



CITY OF
HAYWARD
HEART OF THE BAY

BID #1530-050515
Digester Cleaning at
Water Pollution Control Facility
3700 Enterprise Ave.
Hayward, CA 94545

Bids must be received
no later than:

Friday, May 29, 2015 @ 3:30 pm

Deliver bids to the office of
Purchasing Manager
777 B Street 3rd Floor
Hayward, CA 94541

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To be completed and returned along with the bid form:

- Contractor's License
- Bidder's Reference and Statement of Experience
- Designation of Subcontractors
- Acknowledgement of Addenda
- Signature Affidavit for Non-Collusion
- Non Discriminatory Employment Provision
- Non-Nuclear Affirmation
- Contractor's Certificate Regarding Worker's Compensation

Attachments:

- Contract Bonds (Performance, Labor and Material)
- General Provisions

NOTE: The Table of Contents is to be made a part of the above referenced bid.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

No bid proposals shall receive consideration by the City of Hayward for **Bid# 1530-050515** unless made in accordance with the following instructions:

It is the responsibility of the bidder to assure that the bid is received at the City of Hayward prior to the bid-opening deadline date and time. Bids received beyond the bid-opening deadline will not be accepted and will be returned unopened. Late bids, unsealed bids, unlabeled bids, incomplete bids, or bids otherwise not in compliance with the General Conditions of this Invitation to Bid, will be rejected. By submitting a response, bidder acknowledges and accepts the General Conditions and all terms and conditions contained in this Invitation to Bid.

All bids must be submitted in ink on the bid form. Cover letters, additional sheets, etc. may be included. The total bid excluding sales tax must appear on the bid form as indicated.

Erasures are NOT acceptable. Changes must be lined out and corrections inserted adjacent to and initialed by the bidder's authorized representative. Use of correction fluid or tape is not acceptable.

Vendor is required to quote "NEW" equipment, material or product. Recycled, remanufactured, or previously owned product will not be accepted unless otherwise stated in the Invitation to Bid.

All bids must include the company name and address and must be signed by an authorized representative of the company; signature must be an original signature, or an original signature stamp, on the Bid Form.

Alternate or incomplete bids will NOT be accepted.

City of Hayward, at its sole option, may correct arithmetic or extension errors, and obtain clarification, if necessary.

Number of days shall mean calendar days After Receipt of Order (ARO). Bids quoting delivery beyond the requirement may be rejected.

Bid modifications, corrections, or additions received beyond the bid deadline will NOT be considered.

Telephone or facsimile bids will NOT be accepted.

By submitting a response to this Invitation to Bid, Bidder acknowledges and accepts the City of Hayward's standard terms and conditions.

DEADLINE FOR RECEIPT OF PROPOSALS

Bid proposals must be sealed and filed at the office of the Purchasing Manager located at 777 B Street, Hayward, CA 94541 no later than **Friday, May 29, 2015 at 3:30 pm**. It is the sole responsibility of the bidder to see that his bid is received in proper time. Any bid received after the schedule closing time for receipt of bids will be returned to the bidder unopened.

BIDDERS CONFERENCE/SITE INSPECTION

The City has scheduled a voluntary site visit **Wednesday, May 20, 2015 at 9:00a.m.** Interested parties will meet at the Water Pollution Control Facilities, 3700 Enterprise Avenue, Hayward. Call (510) 293-5395 or (510) 293-5212 for entrance. Vendors are highly encouraged to attend the scheduled site visit. Site visit is not mandatory and will not automatically disqualify prospective bidders who elected not to attend.

CONTACT

Any administrative questions regarding bidding procedures should be directed to the Purchasing Manager, Maria Carrillo at (510) 583-4802; email: maria.carrillo@hayward-ca.gov.

Questions relating to the project management may be directed to the WPCF Manager, Ray Busch, at (510) 293-5212; email: ray.busch@hayward-ca.gov.

CLARIFICATION DEADLINE

Questions regarding documents, discrepancies, omissions, or doubts as to meaning must be submitted in writing to the office of the Purchasing Manager, Maria Carrillo at (510) 583-4802; email: maria.carrillo@hayward-ca.gov , no later than **Friday, May 22, 2015 @ 2:00 pm**.

MODIFICATIONS

Changes in or additions to the Bid Form, recapitulations of the work bid upon alternative proposals, or any other modifications of the Bid Form which is not specifically called for in the contract documents may result in the rejection of the bid as not being responsive to the Bid. No oral or telephonic modification of any bid submitted will be considered.

WITHDRAWAL OF BID PROPOSALS

Bid proposal may be withdrawn by the bidder prior to the time fixed for the opening of bids, but may not be withdrawn for a period of ninety (90) days after the opening of bids. A successful bidder shall not be relieved of the bid submitted without the City's consent or bidder's recourse to Public Contract Code sections 5100 et. seq.

ADDENDA OR BULLETINS

Any addenda or bulletins issued during the time of bidding shall form a part of the drawing and specifications issued to bidders for the preparation of their proposals and shall constitute a part of the contract documents. Initials of bidders on the bid form shall reflect receipt of all addenda prior to submittal of the bid.

AWARD OF CONTRACT

The City reserves the right to reject any and all bid proposals, to contract work with whomever and in whatever manner the City decides, to abandon the work entirely and to waive any informality or non-substantive irregularity as the interest of the City may require and to be the sole judge of the equipment offered.

Bids will be evaluated on basis of lowest, responsible, responsive bid for the work. The City reserves the right to consider quality, warranty, compatibility with existing equipment, and any other information considered to be in the best interests of the City of Hayward.

The City of Hayward reserves the right to purchase quantities by necessity only regardless of approximate quantities indicated on the bid form. Bidder shall also have the right to refuse sale in reduced quantities; in such instances, the award shall go to the next lowest qualified bidder.

A written Purchase Order mailed or Notice to Proceed will be furnished to the successful bidder within time for acceptance specified, results in a binding contract without further action by either party. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.

Award of this bid does not imply exclusive agreement with the City of Hayward.

BONDS

The successful bidder, simultaneously with the execution of the agreement, shall furnish a payment bond in the amount of 100% of the contract price and a faithful performance bond in the amount of 100% of the contract price. Bonds secured from a surety company issued by corporation duly and legally licensed to transact business in the State of California and approved by the City.

Bid bond is not required for this project.

