RULES COMMITTEE: 02-11-09
ITEM: 10.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES COMMITTEE

FROM: Richard Doyle
City Attorney

SUBJECT: PREVAILING WAGES - LIQUIDATED DAMAGES WAIVER REQUESTS

DATE: February 5, 2009

Approved

Date

BACKGROUND

At the December 3, 2008 Rules Committee meeting, James F. Fox, Managing Partner of Pacific Properties III, requested a waiver of the liquidated damages claim assessed against Pacific Coast Fire for a prevailing wage violation on the Sainte Claire Building project ("St. Claire Project"). At the December 10, 2008 Rules Committee meeting, Bernard Kotansky, on behalf of Fountain Alley, LLC, submitted a letter also requesting a waiver of the liquidated damages claim assessed against various subcontractors for a prevailing wage violation on the Fountain Alley rehabilitation project ("Fountain Alley Project"). Both matters were referred to the City Attorney.

Both of these matters arise out of Owner Participation Agreements ("OPAs") entered into by the Redevelopment Agency. On June 29, 2004, the Redevelopment Agency Board authorized the Executive Director to negotiate and execute an OPA with the Barber Trusts (the predecessor of Fountain Alley, LLC) for the rehabilitation of various buildings located along Fountain Alley and East Santa Clara Street in San Jose. The OPA was executed on November 14, 2004. Pursuant to the OPA, the Agency contributed $3,000,000 towards the Fountain Alley Project. On June 5, 2007, the Redevelopment Agency Board approved an OPA with Pacific Properties III for the rehabilitation of the historic St. Claire building located on South First Street in San Jose. Pursuant to the OPA, the Agency contributed $3,000,000 towards the St. Claire Project.

In each OPA, the Agency required that prevailing wages be paid for all construction work required under the OPA. The prevailing wage provisions contained in each OPA, including the imposition of liquidated damages, are consistent with the prevailing wage enforcement mechanisms approved by the Agency Board on January 27, 2004. A copy of the staff report, including proposed liquidated damage language, is attached.

The City's Office of Equality Assurance ("OEA"), on behalf of the Agency, monitored each project for compliance with the prevailing wage requirements. During construction of each project, OEA discovered prevailing wage violations and subsequently assessed liquidated damages against each owner as required under the OPA. OEA has provided a Summary of Prevailing Wage Investigation ('OEA Summary') for each matter, copies of which are attached.

ANALYSIS

As mentioned above, each of these matters arises out of a contract, an OPA, entered into between the owner and the Redevelopment Agency. Each OPA contained a prevailing wage requirement and a liquidated damage provision if the prevailing wage requirements were violated. Each owner initialed the liquidated damage section. Under those provisions, the Agency and the Owners recognized that a breach of the applicable prevailing wage provisions would cause the Agency damage by undermining the Agency's and the City's goals in assuring timely payment of prevailing wages, and would cause additional expense in obtaining compliance and conducting audits, and that the delays, expense and difficulty involved in proving actual losses in a legal proceeding would not be remedied by Owner's payment of restitution to the worker paid less than the prevailing wage. Accordingly, instead of requiring such proof of loss or damage, the OPA provides that:

A. For each day beyond the Payroll Due Date that Owner fails to submit contractor's certified payroll to the Agency, Owner shall pay to the Agency as liquidated damages the sum of One Hundred Dollars ($100.00); and

B. For each instance where the Agency has determined that prevailing wage requirements were not met, Owner shall pay to Agency as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wage which should have been paid.

There is no requirement in either OPA that the violation be "willful" or "intentional" in determining whether liquidated damages apply. In fact, the purpose of liquidated damages as set forth in the OPA is so that the parties would not have to attempt to determine the extent of the penalty or damages in each case. The OPA also does not provide for any discretion in assessing liquidated damages if there is a violation of the prevailing wage requirements nor does the OPA provide for any mechanism to waive liquidated damages.

Based on OEA's monitoring of each project, OEA determined that a violation of the prevailing wage requirements contained in the OPA had occurred as described in the OEA Summary attached. As a result, liquidated damages were assessed against each owner.

CONCLUSION

The prevailing wage requirements contained in the OPAs described above are contract provisions. These provisions are consistent with the prevailing wage enforcement mechanisms approved by the Agency Board and City Council on January 27, 2004. OEA determined that a prevailing wage violation had occurred under each OPA.

