

**City Of Cloverdale
City Council
Resolution No. 025 –2012**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE
AUTHORIZING THE CITY MANAGER TO SIGN
A PROFESSIONAL SERVICES AGREEMENT WITH THE REED GROUP, INC.
FOR PREPARATION OF THE WATER AND SEWER RATE STUDY**

WHEREAS, the last time the City revised its water and sewer rates was on July 1, 2005 and followed recommendations of the 2003 Sewer and Rate Study prepared by Black and Veatch; and

WHEREAS, since 2005 the City has updated its Sewer and Water Master Plans which have identified capital improvements not incorporated into the current sewer and water rates; and

WHEREAS, Operations and maintenance, infrastructure renewal, and regulatory compliance costs have increased over the past seven years and need to be incorporated into the water and sewer rates, and

WHEREAS, the City has two operators each for the water treatment plant and the wastewater treatment plant and this staffing level may not be sufficient to provide adequate coverage for reliable operations of the plants, and

WHEREAS, increasing operator staffing at the plants would have an impact on future water and sewer rates and therefore will be evaluated as part of this water and sewer rate study; and

WHEREAS, Staff considered options for hiring a rate consultant, including issuing a request for proposals; and

WHEREAS, City Staff had discussions with a number of Sonoma County cities, a Sacramento consultant, The Reed Group, Inc. has been identified as being highly qualified and was strongly recommended; and

WHEREAS, based on these discussions with other Sonoma County cities, Staff requested and The Reed Group, Inc. provided a proposal to prepare the Water and Sewer Rate Study for a maximum not to exceed amount of \$32,500 and Staff found the proposal to be fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLOVERDALE AS FOLLOWS:

1. The above recitals are true and correct and are hereby incorporated into this Resolution as findings of the City Council of the City of Cloverdale.

4. The City Manager is hereby authorized and directed to execute with The Reed Group, Inc. a Professional Services Agreement for preparation of the Water and Sewer Rate Study, for a maximum amount not to exceed \$32,500 and for any needed amendments up to an additional amount of \$5,000.

5. This Resolution shall become effective immediately.

It is hereby certified that the foregoing Resolution No. 025 –2012 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on the 13th day of June, 2012 by the following vote: 5-ayes, 0-noes

AYES in favor of: Mayor Cox, Vice Mayor Palla, Councilmember Russell, Councilmember Maacks, and Councilmember Wolter

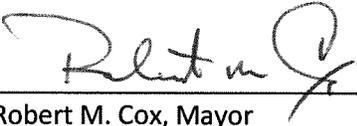
NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTESTED:



Robert M. Cox, Mayor



Roberto J. Bartoli, Jr., Deputy City Clerk

**CITY OF CLOVERDALE
PROFESSIONAL SERVICES AGREEMENT**

AGREEMENT

This Agreement is made and entered into this 14th day of June, 2012, by and between the City of Cloverdale, a California Municipal Corporation, 124 North Cloverdale Boulevard, Cloverdale, California, 95425, hereinafter referred to as "City," and The Reed Group, Inc., a California Corporation, hereinafter referred to as "Consultant."

RECITALS

WHEREAS, the legislative body of the City on June 13, 2012 by Resolution No. _____ authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.08 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. DESCRIPTION OF SERVICES

The services to be performed under this Agreement (the "Services") are as follows: Prepare a Water and Sewer Rate Study and associated professional services. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit A.

2. TERM

The Agreement term will commence on the date this agreement is executed and expire on July 1, 2013, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal. In no event will the City's obligation to pay the Consultant under this Agreement exceed \$32,500 (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. Where the Proposal provides for compensation on a time and materials basis, Consultant must maintain adequate records to permit inspection and audit of Consultant's time and material charges under this Agreement. Consultant

will make such records available to City during normal business hours upon reasonable notice. In accordance with California Government Code section 8546.7, if the "Not to Exceed Amount" exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

4. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of Services pursuant to his Agreement as may be reasonably necessary to meet the standard of performance provided in Section 7 below and to satisfy Consultant's obligations hereunder. Consultant will present study recommendations to the City Council by December 31, 2012 and complete the Services in accordance with this Agreement by July 1, 2013 (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

5. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

6. SUBCONTRACTING

Consultant may subcontract portions of the Services upon the prior written approval of the City. The Consultant will be solely responsible for payment for such subcontract services. No contractual relationship will exist between any such subcontractors of the Consultant and the City.

