



Request for Proposals (RFP)

Hayward Area Recreation and Park District, CA

Executive Recruitment Services for the Position of Finance Manager

Issue Date: Friday, September 13, 2019

Deadline for Submissions: **Friday, September 27, 2019**

Services Needed

The Hayward Area Recreation and Park District is seeking proposals from executive search firms to assist the District in recruiting, qualifying, and securing a candidate for the Finance Manager position. Currently the duties of this new position are being covered by a consultant working three days per week as well as by the Administrative Services Director.

District Overview

The Hayward Area Recreation and Park District, known locally as “HARD” is an independent special district created in 1944 by public vote to provide park and recreation services. The District encompasses over 100 square-miles, and serves 300,000 residents in the City of Hayward and the unincorporated communities of Ashland, Castro Valley, Cherryland, Fairview and San Lorenzo.

Today, HARD has become one of the largest recreation special districts in California with over 100 parks and facilities. The District provides residents with two golf courses and many beautiful facilities and parks that have received national and state recognition for the design, innovation and beauty, as well as hundreds of educational and recreational classes and programs.

In November 2016 voters of the District overwhelming passed Measure F1 to issue \$250 million in General Obligation Bonds for park and facility improvements.

Operating under the Board/Manager form of government, the five Board Members are directly elected for alternating four year terms. The General Manager is appointed by the Board and is responsible for carrying out the policy directions of the Board and making personnel appointments.

The Position

This position is at-will and exempt from Civil Service. The position is covered by benefits provided to all employees designated as part of the Supervisors Bargaining Unit. The complete MOU can be viewed at [Supervisors Unit Memorandum of Understanding](#).

The District implemented pension reform in advance of the State Legislation which enacted revisions to the PERS Pension formula that can be offered under the Public Employee Pension Reform Act (PEPRA). Therefore, the Pension Benefit offered will differ depending on whether the selected candidate qualifies as a PERS "Classic" employee or is new to the PERS system and subject to PEPRA.

Hayward Area Recreation and Park District PERS Classic Employee Pension Formula: 2% @ Age 60. New PEPRA Employee Pension Formula 2% @ Age 62. A complete description of benefits can be viewed at Full Time Employment Benefits

Further information on employee benefits and governmental operations can be found on the District's website at Compensation Documents.

Scope of Work

The District is seeking an executive search firm that will assist with defining the qualifications and skills of the preferred candidate, and initiate an aggressive marketing approach to find the right candidate, and guide the District through the final selection.

The general scope of work for the consultant should include the following tasks:

- *Development of Candidate Profile.* The consultant will meet with key staff to develop a written profile of the preferred candidate.
- *Development of Recruitment Brochure and Advertising Campaign.* The consultant will develop a recruitment brochure that discusses the community, organization, position, and anticipated terms of employment. The consultant will define how the brochure would be utilized in the advertising and recruitment process.
- *Screening and Selecting the Top Candidates.* The consultant will screen the candidates in coordination with key staff to a limited number for further consideration by the Administrative Services Director. A written report shall be prepared on each top candidate for Administrative Services Director. The consultant will facilitate the interviews of the top candidates by a panel, and the final interviews by the Administrative Services Director.
- *Conduct Reference Checks.* The consultant will conduct detailed background checks of top candidate(s) and gain information as to their strengths and weaknesses.
- Assist in sharing information with final candidate on District benefits and terms of employment, providing feedback to District Management.

• *Timeline.* The District is open to recommendations and input on a final schedule. The following tentative timeline is one approach:

October 11	Approval of Recruitment Firm
October 28	Recruitment Open
December 6	Final Filing Deadline
December 9 – 13	Review of Applications and Selection of Interviews
December 20	Interviews
January 2020	Target Start Date for New Finance Manager

Budget/Contract:

A fixed-price contract will be based on the final scope of work that is agreed upon between the District and Consultant. The contract will include the extent of services to be rendered and the method and timing of compensation.

Proposals must include a time, task, personnel, and cost estimate matrix that is realistic for the approach proposed. Respondents are asked to tender a cost estimate that is commensurate with the scope of work defined herein. The budget must cover all anticipated costs including consultant fees, mileage, and reimbursable costs. The District reserves the right to award no contract. The District reserves the right to negotiate modifications to the proposals presented and/or the use of specific individuals or firms.

Proposal Requirements:

All proposals submitted shall be in letter form and submitted electronically. The proposal shall contain the following minimum information and materials:

Team Members. Names and résumés of staff members and subcontractors (if any) who will be working on this recruitment. The consultant team’s Program Manager must be identified and a list of all project personnel along with their specific responsibilities must be included. Those named in the proposal must be those who conduct this recruitment.

