

DISCOVER LIFE'S POSSIBILITIES



LABOR COMPLIANCE PROGRAM

FOR PROPOSITION 84 FUNDED PROJECTS ONLY

City of San Marcos, CA

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Contact:

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TABLE OF CONTENTS

TABLE OF CONTENTS	2
SECTION 1: INTRODUCTION	5
SECTION 2: CONFLICT OF INTEREST	7
SECTION 3: REQUEST FOR PAYROLL RECORDS	9
SECTION 4: LABOR COMPLIANCE PROGRAM	12
Article I - PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS	12
1. Types of Contracts to Which Prevailing Wage Requirements Apply.....	12
Article II - COMPETITIVE BIDDING ON CITY PUBLIC WORKS CONTRACTS.....	13
Article III - JOB START MEETING	13
Article IV - CONTRACTOR PAYROLL REQUIREMENTS; REVIEW AND AUDIT PROCEDURES	14
Certified Payroll Records Required	14
Payment to Employees.....	16
Apprentices	16
Review and Audit of Certified Payroll Records	18
Article V - REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER	20
4. For Failure to Pay Fringe Benefits	21
5. Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices	21
6. For the Taking of Kickbacks	21
Article VI - ENFORCEMENT ACTION	22
Duty of the CITY as the Awarding Body.....	22
Withholding Contract Payments When Payroll Records are Delinquent or Inadequate.....	22
Receipt of a Written Complaint	24
Withholding for Violation for Not Paying the Per Diem Prevailing Wage	24
Forfeitures Requiring Approval by the Labor Commissioner	25
Determination of Amount of Forfeiture by the Labor Commissioner	26
Deposits of Penalties and Forfeitures Withheld	28
Article VII - NOTICE OF WITHHOLDING OF CONTRACT PAYMENTS; REVIEW THEREOF; AND SETTLEMENT AUTHORITY.....	28
Notice of Withholding of Contract Payments	28
Review of Notice of Withholding of Contract Payments	29
Settlement Authority	30
Article VIII - DISTRIBUTION OF FORFEITED SUMS.....	31
Article IX - OUTREACH ACTIVITIES	31
Providing Information to the Public	32



In-service Management training on the LCP	32
Article X - ANNUAL REPORTS	32
ATTACHMENT A	34
CHECKLIST OF LABOR LAW REQUIREMENTS	34
ATTACHMENT B: Audit Record Form	37
AUDIT RECORD FORM	37
ATTACHMENT C: Notice of Withholding of Contract Payment.....	42
TO: 42	
TO: 42	
ATTACHMENT D: Notice of Temporary Withholding of Contract Payment	45
ATTACHMENT E: Notice of Transmittal	49
ATTACHMENT F: Notice of Opportunity to Reivew Evidence	50
ATTACHMENT G: Public Works Form 100	53
SECTION 5 IMPLEMENTATION PLAN	54
SECTION 6 OPERATION MANUAL.....	55
SECTION 7 PROCEDURES.....	58
SECTION 8 FORMS	59
PREVAILING WAGE CONTRACTOR INFORMATION HANDOUT	60
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:.....	69
Travel time and subsistence pay as provided for in Labor Code section 1773.8.	69
CONTRACT AWARD INFORMATION	84
TRAINING FUND CONTRIBUTIONS	88
CONTRACTOR FRINGE BENEFIT STATEMENT	90
Original Request: 02/08/00.....	This Re
Report of Action for Prevailing Wage Violations	103
WITHHOLDING AMOUNT CALCULATION	106
REQUEST FOR APPROVAL OF FORFEITURE	121
1. AWARDING BODY / THIRD PARTY LCP:.....	121



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SECTION 1: INTRODUCTION

The City of San Marcos ("CITY"), a charter city, institutes this Labor Compliance Program ("LCP") for the purpose of implementing its policy relative to the labor compliance provisions of state and federally-funded public works contracts and specifically to comply with the provisions of Labor Code section 1771 pertaining to the use of public funds. This LCP contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as the CITY's policies and contract provisions, and is specific only to projects funded by Proposition 84.

A Labor Compliance Program shall have a duty to the Director to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and these regulations in a manner consistent with the practice of the Labor Commissioner. It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions. It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code Section 1742(b) and sections 17201-17270 of Title 8 of the California Code of Regulations

The California Labor Code section 1770, et seq., and the Public Contracting Code section 20133 requires that contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Office of Policy Research and Legislation ("OPRL").

The CITY adheres to the statutory requirements as set forth in Labor Code section 1771.5(b). Further, it is the intent of the CITY to actively enforce this LCP by monitoring applicable CITY construction sites for the payment of prevailing wage rates, and by requiring contractors and subcontractors having workers on applicable CITY sites to submit copies of certified payroll records demonstrating their compliance with the payment of prevailing wage rates.

