly basis, listing each address completed, fuel load hauled away and man hours per week. The large-scale defensible space project, and Resident Assistance Program work will be invoiced upon completion and inspection of the work performed.

Prices provided will be good until the end of Calendar Year 2022.

Record Keeping

Contractor will maintain accurate records of quantities of materials processed, by general type (tree, brush, etc.) and will cooperate with HFD representative in any audit of such quantities. Contractor shall keep a Hayward Fire Department Representative up to date with daily progress reports on addresses or locations of completed work; and locations where chip piles were evaluated as “unchippable.”

The Contractor’s work is funded by FEMA’s Hazard Mitigation Grant Program and requires both narrative and picture documentation of work. An HFD representative will be present onsite to document the before and after states; no work should be started without said documentation.

Restriction of Work

Contractors will cease work when Red Flag conditions are declared by the National Weather Service. It is the Contractor’s responsibility to be aware of fire conditions. Contractor can learn about fire weather conditions by going to the National Weather Service California Fire Weather web page <https://www.weather.gov/>.

Traffic Control

Contractor will be responsible for appropriate traffic control measures. Contractor shall take all reasonable measures as required by existing conditions and performance of the Contractor to protect the public and their property.

Employees

Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct all employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by the Contract, Contractors shall take all appropriate corrective measures. If City of Hayward has notified Contractors of a complaint related to discourteous or improper behavior, Contractors shall consider reassigning the employee to duties not entailing contract with the public while Contractor is pursuing its investigation and corrective action process.

Contractor shall designate qualified supervisor of field operations who will be available by radio or cell phone during Contractor hours of operations to handle calls and complaints from City of Hayward or to follow up on problems and inspect Contractor operations.

City of Hayward shall notify the Contractor for each violation of the contract reported to them by a resident. It shall be the duty of the Contractors to take proper action to remedy the cause of the complaint within twenty-four (24) hours after notification. Failure to remedy the cause of the complaint within the specified time.

Contractor acknowledges and understands and agrees that there are no promises, expectations or guarantees regarding the amount of work or services to be ordered by City of Hayward from the Contractors under this agreement.

PROPOSAL FORMAT

Contractor must submit a signed cover letter on company letterhead and include the following:

- Confirmation from Contractor that they agree to the terms and conditions set forth in this Request for Proposal.
- Company name, address, website, phone, and fax numbers.
- Designation of primary contact within the company who is authorized to answer questions regarding the assigned work, scheduling of the work, and the submittal of the reports to HFD on work completion; include their name, contact phone number, and e-mail.
- All items listed in the "Required Information" section.
- Contractors to provide pricing on the following items:

Chipping of homeowners cut materials and Disposal	\$____ per cubic yard measured in truck bed inclusive of all transport and handling to legally dispose of materials
Chipping of homeowner cut materials and pile at site	\$____ per cubic yard measured in pile on site
Hourly rate / 2-person crew for chipping	\$____ per hour of 2-person chipping crew inclusive of all transport and equipment

Hourly rate / 2-person crew for Large Scale Defensible Space Project and Resident Assistant Program	\$____ per hour of 2-person for Large Scale Defensible Space Project and Resident Assistant Program inclusive of all transport and equipment
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Required Information

Contractor to provide the following information:

1. License(s)
2. Insurance (as stated in Qualification & Requirements)
3. Experience (brief description of relevant experience)
4. References (3)
5. Equipment List
6. Price sheet (as listed in Proposal Format)

Qualifications & Requirements

- Three years' experience doing fuel reduction or similar work in and around communities documented by three references with contact information related to previous work completed.
- Provide a list of all necessary equipment in good working order and trained operators to complete scope of work as described.
- Provide a list of all necessary vehicles to support crew transportation and equipment maintenance.
- Provide fire suppression equipment to support all services provided.
- Provide current license to conduct business in the State of California. Contractor or subcontractor performing the work must have a current California C61/D49 license or a C-27 Landscape Contractor License.
- The Contractor must be able to provide a Certified Arborist, as needed.
- 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.
- The Contractor(s) will be required to comply with the City's nondiscrimination and affirmative action provisions, attached.
- The Contractor will need to stipulate its non-involvement in the development or production of nuclear weapons.
- The Contractor must adhere to the City of Hayward's General Provisions for Purchases of Work and Services, attached.
- The Contractor must adhere to the contract provisions for procurement outlined in Exhibit F. In the event of a conflict with other provisions in this contract that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon Contractor shall apply.
- Contractor must be in good standing and will be verified as a part of the selection process.

Changes / Modifications

The City reserves the right to order changes in the scope of work. 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.

