



# Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** RICHARD DOYLE  
City Attorney

**SUBJECT:** PREVAILING WAGES -  
LIQUIDATED DAMAGES  
WAIVER REQUEST

**DATE:** 01-20-2011

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Approved

Date

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## **BACKGROUND**

On January 6, 2011, Alfredo Gonzalez, Responsible Managing Officer of R.A.N. Electric Inc. ("R.A.N.") submitted a letter to the City Clerk requesting the City Council to waive the liquidated damages assessed against R.A.N. for a prevailing wage violation on the Electric Cart Storage project at the Water Pollution Control Plant. On January 10, 2011, the City Clerk's Office forwarded the letter to the City Attorney's Office and the Department of Public Works.

The matter arises out of the public works construction contract entered into by the City of San Jose. On April 20, 2010, the City Council awarded a construction contract [Item 2.6] in the amount of \$138,000 to R.A.N. Electric Inc. for the Electric Cart Storage project.

The bid specification and contract required that prevailing wages be paid for all construction work required. The prevailing wage provisions contained in the specifications, including the imposition of liquidated damages, are consistent with the prevailing wage enforcement mechanisms approved by the City Council on May 27, 2003. A copy of the staff report, including proposed liquidated damage language, is attached.

The City's Office of Equality Assurance ("OEA") monitored the project for compliance with the prevailing wage requirements. During construction, OEA discovered a prevailing wage violation and subsequently required restitution be made to one affected worker and assessed liquidated damages against the prime contractor as required. OEA has provided a Summary of Prevailing Wage Investigation ("OEA Summary") and is attached.

## **ANALYSIS**

As mentioned above, this matter arises out of a contract entered into between the prime contractor and the City of San Jose. The contract contained a prevailing wage requirement and a liquidated damage provision if the prevailing wage requirements were violated. Under the liquidated damages provisions, the City and the Contractor recognized that a breach of the applicable prevailing wage provisions would cause the City damage by undermining 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 making a precise determination would be impracticable and/or extremely difficult. Accordingly, the contract provides that:

- A. The City is not obligated to make any payment due the Contractor until Contractor has performed all of its obligations under the prevailing wage provisions.
- B. In the event of a breach of the prevailing wage requirements, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

Restitution to the affected worker has been made by the prime contractor as required. There is no requirement in the contract that the violation be “willful” or “intentional” in determining whether liquidated damages apply. In fact, the purpose of liquidated damage as set forth in the contract is so that the parties would not have to attempt to determine the extent of the penalty or damages. The contract also does not provide any discretion in assessing liquidated damages if there is a violation of the prevailing wage requirements nor does the contract provide for any mechanism to waive liquidated damages.

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

### **CONCLUSION**

The prevailing wage requirements contained in the contract described above are contract provisions. These provisions are consistent with the prevailing wage enforcement mechanisms approved by the City Council on May 27, 2003. OEA determined that a prevailing wage violation had occurred under the contract.

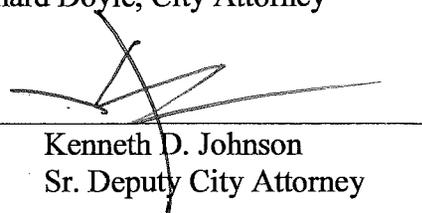
If the Committee believes that a waiver of liquidated damages may be appropriate under these circumstances, the Prevailing Wage Policy should be scheduled for a future City Council meeting so that the City Council can more fully discuss the implications of a waiver on the prevailing wage mechanisms and provide direction to City staff to change these mechanisms to allow such a waiver. Once a waiver process has been approved by the City Council, the City Manager could apply the standards for such a waiver to the City project described above.

### **COORDINATION**

This memorandum has been coordinated with the Public Works Department.

Richard Doyle, City Attorney

By: \_\_\_\_\_

  
Kenneth D. Johnson  
Sr. Deputy City Attorney



**R.A.N. ELECTRIC INC.**  
76 Broadmoor St.  
San Leandro CA 94577  
Contractors License No. 733480  
Tel: (510) 635-1350 Fax: (510) 635-8868

December 20, 2010

**Re:** City of San Jose  
Electric Cart Storage Building at the WPCP  
Non-Compliance of Labor Code & Prevailing Wage Violation

**To Whom it May Concern:**

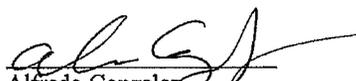
We are writing to request the violation penalty issued to our company on the project titled "Electric Cart Storage" to be placed on the upcoming Rules Committee Agenda.

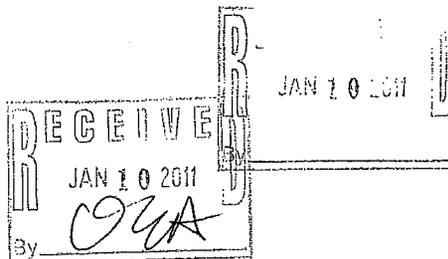
We understand the mistake made but we would like to clarify that this was not done intentionally. We in no way intended to take from Gustavo what is rightfully his, this was simply a mistake made due to us not being fully aware of the proper classifications. This is the first time that we have come across this error and we are sure that we are not the only ones who have made the same mistake. However we have made the proper corrections to fix the mistake on our end and have reimbursed Gustavo Vella for the amount noted. As this was not done intentionally we urge you to remove the liquidated damages as this was simply an error.

We would also like to point out that the City of San Jose has also made an error as they had told us that we required to have 3 inside wiremen on site prior to hiring an apprentice. However this was not the case and after contacting ABC-GGC and the DIR we were able to clarify that the City of San Jose was incorrect before any labor laws were violated. This a great example of how everyone makes mistakes and even the City of San Jose in this case. The City of San Jose is not being penalized nor fined for their mistake and R.A.N Electric shouldn't be either. We urge you to please reconsider the penalty being applied to us on this project as it was simply a mistake.

If you require any further information please don't hesitate to contact us at the information listed above.

Thank You,

  
Alfredo Gonzalez





MGWB COMMITTEE: 05-14-03

ITEM: e

## Memorandum

TO: Making Government Work Better  
Committee

FROM: Richard Doyle  
Nina Grayson

SUBJECT: LIVING & PREVAILING WAGE  
PROGRAM [CR:10-22-02-3.3(d)]

DATE: 05-05-03

### RECOMMENDATION

Adoption of a resolution providing that all City contracts containing prevailing wage and living wage requirements include as remedies for a breach of these requirements provisions giving the City the right to conduct an audit, collect liquidated damages and withhold compensation.