It is the responsibility of the CITY Labor Compliance Program to enforce prevailing wage requirements, consistent with the policy of the state as expressed in Labor Code Section 90.5(a). A Labor Compliance Program shall take reasonable, vigorous, and prompt action to (1) determine whether violations exist, and (2) enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. A Labor Compliance Program shall neither avoid use of its enforcement authority based on cost considerations nor shall it use that authority in an unreasonable manner to gain leverage over a contractor or subcontractor. Unreasonable use of enforcement authority includes, but is not necessarily limited to, prolonged or excessive withholdings of contract payments without making a determination that a violation has occurred.

Should applicable sections of the Labor Code or Title 8 of the California Code of Regulations undergo alteration, amendment, or deletion, the CITY will modify the affected portions of this program accordingly.

The CITY's Labor Compliance Officer ("LCO") shall be responsible for implementation and enforcement of the CITY's LCP.

SECTION 2: CONFLICT OF INTEREST

The CITY, as the awarding body whose employees operate the CITY's LCP, shall determine and designate the employees and/or consultants who participate in making governmental decisions. (California Code of Regulations, tit.8, section 16430.) The designated employees and/or consultants shall file Statement of Economic Interest (Fair Political Practices Commission ("FPPC") Form 700) with the filing officer of the CITY and comply with other applicable requirements of the Political Reform Act (Gov. Code, section 87100, et seq.).

Government Code section 82019, in pertinent part, defines a designated employee as "any officer, employee, member, or consultant of any agency whose position with the agency ...[i]s designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest." (Gov. Code, § 82019, subd. (a)(3).) An employee or a consultant is considered a public official and therefore subject to the Political Reform Act when either makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modifications by another public official or government agency. (Cal.Code Regs., tit. 2, § 18701, subd. (a)(1)(A)(iii).)

The determination is made according to the factors set forth in California Code of Regulations, tit. 2, Sections 18701 et seq.:

1. Determine whether the employee or consultant is making, participating in making, or using his or her official position to influence the making of a governmental decision. (Cal.Code Regs., tit. 2, § 18701, subd. (a).)
2. If yes, ascertain the economic interest and determine whether the economic interest is directly or indirectly involved in the governmental decision. (Cal.Code Regs., tit. 2, §§ 18702 – 18702.3.)
3. If an economic interest is involved, the materiality of the effect of the decision on the economic interest must be ascertained. (Cal.Code Regs., tit. 2, § 18705.) Further, the effect of the governmental decision on the employee or the consultant's economic interests must be distinguished from the governmental decisions effect on the general public.
4. If a determination is made that all of these are affirmative, then there is a conflict of interest.
5. However, the following exceptions exist in the making or participating in making a governmental decision:
 - a. Those governmental decisions or actions by an employee or consultant that is solely ministerial, secretarial, manual, or clerical.

- b. Actions where the employee or the consultant appears before a government agency on a matter related to his or her own personal interests or that of their immediate family;
- c. Communicates with the general public or the press; and
- d. Negotiates his or her own compensation.

(Cal.Code Regs., tit. 6, § 18702.4.)

SECTION 3: REQUEST FOR PAYROLL RECORDS

Requests may be made by any person for certified copies of payroll records. Requests shall be made to any of the following:

- (1) the body awarding the contract, or
- (2) any office of the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards.

(b) Requests for certified copies of payroll records pursuant to Section 1776 of the Labor Code may be made by any person. However, any such request shall be in writing and contain at least the following information:

- (1) The body awarding the contract;
- (2) The contract number and/or description;
- (3) The particular job location if more than one;
- (4) The name of the contractor;
- (5) The regular business address, if known.

NOTE: Requests for records of more than one contractor or subcontractor must list the information regarding that contractor individually, even if all requests pertain to the same particular public works project. Blanket requests covering an entire public works project will not be accepted; unless contractor and subcontractor responsibilities regarding the project are not clearly defined.

(c) Acknowledgment of Request. The public entity receiving a request for payroll records shall acknowledge receipt of such, and indicate the cost of providing the payroll records based on an estimate by the contractor, subcontractor or public entity. The acknowledgment of the receipt of said request for payroll records may be accomplished by the public entity's furnishing a copy of its written correspondence requesting certified copies of the payroll records sent to the specific contractor pursuant to Section 16400(d) below, to the person who requested said records.

(d) Request to Contractor. The request for copies of payroll records by the requesting public entity shall be in any form and/or method which will assure and evidence receipt thereof. The request shall include the following:

- (1) Specify the records to be provided and the form upon which the information is to be provided;

(2) Conspicuous notice of the following:

(A) that the person certifying the copies of the payroll records is, if not the contractor, considered as an agent acting on behalf of the contractor; and

(B) that failure to provide certified copies of the records to the requesting public entity within 10 working days of the receipt of the request will subject the contractor to a penalty of one hundred (\$100.00) dollars per calendar day or portion thereof for each worker until strict compliance is effectuated;

(3) Cost of preparation as provided in Section 16402; and

(4) Provide for inspection.