BID PROTEST

Should any bidder question or protest the award of the contract must submit such question or protest in writing to the Purchasing Manager no later than 5:00 pm on the third (3rd) business day following the date of the bid opening. Such submittal must fully explain the basis of the objection supported by all relevant information facts and details. Letter must be signed by an authorized

representative stating specific reason(s) for the protest including all relevant facts (law, rule, regulation, and criteria).

Questions or protests not furnished in writing as prescribed will not be accepted.

REJECTION OF BIDS

The City reserves the right to accept or reject any and all bids or any portion or combination thereof, or award on the basis of the total bid. The City of Hayward reserves the right to reject any and all bids, or to waive any informality or non-substantial irregularity in any bid.

EXECUTION OF CONTRACT

The successful bidder shall, within ten (10) calendar days of receiving notification of award of the contract, sign and deliver to the City the executed contract along with appropriate bonds and insurance, if required. In the event the bidder to whom an award is made fails or refuses to execute the contract within ten (10) calendar days, the City may declare the bidder's bid deposit or bond forfeited as damages caused by the failure of the bidder to enter into the contract, and may award the work to the next lowest responsible bidder, or may reject all bids and call for new bids.

RIGHTS AND REMEDIES IN THE EVENT OF DEFAULT

If the bidder defaults, the City may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due the bidder or by proceeding against a bidder's bonds, if any, or by suit against the bidder. The prices paid by the City shall be considered the prevailing market prices at the time such purchase is made.

GOVERNING LAW AND VENUE

In the event of litigation, the bid documents, specifications and related matters shall be governed by and construed in accordance with the law of the State of California. Venue shall be with the appropriate state or federal court located in Alameda County.

SUBCONTRACTORS

Pursuant to the Subletting and Subcontracting Fair Practices Act, Government Code Section 4100-4114, inclusive, every bidder shall, on the enclosed form set forth the name and location of the place of business of each subcontractor who will perform work or labor or render service to the bidder in or about the work in an amount in excess of one-half (1/2) of one percent (1%) of the bidder's total bid and the portion of the work which will be done by each subcontractor. If the bidder fails to specify a subcontractor for any portion of the work performed under the contract in excess of one-half (1/2) of one percent (1%) of the bidders total bid, bidder agrees that bidder is fully qualified to and will perform that portion of the work. The successful bidder shall not, without the consent of the City, either substitute any person as subcontractor in place of the subcontractor designated in the original bid, permit any subcontractor to be voluntarily assigned or transferred, allow the work to be performed by anyone other than the original subcontractor listed in the bid or

sublet or subcontract any portion of the work in excess of one-half (1/2) of one percent (1%) of the total bid as to which the bidder's original bid did not designate a subcontractor.

CONTRACTOR'S FINANCIAL OBLIGATIONS

The Contractor shall make prompt payments for all labor, materials, and services furnished to or for him in accordance with the Contract requirements. Prior to submitting a request for final payment, the Contractor shall provide the City with lien releases or conditional lien releases for all subcontractors and suppliers used on this project.

TRANSFER OF INTEREST

No interest in the contract shall be transferred to any other party without permission of the City.

PREVAILING WAGE

Prevailing wages must be paid to all workers employed on a public works project when the public works project is over \$1,000. Prevailing Wages: The Work is subject to the payment of not less than prevailing wages under Labor Code Section 1770 et seq. Bidders are hereby notified that the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to perform the Work under the contract which will be awarded to the successful bidder. Copies are on file with and available upon request from the City Engineer or at <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

Bidders are further notified that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Further information on Compliance Monitoring Unit requirements can be found at <https://www.dir.ca.gov/dlse/cmu/cmu.html>.

No contractor or subcontractor may be listed on a bid proposal for a public works project submitted on or after March 1, 2015 unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5, with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a).

No contractor or subcontractor may be awarded a contract for public work on a public works project awarded on or after April 1, 2015 unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

Contractor agrees to comply with all related provisions of the Labor Code, including but not limited to, the provisions of Labor Code Section 1775 relating to the payment of prevailing wages, Section 1777.5 relating to the employment of apprentices and Section 1811-1813 relating to the payment of Overtime.

WORKERS' COMPENSATION

In accordance with the provisions of Section 3700 of the Labor Code, Contractor shall secure the payment of compensation to his employees. Contractor hereby acknowledges the following statement:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract documents."

The Contractor shall take out and maintain during the life of the contract, Statutory Worker's Compensation and Employer's Liability Insurance with limits not less than One Million Dollars (\$1,000,000) for all its employees to be engaged in the work on the project under the Contract. Should any work be sublet, the Contractor shall require the subcontractor similarly to provide Worker's 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 occurrences on the work.

PROOF OF CARRIAGE OF INSURANCE

The contractor shall take out and maintain during the life of the Agreement all the insurance required by this section and shall annually submit certificates for review and approval by the City. Acceptance of the certificates shall not relieve the contractor of any of the insurance requirements, and shall not decrease the liability of the contractor. The City reserves the right to require the contractor to provide insurance policies for review by the City.

Contractor shall not commence work nor shall contractor allow any subcontractor to commence work under this contract until all required insurance and certificates have been delivered in duplicate to and approved by the City. Certificates and insurance policies shall include the following clause:

"This policy shall not be canceled or reduced in required limits of liability or amount of insurance until notice has been mailed to the City stating date of cancellation or reduction. Date of cancellation or reduction may not be less than ten (10) days after date of mailing notice."

Certificate of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date and cancellation and reduction notice. Contractor shall be solely responsible for:

- 1) Compliance of subcontractors with insurance requirements; and
- 2) Other insurance coverage including but not limited to loss, theft, fire, property damage, and glass breakage.

COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE

The Contractor shall take out and maintain in the name of the Contractor and as an additional insured, the City, during the life of the Contract, such Commercial General and Automobile Liability Insurance as shall protect the Contractor, the City, and its officials, officers, directors, employees and agents from claims which may arise from operations under this contract, whether such operations be by the Contractor, by the City, its officials, officers, directors, employees and agents, any subcontractors or by anyone directly or indirectly employed by any of them. Such coverage shall be at least as broad as: Insurance Service Office Commercial General Liability coverage (occurrence Form CG0001) and Insurance Service Form Number CA0001 (Ed.1/87) covering Automobile Liability, Code 1 (any auto). This liability insurance shall include but not limited to protection against claims arising from bodily and personal injury and damage to property, resulting from the Contractor's or subcontractor's operations, including the use of owned or non-owned automobiles, products and completed operations. The amounts of insurance shall not be less than the following:

- Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Employer's Liability Insurance: \$1,000,000 per occurrence.

