

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Precision Civil Engineering, Inc., a California Corporation, whose address of record is 1234 O Street, Fresno, California 93721 (hereinafter referred to as "Consultant").

WHEREAS, City does not have sufficient personnel to perform City Engineer duties; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide such engineering services.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the engineering services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the City Manager or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **RESERVED.**

3. **TERM.** The term of this Agreement shall be from the effective date of this Agreement for a period of six (6) months, unless earlier terminated as provided herein.

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under

the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "B". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of One Hundred Seventy Five Thousand Dollars \$175,000.00.

5. METHOD OF PAYMENT. Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. RECORDS. It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. CONSULTANT'S BOOKS AND RECORDS. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. INDEPENDENT CONTRACTOR. It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event 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 the City, Consultant shall indemnify, protect, defend, and hold harmless the 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.

9. INDEMNITY. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, protect, defend (with legal counsel reasonably acceptable to City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property, or expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation), that arise out of, pertain to, or relate to, the negligence, recklessness, willful misconduct of Consultant or its employees, subcontractors, or agents in the performance of this Agreement. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its

sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties

or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by providing thirty (30) days notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

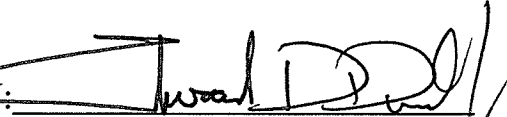
APPROVED AS TO FORM:

BY: Prudence A. nnm 3-4-19
City Attorney Date

ACCOUNT DATA:

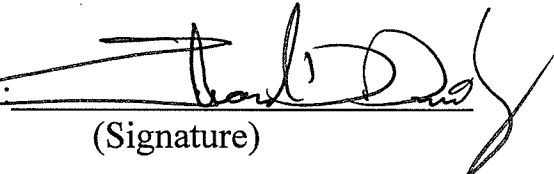
BY: _____
Verified by Finance Officer

CONSULTANT
PRECISION CIVIL ENGINEERING,
INC., A California Corporation

BY: 
(Signature)

Edward D. Dunker Jr.
(Typed Name)

Its: PRESIDENT
(Title)

BY: 
(Signature)

Edward D. Dunker Jr.
(Typed Name)

Its: SECRETARY
(Title)

Taxpayer I.D. No. 74-3054917

ADDRESS: 1234 O Street
Fresno, CA 93721

TELEPHONE: (559) 449-4500

FAX: (559) 449-4515

E-MAIL: _____

EXHIBIT A
SCOPE OF WORK
On-Call/Staff Augmentation Services

Consultant shall provide a variety of anticipated and requested services required by the City of Merced over the contract period. Consultant shall also perform additional tasks within the Consultant's area of expertise as requested and approved by the City Manager or Director of Public Works. Services generally will include:

- Executive Team meeting attendance as requested
- City Council staff report preparation as requested
- City Council meeting attendance as requested
- Planning Commission meeting attendance as requested
- Traffic Investigations, coordination and resolutions
- Technical and Policy Review and response to:
 - o Regional, State and Federal funding programs
 - o Issues requiring engineering review/analysis/recommendations
 - o Outside agency and industry questions/issues
 - o General Correspondence
- Technical review of outside Agency reports/studies
- Development conditions, plan check and meeting attendance
- Capital Improvement Program Support
- Grant Funding application preparation

Consultant's personnel shall be deemed to be agents of the City while performing such services, provided such services are within the scope of work authorized by this Contract. Consultant has specified that Michael Beltran shall represent the City as City Engineer. Any changes to consultant's assigned representative shall require prior approval by the City Manager or Assistant City Manager.

In addition to the work expectations outlined in the attached City Engineer Job Description, Consultant's specific areas of services include, but are not limited to, the following:

- Provide qualified and experienced individual(s) to represent the City as City Engineer;
- May provide additional staff support upon request from the City Manager or Assistant City Manager.
- Provide development processing, plan and map checking, and on-site oversight for new development activity as directed;
- May assist with City Surveyor review and approval duties that includes Map

review, legal descriptions, lot line adjustments, and sign/stamp all documents in technical compliance with the City ordinances and the State Map Act