(e) Inspection of Payroll Records. Inspection of the original payroll records at the office of the contractor(s) pursuant to subdivision (b) of Section 1776 of the Labor Code shall be limited to the public entities upon reasonable written or oral notice.

NOTE: Authority cited: Sections 54, 1773.5 and 1776, Labor Code. Reference: Sections 1773.5 and 1776, Labor Code.

Reporting Format. The format for reporting of payroll records requested pursuant to Labor Code Section 1776 shall be on a form provided by the public entity. Copies of the forms may be procured at any office of the Division of Labor Standards Enforcement (DLSE) throughout the state and/or:

Office of Policy, Research and Legislation
P.O. Box 420603
San Francisco, CA 94101
ATTENTION: Prevailing Wage Unit

Acceptance of any other format shall be conditioned upon the requirement that the alternate format contain all of the information required pursuant to Labor Code Section 1776. If, however, the contractor does not comply with the provisions of Labor Code Section 1776, the Labor Commissioner may require the use of DIR's suggested format, "Public Works Payroll Reporting Form" (Form A-1-131).

(b) Words of Certification. The form of certification shall be as follows: I, _____ (Name-print) the undersigned, am _____ (position in business) with the authority to act 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 _____ (description, no. of pages) are the originals or true, full and 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. Date: _____
Signature: _____

A public entity may require a more strict and/or more extensive form of certification.

NOTE: Authority cited: Sections 54 and 1773.5, Labor Code. Reference: Section 1776, Labor Code.

The cost of preparation to each contractor, subcontractor, or public entity when the request was made shall be provided in advance by the person seeking the payroll record. Such cost shall be \$1 for the first page of the payroll record and .25 cents for each page thereafter, plus \$10 to the contractor or subcontractor for handling costs. Payment in the form of cash, check or certified money order shall be made prior to release of the documents to cover the actual costs of preparation.

NOTE: Authority cited: Section 1776, Labor Code. Reference: Section 1776(h), Labor Code.

Records received from the employing contractor shall be kept on file in the office or entity that processed the request for at least 18 months following completion and acceptance of the project. Thereafter, they may be destroyed unless administrative, judicial or other pending litigation, including arbitration, mediation or other methods of dispute resolution, are in process. Copies on file shall not be obliterated in the manner prescribed in subdivision (b) below;

(b) copies provided to the public upon written request shall be marked, obliterated or provided in such a manner that the name, address and Social Security number, and other private information pertaining to each employee cannot be identified. All other information including identification of the contractor shall not be obliterated;

(c) the public entity may affirm or deny that a person(s) was or is employed on a public works contract (by a specific contractor) when asked, so long as the entity requires such information of an identifying nature which will reasonably preclude release of private or confidential information.

NOTE: Authority cited: Sections 54, 1773.5 and 1776, Labor Code. Reference: Section 1776, Labor Code.

SECTION 4: LABOR COMPLIANCE PROGRAM

ARTICLE I - PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720 et seq., and include, but are not limited to, such types of work as construction, alteration, demolition, repair, or maintenance work. The Office of Policy Research and Legislation (OPRL) predetermine the appropriate prevailing wage rates for particular construction trades and crafts by CITY. For more information, see the Sample Prevailing Wage Contractor Information Handout attached hereto as **Form 1**.

1. Types of Contracts to Which Prevailing Wage Requirements Apply

The CITY institutes this general Labor Compliance Program “LCP” for the purpose of implementing its policy relative to the labor compliance provisions of State and Federally-funded public works contracts.

As provided in Labor Code section 1771, an Awarding Body shall require payment of the general rate of per diem wages or the general rate of per diem wages for holiday and overtime work for any public works project of \$1,000 or more.

A project for construction, installation, alteration, demolition, repair, or maintenance work shall be identified as such in the call for bids, and in the contract or purchase order.

If the amount of a contract subject to Labor Code section 1771 is changed and, as a result, exceeds the applicable limit under which the payment of the general rate of per diem wages is not required, workers employed on the contract after the amount due the contractor has reached the applicable limit shall be paid the general rate of per diem wages for regular, holiday or overtime work, as the case may be.

ARTICLE II - COMPETITIVE BIDDING ON CITY PUBLIC WORKS CONTRACTS

The CITY publicly advertises upcoming public works projects to be awarded according to a competitive bidding process. All CITY bid advertisements (or bid invitations) and public works contracts shall contain appropriate language concerning the requirements of the Labor Code. In the case of a contract for which there is no Call for Bids, the applicable date shall be the date of the award of the contract.

Notice of approval of the CITY's Labor Compliance Program shall be given in the Call for Bids and in the contract or purchase order and shall also be posted at the job site. If more than one job site exists or where such posting would endanger public safety, the notice may be posted in the manner prescribed by section 16100(b) of title 8 of the California Code of Regulations.

The notice of an approved Labor Compliance Program shall contain, at the minimum, the effective date of the Director's approval, a telephone number to call for inquiries, questions, or assistance with regard to the LCP, and the name of the agent or office administering the Labor Compliance Program.