Relevant Work Experience. A listing and discussion of similar work conducted for other public agencies, with an emphasis on work completed for municipal agencies of comparable size and location. Provide references for three successful recruitments for similar Finance positions in the past year. Indicate which staff members worked on the project.

Project Approach. Information on approach and work program for all services requested, including the following minimum information:

A. Briefly describe the methodology and organizational approach the respondent would use to assist the District, including critical elements and special methodologies that would be used to ensure that District objectives are satisfied.

B. Work schedule for the proposed work program in tabular form. The work schedule must set forth a time frame for completion of service tasks and the submittal of work products.

C. The number and type of meetings to be conducted.

D. Describe any unique approaches or services offered under the proposal.

Cost Schedule. A section of the proposal should include an itemized cost estimate for the various tasks to be performed. The cost schedule must list the estimated hourly charge and hours to be assigned for staff members and/or subcontractors. It shall also describe all charges that are billed as a Reimbursable and identify whether it can be paid directly by the District (i.e. advertisements).

Validity of Proposal. Provide a statement that the proposal will remain valid for a minimum of 90 days following the final due date for submission of the proposal.

Format. The work program and schedule must be provided in a format that can be inserted as an exhibit to a contract, preferably in Microsoft Word.

Agreement and Insurance. Standard District Professional Services Agreement and Insurance Required (see attached).

Selection Criteria and Process:

The District will evaluate qualifications based upon these criteria:

- Responsiveness to the RFP.
- Experience and demonstrated success of the Respondent in assisting local governments, notably municipalities, with an executive recruitment process. Experience with projects in the greater Bay Area environs and in cities comparable to Albany will be given greater weight. As part of this process, client references may be contacted.
- Ability to communicate effectively about the subject matter.
- Compensation rates.
- Evidence of the Respondent's ability to provide deliverables in a cost effective and timely manner.
- Other extraordinary elements or creative approaches. This particular selection criterion is intended to allow the District to expressly consider creative aspects of statements of qualifications that do not necessarily fall into other selection criteria.

As a part of its evaluation, the District may request additional information or data from Respondents, and may request Respondents to make in-person presentations of their qualifications to a panel of District representatives.

To Submit Proposals:

Electronic submittal of proposals are due by Friday September 27, 2019 **via email** to:

Martha Mena, Human Resources Director

menm@haywardrec.org

(510) 881-6729

General RFP Conditions:

1. Any material clarifications or modifications to the RFP or the selection process will be made in writing and provided to all recipients of the RFP.
2. The District reserves the right to:
 - a. Waive minor irregularities.
 - b. Modify or cancel the selection process or schedule at any time.
 - c. Negotiate with the second-choice Respondent if it is unable to negotiate an acceptable contract with the first-choice Respondent within a reasonable period of time.
 - d. Reject all proposals, and to seek new qualifications when it is in the best interest of the District to do so.
 - e. Seek any clarification or additional information from Respondents as is deemed necessary to the evaluation of a response.
 - f. Judge the veracity, substance, and relevance of the Respondents' written or oral representations, including seeking and evaluating independent information on any of the Respondents' worked cited as relevant experience.
 - g. Contract with separate entities for various components of the services.
 - h. All expenses related to any Respondent's response to the RFP, or other expenses incurred during the period the selection process is underway, are the sole obligation and responsibility of that Respondent. The District will not, directly or indirectly, assume responsibility for such costs except as otherwise provided by written agreement.
3. The professional will be required to sign the Hayward Area Recreation and Park District's standard Consulting Services Agreement and meet the District's Insurance Requirements; a copy of the agreement and insurance requirements has been attached.

**CONSULTING SERVICES AGREEMENT BETWEEN
THE HAYWARD AREA RECREATION AND PARK DISTRICT AND
[NAME OF CONSULTANT]**

THIS AGREEMENT for consulting services is made by and between the Hayward Area Recreation and Park District ("District") and _____ ("Consultant") as of _____, 20__.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to District the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on _____, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the District's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that District, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from District of such desire of District, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. District hereby agrees to pay Consultant a sum not to exceed _____, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. District shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from District to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to District in the manner specified herein. Except as

specifically authorized by District, Consultant shall not bill District for duplicate services performed by more than one person.