### BACKGROUND

At the April 1, 2003 Council meeting, staff was directed to return to the Making Government Work Better Committee with the following:

1. Draft amendments to the City's wage policy resolutions to include provisions for the payment of liquidated damages to compensate the City for a breach of the prevailing/living wage requirements;
2. Coordinate amendments with the Santa Clara & San Benito Counties Building & Construction Trades Council;
3. Research feasibility of assignment of claims;
4. Research feasibility of including audit rights in all construction and service and maintenance contracts;
5. Research feasibility of submitting pro forma payroll at time of bids;
6. Redevelopment Agency to provide funding support for Office of Equality Assurance labor compliance services.

### ANALYSIS

#### 1. Draft Contractual Provision

Attached to this memorandum is a draft contractual provision. Staff is recommending that a contractual provision substantially like the one attached be included in all contracts containing prevailing/living wage requirements. The draft provision would have to be modified depending upon the type of contract into which it would be inserted.

Making Government Work Better Committee

Subject: Living & Prevailing Wage Program [CR:10-22-3.3(d)]

May 5, 2003

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2. Withholding Payment

The prevailing/living wage requirements include provisions for the contractor to submit documentation showing that the workers are being paid the appropriate wages and benefits. The documentation requirements are critical to the City's ability to monitor the contractor's compliance and to ultimately achieving the goals of the prevailing/living wage requirements. The failure of a contractor to timely submit the documents results in the need for enforcement actions by the City to verify that the contractor is paying the appropriate wages to workers.

Given the critical nature of the documentation requirements, the proposed contractual provision would expressly make paying the contractor conditioned on the contractor complying with these requirements, as well as the other prevailing/living wage requirements. This would enable the City to withhold payment until the contractor has remedied any failure to perform these requirements.

3. Audit

The proposed draft provision also includes a requirement giving the City the right to perform an audit to verify contractor's compliance with the prevailing/living wage requirements.

4. Liquidated Damages for Failing to Pay the Appropriate Wage

A contractor's failure to pay the applicable prevailing or living wage damages the City by undermining the City's ability to achieve the purposes of the prevailing/living wage policies. Such damage would be very difficult to calculate and would seemingly be appropriate for liquidated damages. Accordingly, the proposed draft contractual provision requires the contractor to pay liquidated damages to compensate the City for such damage.

As set forth in previous resolutions adopting the prevailing/living wage policies, these policies benefit the City in a number of ways. They help protect local job opportunities and stimulate the local economy by reducing the incentive to recruit workers from distant cheap labor areas. They also benefit the public through the superior efficiency of well-paid employees, and enable workers to not live in poverty, thus decreasing the amount of taxpayer funded social services. In addition, these policies increase competition by promoting a more level playing field among contractors with regard to the payment of wages.

Achieving the above benefits is severely undermined when a contractor fails to pay the prevailing or living wage. Moreover, the damage to the City caused by the failure to pay the applicable wage is not necessarily remedied by the contractor's payment of restitution. For example, the payment of restitution does not necessarily remedy the fact that the City did not receive the benefit of increased competition or the hiring of a more efficient work force.

The draft provision proposes that the amount of liquidated damages be three (3) times the amount of underpayment. This amount takes into account that the amount of damage suffered by the City increases with the length of the underpayment and the number of workers who were underpaid.

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Making Government Work Better Committee

**Subject: Living & Prevailing Wage Program [CR:10-22-3.3(d)]**

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**5. Assignment of Claims**

Staff does not recommend that the proposed draft provision contain any requirements regarding the assignment of claims. Staff believes that this issue is best left to a case-by-case analysis of the particular facts and circumstances of the matter at hand.

The City has the legal ability to assign claims. The City could assign to others its rights to pursue a claim for a breach of the prevailing/living wage provision of a City contract. However, if such an assignment were to occur, the City loses some elements of control as to how the assigned claim is pursued.

Workers are considered third-party beneficiaries to contractual prevailing/living wage requirements and can bring a legal action to enforce breaches of such contractual requirements. The City has the legal ability to accept from a contractor the assignment of any such claim. However, if the City accepted an assignment of such a claim it would have the risk of the claim being defective for some reason unknown to the City.

In short, the assignment of claims raises a number of complex issues that make the concept of questionable benefit to the City. This is especially true given the remedies provided for in the proposed draft contractual provision and the significant enforcement efforts undertaken by the Office of Equality Assurance to make sure that workers get paid the appropriate wages. Accordingly, staff recommends that the issue of assignment be analyzed within the context of each particular case.

**6. Submission of Pro Forma Certified Payroll**

Staff also does not believe it is necessary for the proposed draft provision to include a requirement that contractors submit a pro forma payroll at the time of bid opening.

Upon notification that a contract has been awarded, the Office of Equality Assurance mails a letter and packet of labor compliance forms and instructions to the prime contractor. The packet includes: current Department of Industrial Relations Prevailing Wage Determinations; List of Subcontractors/Truckers/On-Site Suppliers Form; List of Employees Form; Instructions for Filing Fringe Benefit Statement Form; Instructions for Certified Payroll Reporting; City of San Jose Public Works Payroll Reporting Form; Statement of Compliance Form; and Certification of Posting and Distribution. Attached is a sample of the letter and labor compliance packet mailed to each contractor awarded a City-funded project in excess of \$1,000. By providing these detailed instructions and offering training to any contractor or subcontractor, submittal of a pro forma payroll at time of bid opening would not add value and could delay the award process.

**7. Office of Equality Assurance Staffing and Funding**

The City's Proposed Budget for Fiscal Year 2003-04 reallocates the funding for four positions (.5 Director, 1 Contract Compliance Coordinator, 1 Contract Compliance Specialist, 1 Contract Compliance Assistant and .5 Senior Office Specialist) and \$10,000 in associated non-personal

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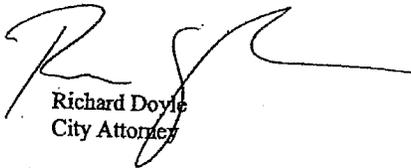
costs from the General Fund to Capital Funds. These positions, which provide direct service to various capital and bond programs, would charge their costs to these capital projects. The Proposed Budget also recommends the elimination of two vacant Contract Compliance Specialists positions allowing \$173,867 in ongoing General Fund savings.

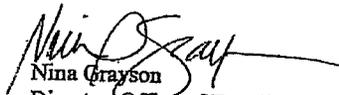
For Fiscal Year 2003-04, the Redevelopment Agency has agreed to reimburse the Office of Equality Assurance for its labor compliance services in the amount of \$100,000. Attached is a copy of the draft Project Services Memorandum.

A more detailed discussion on the proposed budget is scheduled to occur at the May 22 Council Budget Study Session for Strategic Support.