If the Committee desires to allow for a waiver of liquidated damages under these circumstances, our office would recommend that these matters be referred to a future Board/City Council meeting so that the Board/City Council can more fully discuss the implications of a waiver on the prevailing wage enforcement mechanisms and provide direction to Agency/City staff to

change these mechanisms to allow such a waiver. Once a waiver process has been approved by the Board/City Council, the Agency Board could then direct Agency staff to apply the standards for such a waiver to the two Agency projects described above.

COORDINATION

This Memorandum was coordinated with the City's Office of Equality Assurance.

RICHARD DOYLE
City Attorney

Attachments

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Public Works

OFFICE of EQUALITY ASSURANCE

SUMMARY OF PREVAILING WAGE INVESTIGATION
FOUNTAIN ALLEY LLC – BARBER BUILDINGS

On November 16, 2004, the San Jose Redevelopment Agency Board approved an Owner Participation Agreement in an amount not to exceed $3 million with Fountain Alley LLC for building shell and seismic improvements of buildings located at 27-37 Fountain Alley and 28-40 East Santa Clara Street.

On September 18, 2006, Fountain Alley LLC, Hillhouse Construction Company Inc. (Hillhouse), Redevelopment Agency staff and the Office of Equality Assurance (OEA) Director met to discuss prevailing wage requirements and liquidated damage provisions for the project. As a follow-up to the meeting, OEA provided Hillhouse and Fountain Alley LLC with the applicable wage rates for the project and when documents were due. The wage rates issued were DIR Wage Index 2006-2 and 2006-2 Pre-Determined Wage Increase Index.

Hillhouse's December 2006 certified payroll reports were submitted to Fountain Alley LLC on December 31, 2006 and OEA received them on February 5, 2007. The OPA states certified payroll reports are due on a monthly basis within 15 days of Owner's receipt. For each day beyond the Payroll Due Date that Owner fails to submit, Owner shall pay $100 per day. The December 2006 submittal should have been submitted to OEA no later than January 16, 2007. However, OEA received the submittals on February 5, 2007, 20 days overdue. Hillhouse's January 2007 certified payroll reports were submitted to Fountain Alley LLC on January 31, 2007 and OEA received them on March 12, 2007, 21 days overdue.

Throughout the duration of the project, OEA identified five subcontractors as violating prevailing wage requirements and notified Hillhouse. The five subcontractors were: AB Landscaping; Bay Area Asphalt; Burdick Painting; Libra Electric; and Qualified Maintenance. The violations included incorrect classifications and incorrect hourly rates. The restitution amounts by contractor are shown below. Notification provided Hillhouse and the subcontractors the opportunity to disagree with OEA's determination.

Contractor	Restitution Amount
AB Landscaping	$538.16
Bay Area Asphalt	$9,535.89
Burdick Painting	$604.75
Libra Electric	$1,868,11
Qualified Maintenance	$22,289.98

After all restitution was dispersed to the affected workers and in accordance with City Council and Redevelopment Agency action on January 27, 2004, Item 7.1 (Implementation of Enforcement Mechanisms for Prevailing Wage Law Requirements in Redevelopment Agency Contracts), liquidated damages in the amount of $108,610.67 were assessed to Fountain Alley LLC (three times the difference between the actual amount of wages paid and the prevailing wage which should have been paid and $100 per day for each day beyond Payroll Due Date).

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Public Works
OFFICE of EQUALITY ASSURANCE

SUMMARY OF PREVAILING WAGE INVESTIGATION
PACIFIC PROPERTIES III – SAINTE CLAIRE BUILDING

On June 5, 2007, Item 6.2, the San Jose Redevelopment Agency Board approved an Owner Participation Agreement in an amount not to exceed $3 million with Pacific Properties III for seismic retrofit, historic renovation and off-site improvements at the Sainte Claire Building (301 South First Street). The Sainte Claire Building is a six-story building (basement, ground floor and four upper floors).

On August 23, 2007, the Office of Equality Assurance provided Pacific Properties and Garden City Construction with the applicable wage rates for the project. The wage rates issued were DIR Wage Index 2006-2 and 2006-2 Pre-Determined Wage Increase Index. OEA's letter stated that "Pursuant to the California Code of Regulations Section 16001(d), residential projects consist of single-family homes and apartments up to and including four (4) stories. This project does not meet the regulations for residential wage rates."