ARTICLE III - JOB START MEETING

After the CITY awards the public works contract, and prior to the commencement of the work, the CITY shall conduct a mandatory Job Start meeting (Pre-Construction conference), which shall be conducted by the LCO with the contractor and those subcontractors listed in the contractor's bid documents.

At that meeting, the LCO will discuss the federal and state labor law requirements applicable to the contract, including prevailing wage requirements, the respective record keeping responsibilities, the requirement for the submittal of certified payroll records to the CITY, and the prohibition against discrimination in employment.

The LCO will provide the contractor and each subcontractor attending the Job Start Meeting with a Checklist of Labor Law Requirements (**attached hereto as Attachment A**) and shall discuss the items on the Checklist of Labor Law Requirements at the Job Start Meeting.

The contractors and subcontractors present at the Job Start meeting will be given the opportunity to ask questions of the LCO relative to the items contained in the Checklist of Labor Law Requirements. The Checklist will then be signed by the contractor's representative and the CITY's LCO.

At the Job Start meeting, the LCO will provide the contractor with a copy of the CITY's LCP package which includes: a copy of the approved LCP, the Checklist of Labor Law Requirements, blank certified payroll record forms, fringe benefit statements, and state apprenticeship requirements. A copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861) and Prevailing Wage Rate Determination may be obtained at the Department of Industrial Relations website (<http://www.dir.ca.gov/DLSR.html>) and is available for viewing at the CITY's main office at 1 Center Drive, San Marcos, CA 92069..

It will be the contractor's responsibility to provide copies of the LCP package to all listed subcontractors and to any substituted subcontractor performing work on a CITY project.

ARTICLE IV - CONTRACTOR PAYROLL REQUIREMENTS; REVIEW AND AUDIT PROCEDURES

CERTIFIED PAYROLL RECORDS REQUIRED

The contractor and each subcontractor shall maintain payrolls and basic payroll-related records (i.e. timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working on CITY projects which are subject to the LCP. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, and actual wages paid. Time cards, front and back copies of cancelled checks, daily logs, employee sign-in sheets and/or any other records maintained for the purposes of reporting payroll may be requested by the LCO at any time and shall be provided immediately following the receipt of the request.

See **Forms 6 and 7 attached hereto.**

Submittal of Certified Payroll Records

The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the CITY LCO as required. All certified payroll records shall be accompanied by a statement of compliance signed by the contractor or each subcontractor under penalty of perjury pursuant to Labor Code section 1771.5, subdivision (b)(3) and applicable regulations indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations, and that the classifications set forth for each employee conform with the work performed.

The certified payroll records required by Labor Code section 1776 may be maintained and submitted electronically if so called out in the contract document, and will be subject to all of the following conditions:

- i. The reports must contain all of the information required by Labor Code section 1776, with the information organized in a manner that is similar or identical to how the information is reported on the Department of Industrial Relations' suggested "Public Works Payroll Reporting Form" (Form A-1-131) (**Form 7 attached hereto**);
- ii. The reports shall be in a format and use software that is readily accessible and available to contractors, the CITY, the CITY's Labor Compliance Program, and the Department of Industrial Relations;
- iii. Reports submitted to an awarding body, a Labor Compliance Program, the Division of Labor Standards Enforcement, or other entity within the Department of Industrial Relations must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature;
- iv. The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public pursuant to Labor Code Section 1776(e), whether the records are provided electronically or as hard copies; and
- v. No contractor or subcontractor shall be mandated to submit or receive electronic reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

Full Accountability

Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the trades worker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeable trade. Owner-operators are to be reported by the contractor employing them; rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked and the trade classification descriptive of the work actually done.

The contractor shall (i) provide the records required under this section to the CITY within five (5) days of each payday, and (ii) make available the records for inspection by the Department of Industrial Relations, and (iii) permit representatives of the CITY

and the Department of Industrial Relations to interview trades workers during working hours on the project site.

Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors. Moreover, the prime contractor is responsible for Labor Code violations of its subcontractors in accordance with Labor Code section 1775.

PAYMENT TO EMPLOYEES

Employees shall be paid on a regular basis. An employer must establish a fixed workweek (Sunday through Saturday, for example) and payday (such as every Friday or the preceding day should such payday fall on a holiday). On each and every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

If an individual is called a subcontractor but in fact is merely a journey level mechanic supplying only his/her labor, such individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the prime contractor as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor for purposes of prevailing wage requirements, certified payroll reporting, and workers' compensation laws.

The worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the "Prevailing Wage Determinations" for the class of work actually performed. Any work performed on Saturday, Sunday, and/or on a holiday, or portion thereof, must be paid for hours worked in excess of eight (8) hours in a day and forty (40) hours in a workweek shall be premium pay. All work performed on Saturday, Sunday and holidays shall be paid pursuant to the Prevailing Wage Determination. **See Form 8 attached hereto.**

APPRENTICES

The Labor Compliance Program shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including (A) that any contributions required pursuant to Labor Code Section 1777.5(m) are paid to the appropriate entity, (B) that apprentices are paid no less than the prevailing apprentice rate, (C) that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards, and (D) requiring that the regular prevailing wage rate be paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under

Labor Code Section 1777.5(g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.

Either the CITY or the CITY's Labor Compliance Consultant acting on its behalf shall (A) inform contractors and subcontractors bidding public works about apprenticeship requirements, (B) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Section 1773.3 of the Labor Code, and (C) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program.

Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed. Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons. For additional information, **see Form 2 attached hereto.**

Compliance with California Labor Code section 1777.5 requires all public works contractors and subcontractors to:

- a. Submit contract award information to the Apprenticeship Committee for each apprenticeable craft or trade in the area of the Project; **See Form 3 attached hereto** and
- b. Request dispatch of apprentices from the applicable Apprenticeship Program(s) and employ apprentices on public works projects in a ratio to journeypersons which in no case shall be less than one (1) hour of apprentice work to each five (5) hours of journeyperson work.; **See Form 4 attached hereto** and
- c. Contribute to the applicable Apprenticeship Program(s) or the California Apprenticeship Council in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. If payments are not made to an Apprenticeship Program, they shall be made to the California Apprenticeship Council, Post Office Box 511283, Los Angeles, CA 90051-7838. **See Form 5 attached hereto.**

If the contractor is registered to train apprentices, it shall furnish to the CITY written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. It should be noted that a prior approval for a separate project does not confirm approval to

train on any project. The contractor/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

REVIEW AND AUDIT OF CERTIFIED PAYROLL RECORDS

The primary function of the CITY Labor Compliance Program is to ensure that public works contractors comply with the prevailing wage requirements found in the Public Works Chapter of the Labor Code. This regulation is intended to establish minimum requirements which all Labor Compliance Programs shall meet or exceed in carrying out that function. Definitions found throughout this regulation are intended to provide Labor Compliance Programs and representatives of the Department of Industrial Relations and the Division of Labor Standards Enforcement with common terminology as they each perform their respective roles in prevailing wage enforcement in furtherance of the Labor Code provisions establishing Labor Compliance Programs. This regulation is also intended to confirm that the proactive investigation methods, as described in detail herein, only comprise the minimum obligations required of Labor Compliance Programs to satisfy their duty to the Director to operate a Labor Compliance Program as specified in sections 16428 and 16434.

- i. Payroll records furnished by contractors and subcontractors in accordance with section 16421(a)(3), and in a format prescribed at section 16401 of title 8 of the California Code of Regulations, shall be reviewed by the CITY's Labor Compliance Program as promptly as practicable after receipt thereof, but in no event more than 30 days after such receipt. "Review" for this purpose shall be defined as inspection of the records furnished to determine if (1) all appropriate data elements identified in Labor Code section 1776(a) have been reported; (2) certification forms have been completed and signed in compliance with Labor Code section 1776(b); and (3) the correct prevailing wage rates have been reported as paid for each classification of labor listed thereon with confirmation of payment as outlined below.
- ii. Representatives of the Labor Compliance Program shall conduct in-person inspections at the site or sites at which the contract for public work is being performed ("On-Site Visits"). On-Site Visits may be undertaken randomly or as deemed necessary by the Labor Compliance Program, but shall be undertaken during each week that workers are present at sites at which the contract for public work is being performed. All On-Site Visits shall include visual inspection of (1) the copy of the determination(s) of the Director of Industrial Relations of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2, and (2) the Notice of Labor Compliance Program Approval required to be posted at the job site in accordance with section 16429 above, listing a telephone number to call for inquiries, questions, or assistance with regard to the Labor Compliance Program. On-Site Visits may include other activities deemed necessary by the Labor Compliance Program to independently corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors.

- iii. “Confirmation” of payroll records furnished by contractors and subcontractors shall be defined as an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of “Employer Payments” (as defined at section 16000 of Title 8 of the California Code of Regulations), or any other reasonable method of corroboration. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month. Confirmation shall also be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest to the CITY’s Labor Compliance Program that payroll records furnished by a contractor or subcontractor are inaccurate.

An Audit, as defined herein, shall be prepared by the Labor Compliance Program whenever the Labor Compliance Program has determined that there has been a violation of the Public Works Chapter of the Labor Code resulting in the underpayment of wages. An “Audit” for this purpose shall be defined as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code Sections 1775 and 1813, as determined by the Labor Compliance Program after consideration of the best information available as to actual hours worked, amounts paid, and classifications of workers employed in connection with the public work. Such available information may include, but is not limited to, worker interviews, complaints from workers or other interested persons, all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project. An Audit is sufficiently detailed when it enables the Labor Commissioner, if requested to determine the amount of forfeiture under section 16437, to draw reasonable conclusions as to compliance with the requirements of the Public Works Chapter of the Labor Code, and to enable accurate computation of underpayments of wages to workers and of applicable penalties and forfeitures. An Audit using the forms in Attachment B, when accompanied by a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation and the basis upon which the determination of underpayment was made, presumptively demonstrates sufficiency. Records supporting an Audit shall be maintained by the Labor Compliance Program to satisfy its burden of coming forward with evidence in administrative review proceedings under Labor Code Section 1742 and the Prevailing Wage Hearing Regulations found at sections 17201-17270 of Title 8 of the California Code of Regulations.