The following endorsements must be attached to the policy:

- **The City must be named as an additional named insured under the coverage afforded with respect to the work being performed under the contract.**
- If the insurance policy covers on an "accident" or a "claims made" basis, it must be changed to "occurrence".
- The policy must cover Personal Injury as well as Bodily Injury.
- The policy must cover complete contractual liability. Exclusions of contractual liability. Exclusions of contractual liability as to bodily injuries, personal properties and property damages. MUST BE ELIMINATED from the basic policy endorsements. This endorsement may be satisfied by amending the definition of "incidental contract" to include written contract.
- 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.
- A certificate shall be provided which states that the coverage is PRIMARY INSURANCE and that no other insurance affected by the City will be called upon to contribute to a loss under this coverage.
- The policy must include a cross liability or severability of interest clause.
- Any failure of the Contractor to comply with the reporting provisions of the policies shall not affect coverage provided to the City, et al.
- Notice of Cancellation, non-renewal, reduction in limits, or material change, shall be sent to the City with at least **thirty (30) days** prior written notice by certified mail.

- Insurance is to be placed with California Admitted Insurers with a Best's rating of no less than A:XI
- The policy covers use of Non-owned Autos;

Should any insurance policy be materially changed before final completion of the work, and the Contractor fail to procure other insurance as herein required, immediately, the City may procure such insurance and deduct the cost thereof from any amounts due to the Contractor.

Insurance is to be placed with insurers acceptable to the City of Hayward's Legal Department.

COMPLETION AND LIQUIDATED DAMAGES

Time shall be of the essence of the agreement. It is understood that this project shall be completed in its entirety and ready for acceptance **within Thirty (30) working days after award of contract.**

Should the Contractor fail to complete this contract, and the work provided herein within the times fixed for such completion, due allowance being made for contingencies provided for herein, the Contractor shall become liable to the City for all loss and damage which the latter may suffer of account thereof

As it is difficult to ascertain and determine the actual damage which the City will sustain in the event of any, by reason of such delay; and it is therefore agreed that said Contractor will pay to the City the sum of three hundred dollars (\$300.00) per day for each and every calendar days delay beyond the time herein prescribed in furnishing the said work as liquidated damages; the said Contractor agrees to pay said liquidated damages as herein provided, and in case the same is not paid, agrees that said City may deduct the amount thereof from any money due or that may become due said Contractor under this Contract, and should such money be insufficient to cover such damages, the City shall have the right to recover the balance from the Contractor or his/her Surety. In addition to the above stipulated liquidated damages, the Contractor shall pay the cost of the Inspector's salary for the time the Inspector is required on the project beyond the allotted contract time. Payment for Inspector's salary to be made directly to the City. The City shall determine the time the Inspector is required on the Project.

The Contractor shall not be charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond his/her control and without default or negligence of the Contractor, including, but not restricted to acts of the public enemy, acts of the government, acts of another prime contractor in the performance of the contract with the City, fire, flood, epidemics, delays of subcontractors due to such causes. The Contractor shall within ten (10) days from the beginning of any such delay notify the City in writing, of the causes of the delay, who shall, after ascertaining the facts and the extent of the delay extend the time for completion of the work, when in its judgment the finding of the facts and determination thereon shall be final and conclusive on the parties thereto.

The Contractor shall not be assessed for liquidated damages for delay in completion of the project, when such delay was caused by the failure of the awarding authority of this contract or the City of the utility to provide for removal or relocation of the existing utility facility; however, when the

Contractor is aware that removal or relocation of an existing utility has not been provided, the Contractor shall promptly notify the awarding authority, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the utility or to provide its removal or relocation.

LOSS OR DAMAGE:

The Contractor shall take and assume all responsibility for the work. The Contractor shall bear all losses and damages which may occur to said work or any part or portion thereof and in connection therewith to persons and/or property, and shall fully indemnify the City from and against the same.

The Contractor, subject to the limitations of Civil Code Section 2782, shall assume the defense of and indemnify and save harmless the City, officers and employees from every expense, liability or payment by reason of injury (including death) to persons or damage to property suffered through any act or omission, including passive and/or active negligence, of the Contractor, or any Subcontractors or anyone directly or indirectly employed by either of them, or from the condition of the premises while in the control of the Contractor or any Subcontractors, or anyone directly or indirectly employed by either of them or arising in any way from the work called for by this contract, or any part of the premises.

INTERPRETATION OF CONTRACT DOCUMENTS:

Should any question arise concerning the intent or meaning of drawings or specification, such question(s) shall be submitted to the City for interpretation.

EXTRA AND/OR ADDITIONAL WORK AND CHANGES:

The City at any time during the progress of said work, request any alterations, deviations, additions, or omissions from the said contract, specifications, or drawings, it shall be at liberty to do so and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of said contract price as the case may be, by a fair and reasonable valuation. The value of any such extra work or change shall be determined in one or more of the following ways:

- a. By estimate and acceptance in a lump sum.
 - b. By unit prices named in the contract or subsequently agreed upon.
 - c. Cost of labor, materials and equipment plus overhead and profit as indicated below.
1. Work by Contractor or Subcontractors: For any portion of the changed work which is to be performed by a subcontractor, Contractor shall furnish to the City a detailed estimate prepared and signed by subcontractor of the cost to subcontractor for performing the changed work. At the option of the City, a lump sum estimate of such cost to subcontractor may be accepted in lieu of the detailed estimate. The combined costs for subcontractor's overhead, profit, taxes, supervision, and bonds **shall not exceed fifteen percent**. Contractor may add no more than fifteen percent for its overhead, profits, insurance, taxes, supervision, bonds, and any other miscellaneous costs for such work, known as overhead and profit hereafter.

Estimates of the amount to be deleted from subcontractor's portion of the work shall be the gross cost of the deducted work plus at least six percent overhead, bonds, insurance, and related savings.