Consultant and District acknowledge and agree that compensation paid by District to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. District therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At District's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

2.2 Monthly Payment. District shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. District shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. District shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to District of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. District shall pay for the services to be rendered by Consultant pursuant to this Agreement. District shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. District shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule:

2.6 Reimbursable Expenses. Reimbursable expenses are specified below, and shall not exceed (\$). Expenses not listed below are not chargeable to District. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 Payment upon Termination. In the event that the District or Consultant terminates this Agreement pursuant to Section 8, the District shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

2.9 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. District shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

District shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with District employees and reviewing records and the information in possession of the District. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of District. In no event shall District be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to District of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the District. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to District. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. The additional insured coverage under the Consultant's policy shall be "primary and non-contributory" and will not seek contribution from District's insurance or self-insurance and shall be at least as broad as CG 20 01 04 12. In the event Consultant fails to maintain coverage as required by this Agreement, District at its sole discretion may purchase the coverage required and the cost will be paid by Consultant. Failure to exercise this right shall not constitute a waiver of right to exercise later. Each insurance policy shall include an endorsement providing that it shall not be cancelled, changed, or allowed to lapse without at least thirty (30) days' prior written notice to District of such cancellation, change, or lapse.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the District and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District. Consultant shall notify District within 14 days of notification from Consultant's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 Code 1 (“any auto”).

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

- a. District and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured’s general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to District or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the District and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the District shall be called upon to contribute to a loss under the coverage.

- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to DISTRICT and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District. Consultant shall notify District within 14 days of notification from Consultant's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.3 Professional Liability Insurance. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District.

4.3.3 The policy must contain a cross liability or severability of interest clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The District shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the District prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

- 4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish District with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The District reserves the right to require complete, certified copies of all required insurance policies and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.
- 4.4.3 Subcontractors.** Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the Indemnification and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Consultant agree to be bound to Consultant and the District in the same manner and to the same extent as Consultant is bound to the District under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and will provide proof of compliance to the District.
- 4.4.4 Variation.** The District may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the District's interests are otherwise fully protected.
- 4.4.5 Deductibles and Self-Insured Retentions.** All self-insured retentions (SIR) and/or deductibles must be disclosed to the District for approval and shall not reduce the limits of liability. Policies containing any self-insured retention provision and/or deductibles shall provide or be endorsed to provide that the SIR and/or deductibles may be satisfied by either the named insured or the District.
- 4.4.6 Excess Insurance.** The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of District (if agreed to in a written contract or agreement) before District's own insurance or self-insurance shall be called upon to protect District as a named insured.

4.4.7 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to District at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies District may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option exercise any of the following remedies, which are alternatives to other remedies District may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. To the maximum extent allowed by law, Consultant shall indemnify, keep and save harmless the District, and District Board of Directors, officers, agents and employees against any and all suits, claims or actions arising out of any injury to persons or property, including death, that may occur, or that may be alleged to have occurred, in the course of the performance of this Agreement by a negligent act or omission or wrongful misconduct of the Consultant or its employees, subcontractors or agents. Consultant further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any judgment be rendered against the District or any of the other individuals enumerated above in any such action, Consultant shall, at its expense, satisfy and discharge the same. Consultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of District, Consultant shall indemnify, defend, and hold harmless District for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of District.

Consultant/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of District. District shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise District shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other District, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by District, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of District and entitlement to any contribution to be paid by District for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as District may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to District that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to District that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses,

permits, and approvals that are legally required to practice their respective professions. In addition to the

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foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from District.

- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** District may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon _____ days' written notice to District and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; District, however, may condition payment of such compensation upon Consultant delivering to District any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the District in connection with this Agreement.

- 8.2 Extension.** District may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if District grants such an extension, District shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, District shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 Assignment and Subcontracting.** District and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, District's remedies shall included, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that District would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. Consultant hereby agrees to deliver those documents to the District upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the District and are not necessarily suitable for any future or other use. District and Consultant agree that, until final approval by District, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the District under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the District. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of District or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any District official in the work performed pursuant to this Agreement. No officer or employee of District shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the District. If Consultant was an employee, agent, appointee, or official of the District in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the District for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by the District General Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:

Any written notice to District shall be sent to:

General Manager

Hayward Area Recreation and Park District

1099 'E' Street

Hayward, CA 94541

10.11 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

Seal and Signature of Registered Professional with report/design responsibility.

10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between District and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

HAYWARD AREA RECREATION AND PARK DISTRICT

CONSULTANT

Paul McCreary,
General Manager

[NAME, TITLE]

Attest:

Shakiyla Maxwell
Executive Assistant