After the Labor Compliance Program has determined that violations of the prevailing wage laws have resulted in the underpayment of wages and an audit has been prepared,

notification shall be provided to the contractor and affected subcontractor of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner pursuant to these regulations. The contractor and affected subcontractor shall be provided at least 10 days following such notification to submit exculpatory information consistent with the “good faith mistake” factors set forth in Labor Code Section 1775(a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the Labor Compliance Program reasonably concludes that the failure to pay the correct wages was a good faith mistake, and has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations, the Labor Compliance Program shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code Section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the Labor Compliance Program. For each instance in which a wage deficiency is resolved in accordance with this regulation, the Labor Compliance Program shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall identify the public works project, the contractor or affected subcontractor involved, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency; and the record shall also include a copy of the Audit prepared pursuant to subpart (e) above along with any exculpatory information submitted to the Labor Compliance Program by the affected contractor or subcontractor.

The audit record form (**attached hereto as Attachment B**) demonstrates the sufficient detail that is necessary to verify compliance with Labor Code requirements.

ARTICLE V - REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER

It is the CITY's policy that the public works prevailing wage requirements set forth in the Labor Code, sections 1720 – 1861, be strictly enforced. Therefore, contractors and subcontractors found to be willful violators under Labor Code section 1777.1 shall be referred to the Labor Commissioner for debarment from bidding on or otherwise being awarded any public work contract in California for the performance of construction and/or maintenance services for a period not to exceed three (3) years in duration. The debarment period shall depend upon the nature and severity of the Labor Code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

If an investigation reveals that a willful violation of Labor Code section 1777.1 has occurred, the LCO will make a written report to the CITY and the Labor Commissioner (**see Form 13 attached hereto**) which shall include: (1) an Audit consisting of a comparison of payroll records to the best available information as to the actual hours worked and (2) the classification of workers employed on the public works contract. Six (6) types of willful violations shall be reported:

1. Failure to Comply with Prevailing Wage Rate Requirements

Failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and CITY contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to trades workers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated.

2. Falsification of Payroll Records, Misclassification of Work, and/or Failure to Accurately Report Hours of Work

Falsification of payroll records and failure to accurately report hours of work is characterized by deliberate underreporting of hours of work; underreporting the headcount; stating that the proper prevailing wage rate was paid when, in fact, it was not; clearly misclassifying the work performed by the worker; and any other deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records. Such violations are deemed to be willful violations committed with the intent to defraud.

3. Failure to Submit Certified Payroll Records

Contractors or subcontractors who refuse to comply with a request by the CITY Labor Compliance Program for certified payroll reports or substantiating information and records will be determined to be in willful violation of the Labor Code. Additionally, refusal to correct inaccuracies or omissions that have been discovered will also be determined to be a willful violation of the Labor Code.

4. For Failure to Pay Fringe Benefits

Fringe benefits are defined as the amounts stipulated for employer payments or trust fund contributions and are determined to be part of the required prevailing wage rate. Failure to pay or provide fringe benefits and/or make trust fund contributions on a timely basis is equivalent to payment of less than the stipulated wage rate and shall be reported to the CITY and the Labor Commissioner as a willful violation, upon completion of an investigation and audit.

5. Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices

Failure to pay the correct apprentice rate or classifying a worker as an apprentice when not properly registered is equivalent to payment of less than the stipulated wage rate and shall be reported to the CITY and the Labor Commissioner as a willful violation, upon completion of an investigation and Audit.

6. For the Taking of Kickbacks

Accepting or extracting kickbacks from employee wages under Labor Code section 1778 constitutes a felony and may be prosecuted by the appropriate enforcement agency.

ARTICLE VI - ENFORCEMENT ACTION

DUTY OF THE CITY AS THE AWARDING BODY

- a. Duty to Director of Department of Industrial Relations.

The CITY's Labor Compliance Program has a duty to the Director of the Department of Industrial Relations to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and Chapter 8 of Division 1 of the California Code of Regulations in a manner consistent with the practice of the Labor Commissioner (8 Cal Code Reg 16434 A). It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions. These are available at the Department of Industrial Relations web site (www.dir.ca.gov) and the Office of Policy Research and Legislation link. It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code section 1742(b) and sections 17201 – 17270 of Title 8 of the California Code of Regulations.