7. STANDARD OF PERFORMANCE

A. Consultant will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and will prepare all work products required by this Agreement in the usual and customary professional manner. Consultant will comply with federal, state and local laws applicable to performance of the Services, including but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, any environmental laws or regulations, air pollution control laws and regulations applicable to Consultant and/or the Services, and any laws and regulations related to any copyright, patent, trademark or other intellectual property right involved in performance

of the services. Consultant's Failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

B. Consultant shall assign only competent personnel to perform Services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

8. PREVAILING WAGES

This Agreement is subject to the requirements of the California Prevailing Wage Law, California Labor Code Section 1720 et seq., and the Services as described in Exhibit A will be performed in accordance with all applicable requirements of the California prevailing Wage Law, including, but not limited to, all applicable requirements contained in Exhibit B, which is attached to and made a part of this Agreement.

9. OTHER GOVERNMENTAL REGULATIONS

To the extent that the Services may be funded by or otherwise subject to the authority of another governmental entity or entities, Consultant and any subcontractors shall comply with all applicable rules and regulations of such other governmental entity or entities.

10. USE OF RECYCLED PRODUCTS

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

11. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees, and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with Consultant's performance of the Services or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Consultant's obligation to indemnify, defend and hold harmless under this provision

shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding has been extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, as much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code section 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to California Civil Code section 2782.8, as amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code section 2782.8.

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

12. INSURANCE

A. Before commencing performance of the Services, Consultant, at its own cost and expense, must: (a) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and (b) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's proposal. Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and

endorsements evidencing such coverage to the City.

B. Consultant must, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance must be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. The insurance must be endorsed to waive all rights of subrogation against the City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

C. Consultant, at its own cost and expense, must maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, and combined single limit coverage for risks associated with Services. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

D. Required commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

E. Except for Workers' Compensation insurance and professional liability insurance, all other insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

1. City and its officials, officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees,

agents, or volunteers.

2. Required insurance coverage must be primary insurance with respect to the City and its officials, officers, employees and volunteers. No insurance or self-insurance maintained by the City may be called upon to contribute to a loss under the coverage.

F. All insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

1. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

2. Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

G. Professional liability insurance may be provided on a "claims-made" basis, but the policy must be maintained in effect, and the City must be provided satisfactory evidence of the policy being maintained in effect, for a period of five years following the expiration or termination of this Agreement.

H. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) covering errors and omissions and containing a cross liability or severability of interest clause acceptable to the City. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000.00 per claim.

I. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City.

J. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City interests are otherwise fully protected.

13. NON-DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, sex, or age. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex or age.

14. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, to the extent the requirements of Chapter 5.04 of the Cloverdale Municipal Code apply, Consultant and any subcontractors subject to the requirements of Chapter 5.04 of the City Municipal Code must acquire at their sole expense a business license from the City in accordance with that chapter. Such licenses must be kept valid throughout the Agreement term.

15. OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS

All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Consultant's prior written consent will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of the City. Consultant may use final reports, that are in the public record, for marketing purposes.

16. TERMINATION AND REMEDIES

A. City may terminate this Agreement for convenience by giving at least 10 days' written notice to Consultant specifying the termination effective date. Upon receipt of such notice, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.

B. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

1. Terminate the Agreement by notice to the Consultant specifying the termination effective date;

2. Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports and other design documents and work products prepared by Consultant, whether or not completed;

3. Complete the unfinished Services itself or have the unfinished Services completed, and/or;

4. Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

17. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

18. REPRESENTATIVES

A. The City representative for purposes of this Agreement will be Craig A. Scott. The Consultant representative for purposes of this Agreement will be Bob Reed. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

B. Notices:

Any written notice to Consultant shall be sent to:

Bob Reed
The Reed Group, Inc.
3053 Freeport Blvd. #158
Sacramento, CA. 95818-4346

Any written notice to City shall be sent to:

Craig Scott
City of Cloverdale
124 N. Cloverdale Blvd.
Cloverdale, California 95425

19. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency or difference in interpretation of terms arises as between terms or provisions of this Agreement and any exhibit(s) made a part of this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the Parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

20. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to the provisions of California Government Code section 87300 and following, the Political Reform Act (California Government Code section 81000 and following), the regulations promulgated by the Fair Political Practices Commission (Title 2, section 18110 and following of the California Code of Regulations), California Government Code section 1090 and following, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Consultant's obligations pursuant to this Agreement. Consultant agrees to cooperate fully with City and to provide any necessary and appropriate information requested by City or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement.