**COORDINATION**

This report has been coordinated with the Executive Director of the Santa Clara & San Benito Counties Building & Construction Trades Council.

  
Richard Doyle  
City Attorney

  
Nina Grayson  
Director, Office of Equality Assurance  
Department of Public Works

Attachments



### DRAFT MODEL CONTRACT PROVISION

I. **Remedies For Contractor's Breach Of Prevailing Wage/Living Wage Provisions.**

A. **General:** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

1. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
2. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
3. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
4. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

B. **Withholding Of Payment.** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Provision and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Provision.

In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Provision, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Contract. The City is not obligated to make any payment due the Contractor until Contractor has performed all of its obligations under these provisions.

Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of

DRAFT MODEL CONTRACT PROVISION

May 6, 2003

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any other term or condition contained in this Contract or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

- C. **Liquidated Damages For Breach Of Wage Provision:** Contractor agrees its breach of the Wage Provision would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Provision would be impracticable and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

- D. **Audit Rights.** All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

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ATTACHMENT II



*Department of Public Works*

OFFICE of EQUALITY ASSURANCE

Month, Date, Year

Name

Title

Company Name

Mailing Address

City, State and Zip Code

**RE: Project Name**

Dear Mr./Ms. \_\_\_\_\_:

The Office of Equality Assurance has been notified that Company Name has been awarded the above referenced project in the amount of \$ \_\_\_\_\_ and that construction is scheduled to begin date.

The California Labor Code requires the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime on all public works projects over \$1,000 and adherence to all labor standards and regulations. Prime contractors are responsible for compliance of any and all subcontractors and lower tier subcontractors with all contract provisions.

Enclosed are documents to be provided to your subcontractors:

- Current Department of Industrial Relations General Prevailing Wage Determinations
- List of Subcontractors/Truckers/On-Site Suppliers Form
- List of Employees Form
- Instructions for Filing of Fringe Benefit Statement
- Contract Compliance Fringe Benefit Statement Form
- Instructions for Certified Payroll Reporting
- City of San Jose Public Works Payroll Reporting Form
- Statement of Compliance Form

As the prime contractor, you are required to file all of the above documents in addition to:

- Posting the Current Department of Industrial Relations General Prevailing Wage Determinations at the construction site; and
- Signing the Certification of Posting and Distribution Form

The Contract Compliance Specialist assigned to monitor this project is name of Contract Compliance Specialist. Throughout this project, first name of Contract Compliance Specialist will be your contact person regarding all labor compliance issues and requirements. First name

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Name  
RE: Name of Project  
Date  
Page Two

of Contract Compliance Specialist can be reached at direct phone number or by email at e-mail address. Should your staff or any of the subcontractors wish to receive labor compliance training, our Office will be happy to schedule one.

To ensure that appropriate wage rates and benefits are paid to employees performing work on this project, the Office of Equality Assurance requires receipt of the following labor compliance documents within 10 days of issuance of the Notice to Proceed.

Labor Compliance Documents	To Be Submitted by Whom
Certification of Posting and Distribution Form	Prime Contractor
List of Subcontractors/Truckers/On-Site Suppliers Form	Prime Contractor and Subcontractors
List of Employees Form	Prime Contractor and Subcontractors
Contract Compliance Fringe Benefit Statement Form	Prime Contractor and Subcontractors

As soon as construction is initiated, the following documents are required to be submitted 10 days following each pay period.

Labor Compliance Documents	To Be Submitted by Whom
City of San Jose Public Works Payroll Reporting Form	Prime and Subcontractors
Statement of Compliance Form	Prime and Subcontractors

Kindly use the enclosed Transmittal Form when providing any and all documents to our Office. Should these documents not be received within the stated timeframes, it will constitute a violation of your contract and a portion of your progress payment(s) may be withheld.

Thank you for your attention and cooperation.

Sincerely,

Nina S. Grayson  
Director

Enclosures

c Contract Compliance Specialist  
Project Manager

January 20, 2011

Subject: Prevailing Wages – Liquidated Damages Waiver Request

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Department of Public Works

OFFICE of EQUALITY ASSURANCE

April 28, 2003

To Whom It May Concern:

**PREVAILING WAGES**

Attention is called to the fact that State of California Prevailing Wage Rate requirements apply to this project. Copies of the General Prevailing Wage Determinations made by the California Director of Industrial Relations are available at the Office of Equality Assurance, 4 North 2<sup>nd</sup> Street, Suite 925, San Jose, CA 95113 and the Office of the City Clerk, 801 North First Street, Room 116, San Jose, CA 95110. The General Prevailing Wage Determination is also available via the Internet at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD). All questions regarding prevailing wage requirements are to be directed to the Office of Equality Assurance at 408-277-4025.

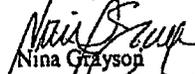
Please note the following classifications are not allowed on City of San Jose public works construction contracts:

Landscape Maintenance Laborer  
Underground Utility Tradesman  
Landscape Tradesman I  
Landscape Tradesman II  
Floor Preparation Worker Trainee, First 6 Months  
Floor Preparation Worker Trainee, Second 6 Months  
Floor Preparation Worker Trainee, Third 6 Months  
Floor Preparation Worker Trainee, Fourth 6 Months  
Floor Preparation Worker Trainee, Fifth 6 Months  
Floor Preparation Worker Trainee, Sixth 6 Months  
Floor Preparation Worker Trainee, Seventh 6 Months  
Floor Preparation Worker Trainee, Eighth 6 Months  
Floor Covering Handler Trainee, First 3 Months  
Floor Covering Handler Trainee, Second 3 Months  
Refrigeration Tradesman (Year 2)  
Refrigeration Tradesman (Year 3)  
Refrigeration Tradesman (Year 4)  
Refrigeration Tradesman (Year 5)

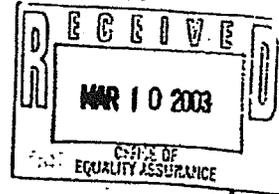
**DEBARRED CONTRACTORS**

The following contractors have been debarred from bidding or performing work on any City projects:

Kelly Door Company, Inc. for the period June 27, 2002 to November 27, 2003  
Trimpak LLC for the period November 7, 2002 to November 7, 2005

  
Nina Grayson  
Director, Office of Equality Assurance

GENERAL PREVAILING WAGE DETERMINATIONS  
MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS



153/3/03

PURSUANT TO CALIFORNIA LABOR CODE PART 7,  
CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773, AND 1773.1

INDEX: 2003-1 STATEWIDE BASIC TRADE JOURNEYMAN RATES

Download all Statewide Basic Trade Determinations (Pages 1-2I)