SELECTION PROCESS AND CRITERIA

The City will make its selection based on several criteria and reserves the right to accept other than the lowest priced offered. The award will be in the best interest of the City and will be to a firm or firms whose overall proposal is rated as being in the City's best interest. Selection criteria will include:

- The best match of contractor to project needs, including experience, staffing, past performance with contract administrators etc.
- The best match of contractor's availability to meet the City's timing needs.
- The best match of operator experience, skills, and equipment for site conditions.
- Quality and thoroughness of the proposal.
- Experience and past performance in completing projects of a similar type, size, and complexity.

City staff will evaluate all responses to the RFP that meet the submittal requirements and deadline. Submittals that do not meet the requirements or deadline will not be considered. The City reserves the right to request additional information or materials from bidding parties, if necessary, to determine the winning proposal.

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

MISCELLANEOUS STATEMENTS

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.

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.

Environmentally Friendly Preferred Purchasing Program: The City shall continue to implement the Environmentally Friendly Preferred Purchasing Program by requiring City contractors to use best management practices (e.g., waste prevention, salvage and reuse, recycling and reusing) to maximize diversion of waste from landfills.

END OF REQUEST FOR PROPOSAL

Attachments & Exhibits

Attachment A: Professional Services Agreement

Attachment B: Project Area: Chipping & Residential Assistance Map

- Exhibit A: Nondiscriminatory Employment Practices Provisions
- Exhibit B: Special Affirmative Action Provision for Supply and Service Contracts
- Exhibit C: Non-discriminatory Employment Practices and Affirmative Action Certification Statement
- Exhibit D: Affirmation on Non-Involvement in Development of Production of Nuclear Weapons
- Exhibit E: General Provisions for Purchases of Work and Services
- Exhibit F: FEMA Mandated Contract Provisions

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF HAYWARD AND
(CONTRACTOR)

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

RECITALS:

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

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

WHEREAS, Contractor is willing to render such as defined in the proposal entitled "Hayward Fire Department Vegetation Management Services", dated _____, 2021.

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

AGREEMENT:

Scope of Service.

Subject to the terms and conditions set forth in this agreement, Contractor shall provide to City as needed vegetation management services, on-call chipping services, and defensible space activities on private property in accordance with the standard terms, conditions, and specifications per the Hayward Fire Department (HFD). Contractor shall provide said services at the time, place and in the manner specified therein.

Compensation. City hereby agrees to pay Contractor: the unit prices and amounts set forth in the quote, as submitted by the Contractor in response to the City's Request for Proposal for Vegetation Management Services, On-Call Chipping of Homeowner Cut Materials and Resident Assistance Program. This schedule of compensation shall remain in effect for the initial term of this agreement. If the term of this agreement is extended, the schedule of compensation may be amended upon mutual consent of the City and Contractor.

Effective Date and Term. The effective date of this agreement is _____ and it shall terminate no later than _____. This agreement may be extended for a

period of two 1-year terms, provided the Contractor is continuing to provide the level of service as outlined in their proposal and is satisfactorily abiding by the terms of this Agreement.

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

Billings. Contractor shall submit invoices to the City describing its services and costs in the manner set forth in the proposal (RFP# 2215-012122) specifications for vegetation management services. Contractor shall not invoice the City for services not yet performed. City agrees to remit payment to the contractor within 30 days of receipt of correct invoice.

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

Designation of Primary Provider of Services. This agreement contemplates the services of Contractor, **[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 Fire Chief.

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

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

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

(a) Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Contractor

shall be provided with limits not less than one million dollars. In the alternative, Contractor may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this agreement.

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

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

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

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

- (v) Any explosion, collapse, and underground property damage exclusion must be deleted.
- (vi) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.
- (vii) The policy must contain a cross liability or severability of interests clause.
- (viii) Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- (ix) Broad form property damage liability must be afforded. A deductible that does not exceed \$25,000 may be provided.
- (x) Insurance is to be placed with California- admitted insurers with a Best's rating of no less than B:XI.
- (xi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.

(c) Professional Liability. Contractor, at Contractor's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than one million dollars covering the licensed professionals' errors and omissions, as follows:

- (i) Any deductible shall not exceed \$100,000 per claim.
- (ii) Notice of cancellation or non-renewal must be received by the City at least thirty days prior to such change.
- (iii) If the professional liability coverages are written on an occurrence form, the policy must contain a cross liability or severability of interest clause.
- (iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:
 - 1. The retroactive date of the policy must be shown and must be before the date of the agreement.

2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.

3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this agreement, Contractor must provide extended reporting coverage for a minimum of five years after completion of the agreement or the work.

4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.

(d) Deductibles and Self-Insured Retentions. During the period covered by this agreement, upon express written authorization of City's City Attorney, Contractor may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Contractor procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

(e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the agreement is reduced, limited, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than five days after Contractor is notified of the change in coverage.