- Research, prepare, and coordinate grant funding requests;
- Coordinate the City's transportation program with the Merced County Association of Governments, California Transportation Commission, California Department of Transportation, and other local, regional, State, and Federal programs;
- Support and administer the City's Engineering Department Budget and Capital Improvement Program Budget, initiating capital improvement projects and programs, defining project scope, determining project budget and financial resources;
- As part of developing the City's long-range Capital Improvement Program, undertake a comprehensive review of all finance programs currently underway or proposed including all debt finance programs, developer fee programs, specific development finance plans, other regional, State, and Federal funding programs;
- Develop specific finance plans, lighting and landscape districts, and strategies necessary to implement development projects in the City;
- Provide Assessment Engineering for CFDs (Mello-Roos) and 1913/15 Act Assessment Districts;
- Prepare, review, and administer public facilities infrastructure master plans;
- Prepare and issue consultant Requests for Proposal, select and manage consultants, and assure compliance with design standards and funding source requirements;
- Provide project management services for the preparation of in-house contract documents and specifications for public infrastructure projects, recommendation for project award; negotiation and administration of contracts for construction projects;
- Provide leadership, mentoring and training to in-house City staff;
- Provide limited design services for various public works projects;
- Provide support and management of environmental documentation, permits and Real Estate services for City and Private Development projects;
- Assist with and manage appropriate levels of proactive maintenance of the City's infrastructure;
- May manage third party agreements with the City;

- Provide City Traffic Engineering related services such as traffic safety investigations, speed zone surveys, route planning, corridor analysis, capacity evaluations, bicycle and pedestrian facilities analysis, traffic impact reports, computer modeling, congestion management programs, traffic signal and control systems, traffic management plans for construction zones; parking facilities, street signage and marking programs, and street lighting;
- Assist with ADA Transition Plan;
- Provide creative solutions to difficult and unforeseen problems;
- Keep City staff abreast in current technology, materials, grant funding availability and methods in the Public Works arena;
- Provide services to support other City departments as requested such as administrative, City Clerk Services, Finance, and Accounting, Information Technology; and
- Work with the City Attorney in the preparation of ordinances and agreements.

Limitations of Budgetary Authority:

All decisions made by Consultant on behalf of the City regarding the commitment or use of City funds, including in-kind services and future funding commitments, requires prior approval of the City Manager or Assistant City Manager.

CITY ENGINEER

DEFINITION

Under administrative direction, to plan, organize, direct, and manage the City Engineer functions of the City of Merced; to be responsible for the development, organization, and administration of City capital improvement projects; to develop and update engineering standards; to perform a variety of the most difficult and complex professional office and field engineering work; to prepare plans, designs, and specifications for a variety of City projects; to review work prepared by outside consultants; to prepare engineering reports; to supervise, train, and evaluate work for staff assigned to the City Engineer function; to monitor work-flow and seek outside consultants to maintain Capital Improvement Project schedule; to provide professional engineering consultation for the City Council, City Manager, and other City staff; and to do related work as required.

DISTINGUISHING CHARACTERISTICS

This is the top level management classification for the position which has responsibility for managing and directing the services and functions of the Office of the City Engineer, as well as serving as the primary engineering advisor for the City Council, City Manager, and City staff.

REPORTS TO

City Manager, through the Director of Development Services

CLASSIFICATIONS SUPERVISED

Staff assigned to the Engineering Department.

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES *(The following is used as a partial description and is not restrictive as to duties required.)*

Plans, organizes, and manages, and directs the City Engineer functions; has responsibility for the development, management, and oversight of City capital improvement projects; provides supervision, training, and work evaluations assigned technical, professional, paraprofessional, and office support staff; accepts and approves construction work under City contract and private construction of public improvements; analyzes and assesses the impact of pending legislation which may impact City engineering functions; approves final Subdivision and Parcel Maps; approves plans and specifications for engineering and construction projects; oversees the Disadvantaged Business Enterprise Program; oversees traffic and radar speed studies; gives depositions and represents the City in legal matters related to City Engineer responsibilities; manages contracts; negotiates development conditions with developers and engineers; plans regional transportation systems; provides Resident Engineer services on grant projects; seeks and manages grant funding; resolves construction claims and conflicts; performs a variety of special studies and analysis, prepares reports; performs utility rate studies and analysis; provides a variety of consultation regarding engineering and community

CITY ENGINEER - 2

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES (continued)

development problems to City management and staff; develops, updates, and maintains City engineering standards; performs a variety of highly complex professional engineering work; researches data and provides consultation to engineers and contractors; develops and proposes solutions to complex engineering problems; represents the City in meetings with contractors, engineers, developers, property owners, attorneys, community groups, and representatives of other public agencies.

TYPICAL PHYSICAL REQUIREMENTS

Frequently stand and walk; sit for extended periods; normal manual dexterity and eye-hand coordination; lift and move objects weighing up to 25 pounds; corrected hearing and vision to normal range; verbal communication; use of engineering and office equipment, including computer, telephone, calculator, copiers, and FAX.

TYPICAL WORKING CONDITIONS

Work is performed in an office environment; may work outside; some exposure to weather and temperature variances; exposure to dust; continuous contact with other staff and the public.