- b. Labor Compliance Program Record Keeping Duty

For each public work project subject to a Labor Compliance Program's enforcement of prevailing wage requirements, a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project shall be maintained (**see Form 14 attached hereto**). That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner. Compliance records for a project shall be retained until the later of (1) at least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted, or (2) one year after a final decision or judgment in any litigation under Labor Code section 1742. For purposes of this section, a written summary or report includes information maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format that (1) can be transmitted by e-mail or compact disk and (2) would be acceptable for the filing of documents in a federal or state court of record within this state.

WITHHOLDING CONTRACT PAYMENTS WHEN PAYROLL RECORDS ARE DELINQUENT OR INADEQUATE

The CITY shall withhold contract payments when payroll records are delinquent or inadequate or when, after an investigation, it is established that underpayment of the prevailing wage has occurred. Withholding of contract payments by a Labor Compliance

Program, approved by the Department of Industrial Relations, is authorized by Labor Code section 1771.6 and title 8, California Code of Regulations, section 16435, et seq. The CITY's Labor Compliance Program will refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions.

- a. "Withhold" means to cease payments by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code section 1729.
- b. Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.
- c. "Delinquent payroll records" means those not submitted on the date set in the CITY contract and the Labor Compliance Program.
- d. "Inadequate payroll records" are any one of the following:
 - i. A record lacking any of the information required by Labor Code section 1776;
 - ii. A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;
 - iii. A record remaining uncorrected for one payroll period; after the CITY's Labor Compliance Program has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However, prompt correction by contractor or subcontractor will stop any duty of CITY to withhold if such inaccuracies do not amount to one (1) percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code section 1776 and section 16401 of title 8 of the California Code of Regulations.
- e. The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code section 1771.5, subdivision (b)(5), and it does not require the prior approval of the Labor Commissioner is not mandatory, however. The CITY shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the CITY's LCP has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; *provided that* a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.
- f. When contract payments are withheld under this section, the LCP shall provide the contractor and subcontractor (if applicable) with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, identifying what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the

amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section. Form attached hereto as **Attachment C**.

- g. No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.
- h. In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code section 1776, subdivision (h) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code section 1776, subdivision (h) does require the prior approval of the Labor Commissioner under section 16435 of title 8 of the California Code of Regulations, which the Labor Compliance Program shall obtain.

RECEIPT OF A WRITTEN COMPLAINT

Upon receipt of a written complaint alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the Labor Code, the Labor Compliance Program shall do all of the following:

- a. Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;
- b. Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under Labor Code section 1775, subdivision (c) if the complaint is against a subcontractor;
- c. Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Labor Compliance Program;
- d. Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the Labor Compliance Program; and
- e. Notify the complaining party in writing at least once every 90 days of the status of a complaint that has been resolved by the Labor Compliance Program but remains under review or in litigation before another entity.

WITHHOLDING FOR VIOLATION FOR NOT PAYING THE PER DIEM PREVAILING WAGE

“Amount equal to the underpayment” is the total of the following determined by payroll review, audit, or admission of the contractor or subcontractor:

- i. The difference between the amounts paid to workers and the correct General Prevailing Wage Rate of Per Diem Wages as defined in section 16000 et. seq. of title 8 of the California Code of Regulations;

- ii. The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in section 16000 et seq. of title 8 of the California Code of Regulations and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification, or trade in which they were employed and the amounts paid;
- iii. Estimated amounts of “illegal taking of wages”; and
- iv. Amounts of apprenticeship training contributions paid to neither the program sponsor’s training trust nor the California Apprenticeship Council.

Penalties under Labor Code sections 1775 and 1813:

- i. Pursuant to Labor Code section 1775, the contractor shall, as a penalty to the CITY, forfeit up to two hundred (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages.
- ii. Pursuant to Labor Code section 1813, the contractor shall, as a penalty to the CITY, forfeit one hundred dollars (\$100) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week.

FORFEITURES REQUIRING APPROVAL BY THE LABOR COMMISSIONER

Forfeitures are assessed by the Labor Compliance Program for the violations of the prevailing wage laws and which are proposed to be withheld pursuant to Labor Code Section 1771.6(a). Forfeitures are assessed for the following (1) 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 by the contractor or subcontractor; and (2) penalties assessed under Labor Code sections 1775, 1776 and 1813.

If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1000.00, the forfeitures shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner’s receipt of copies of the following: (1) the Notice of Withholding of Contract Payments authorized by Labor Code section 1771.6(a); (2) an Audit as defined in section 16432(e) of these regulations, and (3) a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation, the basis of the underpayment, and the factors considered in determining the assessment of penalties, if any, under Labor Code section 1775.