On August 28, 2007, Redevelopment Agency staff contacted OEA's Director to ask if there was any way to interpret the Sainte Claire Building as a four-story residential building. OEA's response was the project did not meet the definition of a residential project, but OEA would request clarification from the Department of Industrial Relations (DIR).

On August 29, 2007, OEA faxed a request to the DIR seeking clarification regarding the use of residential rates. On September 14, 2007, the DIR responded stating that a building taller than four stories would not meet the definition of a residential project and therefore use of the commercial rates published in the Director's General Prevailing Wage Determinations would apply to the project described. OEA provided a copy of the DIR response to Pacific Properties on September 15, 2007.

On July 29, 2008, OEA's Director notified Garden City Construction that a prevailing wage violation had been identified -- Pacific Coast Fire's certified payroll reports classified four of its workers as Residential Journeyman. The appropriate craft classification is Plumber: Sprinkler Fitter (Fire Protection and Fire Control Systems). Total restitution owed was $8,379.26 to four workers. OEA's notification provided Garden City and/or Pacific Coast Fire an opportunity to disagree with OEA's determination. Neither Garden City nor Pacific Coast Fire disagreed with the determination and on July 31 Pacific Coast Fire delivered four restitution checks to OEA for dispersal.

On August 26, 2008 after all restitution checks were dispersed to the affected workers and in accordance with City Council and Redevelopment Agency action on January 27, 2004, Item 7.1 (Implementation of Enforcement Mechanisms for Prevailing Wage Law Requirements in Redevelopment Agency Contracts), OEA issued a letter to Pacific Properties III assessing liquidated damages in the amount of $25,137.78 (three times the difference between the actual amount of wages paid and the prevailing wage which should have been paid).

THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

MEMORANDUM

TO: HONORABLE MAYOR, CITY COUNCIL, & REDEVELOPMENT AGENCY BOARD	FROM: HARRY S. MAVROGENES DEL D. BORGSDORF
SUBJECT: PREVAILING WAGES	DATE: JANUARY 27, 2004

RECOMMENDATION

It is recommended that the City Council and Redevelopment Agency Board take the following actions:

(a) Approval by the Agency Board of recommended changes to agreements regarding implementation of enforcement mechanisms for Prevailing Wage Law requirements in Agency contracts.

(b) Approval by the City Council of recommended changes to certain City agreements, administered by the Housing Department, regarding implementation of enforcement mechanisms for Prevailing Wage Law requirements.

BACKGROUND

The Redevelopment Agency Board directed staff and the General Counsel to incorporate language that describes consequences for violations of prevailing wage requirements into Redevelopment Agency contracts. Agency staff met with representatives from the General Counsel's Office and the Office of Equality Assurance to prepare recommended contract provisions. On November 12, 2003, City staff presented an update on prevailing wage enforcement efforts to the Making Government Work Better Committee and, at the same time, the Redevelopment Agency staff and General Counsel's Office presented the attached revised policy to enhance prevailing wage enforcement efforts for Redevelopment Agency contracts.

ANALYSIS

The Redevelopment Agency contracts with the Office of Equality Assurance through an annual Project Services Memorandum for the monitoring of prevailing wage compliance on Agency projects. Agency contracts and agreements range from straightforward construction contracts to facade improvement grants, to development agreements with private parties. In addition, the City's Housing Department uses funds provided by the Agency to offer loans and grants to housing developers, with the requirement that the housing developer comply with long-term affordability restrictions. The City, through the Housing Department, also enters into development agreements for City-owned property acquired with funds provided by the Redevelopment Agency. All of these agreements are subject to the Labor Code's prevailing wages requirements, though reporting and monitoring efforts vary with the differing structures of the agreements.

It is clearly understood in the construction industry that public projects require the payment of prevailing wages and that reporting of these payments is made through the provision of certified payroll documents with payment requests. The Office of Equality Assurance routinely handles these monitoring efforts.

Redevelopment Agency or Housing Department projects involving development or lease agreements with the private sector can become somewhat more complicated, as the Agency and Housing Department do not hold the construction contract and, therefore, have less direct control over the contractor. If the Agency and/or the Housing Department are not directly funding construction of improvements, they cannot withhold construction funds pending collection of certified payroll documentation. For this reason, different mechanisms for enforcing prevailing wage provisions are appropriate, given the particular terms of an agreement. The Office of Equality Assurance works with the developers and their contractors to obtain the necessary information.