PAGE	DETERMINATION
1	BOILERMAKER-BLACKSMITH
2	IRON WORKER
2A*	ELECTRICAL UTILITY LINEMAN (a)
2B	TELECOMMUNICATIONS TECHNICIAN
2D-2F	TREE TRIMMER
2H	STATOR REWINDER

- + Includes shift pay determinations.
- \* A single asterisk after the expiration date of a determination indicates that no increase is required for projects advertised while that determination is in effect. The determination remains in effect until it is canceled, modified, or superceded by a new determination by the Director of Industrial Relations. A new determination will become effective 10 days after it is issued. Contact the Division of Labor Statistics and Research at (415) 703-4774 after 10 days from the expiration date, if no subsequent determination is issued.
- a. State of California, except Del Norte, Modoc and Siskiyou Counties.
- b. Includes Del Norte, Modoc and Siskiyou Counties.
- c. Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.
- d. Includes San Diego County; excludes Mono County.
- e. Includes San Diego County.
- f. Includes Fresno, Kings, San Diego, and Tulare Counties; excludes Inyo and Mono Counties
- g. Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba Counties.
- h. Includes Mono County.
- i. Includes Inyo and Mono Counties.



Page \_\_\_\_ of \_\_\_\_

**LIST OF SUBCONTRACTORS/TRUCKERS/ON-SITE SUPPLIERS\***

(\*Unless supply delivery is limited to curbside drop off, suppliers must be listed below.)

PRIME CONTRACTOR: \_\_\_\_\_

SUBCONTRACTOR (if 2<sup>nd</sup> or 3<sup>rd</sup> Tier Sub List): \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

	SUBCONTRACTOR/TRUCKER	DESCRIPTION OF WORK	DOLLAR AMOUNT	EXPECTED START DATE
Company:				
Address:				
Phone:				
Project Manager Name:				
Project Manager Cell Phone:				
Company:				
Address:				
Phone:				
Project Manager Name:				
Project Manager Cell Phone:				
Company:				
Address:				
Phone:				
Project Manager Name:				
Project Manager Cell Phone:				
Company:				
Address:				
Phone:				
Project Manager Name:				
Project Manager Cell Phone:				

Project Manager Cell Phone: \_\_\_\_\_ Office of Equality Assurance • 4 North 2<sup>nd</sup> Street, Suite 925, San Jose, CA 95113 • Phone 408.277.4025 • FAX 408.277.3865

Revised 4.2003





## INSTRUCTIONS FOR FILING A FRINGE BENEFIT STATEMENT

California Labor Code and City wage policies (Resolution Nos. 60932, 61144, 61716 and 68900) require the filing of a Fringe Benefit Statement on each contract. The Code requires contractors to pay not less than the basic hourly rate plus fringe benefits as predetermined by the Department of Industrial Relations. The contractor's obligation to pay fringe benefits may be met either by payment of fringes to various plans, funds or programs or by making these payments to the employees as cash in lieu of fringes.

Properly filled out and submitted with supporting documentation, the Fringe Benefit Statement will notify the City of San Jose that your firm should receive credit for employer paid benefits towards the total hourly rate required in your contract.

**FRINGE BENEFIT STATEMENT** In general, benefits such as Vacation/Holiday, Health & Welfare and Pension are considered fringes for payroll reporting purposes. Payroll deductions for items such as Fund Administration and Dues, paid by the employee, are not considered "Fringes" and therefore will not to be figured in any part of the wage schedule. (Please refer to the attached Clarification of Allowable Employer Fringe Benefit Payments and General Prevailing Wage Rate.)

The following instructions have been prepared to assist your firm in completing the City's Fringe Benefit Statement Form. For further clarification, contact the City of San Jose Office of Equality Assurance at:

Office of Equality Assurance  
4 North 2<sup>nd</sup> Street, Suite 925  
San Jose, CA 95113  
Phone: 408.277.4025  
Fax: 408.277.3885

### INSTRUCTIONS

- (A) **Name of Contractor or Subcontractor:** Fill in your firm's name.
- (B) **Project:** Fill in the project title.
- (C) **Classification:** Indicate each prevailing wage classification you expect to use on this contract. You may use additional sheets if necessary or attach a spreadsheet containing the same information to this form.
- (D) Calculate and input the hourly dollar amount for each benefit. If benefit amounts vary from employee to employee, it may be beneficial to break down individual employee benefits in a spreadsheet format and attach the spreadsheet to this form.

Contractors operating under bargaining agreements may obtain the hourly dollar benefit breakdown from their benefit plan administrators. If your firm does not operate under a bargaining agreement, you may use the formulas on the next page to compute hourly benefits. Please be advised that examples are provided only to demonstrate how the formulas are used.

Revised 4.2003

Office of Equality Assurance - 4 North 2<sup>nd</sup> Street, Suite 925, San Jose, CA 95113 • Phone 408.277.4025 • FAX 408.277.3885

**Annual Calculation.** The annual calculation is based on 2080 hours per week (40 hours x 52 weeks per year).

<p><b>Use the Annual Benefit Amount</b></p>	<p><b>Formula: Employee's Basic Hourly Rate x Number of Benefit Hours (8 hours a day x number of days) ÷ 2080 annual hours.</b></p>
<p><i>For Example: At \$20 per hour, with 80 vacation hours a year the hourly rate calculates &gt;&gt;&gt;&gt;&gt;&gt;</i></p>	<p>\$20 x 80 hours = \$1,600 divided by 2080 = \$.77 <b>Fringe Benefit Hourly Amount: \$.77</b></p>

**Monthly Calculation.** The monthly calculation factor of 173.33 is based on 2080 hours per year divided by 12 months.

<p><b>Use the Monthly Benefit Payment</b></p>	<p><b>Formula: Monthly benefit plan contribution ÷ 173.33.</b></p>
<p><i>For Example: If the employer pays \$200 per month for a medical benefit, the monthly hourly rate calculates &gt;&gt;&gt;&gt;&gt;&gt;</i></p>	<p>A monthly plan contribution of \$200 divided by 173.33 = \$ 1.15 <b>Fringe Benefit Hourly Amount: \$ 1.15</b></p>

(E) **Name of the Plan or Fund.** To receive credit for employer paid benefit contributions, contributions must be documented. On the Fringe Benefit Statement, indicate the name of the Plan or Fund and attach appropriate plan contribution documentation described below.