2. Markup for Added Work or Credit for Deleted Work: Where changed work is performed, Contractor may add to the total cost estimate for such work no more than fifteen percent for profit, overhead, insurance, taxes, supervision, and bonds. Estimate of the amount to be deducted from the contract price shall be the gross cost of the deducted work plus at least six percent for overhead, bonds, insurance, taxes and related savings.

For proposed change orders which involve both added and omitted work, Contractor shall separately estimate the cost of the added work before markups, and separately estimate the cost of the omitted work before allowance of a credit.

If the difference between the costs results in an increase to the contract price, the markup for added work shall be applied to the difference, and if the difference in the costs results in a decrease, then the markup for deleted work shall be applied to the difference.

3. Market Values: Cost for added work shall be based on market values prevailing at the time of the change, unless Contractor can establish to the satisfaction of the City that it investigated all possible means of obtaining work at prevailing market values and that the excess cost could not be avoided by it.

When a change order deletes work from the contract, the computation of the cost thereof shall be the values which prevailed at the time bids for the work were opened.

If none of the above methods is agreed upon, the Contractor, provided he/she receives an order to do so as above, shall proceed with the work. In such case and also under case "C", he/she shall keep and present in such form as the City may direct, a correct account of the net cost of labor and materials, together with vouchers.

No extra work shall be performed or change be made unless in pursuance of a written order from the City stating that the extra work or change is authorized. No claim for an addition to the Contract sum shall be valid unless so ordered.

TERMINATION BY THE CITY FOR BREACH, ETC.:

If the Contractor should be adjudged a bankrupt, or if he/she should make a general assignment for the benefit of his/her insolvency, or if he/she or any subcontractors should violate any of the provisions of the contract, or if he/she should persistently or repeatedly refuse or should fail to prosecute the work properly for failure to perform any provisions of this contract, or if he/she should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instruction of the City, then the City may serve written notice

upon the Contractor and his/her Surety of its intention to terminate the contract, such notice to contain the reasons for such intention to terminate the contract, and unless within five (5) days after the serving of such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, the contract shall, upon expiration of said five (5) days , cease and terminate. In the event of any such termination, the City shall immediately serve written notice upon the Surety and the Contractor, and the Surety shall have the right to take over and perform the Contract provided, however, that if the Surety within ten (10) days after the serving upon it of notice of termination does not give the City may take over the work and prosecute the same completion by any method it may deem advisable, for the account and at the expense of the Contractor and the Contractor and occasioned the City thereby, and in such event the City may without liability for doing so, take possession of and utilize in completing the work such materials, appliances, plant and other property belonging to the Contractor as may be on the site of the work and necessary therefore. In such case the Contractor shall not be entitled to receive any further payment until the work is finished.

If unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services such shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the City.

ASSIGNMENT OF CONTRACT:

Neither the Contract, nor any part thereof nor any moneys due of to become due hereunder may be assigned by the Contractor without the approval of the City, not without the consent of the Surety unless the Surety has waived its right to notice of assignment.

PAYMENTS WITHHELD:

The City may withhold, or on account of subsequently discovered evidence, nullify the whole or part of any certificate to such extent as may be necessary to protect the City from loss on account of:

- a. Defective work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the Contractor to make payments properly to subcontractors, or for material or labor.
- d. A reasonable doubt that the contract can be completed for the balance then unpaid.
- e. Damage to another contractor.

Documentation of disposal shall be delivered to the City.

CLAIMS

All claims of \$375,000 or less which arise between the contractor and the local agency shall be subject to the settlement an arbitration provisions set forth in Public Contract Code Sections 20103 through 20104.8, which provisions are incorporated herein by this reference.

PRICE, TERMS AND CONDITIONS

Price, terms and conditions of this bid are considered valid for sixty (60) days, from date of bid opening, unless the offering party in writing allows for a longer period of time.

Any cash discounts given to the City of Hayward must be so stated on the bid.

Prompt payment discounts offered for payment within less than thirty (30) calendar days will not be considered in evaluating offers for award. However, offered discounts of less than thirty (30) days will be taken if payment is made within the discount period, even though not considered in the evaluation of offers.

In connection with any discount offered, time will be computed from date of complete delivery of the supplies or equipment as specified, or from date correct invoices are received if the latter is later than the date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing the warrant or check.

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. A City of Hayward Business License is required before starting work. 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 also, procure all permits, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of The Work. In addition, Bidder must include Contractor's license number and date of expiration on the bid form.

WORKING HOURS

Job to start at a time designated by the City and the Contractor Regular working hours, Monday through Friday except during legal holidays if approved by the Purchasing Department in writing. The Contractor shall give a minimum of three (3) day notice to the Project Manager for any work scheduled outside of the regular working hours. The Contractor is responsible to schedule and coordinate its work accordingly to allow for inspections by the Project Manager or its designee as required by these specifications.

CLEAN UP

The contractor shall be responsible for necessary cleanup during progress of work, and shall take necessary safety precautions to prevent injury to the workers or the public. Upon the completion, the contractor shall remove all of the contractor's equipment and debris, leaving the entire area clean and ready to use, all as approved by the City.

CONTRACTOR USE OF WORKSITE

Confine Worksite operations to areas permitted by law, ordinances, permits, and the Contract

Documents. Consider the safety of the Work and that of people and property on and adjacent to the Worksite when determining amount, location, movement, and use of materials and equipment on Worksite. Do not load Worksite with equipment and products which would interfere with the area's normal access, traffic or flow. Only equipment, tools or materials required for this work may be stored at the Worksite.

PROJECT PHASING AND WORK SCHEDULE

The Contractor shall submit a complete and detailed schedule of the work with specific milestones for the design, procurement, installation and modification.

INTENT OF THE CONTRACT

It is the intent of this contract to obtain a finished, complete in place, fully functional, and suitable for its intended purpose workmanlike job of high quality, with all equipment properly installed and operating with the option to add additional digester cleaning of up to three (3) digesters within a two (2) year term.

Except as otherwise specified, the Contractor shall furnish the following to the full extent as required by the Contract: Labor, superintendence, products, construction equipment, tools, machinery, materials and appurtenances as necessary. Utilities required for construction and related activities, facilities and services necessary to properly execute and complete the Work, including security, storage area, temporary safety fencing for worksite and all materials, including City furnished equipment, awaiting incorporation into the Work.