DESIRABLE QUALIFICATIONS

Knowledge of:

Principles of public and engineering administration.

Capital improvement project, planning, development, and administration.

Comprehensive knowledge of the theory, principles, and practices of civil engineering and their application to the design and preparation of engineering specifications, and construction of public works facilities, including roads, bridges, drainage systems, airports, and water and wastewater facilities.

Laws, rules, regulations, and policies affecting public works engineering.

Construction methods, materials, and equipment.

Proper inspection methods and procedures.

Contract development and administration.

Uses of computers and computer applications in professional engineering.

Principles of engineering management, supervision, training and employee evaluation.

Ability to:

Plan, organize, and manage the City Engineer functions of the City.

Plan, develop, and administer City capital improvement projects.

Provide a variety of engineering consultation to City elected officials, management, and staff.

Develop and administer grants.

Plan and oversee project scheduling, completion, and acceptance (at design and construction stages).

Supervise, train, and evaluate professional, paraprofessional, technical engineering, and office support staff.

CITY ENGINEER - 3

DESIRABLE QUALIFICATIONS (continued)

Ability to: (continued)

Perform a wide scope of the most professional engineering work in the preparation of plans, designs, and specifications for public works and City facility development, construction, and maintenance.

Prepare a variety of engineering reports.

Conduct engineering reviews of designs, plans, and specifications prepared by others.

Gather, organize, analyze, and present a variety of technical engineering and statistical data.

Perform construction project administration, ensuring compliance with plans, specifications, and contracts.

Use a computer and appropriate software in professional engineering and administrative work.

Effectively represent the City Engineering Department in contacts with the public, other City staff, and other government agencies.

Establish and maintain cooperative working relationships.

Training and Experience:

Any combination of training and experience which would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the required knowledge and abilities would be:

Thorough professional engineering experience including considerable managerial experience in the direction of varied capital improvement projects and programs, and graduation from an accredited college or university with specialization in civil engineering, public administration or related field, and eight years of experience in a managerial or supervisory capacity.

Special Requirements:

Possession of a valid California Driver License.

Possession of current registration as a professional civil engineer in California. Registered Civil Engineer certification to include surveying or Civil Engineer and Land Surveyor registration to meet Subdivision Map Act requirements, desirable at time of appointment. May be required to obtain Land Surveyor registration following appointment to position.

CITY ENGINEER - 4

Reference: City of Merced Personnel Rules and Regulations, Sections 5.05 and 5.07.

The contents of this class specification shall not be construed to constitute any expressed or implied warranty or guarantee, nor shall it constitute a contract of employment. The City of Merced assumes no responsibility beyond the general accuracy of the document, nor does it assume responsibility for any errors or omissions in the information contained herein. The contents of this specification may be modified or revoked without notice. Terms and conditions of employment are determined by the City Manager.

APPROVED 
Chairperson, Personnel Board

DATE 11-13-12

EXHIBIT B

Rate Schedule

2019 Rate Schedule:

Senior Principal/Principal	\$ 205.00/Hr.
Senior Designer/Professional Engineer	\$ 190.00/Hr.
Senior Entitlement Manager	\$ 150.00/Hr.
Project Manager/Licensed Civil Engineer	\$ 170.00/Hr.
Project Engineer II	\$ 140.00/Hr.
Project Engineer I	\$ 120.00/Hr.
Senior CAD Technician	\$ 110.00/Hr.
CAD Technician II	\$ 95.00/Hr.
CAD Technician I	\$ 85.00/Hr.
Professional Licensed Surveyor	\$ 170.00/Hr.
Project Surveyor/LSIT	\$ 135.00/Hr.
Technical Analyst/GIS Specialist	\$ 120.00/Hr.
High-Definition Scanner	\$ 250.00/Hr.
Registration/Flv-Through	\$ 125.00/Hr.
3-Man Survey Crew or GPS	\$ 230.00/Hr.
2-Man Survey Crew or Robotic	\$ 190.00/Hr.
1-Man Survey Crew	\$ 150.00/Hr.
3-Man Survey Crew or GPS	\$ 435.00/Hr.*
2-Man Survey Crew or Robotic	\$ 335.00/Hr.*
1-Man Survey Crew	\$ 195.00/Hr.*
Landscape Architect	\$ 150.00/Hr.
Biologist	\$ 135.00/Hr.
QSP Trained Inspector	\$ 120.00/Hr.
Expert Witness (Deposition)	\$ 300.00/Hr.
Expert Witness (Trial)	\$ 400.00/Hr.
Clerical	\$ 70.00/Hr.
Mileage	\$ 0.600/Mile