- **Health & Welfare Documentation.** For your Health & Welfare Plan, please submit copies of the plan documentation indicating monthly or quarterly billings for the covered benefits (and delineating all benefits per worker), as well as statements and copies of checks transmitted by your firm to the trust fund payments for these benefits.
- **Pension Plan Documentation.** For your Pension Plan, please submit copies of the plan documentation from the Plan Administrator including the plan summary, account balances, monthly or quarterly transmittals into the accounts and copies of checks transmitted by your firm to them as payments into these accounts.
- **Vacation Plan/Paid Holiday Documentation.** Please submit copies of your company's policy for employer paid vacation and holidays. For vacation, please explain how you track the vacation hours for each employee. Additionally, please submit copies of monthly reports or statements from the bank/fund depository showing that the plan and vacation amounts are available for the workers.

January 20, 2011

**Subject: Prevailing Wages – Liquidated Damages Waiver Request**

Page 18

- **Use of Apprentices.** To use an apprentice, your firm must be registered with an apprenticeship program approved by the California Division of Apprenticeship Standards (DAS). To pay a worker at the apprenticeship rate, you must provide documentation that each such worker is registered as an apprentice. If the worker is not registered, the journeyman rate must be paid.

**NOTE:** Section 1777 of the California Labor Code details contractor obligations to pay training funds into approved apprenticeship programs and the ratio of apprentices to journeymen performing work on a public works contract.

Prior to commencing work on a public work contract of \$30,000 or greater, every contractor is required to submit contract award information to an applicable apprenticeship program. For more information, you may contact the local DAS office at:

State of California  
Department of Industrial Relations  
Division of Apprenticeship Standards (DAS)  
100 Paseo de San Antonio, Room 125  
San Jose, CA 95113

The local Division of Apprenticeship Standards may be reached by telephone at 408-277-1273 or by Fax at 408-277-9612. For more information see the following Internet address: <http://www.dir.ca.gov/DAS/das.html>

- (F) Fringes Paid In Cash. Indicate if some or all fringes will be added to the employee's basic hourly rate.

**ATTACHMENTS:**

Fringe Benefit Statement  
Clarification of Allowable Employer Fringe Benefit Payments

### Clarification of Allowable Employer Fringe Benefit Payments And General Prevailing Wage Rate

*Excerpt from California Code of Regulations, Title 8, Group 3. Payment of Prevailing Wages Upon Public Works.*

**Employer Payments. Includes:**

- (1) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program for the benefit of employees, their families and dependents, or retirees.
- (2) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees, their families and dependents or to retirees pursuant to an enforceable commitment or agreement to carry out a financially responsible plan or program which was communicated in writing to the workers affected; and
- (3) The rate of contribution irrevocably made by the contractor or subcontractor for apprentice or other training programs authorized by Section 3071 and/or 3093 of the Labor Code.

**General Prevailing Rate of Per Diem Wages**

**(a) Includes:**

- (1) The prevailing basic straight-time hourly rate of pay; and
- (2) The prevailing rate for holiday and overtime work; and
- (3) The prevailing rate of employer payments for any or all programs or benefits for employees, their families and dependents, and retirees which are of the types enumerated below:
  - (A) medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits;
  - (B) retirement plan benefits;
  - (C) vacations and holidays with pay, or cash payments in lieu thereof;
  - (D) compensation for injuries or illnesses resulting from occupational activity;
  - (E) life, accidental death and dismemberment, and disability or sickness and accident insurance;
  - (F) supplemental unemployment benefits;
  - (G) thrift, security savings, supplemental trust, and beneficial trust funds otherwise designated, provided all of the money except that used for reasonable administrative expenses is returned to the employees;
  - (H) occupational health and safety research, safety training, monitoring job hazards, and the like, as specified in the applicable collective bargaining agreement;
  - (I) See definition of "Employer Payments," (3).
  - (J) other bona fide benefits for employees, their families and dependents, or retirees as the Director may determine; and
- (4) travel time and subsistence pay as provided for in Labor Code Section 1773.8.

- (b) The term "general prevailing rate of per diem wages" does not include any employer payments for:
- (1) Job related expenses other than travel time and subsistence pay;
  - (2) Contract administration, operation of hiring halls, grievance processing, or similar purposes except for those amounts specifically earmarked and actually used for administration of those types of employee or retiree benefit plans enumerated above;
  - (3) Union, organizational, professional or other dues except as they may be included in and withheld from the basic taxable hourly wage rate;
  - (4) industry or trade promotion;
  - (5) Political contributions or activities;
  - (6) Any benefit for employees, their families and dependents, or retirees including any benefit enumerated above where the contractor or subcontractor is required by Federal State, or local law to provide such benefit; or
  - (7) Such other payments as the Director may determine to exclude.

**CONTRACT COMPLIANCE  
FRINGE BENEFIT STATEMENT**

CONTRACTOR NAME: \_\_\_\_\_ (A)

PROJECT: \_\_\_\_\_ (B)

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)	
(C)	Vacation (D)	(E)	
<p><i>Note: Documentation of Plan contribution <b>must</b> be returned with this statement</i></p> <p>Please attach a copy of your most recent transmission into each medical, pension, profit sharing plan account indicating worker name and amount of contribution.</p>	\$ _____	_____	
	Health & Welfare	_____	
	\$ _____	_____	
	Pension	_____	
	\$ _____	_____	
	Apprentice	_____	
	\$ _____	_____	
	Other (specify)	_____	
	\$ _____	_____	
	_____	Vacation	_____
	_____	\$ _____	_____
	_____	Health & Welfare	_____
_____	\$ _____	_____	
_____	Pension	_____	
_____	\$ _____	_____	
_____	Apprentice	_____	
_____	\$ _____	_____	
_____	Other (specify)	_____	
_____	\$ _____	_____	

(F)  All (or some) fringes are paid as a cash payment in the employee's basic hourly rate.

Company Name (Please Print) \_\_\_\_\_

Name and Title (Please Print) \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

**CONTRACT COMPLIANCE  
FRINGE BENEFIT STATEMENT**

CONTRACTOR NAME: \_\_\_\_\_

PROJECT: \_\_\_\_\_

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
<p><i>Note: Documentation of Plan contribution <u>must</u> be returned with this statement</i></p> <p>Please attach a copy of your most recent transmission into each medical, pension, profit sharing plan account indicating worker name and amount of contribution.</p>	Vacation	_____
	\$	_____
	Health & Welfare	_____
	\$	_____
	Pension	_____
	\$	_____
_____	Apprentice	_____
	\$	_____
	Other (specify)	_____
	\$	_____
	Vacation	_____
	\$	_____
_____	Health & Welfare	_____
	\$	_____
	Pension	_____
	\$	_____
	Apprentice	_____
	\$	_____
_____	Other (specify)	_____
	\$	_____
	Vacation	_____
	\$	_____
	Health & Welfare	_____
	\$	_____
_____	Pension	_____
	\$	_____
	Apprentice	_____
	\$	_____
	Other (specify)	_____
	\$	_____

All (or some) fringes are paid as a cash payment in the employee's basic hourly rate.