In the specifications, plans, schedules and details, information is conveyed by means of brief mention or notation which, regardless of brevity, shall be binding exactly as if presented in complete sentences employing mandatory language. Work not listed in the specifications or drawings, but clearly implied as necessary to complete the job, shall be included as though fully specified and drawn.

Titles and headings to sections and paragraphs in these specifications are introduced merely for convenience and shall not be taken as a correct or complete segregation of the several units of materials and labor. No responsibility, either direct or implied, will be assumed by the City, for omissions or duplications by the Contractor or its subcontractors due to real or alleged error in arrangement of matter in the Contract Documents.

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.

RESPONSIBILITY OF THE 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.

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.

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.

PUBLIC RECORDS

All responses to the Invitation to Bid will become the property of the City. Once a final award is made, all bid responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City shall not in any way be liable or responsible for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act.

GENERAL PROVISIONS FOR PURCHASES OF WORK AND SERVICES

The City of Hayward's general provisions for purchases of work and services are described in Attachment 1. The provisions are dated 11/15/1999 and include sections 1.00 Legal Relations and Responsibilities through 1.26 Recycled Materials.

DEFEND, INDEMNIFY AND HOLD HARMLESS

To the full extent permitted by law, Contractor shall defend, indemnify and hold harmless City of Hayward, its employees, agents, officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorney fees incurred by the City, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever incurred in relation to, as a consequence of or arising out of or in any way attributable in whole or in part to the performance of this contract and agreement. All obligations under this provision are to be paid by Contractor as the City incurs them.

Without affecting the rights of the City under any provision of this agreement or this section, Contractor shall not be required to indemnify and hold harmless City of Hayward as set forth above for liability attributable to the sole fault of City of Hayward, provided such sole fault is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City of Hayward is shown to have been solely at fault and not in instances where Contractor is solely or partially at fault or in instances where City's fault accounts for only a percentage of the liability involved. In those instances, the obligation of Contractor will be all-inclusive and the City will be indemnified for all liability incurred, even though a percentage of the liability is attributable to conduct of the City.

Contractor acknowledges that its obligation pursuant to this section extends to liability attributable to City of Hayward, if that liability is less than the Sole fault of City.

ATTORNEY'S FEES

In the event suit is brought by either party in connection with this agreement, the prevailing party shall have judgment for court costs and a reasonable attorney's fee.

END OF SECTION

SPECIAL CONDITIONS AND INSTRUCTIONS

QUALIFICATIONS

Bidders shall furnish sufficient evidence on their qualifications to perform the work. This information shall include and disclose all pertinent facts as may be appropriate and shall provide the following information:

- a. A description of the company's experience and capability to remove, transport, and dispose of bio-solids as required by this proposal and applicable code of regulations.
- b. The names and resumes of key personnel that will be involved with the project.
- c. A record of past performance on at least three similar POTW bio-solids' digester cleaning projects involving the operation of appropriate solids removal equipment, including a description of the project and references providing the project name, project manager/engineer, owner, and phone numbers.
- d. A list of subcontractors, if any, the bidder intends to use for the project. This list shall include the same qualifications information as those required of the contractor (e.g., personnel, experience, etc.)
- e. The bidder shall demonstrate financial ability to perform the contract for the duration of the contract term.

DEFINITIONS

OWNER: The word "Owner" or "District" or "City" shall mean the so named in the Contract Documents, and who is referred to throughout the Contract Document as singular in number and masculine in gender. The term "Owner" shall mean the Owner or his authorized representative. All necessary action by Owner pertaining to the Contract will be taken by legally constituted authorities empowered to act on behalf of the Owner.

ENGINEER: The word "Engineer" shall mean the individual or firm authorized by the Owner to oversee the performance of this Contract, acting either directly or through properly authorized agents, each acting only within the scope of authority delegated to him by the Engineer. The responsibility for the Engineer under this Contract shall be limited and does not include responsibility for the superintendence of work, site conditions, operations, equipment, personnel, or the maintenance of a safe place to work or any safety in, or about the site of the work.

CONTRACTOR: The word "Contractor" shall mean the party entering into Contract with the Owner for performance of the work called for in the Contract Documents, including the Contractor's authorized agents.

SUBCONTRACTOR: The word "subcontractor" shall mean any person, firm, or corporation entering into agreement with the Contractor for performance of any part of the Contractor's obligation under the Contract, and whose contractual obligations are with the Contractor not with the Owner.

CONTRACT: The word "Contract" shall mean the agreement between the Owner and the Contractor for the satisfactory performance of the work indicated on the drawings and specified herein and the performance consideration therefore, all as evidenced by the Contract Documents.

CONTRACT DOCUMENTS: The Contract Documents all comprise the following documents: the Notice Inviting Proposals, Information to Offerors, Proposal Requirements, Agreement, General Conditions, Special Conditions, Technical Specifications of the Contract, Purchase Orders and all referenced portions

of material and testing standards and standard specifications, together with all addenda and change orders executed pursuant to the provisions of the Contract.

SPECIFICATIONS: The work "Specifications" shall mean that portion of the Contract Documents comprising the Notice Inviting Proposals, Information to Offerors, Proposal Requirements, General Conditions, Special Conditions, Technical Specifications of the Contract, and all referenced portions of material and testing standards and standard specifications, together with all addenda and change orders issued with respect thereto.

DRAWINGS/CONTRACT DRAWINGS: The words "Drawings" or "Contract Drawing" or "plans" shall mean that portion of the Contract documents comprising all drawings, plans, maps, profiles, diagrams, or other graphic representation delineating the location, nature, extent, and form of the work, together with supplemental details and with all addenda and change orders.

CONTRACT PRICE: The words "Contract Price" shall mean the total moneys payable by the Owner to the Contractor under the terms and conditions of the Contract Documents.

ADDENDUM: A supplement to any of the contract documents issued in writing prior to opening of proposals.

CONTRACT TIME: The words "Contract Time" shall mean the number of calendar days stated in the Contract Documents for the completion of the work unless specifically noted otherwise.

WORKING DAYS: The words "Working Days" shall mean days excluding the Holidays, Saturdays and Sundays.

CHANGE ORDERS: The words "Change Order" shall mean a document which is signed by the Owner and authorizes an addition, deletion, or revision in the work, or an adjustment in the Contract Price or the Contract Time issued on or after the date of execution of the Agreements.

