

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF HAYWARD AND
THE CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT FOR COMMUNITY
BLOCK PARTIES AND COMMUNITY-LED PROJECTS

THIS AGREEMENT, dated for convenience this day of October 1, 2019, is by and between CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT - CHABOT COLLEGE, a public body of the State of California, ("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.

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

AGREEMENT:

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

2. Compensation. City hereby agrees to pay for completion of work described in Exhibit A. Total compensation for Contractor's services and expenses incurred pursuant to this agreement shall not exceed \$60,000, with a maximum of \$50,000 for work completed before July 1, 2020 and a maximum of \$10,000 for work completed on or after July 1, 2020, no later than August 30, 2020.

3. Effective Date and Term. The effective date of this agreement is October 1, 2019 and it shall terminate no later than August 30, 2020.

4. 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.

5. Billings. Contractor shall submit monthly bills to the City. In no event shall Contractor submit any billing for an amount in excess of the maximum amount of compensation provided in section (2).

6. 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.

7. 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.

8. 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 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 City Manager. Contractor shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's City Manager.

9. 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.

10. Indemnification - Contractor's Responsibility. It is understood and agreed that Contractor has the experience and knowledge 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 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.

11. 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.

12. Nondiscrimination: 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.

(a) Professional Services and Employment. Contractor shall not unlawfully discriminate in the provision of professional services, or against any employee or applicant for employment, because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.

(b) Compliance with Anti-Discrimination Laws. Contractor will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department

of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

13. Confidential Information:

(a) Disclosure of Confidential Information. In the performance of this Agreement, Contractor may receive information that is confidential under local, state, or federal law. Contractor hereby agrees to protect all confidential information in conformance with any and all applicable local, state, and federal confidentiality laws, regulations, policies, procedures, and standards.

(b) Continuing Compliance with Confidentiality Laws. The parties acknowledge that local, state, and federal laws, regulations and standards pertaining to confidentiality are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the requirements of any and all applicable local, state, and federal confidentiality laws, regulations, and/or standards.

14. Drug Free Workplace Certification of Compliance. By signing this Agreement, Contractor, hereby certifies, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code §8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code §8355(a)(1).

(b) Establish a Drug-Free Awareness Program, as required by Government Code §8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:

- (i) The dangers of drug abuse in the workplace,
- (ii) Contractor's policy of maintaining a drug-free workplace,
- (iii) Any available counseling, rehabilitation, and employee assistance programs, and

- (iv) Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- (c) Provide, as required by Government Code §8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Agreement:
 - (i) Will receive a copy of Contractor's drug-free policy statement, and
 - (ii) Will agree to abide by terms of Contractor's condition of employment, contract or subcontract.

15. 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 a portion of compensation equivalent to the 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, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the City in connection with this agreement.

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

To Contractor: Vice Chancellor of Business Services
Chabot-Las Positas Community College District
Business Services Office
7600 Dublin Blvd., 3rd Floor
Dublin, CA 94568

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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

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

25. Conflict of Interest. Contractor warrants and covenants that the provider 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 provider of services is a "Contractor" for the purposes of the Fair Political Practices Act (Gov. Code ' 81000 et seq.), each such person shall comply with Form 721 Statement of Economic Interests filing requirements in accordance with the City's local Conflict of Interest Code. In addition, if any other conflict of interest should nevertheless hereinafter arise, 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.

26. 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 C and made a part hereof.

27. 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.

28. 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.

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

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

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

CONTRACTOR - Chabot-Las Positas Community College District - Chabot College

Dated: _____

By _____

Its Doug Roberts, Vice Chancellor Business Services

CITY OF HAYWARD

Dated: _____

By _____

City Manager

Attest: _____

City Clerk

Approved as to Form and Procedure:

City Attorney

Attachments:

- Exhibit A Scope of Work, consisting of 1 page
- Exhibit B Nondiscriminatory Employment Practices by City Contractors, consisting of 3 pages
- Exhibit C Affirmation of Non-Involvement in the Development or Production of Nuclear Weapons, consisting of 1 page

EXHIBIT A: SCOPE OF WORK FOR HAYWARD BLOCK PARTIES AND COMMUNITY LED PROJECTS IN FALL 2019 THROUGH SUMMER 2020

The City agrees to compensate Chabot College up to \$60,000 for the below work. This work will commence after October 1, 2019 and will be completed no later than August 30, 2020, with a maximum of \$50,000 for work completed before July 1, 2020 and \$10,000 for work completed on or after July 1, 2020.

The Chabot College faculty supporting this work will be:

- Tom DeWit, Language Arts Faculty, tdewit@chabotcollege.edu
- Eric Helzel, Language Arts Faculty, ewheltzel@gmail.com
- Sean McFarland, Language Arts Faculty, smcfarland@chabotcollege.edu

\$30,000 – Internship Program

- Recruit and select at least four interns who are familiar with Hayward neighborhoods and come from diverse background
- Provide weekly guidance, task supervision, and quality monitoring
- Coordinate interns to attend at least one half-day retreat with City staff
- Coordinate monthly update meetings between City staff and interns

\$30,000 – Community-led Projects & Block Parties

- Recruit community members in at least four Hayward neighborhoods to sponsor “culture fest” block parties
- Host at least five culture fests in Hayward neighborhoods with food and family-friendly activities
- Track attendance and collect email signups
- Coordinate with City staff to advertise priority City programs
- Fund at least four small neighborhood grants to create community-led pop-up activities or amenities



CITY OF
HAYWARD
HEART OF THE BAY

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

The undersigned hereby certifies:

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

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

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

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

Print/Type Company Name

Print/Type Official Name & Title

Company Address

Signature of Company Official

City/State/Zip Code

Date

**Department of Finance
Purchasing Division**

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, 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 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 interview 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 on or behalf of the City;
3. The projected turnover, vacancies, or workforce 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 workforce 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 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 workforces 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.

BIDS EXCEEDING \$10,000 MUST INCLUDE EEO SCHEDULE 1,
ATTACHED
(rev. 5/13/94)

CITY OF HAYWARD
AFFIRMATIVE ACTION CERTIFICATION STATEMENT
(EEO Schedule - 1)

The Respondent to a City of Hayward Request for Proposals/Request for Quotation hereby certifies:

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 and 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 Number Name City State Zip

Telephone: () _____

Please check below as appropriate:

() Prime () Subcontractor () Supplier of Goods or Services

NOTE: A COMPANY THAT PREVIOUSLY HAS SUBMITTED AN AFFIRMATIVE ACTION COMPLIANCE REPORT DURING THE FISCAL YEAR DOES NOT HAVE TO COMPLETE THIS FORM.

(REV. 5/13/94)