Consultant may not employ any City official, officer or employee in the performance of the Services, nor may any official, officer or employee of City have any financial interest in this Agreement that would violate California Government Code section 1090 et seq. Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code section 1090 et seq., the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code section 1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by the Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

21. APPLICABLE LAW

The laws of the State of California shall govern the rights, obligations, duties and

liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Sonoma County.

22. RECOVERY OF ATTORNEY'S FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

23. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the parties have caused their authorized representative to execute this Agreement on this 14th day of June, 2012.

CITY

By: [Signature]

Its: City Manager

CONSULTANT

By: [Signature]

Its: President

ATTEST:

By: [Signature]
Rob Bertoli, Deputy City Clerk

APPROVED AS TO FORM:

By: [Signature]
Eric W. Danly, City Attorney

Exhibits: Exhibit A – Consultant's Proposal
Exhibit B – Prevailing Wages Labor Code Provisions

922951.

**EXHIBIT A
WATER AND SEWER RATE STUDY
SCOPE OF SERVICES**

Beginning in July 2012, the Reed Group, Inc. shall perform a water and sewer rate study for the City of Cloverdale, which will consist of the following tasks:

1. Develop 5-year financial plans for both water and sewer, and use the financial plans to determine the annual water and sewer rate revenue requirements. The financial plans would reflect current O&M costs, existing debt service obligations, and 5-year CIP needs.
2. Perform cost of service analyses for both water and sewer to proportionately assign costs to each user class.
3. Design water and sewer rates and prepare rate schedules to generate required revenue from each customer class. Modest rate structure changes may be recommended, if needed to achieve cost of service or other rate setting objectives.
4. Prepare draft and final rate study reports in PDF format.
5. Present study recommendations to the City Council prior to the end of 2012 and prior to commencing the Prop. 218 public notice process.
6. Assist City staff in preparing a Notice of Public Hearing on proposed water and sewer rates.
7. Present study recommendations during a public hearing conducted by the City Council.
8. Attend one meeting with staff near the outset of the study, and up to three conference calls as needed during the study.

This scope of services does not include (1) multiple financial plan scenario analyses or options, (2) major rate structure changes or alternative analyses, (3) review or refinement of non-residential sewer strength classifications, (4) additional City Council meetings or public outreach/education assistance, or (5) significant changes in project schedule. In addition, it assumes that detailed customer and water use data can be extracted from the utility billing system and provided in a timely manner and in a suitable format for rate analyses.

The total cost of the water and sewer rate study shall not exceed \$32,500, including expenses. Invoices for work performed shall be prepared monthly reflecting the actual time and expenses incurred, up to the not-to-exceed limit of the Agreement. Invoices shall be paid within 30-days. Bob Reed's hourly billing rate is \$260, and will increase to \$275 in 2013. Expenses shall be billed at cost.

EXHIBIT B

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Services shall constitute a legal day's work under this Agreement.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Services is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815; which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subconsultants shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the Services for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Services are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file with the City and shall be made available on request. The Consultant and subconsultants engaged in the performance of the Services shall pay no less than these rates to all persons engaged in performance of the Services.
- B. In accordance with Labor Code Section 1775, the Consultant and any subconsultants engaged in performance of the Services shall comply Labor Code Section 1775 which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the Services that the Consultant or any subconsultant pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or

subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subconsultant in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subconsultant had knowledge of their obligations under the California Labor Code. The Consultant or subconsultant shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subconsultant worker engaged in performance of the Services is not paid the general prevailing per diem wages by the subconsultant, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The Agreement executed between the Consultant and the subconsultant for the performance of part of the Services shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subconsultant by periodic review of the subconsultant's certified payroll records.
3. Upon becoming aware of a subconsultant's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subconsultant for performance of the Services.
4. Prior to making final payment to the subconsultant, the Consultant shall obtain an affidavit signed under penalty of perjury from the subconsultant that the subconsultant has paid the specified general prevailing rate of per diem wages employees engaged in the performance of the Services and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subconsultant engaged in performance of the Services, shall keep accurate payroll records 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 in performance of the Services. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any Services performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subconsultants engaged in performance of the Services, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- E. In case it becomes necessary for the Consultant or any subconsultant engaged in performance of the Services to employ on the Services any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Services to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.