NOTICE OF AWARD: The words "Notice of Award" shall mean the notice by the Owner to the apparent successful offeror stating that upon compliance by the successful offeror with the conditions precedent enumerated therein within the time specified, the Owner will enter into an Agreement.

NOTICE TO PROCEED: The words "Notice to Proceed" shall mean the written notice issued by the Owner to the Contractor authorizing him to proceed with the work and establishing the date of commencement of the Contract Time.

OFFER: The word "Offer" shall mean the proposal of the offer submitted on the prescribed form setting forth the prices for the work to be performed.

SPECIFICATIONS FOR DIGESTER CLEANING

DIGESTER CLEANING

1. DIGESTER DESCRIPTION

- a. Dimensions: The digester is circular, concrete tank with dimensions of 29' depth x 80' diameter. The plan views and sections of the digester(s) are shown in the drawings and will be provided during voluntary bid walk.
- b. The major components of the digester are sludge influent and effluent lines, digester overflow box, roof mounted gas collection equipment, sample hatches, sight glasses, external pump mixing systems and access ports as shown in the attached drawings.

2. CONTENTS

The materials in the digester consist of digested sludge, nonvolatile materials, organic and inorganic materials, debris, rags and others. The estimated digester capacity is 1.09 million gallons and the contents to be removed in this contract are estimated at 600 thousand gallons (600,000): 100,000 gal. sludge, 50,000 gal. grit, and 450,000 gal. rags and other debris. Digester will be out of service with manways open for contractor inspection. Digester volume and contents are approximations and need to be verified by contractor during bid walk.

3. WORK INCLUDED

Furnish labor, services, materials, equipment, transportation, permits, fees, applicable taxes and others as necessary to complete Digester cleaning as shown on the drawings and as specified herein, included, but not limited to the following:

- a) Screening and pumping the contents to include scum, rags, hair and plastics before the material shall be pumped to the Drying Pond area which is located on-site, 1/4 mile to the west of the digester. Sludge/supernatant to be pumped to drying beds using contractor provided temporary above ground pipe line.
- b) Remove all sludge, grit and other miscellaneous materials from the digester; screen the material and transfer the screened sludge material to an on-site storage location specified by the City of Hayward. The material will be screened to 3/16" particle size. The screenings will be deposited in roll-off bins or other receptacles supplied by City of Hayward for end disposal. Contractor will hydrowash the interior of the digester structures at the City of Hayward Wastewater Facility with the following provisions:
- c) Provide for a safe work environment in and around the digester during cleaning process. Contractor is responsible for following Confined Space Entry procedures including adequate personnel levels, training, ventilation and atmospheric monitoring devices.
- d) Provide safety measures for all the work described herein.

4. SCREENED SLUDGE REQUIREMENTS

The Contractor shall achieve a 0.25" maximum particle size requirement for all screened digester contents.

To comply with this requirement, Contractor shall have a proven screening system or other equipment that achieves the same debris removal result. To assist the City in verifying the Contractor's ability to provide for particle removal, the Contractor shall furnish to the City with his bid submittal a list of clients for whom this type of debris removal methods produced this standard of performance. Failure to do so may result in disqualification of the bid submitted.

5. HAULING THE REMOVED SCREENED MATERIALS

The contractor shall haul the removed screened materials from the Digester to an on-site disposal site. The disposal site, a summer drying bed, is located one third of a mile to the west of the digester being cleaned. The hauling equipment shall be of the type that will prevent sludge from leaking and splashing onto WPCF roads during transportation.

The Contractor shall furnish to the City in writing its agreement to hold the City harmless in the event of any action occurring as a result of the Contractor's hauling and disposal operations. Such agreement shall be submitted with the Contractor's bid.

6. DISPOSAL OF THE REMOVED MATERIALS

- a. The Contractor shall comply with all Local, State and Federal Regulations and Regional Water Quality Control Board Requirements, concerning the removal, hauling, and disposal of the removed materials specified herein.
- b. The Contractor shall submit the following to the Engineer for review before the Contractor can receive the Notice to Proceed:
 1. Route of vehicles to disposal site
 2. Hauling and disposal records shall be submitted to the Plant Manager on a daily basis.
 3. The Contractor shall hold the City harmless in the event of any action occurring as a result of the Contractor's disposal of the digester contents.

SAFETY

The Contractor shall be solely and completely responsible for the safety of all persons and property, during the contract period and as specified herein, AND SHALL BE IN COMPLIANCE WITH ALL APPLICABLE HEALTH AND SAFETY REGULATIONS RELATING TO THE TYPE OF WORK DESCRIBED HEREIN. The Contractor shall take necessary precautions to insure protection of the health and safety of human life. The Contractor shall meet the following safety requirements, but not be limited to:

1. Interior air quality shall be tested continuously. All air sampling information shall be logged in the log book. Interior air shall be tested for high gas levels of methane, carbon dioxide, hydrogen sulfide and lower explosion limit. If readings exceed OSHA standards for a working environment, no one shall be allowed to enter the digester.
2. The Contractor shall provide proper ventilation to maintain OSHA quality standards.
3. Fire and explosion hazards exist from high methane content digester gas. Gas safety measures shall be taken while working on the digester.

4. All safety related accidents shall be reported to the Engineer not more than 24 hours after taking place.
5. CONTRACTOR SHALL SUBMIT WITH HIS BID PROPOSAL DOCUMENTATION ACCEPTABLE TO THE CITY WHICH DEMONSTRATES THAT THE PERSONNEL TO BE ASSIGNED TO THIS WORK HAVE BEEN ADEQUATELY TRAINED IN ALL APPLICABLE SAFETY RULES, REGULATIONS AND PROCEDURES.

SAFETY EQUIPMENT

Safety equipment provided shall include the items from the following lists, but not be limited to:

- Atmospheric monitoring equipment which identify explosive and oxygen deficient condition
- Ventilation equipment
- Ladders with safety apparatus
- Self-contained breathing apparatus, if deemed appropriate
- Safety harness and tether rope

ODOR CONTROL

The Contractor shall develop odor control measures for the work specified herein.

1. Odor control measures shall include piping, equipment, chemicals and others as required to reduce the odor to a non-noticeable level as determined by the Engineer.
2. Odor control measures shall be submitted to the Engineer for review prior to commencing of the work.