- (f) In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
 - (ii) Order Contractor to stop work under this agreement or withhold any payment which becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof;
 - (iii) Terminate this agreement.

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

Indemnification - Contractor's Responsibility. It is understood and agreed that Contractor has the skills and experience necessary to perform the work agreed to be performed under this agreement, that City relies upon the skills of Contractor to do and perform Contractor's work in a skillful manner, and Contractor thus agrees to so perform the work.

Acceptance by City of the work performed under this agreement does not operate as a release of said Contractor from such professional responsibility for the work performed. It is further understood and agreed that Contractor is apprised of the scope of the work to be performed under this agreement and Contractor agrees that said work can and shall be performed in a fully competent manner.

Contractor shall indemnify, defend, and hold City, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Contractor, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising solely out of the active negligence, sole negligence, or willful misconduct of the City, its officers, employees, agents, or volunteers. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

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

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

OR

In the performance of this Agreement, Contractor 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 City for its convenience upon written notification to Contractor. In the event of termination, the Contractor shall be entitled to compensation for services performed to the effective date of termination; provided, however, that the City may condition payment of such compensation upon Contractor's delivery to the City of any or all documents, materials provided to Contractor or prepared by or for Contractor or the City in connection with this agreement.

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

To Contractor: (Contractor)
(Address
_____)

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

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

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

Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Contractor pursuant to this agreement shall be the property of the City at the moment of their completed preparation.

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

Abandonment by Contractor. In the event the Contractor ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Contractor shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this agreement, and shall be paid for the reasonable

value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment.

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

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

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

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

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

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

Conflict of Interest. Contractor warrants and covenants that the [principal] provider(s) of services presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this agreement a violation of any applicable state, local, or federal law. If any [principal] provider of services is a "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. Contractor agrees to comply with the requirements imposed by Ordinance No. 87-024 C.S., establishing a "Nuclear Free Hayward." An executed copy of the Affirmation of Non-Involvement in the Development or Production of Nuclear Weapons is attached hereto as Exhibit D and made a part hereof.

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

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

Whole Agreement. This agreement has eleven 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.

FEMA Mandated Contract Provisions. All contracts between the City and Contractor must follow the City's own documented procurement standards (reflecting State, Tribal, and local government laws and regulations) AND applicable federally mandated FEMA contract clauses and provisions (Title 2 CFR 200.318-200.326) included as Exhibit "F". When the two (2) standards conflict the more restrictive standard applies.

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

CONTRACTOR

Dated: _____

By _____

Its _____

CITY OF HAYWARD

By _____

Fire Chief

Dated: _____

By _____

City Manager

Attest: _____

City Clerk

Approved as to Form and Procedure:

City Attorney

Attachments:

- Exhibit A: Nondiscriminatory Employment Practices Provisions
- Exhibit B: Special Affirmative Action Provision for Supply and Service Contracts
- Exhibit C: Non-discriminatory Employment Practices and Affirmative Action Certification Statement
- Exhibit D: Affirmation on Non-Involvement in Development of Production of Nuclear Weapons
- Exhibit E: General Provisions for Purchases of Work and Services
- Exhibit F: FEMA Mandated Contract Provisions



Vicinity Map
 Hayward Fire Department,
 Hayward-Fairview Defensible Space Chipper and Resident Assistance Program
 San Francisco Quadrangle, 1978. Scale: 1:100,000

CITY OF HAYWARD
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, 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, 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, sex, age, or disability.

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

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

5. **COMPLIANCE REVIEW PROCEDURES.**
(a) The contractor or subcontractor shall, upon request of the City Manager, submit its official payroll records together with a monthly cumulative summary of all employee hours

worked in performance of its contract with or on behalf of the City identified as to minority status.

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

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

6. **VIOLATIONS.** The City Manager shall deem a finding of willful violation of the Nondiscriminatory Employment Practices Provision and the California Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the contractor or subcontractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426, which has become final, or obtained relief under Labor Code Sections 1429 and 1429.1, or an appropriate federal commission or agency, or a court of the State of California, or if the United States Government finds, in any action or proceeding to which the contractor or subcontractor is a party, that it discriminated against employees or applicants for employment in the performance of this contract. Upon receipt of such notice or final judgement, 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.

CITY OF HAYWARD

SPECIAL AFFIRMATIVE ACTION PROVISION FOR SUPPLY AND SERVICE CONTRACTS

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

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

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

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

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

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

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

(d) In the event the apparent low bidder fails to submit the requested written information, appear at the conference, or enter into a

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

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

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

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

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

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

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

- (a) Contracts with other governmental jurisdictions;
- (b) Contracts with manufacturers whose principal place of business is located outside the United States;
- (c) Contracts with the United States manufacturers whose principal place of business is located outside the State of California;
- (d) Contracts with any single or sole source supplier of any goods or service; and
- (e) Contracts resulting from exigent emergency requisitions where any delay in completion or performance of the contract would jeopardize the public health, safety, or welfare of the citizens of the City of Hayward, or where in the judgement 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.