Company Name (Please Print) \_\_\_\_\_

Name and Title (Please Print) \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_



## INSTRUCTIONS FOR CERTIFIED PAYROLL REPORTING

California Labor Code requires contractors to pay not less than the basic hourly rate plus fringe benefits as predetermined by the Department of Industrial Relations. The contractor's obligation to pay fringe benefits may be met either by payment of fringes to various plans, funds or programs or by making these payments to the employees as cash in lieu of fringes.

The City of San Jose Public Works Payroll Reporting Form is modeled after the Public Works Payroll Reporting Form A-1-131 prepared by the California Department of Industrial Relations. This form has been made available for the convenience of contractors and vendors required by City of San Jose construction, maintenance or service contracts to submit certified payrolls. Properly filled out, this form will satisfy the requirements of California Labor Code Part 7, Section 1776 to file payrolls submitted in connection with contracts for public work and maintenance contracts. (Note: A computer payroll report is acceptable [with Statement of Compliance form attached] only if the same payroll information is included.) All compliance documents are to be accompanied by the Compliance Documentation Transmittal Form provided by the Office of Equality Assurance.

This payroll form provides for the contractor's showing on the face of the payroll all monies paid to the employees, whether as basic rates or as cash in lieu of fringes and provides for the contractor's representation in the statement of compliance attached to the payroll that he/she is paying to others fringes required by the contract and not paid as cash in lieu of fringes.

The following instructions have been prepared to assist your firm in completing certified payroll-reporting forms. For further clarification, contact the City of San Jose Office of Equality Assurance at:

Office of Equality Assurance  
4 North 2<sup>nd</sup> Street, Suite 925  
San Jose, CA 95113  
Phone: 408.277.4025  
Fax: 408.277.3885

### INSTRUCTIONS

- (A) Name of Contractor or Subcontractor: Fill in your firm's name.
- (B) Contractor's License #: Fill in your firm's license #
- (C) Address: Fill in your firm's address.
- (D) Payroll No: Fill in your firm's fiscal year payroll number.
- (E) Week Ending: Fill in the last calendar day reported on the form. If this is a two-week pay period please indicate.
- (F) Self-Insured Certificate # / Workers' Compensation Policy #: Self-explanatory.
- (G) Project or Contract No: Project title or Purchase Order Number.

Revised 4.2003

Office of Equality Assurance · 4 North 2<sup>nd</sup> Street, Suite 925, San Jose, CA 95113 · Phone 408.277.4025 FAX 408.277.3885

- (1) Column 1 – Name, Address, and Social Security Number of Employee: The employee's full name, address & social security number must be shown on each weekly payroll submitted.

NOTE: Owner-operators performing work on-site must be included on the payroll form with full payroll detail including: number of hours worked, hourly rate of compensation/draw, gross amount earned on the City of San Jose contract and total gross amount received for the reported week.

- (2) Column 2 – Work Classifications: List classification descriptive of work actually performed by employees. Consult the General Prevailing Wage Determination made by the Director of Industrial Relations for proper classification. If additional classifications are deemed necessary, contact the Office of Equality Assurance. Employees may be shown as having worked in more than one classification provided accurate breakdown of hours worked is maintained and shown on the payroll by use of separate line entries.

- (3) Column 3 – Hours Worked: List hours worked each day on City of San Jose Project. List hours worked on non City of San Jose Projects under All Other Work. Enter overtime hours in accordance with California Industrial Welfare Commission Order No. 16-2001.

- (4) Column 4 – Total Hours. Indicate total of straight-time hours worked (s) and total over-time hours worked (o).

- (5) Column 5 – Rate of Pay, Including Fringe Benefits: In the Hourly Rate of Pay box, list actual basic hourly rate paid the employee for straight time worked plus any cash in lieu of fringes paid the employees. When recording the straight time hourly rate include any cash paid in lieu of fringes. You should show separately that benefits are paid in cash on the Statement of Compliance. (See "FRINGE BENEFITS" below.) For overtime, show overtime hourly rate paid, plus any cash in lieu of fringes paid the employees. Payment of not less than time and one half the basic or regular rate paid is required for overtime.

STATEMENT OF COMPLIANCE. See instructions for completing Statement of Compliance on the next page.

- (6) Column 6 – Gross Amount Earned:

- a. San Jose Project: Enter the gross amount earned on this project. If part of the employee's weekly wage was earned on a project other than the project described on this payroll, enter two separate gross amounts in column 6. In the first sub-column enter the amount earned on the City of San Jose project, and then enter the total gross amount earned for all projects (including the San Jose project) in the sub-column: Total All Projects.
- b. Travel & Subsistence: Enter the gross travel and or subsistence payment amount paid to the employee for the week reported.
- c. Total All Work: Enter the total gross amount earned for the San Jose Project, Travel & Subsistence, and All Other Work for the week reported.

- (7) Column 7 – Deductions: Indicate deductions made in the appropriate box; if more than the indicated deductions are made, show the balance of deductions under "Other"; show actual total under "Total Deductions"; and in an attachment to the payroll describe the deductions contained in the "Other" column. If the employee worked on other jobs in addition to this project, show actual deductions from his weekly gross wage.

(8) Column 8 – Net Wages Paid for Week and Check No.: Required.

**Statement of Compliance Required:** While this form need not be notarized, the statement is certified under penalty of perjury. Accordingly, the party signing this required statement should have knowledge of the facts represented as true and must be the owner or other person holding interest in the firm.

**Check Box A. Contractors who pay all fringe benefits:** A contractor who pays fringe benefits into approved plans, funds or programs in amounts not less than were determined in the applicable wage decision shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his employees just as he has always done. Such contractor shall also check Paragraph A. of the Statement of Compliance that he is paying to approved plans, funds or programs not less than the amount predetermined as fringe benefits for each craft. (Any exceptions shall be noted in check box C.)

**Check Box B. Contractors who pay no fringe benefits:** A contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time Hourly Rate of Pay column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check Paragraph B of the Statement of Compliance to indicate that he is paying fringe benefits in cash directly to his employees. (Any exceptions shall be noted in check box C.)

**Check Box C. Exceptions:** Any contractor who is making payment to approved plans, funds or programs in amounts less than the wage determination requires is obliged to pay the difference directly to the employees as cash in lieu of fringes. Any exceptions to Paragraph A or B, whichever the contractor may check, shall be entered in Paragraph C. Explain the reason an employee is not paid the total fringes through contribution to a plan or cash in lieu of fringes and provide the hourly dollar amount. An attachment may be used for this purpose.