CLEAN-UP and SANITARY CONDITIONS

The contractor shall provide portable toilets and wash stations for personnel. Contractor is responsible for maintaining employee sanitary areas and training employees for hygienic practices.

The Contractor shall maintain the project site in a clean and orderly condition at all times. Any spillage, debris or excess materials and equipment shall be cleaned up and removed from the Plant site and not be washed into the Plant drains. Walkways, driveways and passways shall be maintained in a manner that will not be a safety hazard to the Plant personnel, or become an obstruction or interfere with their performing normal and routine tasks.

Upon completion of the cleaning, the Contractor shall remove all materials and equipment from the Plant site.

WATER USAGE

The contractor will need to identify the quantity of water needed for the cleaning process. The contractor can access final effluent from the final clarifier tank. If final effluent is used the contractor is responsible for his pumping operation to the digester area which includes; pump(s), electrical extension cords, suction/discharge hoses and hose protection ramps hoses. Electricity will be made available at selected locations to the contractor for the operation of this equipment.

Use of the non-potable chlorinated water will be available provided that it is not in excess of that which will impact the Plant operations. Potable water from local fire suppression hydrants will be on a small quantity basis and should not be considered as a primary source of process cleaning water. Potable water can be used for the immediate area cleaning and equipment washdown purposes.

EQUIPMENT POWER REQUIREMENTS

At the time of bid submittal, the contractor will identify the equipment power requirements and provide appropriately sized power disconnects and line voltage cords for all equipment. The City will provide access to power for the purposes of the equipment operation.

FINAL ACCEPTANCE

After the Contractor has completed to the best of his knowledge all the work under this Contract, the Contractor shall then request final inspection by the Engineer. The Engineer will then make an inspection. If items are found by the Engineer to be incomplete or not in compliance with the Contract requirements, the Engineer will inform the Contractor of such items. After the Contractor has completed these items, the procedure shall then be the same as specified above for the Contractor's statement of completion and request for final inspection.

After all work under the Contract has been completed, as determined by the Engineer, the Engineer will make final acceptance of the entire work under this Contract at the date of the Engineer's final inspection.

BID FORM
For RFQ #1530-050515
DIGESTER CLEANING

TO: THE CITY OF HAYWARD

FROM: _____
 (Company name)

Pursuant and in compliance with your Instructions and Conditions and all other documents relating thereto, the undersigned offer or, having familiarized himself with the terms of the contract, the local conditions affecting the performance of the contract, the cost of the work at the place where the work is being done, and with the specifications and other contract documents, hereby proposed and agrees to perform within the time stipulated, in contract, including all of its component parts, and everything required to be performed, and to provide and furnish any and all of the labor, materials, tools, expandable equipment, and all utility and transportation services necessary to perform all of the work required in connection with **BID #1530-050515**, all in strict conformity with the specifications and other contract documents, including any addenda issued and on file at the Office of the Purchasing Manager of the City of Hayward.

BASE BID

Furnish all labor, materials, equipment, transportation, permits, fees, and all costs to remove rags, plastics and grit material contents from the City of Hayward’s Digester located at the Water Pollution Control Facility.

LUMP SUM:

Item No.	Description	Mobilization-Each (In figures)	Mobilization -Each (In words)
1.	Mobilization & Demobilization:	\$	
Item No.	Description	Cleaning-Each (In figures)	Cleaning-Each (In words)
2.	Digester Cleaning and Solids Screening	\$	
Item No.	Description	Daily Rate- Each (In figures)	Daily Rate-Each (In words)
3.	Daily Rate (days in excess of 3 days)	\$	

VENDOR NOTE: Contractor must have a proven grinder pump system or other equipment that achieves the same debris removal result.

***THE CITY'S INTENT IS TO COMPLETE THE DIGESTER CLEANINGS OF UP TO THREE (3) DIGESTERS DURING A TWO (2) YEAR TERM.**

NOTE: All bids will be compared on the basis of the lump sum being proposed. The undersigned declares, by their signature to this Proposal, that the bidder has visited the site of the work and quantities and related work checked carefully and understands that the City shall not be responsible for any errors or omissions on the part of the undersigned in making up this bid.

In case of discrepancy between an item price in words and the price in figures, the price in words shall prevail. As to lump sum items, the amount set forth in the "Total" column shall be the item price.

COMPLETION REQUIREMENT

Working days to complete one (1) project: _____

Estimated completion date for the first (1st) project: _____

TERMS

Cash terms (if applicable) _____% _____ Days

FOB

Destination

THE REPRESENTATIVES MADE HEREIN ARE MADE UNDER PENALTY OF PERJURY.

CONTRACTOR'S LICENSE

Licensed in accordance with the act providing for the registration of the registration of contractor's,

_____	CA License No. _____
(Proper Name of Bidder)	_____
	(Expiration Date)
DIR Registration No. _____	COH Bus. Lic. No. _____
_____	_____
(Expiration Date)	(Expiration Date)

NO BID IS VALID UNLESS SUBMITTED ON THIS FORM AND SIGNED BY AUTHORIZED AGENT FOR YOUR COMPANY.

SUBMITTED BY:

COMPANY NAME: _____

ADDRESS: _____

CITY: _____ STATE: ____ ZIP: _____

TELEPHONE: _____

EMAIL: _____

SIGNATURE: _____

(Authorized Agent)

NAME: _____

(Please Print)

TITLE: _____

DATE: _____

NOTE: If bidder is a corporation, the legal name of the corporation shall be set forth above, together with the signature of authorized officers or agents; if bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partnership; and if bidder is an individual, his signature shall be placed above.

THIS DOCUMENT MUST BE COMPLETED, EXECUTED AND SUBMITTED WITH THE BID FORM

BIDDER'S REFERENCE AND STATEMENT OF EXPERIENCE

The bidder is required to state below work of similar character to that included in the proposed contract he has done and provide references which will fully disclose his responsibility, experience, skill and business standing. Please list below your qualified commercial references:

Company Name

Contact

Address

Telephone Number

Brief Description of Project:

Project Completion (date)

\$ _____

Amount of Contract

Company Name

Contact

Address

Telephone Number

Brief Description of Project:

Project Completion (date)

\$ _____

Amount of Contract

Company Name

Contact

Address

Telephone Number

Brief Description of Project:

Project Completion (date)

\$ _____

Amount of Contract

Company Name

Contact

Address

Telephone Number

Brief Description of Project:

Project Completion (date)

\$ _____

Amount of Contract

THIS DOCUMENT MUST BE COMPLETED, EXECUTED AND SUBMITTED WITH THE BID FORM

DESIGNATION OF SUBCONTRACTORS

In compliance with the provisions of the Government Code of the State of California each bidder shall set forth below the name and the mill, shop, or office of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement to be performed under these specifications and the portion of the work which will be done by each subcontractor.