The attached clauses provide recommended language for the various types of agreements entered into by the Redevelopment Agency and the City's Housing Department. In summary, for leases, DDAs, loan agreements, and OPAs, new language is recommended that would require the developer to secure initial compliance documentation and the monthly certified payroll from the contractor, prior to disbursement of construction funds. Under these agreements, the developer will be required to pay the City or the Redevelopment Agency daily liquidated damages in the event the documentation is not provided within the time established in the agreement. The specific amount of liquidated damages will depend upon a variety of factors, and will be determined on a project-by-project basis.

It is uncertain how the development community will respond to these additional requirements. In the case of agreements entered into by the City's Housing Department, the Department intends to condition the use of City loan proceeds or funds on the incorporation of these liquidated damages provisions. The inclusion of the recommended language could lead to increased developer costs or the loss of developer interest, should a developer refuse to agree to such provisions. To address these uncertainties, staff will return in six months with a report on developer responses and experience.

On projects such as facade improvements, it is already extremely difficult to interest the construction community in these small projects because of the required paperwork associated with prevailing wages. Beginning in 2003, submittal of prevailing wage documentation for facade contractors has been a part of those agreements.

Within Redevelopment Agency construction contracts, three language changes are recommended: 1) Inclusion of prevailing wage initial compliance documentation in the contract documents and the requirement that completed forms be returned with other documents within eight days of the contract award, 2) inclusion of a second liquidated damages provision relating to non-payment of prevailing wages, and 3) clarification of language regarding findings and conditions by which all or part of a pay request can be withheld, to the extent there is no certified payroll to support it.

COORDINATION

This report has been coordinated with the Office of Equality Assurance, the Housing Department, the City Attorney, and the Agency's General Counsel.

DEL D. BORGSDORF
City Manager

HARRY S. MAVROGENES
Interim Executive Director

Attachments

Attachment A

1. PROPOSED LANGUAGE FOR DISPOSITION AND DEVELOPMENT AGREEMENTS, OWNER PARTICIPATION AGREEMENTS, AND LEASES

#. [§#####] Prevailing Wages During Construction

Developer shall pay, or cause to be paid, prevailing wages, for all construction work required under this Agreement. For the purposes of this Agreement, "prevailing wages" means not less than the general prevailing rate of per diem wages, as defined in Section 1773 of the California Labor Code and Subchapter 3 of Chapter 8, Division 1, Title 8 of the California Code of Regulations (Section 16000 *et seq.*), and as established by the Director of the California Department of Industrial Relations ("DIR"), or in the absence of such establishment by the DIR, by the City's Office of Equality Assurance ("OEA"), for the respective craft classification. In any case where the prevailing wage is established by the DIR or by OEA, the general prevailing rate of per diem wages shall be adjusted annually in accordance with the established rate in effect as of such date.

In addition to State Law requirements regarding prevailing wages, the Redevelopment Agency of the City of San Jose recognizes that Developer's payment of prevailing wages promotes the following goals:

1. Protection of job opportunities within the City of San Jose and stimulation of the economy by reducing the incentive to recruit and pay a substandard wage to workers from distant, cheap-labor areas;

2. Benefiting the public through the superior efficiency and ability of well-paid employees, thereby avoiding the negative impact that the payment of inadequate compensation has on the quality of services because of high turnover and instability in the workplace;

3. Payment of a wage that enables workers to live within the community, thereby promoting the health and welfare of all citizens of San Jose by increasing the ability of such workers to attain sustenance, avoid poverty and dependence on taxpayer funded social services; and

4. Increasing competition by promoting a level playing field among contractors with regard to the minimum prevailing wages to be paid to workers.

Developer's compliance with prevailing wage requirements is a material consideration of Agency in entering into this Agreement. Agency will monitor Developer's compliance with the Labor Code requirements and additional requirements of this Agreement through the City Of San Jose's Office of Equality Assurance.

Developer shall:

- Require its construction contractor and subcontractors to complete and submit all prevailing wage initial compliance documentation to OEA.
- Following commencement of construction, require its contractor and subcontractors to submit completed certified payroll records with each monthly pay request and Developer shall refuse to pay all or a portion of a pay request to the extent not supported by certified payroll documentation.
- Submit all certified payroll to Agency on a monthly basis within fifteen days of Developer's receipt ("Payroll Due Date").
- Require the contractor for the construction of the Project to grant the City of San Jose ("City") and Agency access to the Project site at reasonable times for the purpose of enforcing the provisions of this Section.
- Provide the City and Agency with documentation relating to compliance with this Section.
- Indemnify and hold the City and Agency harmless from any third party costs, claims, or damages arising from the contractor's or any subcontractor's failure to pay prevailing wages.