This section may also be used to explain other withholding such as child support or uniform deductions. Such withholding amounts are reported as OTHER employee deductions on the payroll-reporting form [see column (8) on the attached sample].

**ATTACHMENTS:**

City of San Jose Public Works Payroll Reporting Form  
Statement of Compliance

**CITY OF SAN JOSÉ PUBLIC WORKS PAYROLL REPORTING FORM**

PAGE \_\_\_\_\_ OF \_\_\_\_\_

(1) NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(A) NAME OF CONTRACTOR OR SUBCONTRACTOR		(B) CONTRACTOR'S LICENSE# SPECIALTY LICENSE#		(C) ADDRESS		(D) PAYROLL NO.		(E) PROJECT OR CONTRACT NO.		(F) CHECK NO.	
	(A) FOR WEEK ENDING		(B) SELF-INSURED CERTIFICATE # WORKERS' COMPENSATION POLICY#		(C) PROJECT AND LOCATION		(D) CLASSIFICATION		(E) GROSS AMOUNT EARNED			(F) NET WAGES PAID FOR WEEK
	(A) DATE		(B) HOURS WORKED EACH DAY		(C) HOURLY RATE OF PAY		(D) SAN JOSE PROJECT		(E) ALL OTHER WORK			
(A) M T W T F S S		(B) HOURS		(C) RATE		(D) TRAVEL & SUBSISTANCE		(E) TOTAL ALL WORK		(F) DEDUCTIONS & OTHER EMPLOYER PAYMENTS		
Employee: Nina Carlson 12 Palace Way	San Jose Project		S									
	All Other Work:		S									
Employee:	San Jose Project		S									
	All Other Work:		S									
Employee:	San Jose Project		S									
	All Other Work:		S									

S = Straight time  
 O = Overtime  
 SCL = State Disability Insurance

\*OTHER: Any other deductions, whether or not included or required by prevailing wage determinations, must be separately listed. Use extra sheet if necessary.

NOTE: CERTIFICATION STATEMENT MUST BE COMPLETED AND THE ORIGINAL SIGNED STATEMENT ATTACHED TO THE PAYROLL

Office of Equality Assurance · 4 North Second Street, Suite 925, San Jose, CA 95113 tel (408) 277-4444 fax (408) 277-3685 tly (408) 971-0134



STATEMENT OF COMPLIANCE  
(Certified Under Penalty of Perjury)

PROJECT: \_\_\_\_\_

PAYROLL PERIOD: \_\_\_\_\_ to \_\_\_\_\_  
First Day of Pay Period Last Day of Pay Period

I, \_\_\_\_\_, the undersigned, am  
(Name - print)

\_\_\_\_\_ with the authority\* to act  
(Position in business)

for and on behalf of \_\_\_\_\_  
(Name of business and/or contractor)

certify under penalty of perjury that the records or copies thereof submitted and consisting of  
\_\_\_\_\_ are the originals or true, full and  
(description / no. of pages)

correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of  
cash, check, or whatever form to the individual or individuals named.

**\*Must be signed by the owner or other person holding interest in the firm.**

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

A. FRINGE BENEFITS ARE PAID INTO APPROVED PLANS, FUNDS OR PROGRAMS.  
In addition to the basic hourly wage rates paid to each laborer or mechanic listed on the attached payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted under item C below.

B. FRINGE BENEFITS ARE PAID IN CASH.  
Each laborer or mechanic listed on the attached payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in item C below.

C. EXCEPTIONS Please explain below.

\_\_\_\_\_  
\_\_\_\_\_

CITY OF SAN JOSÉ PUBLIC WORKS PAYROLL REPORTING FORM

PAGE \_\_\_\_\_ OF \_\_\_\_\_



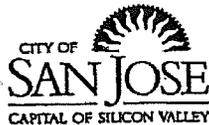
(1) NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NAME OF CONTRACTOR OR SUBCONTRACTOR	(3) PAYROLL NO.	CONTRACTOR'S LICENSE		FOR WEEK ENDING:	ADDRESS		(4) CONTRACT NO.	PROJECT OR LOCATION	(5) CHECK NO.																
			SPECIALTY LICENSE #	WORKERS' COMPENSATION POLICY #		PROJECT OR CONTRACT NO.	PROJECT OR LOCATION																			
			(6) TOTAL HOURS	(7) HOURLY RATE OF PAY		(8) GROSS AMOUNT EARNED	(9) DEDUCTIONS - EMPLOYEE PAID (DOES NOT INCLUDE BENEFIT OR OTHER EMPLOYER PAYMENTS)				(10) NET AMOUNT PAID FOR WEEK															
(11) DAY			(12) HOURS WORKED EACH DAY			(13) SAN JOSE PROJECT			(14) OTHER DEDUCTIONS																	
M	T	W	TH	F	S	S	O	FICA (See 31g)	STATE TAX	SDI	HEALTH & WELFARE															
DATE			DATE			TOTAL ALL WORK			TOTAL DEDUCTIONS																	
Employee:			San Jose Project			S																				
Employee:			All Other Work:			S																				
Employee:			San Jose Project:			S																				
Employee:			All Other Work:			S																				
Employee:			San Jose Project:			S																				
Employee:			All Other Work:			S																				

Revised 4.2003  
 S = Straight time  
 O = Overtime  
 SDI = State Disability Insurance

\*OTHER: Any other deductions, whether or not included or required by prevailing wage determinations, must be separately listed. Use extra sheet if necessary.

NOTE: CERTIFICATION STATEMENT MUST BE COMPLETED AND THE ORIGINAL SIGNED STATEMENT ATTACHED TO THE PAYROLL

Office of Equality Assurance - 4 North Second Street, Suite 925, San Jose, CA 95113 tel: (408) 277-4025 fax: (408) 277-3885 tty: (408) 971-0134



### CERTIFICATION OF POSTING AND DISTRIBUTION

Pursuant to California Labor Code 1773.2, a copy of the current General Prevailing Wage Determination Made By The Director of Industrial Relations must be posted at the public works construction job site. If more than one worksite exists on any project, the applicable rates may be posted at a single location that is readily available to all workers.

Prevailing wage determinations with a single asterisk (\*) after the expiration date that are in effect on the date of advertisement of bids remain in effect for the life of the project. Prevailing wage determinations with double asterisks (\*\*) after the expiration date indicate that the basic hourly rate, overtime and holiday pay rates and employer payments to be paid for work performed after this date have been predetermined. If work is to extend past this date, the new rate must be paid. The contractor should contact the Prevailing Wage Unit of the Division of Labor Statistics and Research at (415) 703-4774 or the awarding body to obtain predetermined wage changes.