If the Contractor fails to specify a subcontractor for any portion of the work to be performed under the contract, he shall be deemed to have agreed to perform such portion himself, and he shall not be permitted to subcontract that portion of the work under the conditions hereinafter set forth.

Subletting or subcontracting of any portion of the work as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the legislative body of the CITY.

<u>TRADE NAME</u>	<u>CONTRACTOR'S LICENSE NO.</u>	<u>EXPIRATION DATE</u>	<u>DIR REGISTRATION NO.</u>	<u>EXPIRATION DATE</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

THE REPRESENTATIONS MADE HEREIN ARE MADE UNDER PENALTY OF PERJURY.

****THIS DOCUMENT MUST BE COMPLETED, EXECUTED AND SUBMITTED WITH THE BID FORM****

ACKNOWLEDGMENT OF ADDENDA

Failure to execute the following may be considered as an irregularity in the bid. Receipt of the following addenda issued during the time of bidding is acknowledged, and the information contained therein has been considered in the preparation of this bid:

- | | |
|--------------------------------|--------------------------------|
| <input type="checkbox"/> None | <input type="checkbox"/> No. 3 |
| <input type="checkbox"/> No. 1 | <input type="checkbox"/> No. 4 |
| <input type="checkbox"/> No. 2 | <input type="checkbox"/> No. 5 |

(Check Appropriate Space(s) for Addenda Received)

WARNING

If an addendum or addenda have been issued by the City and not noted above as being received by the bidder, this Proposal may be rejected.

THIS DOCUMENT MUST BE COMPLETED, EXECUTED AND SUBMITTED WITH THE BID FORM

NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID.

State of California)
) ss.
County of _____)

_____, being first duly sworn, deposes and says that he or she is of _____ the party making the foregoing bid that the bid is not made in the interest of or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder as not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price of any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

NO BID IS VALID UNLESS SIGNED BY THE PERSON MAKING THE BID

SIGNATURE: _____

PRINT NAME: _____

DATE: _____

CONTRACTOR'S CERTIFICATE
REGARDING WORKER'S COMPENSATION

LABOR CODE SECTION 3700

“Every employer except the State and all political subdivisions or institutions thereof, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the City of Industrial Relations of ability to self-insure and to pay any compensation that may become due to this employees.’

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker’s compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of this contract.

SIGNATURE: _____

Print Name: _____

Date: _____

(In accordance with Article 5 [commencing at Section 1860], Chapter I, Part 7, Division 2 of the Labor Code, the above certificate must signed and filed with the awarding body prior to performing any work under this contract.)

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

**Department of Finance
Purchasing Division**



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**

LABOR AND MATERIALS BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Hayward (hereinafter referred to as "City") has awarded to _____ (hereinafter referred to as "Contractor") an agreement for DIGESTER CLEANING (hereinafter referred to as the "Project").

WHEREAS, and the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for labor performed and materials furnished for the aforesaid work and for amounts due under the Unemployment Insurance Act of the State of California with respect to such work,

NOW THEREFORE, we, _____, the undersigned Contractor, and _____, as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound to all persons furnishing any materials or supplies used in, upon, for, or about the performance of the aforesaid work under the aforesaid contract, and all persons performing any work or labor of any kind thereon, and all persons entitled to receive any sums of money due under the Unemployment Insurance Act of the State of California with respect to such work or labor, and all other persons, if any, entitled to file claims under Title 15 (commencing with Section 3082), Part 4, Division 3, of the Civil Code of the State of California with respect to such materials, supplies, work, or labor, unto the City in the sum of _____ dollars, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its subcontractors shall fail to pay for any materials or supplies used in, upon for or about the performance of the aforesaid work under the aforesaid contract or for any work or labor of any kind thereon, or for any sums of money due under the Unemployment Insurance Act of the State of California with respect to such work or labor, or for any sums of money due persons entitled to file claims under Title 15 (commencing with Section 3082), Part 4, Division 3, of the Civil Code of the State of California with respect to such materials, supplies, work, or labor, the aforesaid Surety will pay the same in an amount not to exceed the sum of this bond specified above.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the Acceptance of the Work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor of Surety's

obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City’s option:

- 1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents;
- 2) Obtain a Bid or Bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible Bidder, arrange for a Contract between such Bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Contract price, including other costs and damages for which Surety may be liable. The term “balance of the Contract price” as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents;
- 3) Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Contract price, including other costs and damages for which Surety may be liable. The term “balance of the Contract price” as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a Bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City’s objection to Contractor’s further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Contractor and Surety above named on the _____ day of _____ 201__ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL/CONTRACTOR:	SURETY:
[Name of Contractor]	[Name of Surety]
Signature	Signature of Attorney-In-Fact
[Name]	[Name of Attorney-In-Fact]

[Title]		
SEAL		SEAL

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Hayward (hereinafter referred to as "City") has awarded to _____ (hereinafter referred to as "Contractor") an agreement for DIGESTER CLEANING (hereinafter referred to as the "Project").

WHEREAS, and the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for faithful performance of said Contract Documents.

NOW THEREFORE, we, _____, the undersigned Contractor, and _____, as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ dollars, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify, defend and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the Acceptance of the Work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- 1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents;
- 2) Obtain a Bid or Bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible Bidder, arrange for a Contract between such Bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Contract price, including other costs and damages for which Surety may be liable. The term "balance of the Contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents;
- 3) Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Contract price, including other costs and damages for which Surety may be liable. The term "balance of the Contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a Bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Contractor and Surety above named on the _____ day of _____ 201__ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL/CONTRACTOR:	SURETY:
[Name of Contractor]	[Name of Surety]
Signature	Signature of Attorney-In-Fact
[Name]	[Name of Attorney-In-Fact]
[Title]	

SEAL	SEAL
------	------

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

CITY OF HAYWARD

GENERAL PROVISIONS FOR PURCHASES OF WORK AND SERVICES

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)