Agency and Developer recognize that Developer's breach of applicable prevailing wage provisions, including those applicable through the California Labor Code and Agency's additional prevailing wage compliance provisions within this Agreement, will cause the Agency damage by undermining Agency's goals in assuring timely payment of prevailing wages, and will cause the Agency additional expense in obtaining compliance and conducting audits, and that such damage would not be remedied by Developer's payment of restitution to the worker paid less than the prevailing wage. Agency and Developer further recognize the delays, expense and difficulty involved in proving Agency's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, Agency and Developer agree that:

(A) for each day beyond the Payroll Due Date that Developer fails to submit contractor's certified payroll to Agency, Developer shall pay to Agency as liquidated damages the sum of _____ DOLLARS ($_____.00); and

(B) for each instance where Agency has determined that prevailing wage requirements were not met, Developer shall pay to Agency as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wage which should have been paid.

_____	_____
AGENCY	DEVELOPER

2. PROPOSED LANGUAGE FOR CONSTRUCTION CONTRACT OWNER/CONTRACTOR AGREEMENT*

Section 3.4 Liquidated Damages.

A. Timely Completion

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement, and that OWNER will suffer financial loss if the work is not complete within the time specified, plus any extensions of time authorized under Section 3.3 of this Agreement. OWNER and CONTRACTOR further recognize the delays, expense and difficulty involved in proving OWNER's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, OWNER and CONTRACTOR agree that for each calendar day's delay beyond the Scheduled Completion Date, (which delays are not excused pursuant to Section 3.3 of this Agreement), CONTRACTOR shall pay to OWNER the sum of [_____ **and No/100 Dollars ($_____)]** as liquidated damages.

B. Prevailing Wage Compliance

OWNER and CONTRACTOR recognize that CONTRACTOR's breach of applicable prevailing wage provisions, including those applicable through the California Labor Code and OWNER's additional prevailing wage compliance provisions within this Contract (Article IV of the Owner-Contractor Agreement and Article 17 of the General Conditions), will cause the OWNER damage by undermining OWNER's goals in assuring timely payment of prevailing wages, and will cause the OWNER additional expense in obtaining compliance and conducting audits, and that such damage would not be remedied by CONTRACTOR's payment of restitution to the worker paid less than the prevailing wage. OWNER and CONTRACTOR further recognize the delays, expense and difficulty involved in proving OWNER's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, OWNER and CONTRACTOR agree that for each instance where Owner has determined that prevailing wage requirements were not met, CONTRACTOR shall pay to OWNER as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wage which should have been paid.

_____ OWNER

_____ CONTRACTOR

* additional provisions appear throughout the Agency's construction bid package, including provisions in determining a bidder's responsibility, withholding payment, and mechanics of coordinating with OEA. The volume of the documents is such that only the most pertinent provisions are excerpted here.

2. PROPOSED LANGUAGE FOR CONSTRUCTION CONTRACT (cont.)

ARTICLE IV

PREVAILING WAGES

The general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Agreement is that ascertained by the Director of the Department of Industrial Relations of the State of California, copies of which ("Prevailing Rate Schedules") are on file in the OWNER's principal office. The Prevailing Rate Schedules shall be made available to any interested party on request. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of worker employed on the PROJECT. CONTRACTOR shall post the Prevailing Rate Schedule at the Site.

CONTRACTOR shall forfeit, as a penalty as set forth in California Labor Code §1775, fifty dollars ($50.00) for each calendar day or portion thereof, for each worker paid less than the prevailing rates set forth in the Prevailing Rates Schedules for any work done under the CONTRACT DOCUMENTS or any work done by any subcontractor under CONTRACTOR. CONTRACTOR shall comply with the payroll records requirements set forth in Section 17.2 of the General Conditions and the provisions in Section 7.10 of the General Conditions concerning apprentices and shall be responsible for causing all of CONTRACTOR's subcontractors to comply with these requirements and provisions.