In addition to the California Labor Code requirement to post, the City of San Jose requires that the prime contractor distribute the current wage determination and any subsequent wage determinations applicable to this project to all subcontractors on this job and certify posting and distribution by signature below.

---

*The undersigned contractor certifies that the current General Prevailing Wage Determination applicable to this project has been distributed and posted as required.*

Project Name: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Authorized Representative's Printed Name)

\_\_\_\_\_  
(Authorized Representative Title)

\_\_\_\_\_  
(Date)

 **DRAFT**

ATTACHMENT III

**PROJECT SERVICES MEMORANDUM  
CITY OF SAN JOSE DEPARTMENT OF PUBLIC WORKS**

**ITEM 1: PROJECT DESCRIPTION**

The Redevelopment Agency ("Agency") agrees to reimburse the Office of Equality Assurance (OEA) for time and materials in support of the Agency's public and private projects, as requested by the Redevelopment Agency.

**ITEM 2: PROJECT COORDINATION**

This project is being coordinated through the Project Management Division of the Redevelopment Agency and the City Department of Public Works, Office of Equality Assurance. The following are contacts for these agencies, respectively:

1. The Redevelopment Agency of San Jose  
Contacts: Bill Ekern, Director of Project Management
2. The Department of Public Works  
Contacts: Nina Grayson, Director of Equality Assurance

**ITEM 3: SCOPE OF SERVICES**

The Office of Equality Assurance will provide all labor compliance activities associated with Agency approved public and private projects.

The term of this Project Services Memorandum shall be for the fiscal year 2003-2004, to begin on July 1, 2003 and end June 30, 2004.

**ITEM 4: SCHEDULE OF PERFORMANCE**

- a. At the Agency's request, Department of Public Works shall provide a schedule and estimated costs for providing labor compliance assistance for an Agency-assisted project.
- b. Department of Public Works shall provide a monthly service summary report for each respective month by the tenth of each month.
- c. Department of Public Works contact shall coordinate a bi-monthly meeting, commencing at the beginning of the fiscal year (July 1, 2002), between the Agency and Department of Public Works to discuss, monitor and measure

performance pursuant to this Project Services Memorandum and related issues.

- d. The Agency shall conduct a quarterly evaluation of the services provided by Department of Public Works under the procedure for Additional Contingency Services. Department of Works' contact shall provide the evaluation form to the Agency.

**ITEM 5: FUNDING**

The Redevelopment Agency shall provide up to One Hundred Thousand Dollars (\$100,000.00) in its budget for Labor Compliance services to the Department of Public Works, generally described above under Scope of Services.

**Property Management Program**

Actual cost of compliance staff, supplies, equipment and management, plus 15% overhead

**\$100,000.00**

**TOTAL**

**\$100,000.00**

**ITEM 6: BASIC SERVICE REQUEST AND RESPONSE TIME**

The Department of Public Works' contact shall provide the necessary services for the review of contract documents, certified payroll, and other labor compliance-related documents, as directed by the Agency's contact. The Agency's contact shall provide copies of all agreements and contracts approved by the Redevelopment Agency Board of Directors. The Department shall normally provide a response to requests for project review within ten working days.

**ITEM 8: MONTHLY BILLING AND SUMMARY REPORT**

A monthly billing and summary report of all services, provided by the Department for each preceding month, will be prepared by the Department and forwarded to the Agency's contact by the tenth (10<sup>th</sup>) of the following month. The Redevelopment Agency will remit payment to the Department of Public Works within thirty (30) days from receipt of billing.

Costs for all Department services will be itemized and will represent the actual wages and hours worked by Department personnel and the supplies and materials used on Agency-assigned requests. Personnel, vehicle and equipment costs will include the appropriate fringe/paid absence charges identified on the itemized

service charges sheet on the monthly billing. Non-personal costs for materials from City Warehouse Stores will include a twenty-two percent (22%) surcharge. As agreed, a fifteen-percent (15%) administrative charge will be added to Department costs, in lieu of the City overhead rates.

**APPROVALS:**

**The Department of Public Works**

Director of Equality Assurance

\_\_\_\_\_  
DATE \_\_\_\_\_

Deputy Director

\_\_\_\_\_  
DATE \_\_\_\_\_

**The Redevelopment Agency of the City of San Jose**

Director of Project Management

\_\_\_\_\_  
DATE \_\_\_\_\_

Deputy Executive Director

\_\_\_\_\_  
DATE \_\_\_\_\_

JDE:

Capital Project:

Various

Sub-Project:

Equality Assurance (Department of Public Works)



**SUMMARY OF PREVAILING WAGE INVESTIGATION**

**ELECTRIC CART STORAGE  
R.A.N. ELECTRIC INC.**

- April 20, 2010 City Council awarded construction contract to R.A.N. Electric
- April 21, 2010 OEA mailed letter, instructions, wage rates and forms to R.A.N. Electric
- July 9, 2010 Notice to Proceed Issued – first day charged was July 20, 2010; date of project completion - December 29, 2010
- September 10, 2010 OEA issued Notice of Non-Compliance letter to R.A.N. Electric – non-receipt of required labor compliance forms and weekly Certified Payroll Reports
- September 29, 2010 OEA received labor compliance forms and weekly Certified Payroll Reports from R.A.N. Electric. Certified Payroll Reports show a worker classified as Laborer Group 5e rather than Laborer Group 3.
- October 13, 2010 OEA issued letter to R.A.N. Electric – informed R.A.N. Electric of prevailing wage violation; restitution owed in the amount of \$2,410.40 to one worker; assessed liquidated damages in the amount of \$7,231.20 (3 times the amount of restitution); and provided R.A.N. ten (10) days to provide any additional relevant information if R.A.N. disagreed with violation.
- October 15, 2010 Alfredo Gonzalez phoned OEA & acknowledged receipt of violation letter; violation was unintentional; will make restitution to affected worker immediately; asked to have liquidated damage assessment waived. OEA staff informed Mr. Gonzalez that liquidated damages cannot be waived.
- October 20, 2010 Alfredo Gonzalez submitted letter to Nina Grayson asking for clarification and requesting waiver of liquidated damage assessment

October 21, 2010      Nina Grayson responded to Mr. Gonzalez's letter – explained duties of Laborer Group 3; explained liquidated damage assessment - no requirement in contract that violation be "willful" or "intentional"; contract provides no discretion in assessing liquidated damages; contract provides no mechanism to waive liquidated damages; and upheld liquidated damage assessment.