NONDISCRIMATORY 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:

- 1) 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."
- 2) 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."
- 3) 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

PLEASE FAX TO (510) 583-3600

CITY OF HAYWARD GENERAL PROVISIONS FOR PURCHASES OF WORK AND SERVICES

Exhibit E

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

1.00 Legal Relations and Responsibilities

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

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

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

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

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

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

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

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

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

Traffic control procedures stated herein and traffic control standard plans shall be the MINIMUM accepted in the City of Hayward. Any variations shall be approved by the Engineer prior to use. In no way shall compliance with these specifications and standards relieve the Successful Bidder of any liability for claims or damages arising from his work.

All streets within the project limits shall remain open to traffic at all times during

the construction period. Between the hours of 5:00 PM and 8:00 AM, all lanes remain open to traffic.

Adequate traffic warning and control devices shall be provided and maintained by the Successful Bidder during the construction period in accordance with the "State of California Manual of Warning Signs, Lights and Devices for Use In Performance of Work upon Highways" dated 1973. When inadequate traffic warning and control devices have been installed, the City shall provide whatever facilities are deemed necessary and will charge the Successful Bidder for the costs thereof as provided in Section 7, Article 2 of the Hayward Municipal Code.

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

The Successful Bidder shall install and maintain all signs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following endorsements must be attached to the policy:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) AFFIRMATIVE ACTION - GENERAL

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

(2) RECRUITMENT

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

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

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

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

(3) EQUAL EMPLOYMENT OPPORTUNITY OFFICER

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

(4) ACCESS TO RECORDS

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

(5) COMPLIANCE REVIEW PROCEDURES

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

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

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

(6) VIOLATIONS

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

(7) REMEDIES FOR WILLFUL VIOLATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(REV. 01/31/13)

Exhibit F: FEMA Mandated Contract Provisions

This contract is eligible for FEMA funding. FEMA requires inclusion of the following contract provisions for procurement. In the event of a conflict with other provisions in this contract that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon Contractor shall apply.

- 1. Remedies for Breach.** In addition to all other remedies included in this contract, Contractor shall, at a minimum, be liable to the City for all foreseeable damages it incurs as a result of Contractor violation or breach of the terms of this contract. This includes without limitation any costs incurred to remediate defects in Contractor's services and/or the additional expenses to complete Contractor's services beyond the amounts agreed to in this contract, after Contractor has had a reasonable opportunity to remediate and/or complete its services as otherwise set for in this contract. All remedies provided for in this contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.
- 2. Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Contract, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs reasonably necessary to effectuate demobilization from the work.
- 3. Termination for Cause.** On and after any event of default, City shall have the right to exercise its legal and equitable remedies, including without limitation, the right to terminate this contract for cause or to seek specific performance of all or any part of this contract. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any event of default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this contract or any other contract between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this contract or any other contract.
- 4. Equal Employment Opportunity.**

During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and

applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

5. DAVIS-BACON ACT

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

6. COPELAND ANTI-KICKBACK ACT

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- c. *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- d. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

Clean Air Act

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. DEBARMENT AND SUSPENSION

- a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. PROCUREMENT OF RECOVERED MATERIALS

- a. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired —
 - 1) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2) Meeting contract performance requirements; or
 - 3) At a reasonable price.
- b. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
- c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

11. TIME AND MATERIAL CONTRACTS

To the extent this contract includes work that is paid on a time and material basis, such work must have a guaranteed maximum price (GMP). The GMP is set forth in the body of this contract. The GMP constitutes a ceiling price that Contractor exceeds at its own risk.

12. BONDING REQUIREMENTS

To the extent this is a contract for construction or facility improvement, Contractor agrees as follows:

- a. Contractor provided with its bid for this contract a bid guarantee of no less than 5% of the bid price, or greater if otherwise required in this contract.
- b. Contractor has obtained a performance bond in favor of the City, securing fulfillment of all its obligations under the contract, in an amount no less than 100% of the contract price.
- c. Contractor has obtained a payment bond, assuring payment as required by law to all persons supplying labor and material in the execution of the work provided for in the contract, in an amount no less than 100% of the contract price.

13. ACCESS TO RECORDS

The following access to records requirements apply to this contract:

- a. The Contractor agrees to provide applicable state agency, the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

14. DEPARTMENT OF HOMELAND SECURITY (DHS) SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

15. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

16. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

15. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

17. BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, Contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

***** END *****