In addition to the California Labor Code requirements, OWNER recognizes that CONTRACTOR's payment of prevailing wages promotes the following goals:

1. Protection of job opportunities within the City of San Jose and stimulation of the economy by reducing the incentive to recruit and pay a substandard wage to workers from distant, cheap-labor areas;

2. Benefiting the public through the superior efficiency and ability of well-paid employees, thereby avoiding the negative impact that the payment of inadequate compensation has on the quality of services because of high turnover and instability in the workplace;

3. Payment of a wage that enables workers to live within the community, thereby promoting the health and welfare of all citizens of San Jose by increasing the ability of such workers to attain sustenance, avoid poverty and dependence on taxpayer funded social services; and

4. Increasing competition by promoting a level playing field among contractors with regard to the minimum prevailing wages to be paid to workers.

CONTRACTOR's compliance with prevailing wage requirements is a material consideration of OWNER in entering into this Contract. OWNER will monitor CONTRACTOR's compliance with the Labor Code requirements and additional requirements of this Contract through the City Of San Jose's Office of Equality Assurance, as detailed in the General Conditions Articles 7, 9 and 17.

3. EXISTING LANGUAGE FOR FAÇADE IMPROVEMENT GRANTS

#. Progress Payments; Final Payment.

(a) Subject to all the terms and conditions of this Agreement, AGENCY agrees to make the following progress payments ("Progress Payments") to Contractor:

(1) A Progress Payment equal to thirty percent (30%) of the sum of the Total Base Grant plus GRANTEE's Contribution, or _____ ($_____), shall be paid by AGENCY to Contractor after: (i) AGENCY's determination that Contractor has completed thirty percent (30%) of the Eligible Improvements; and (ii) GRANTEE's submittal to AGENCY of Contractor's completed prevailing wage compliance documentation and certified payroll; and

(2) A Progress Payment equal to forty percent (40%) of the sum of the Total Base Grant plus GRANTEE's Contribution, or _____ ($_____), shall be paid by AGENCY to Contractor upon: (i) AGENCY's determination that Contractor has completed seventy percent (70%) of the Eligible Improvements; (ii) Contractor's submittal to AGENCY of unconditional lien releases for the work completed for the 30% Progress Payment; and (iii) GRANTEE's submittal to AGENCY of Contractor's certified payroll.

(b) Any GRANTEE Contribution shall be the first funds used for the payment of any Progress Payment.

(c) All AGENCY payments shall be made by check and shall be made payable to Contractor.

(d) Upon final completion of the Eligible Improvements, in accordance with the approved plans and specifications, if the completed work is approved by GRANTEE, which approval shall not be unreasonably withheld, GRANTEE shall request AGENCY's approval of the work performed and shall submit the Contractor's Certificate of Completion, unconditional lien releases and certified payroll for the work covered by the previous progress payment to AGENCY along with a request for final payment signed by GRANTEE as approved.

##. All proposed contractor for the construction of the Eligible Improvements shall: require that the Contractor pay prevailing wages pursuant to the requirements of the California Labor Code, Section 1771, *et. seq.* For the purpose of this Agreement, Prevailing Wages are the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute this Agreement as ascertained by the Director of the Department of Industrial Relations of the State of California, copies of which ("Prevailing Rate Schedules") are on file in the City

of San Jose's Office of Equality Assurance. The Prevailing Rate Schedules shall be made available to any interested party on request. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of worker employed on the project. Contractor shall post the Prevailing Rate Schedule at the Site. Contractor shall comply with the payroll records requirements concerning apprentices and shall be responsible for causing all of Contractor's subcontractors to comply with these requirements and provisions.

The Contractor and each subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by the Contractor or subcontractor in connection with the project. The payroll records shall be kept in accordance with the provisions of Section 1776 of the California Labor Code, and Contractor and each subcontractor shall otherwise comply with all requirements of such Section 1776.

4. PROPOSED LANGUAGE FOR CONSULTANT AGREEMENTS

PREVAILING WAGES.

CONTRACTOR shall pay, or cause to be paid, prevailing wages, as set forth in the Labor Code Section 1770 *et. seq.*, for all labor performed on the Project sites to facilitate the professional services provided under this AGREEMENT, including, but not limited to, drilling, trenching, and excavation. CONTRACTOR shall include in all agreements for such labor, a requirement that the employer provide all workers with written notice that prevailing wages apply.

CONSULTANT expressly agrees that the compensation agreed to between the parties includes all payment necessary to meet State prevailing wage law requirements. CONTRACTOR shall indemnify the AGENCY for any claims, costs or expenses which the AGENCY incurs as a result of CONTRACTOR's failure to pay, or cause to be paid, prevailing wages.