The LCP shall request and obtain approval for all other forfeitures from the Labor Commissioner for failure to pay the correct rate of prevailing wages. Failure to pay the correct rate of prevailing wages means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the LCP, and which are appealable by the contractor before the Director of the Department of Industrial Relations under Labor Code sections 1742 and 1742.1 and pursuant to Sections 17201

through 17270 of Title 8 of the California Code of Regulations. Form attached hereto as **Form 16**

Regardless of what is defined as prevailing wages in contract terms, noncompliance with the following are considered failures to pay prevailing wages:

- i. Nonpayment of items defined as “Employer Payments” and “General Prevailing Rate of Per Diem Wages” in section 16000 of title 8 of the California Code of Regulations and Labor Code section 1771;
- ii. Failure to provide complete and accurate payroll records, as required by Labor Code section 1776;
- iii. Paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code section 3077, working under an apprentice agreement in a recognized program;
- iv. Accepting or extracting kickbacks, in violation of Labor Code section 1778;
- v. Engaging in prohibited actions related to fees for registration as a public works employee, in violation of Labor Code section 1779; and
- vi. Failure to pay overtime for work over eight (8) hours in any one day or forty (40) hours in any one week, in violation of Labor Code sections 1813, 1815, section 16200(a)(3)(F) of title 8 of the California Code of Regulations.

DETERMINATION OF AMOUNT OF FORFEITURE BY THE LABOR COMMISSIONER

- a. Where the Labor Compliance Program requests a determination from the Labor Commissioner of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the information specified in subparts (i) through (ix) below.
 - i. Whether the public work has been accepted by the CITY and whether a valid notice of completion has been filed, the dates if any when those events occurred, and the amount of funds being held in retention by the CITY;
 - ii. Any other deadline which if missed would impede collection;
 - iii. Evidence of violation, in narrative form;
 - iv. Evidence of violation obtained under title 8 of the California Code of Regulation section 16432 and a copy of the Audit prepared in accordance with title 8 of the California Code of Regulation section 16432(e) setting forth the amounts of unpaid wages and applicable penalties;
 - v. Evidence that before the request for forfeiture was sent to the Labor Commissioner (A) the contractor and subcontractor were given the opportunity to explain why there was no violation, or that any violation was caused by good faith mistake and promptly corrected when brought to the contractor or subcontractor’s attention, and (B) the contractor and subcontractor either did not do so or failed to convince the Labor Compliance Program of its position;
 - vi. Where the Labor Compliance Program seeks not only wages but also a penalty under Labor Code section 1775 as part of the forfeiture, and the contractor or

- subcontractor has unsuccessfully contended that the cause of violation was a good faith mistake, a short statement should accompany the proposal for a forfeiture, with a recommended penalty amount pursuant to Labor Code section 1775, subdivision (a);
- vii. Where the Labor Compliance Program seeks only wages or a penalty computed at less than \$200 per day as part of the forfeiture and the contractor or subcontractor has successfully contended that the cause of the violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, the file should include the evidence as to the contractor or subcontractor's knowledge of his or her obligation, including the LCP's communication to the contractor or subcontractor of the obligation in the bid invitations, the Job Start Meeting agenda and records, and any other notice given as part of the contracting process. If the amount of wages sought includes overtime, penalties under Labor Code section 1813 should be computed at \$100 per day for each calendar day during which each worker was required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week. With the file should be a statement, similar to that described in (vi above), and recommended penalty amounts, pursuant to Labor Code section 1775, subdivision (a);
 - viii. The previous record of the contractor and subcontractor in meeting their prevailing wage obligations; and
 - ix. Whether the Labor Compliance Program has been granted approval on only an interim or temporary basis under title 8 of California Code of Regulations sections 16425 or 16426 or whether it has been granted extended approval under section 16427.
- b. The file or report shall be served on the Labor Commissioner as soon as practicable after the violation has been discovered, and not less than 30 days before the final payment, but in no event later than 30 days after the filing of a valid Notice of Completion in the Office of the CITY Recorder, whichever occurs last.
 - c. A copy of the proposed forfeiture and the file or report shall be served on the contractor, and subcontractor if applicable, at the same time as it is sent to the Labor Commissioner. The Labor Compliance Program may exclude from the documents served on the contractor and subcontractor copies of documents secured from the contractor or subcontractor during an Audit, investigation, or meeting if those are clearly referenced in the file or report.
 - d. The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to the wages and penalties due.
 - e. The Labor Commissioner's determination of the forfeiture is effective on one of the two following dates:
 - i. For all programs other than those having extended authority under title 8 of the California Code of Regulation section 16427, on the date the Labor Commissioner serves by first class mail, on the Labor Compliance Program, on the CITY, on the

contractor and on the subcontractor, if any, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor or subcontractor is effective if made on the last address supplied by the contractor or subcontractor in the record. The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.

- ii. For programs with extended authority under title 8 of the California Code of Regulation section 16427, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. For such programs, a notice that approval will follow such a procedure will be included in the transmittal of the forfeiture request to the contractor. If the Labor Commissioner notifies the parties of a decision to undertake further review, the Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of notice of further review.

DEPOSITS OF PENALTIES AND FORFEITURES WITHHELD

- a. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture, or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the CITY shall deposit penalties and forfeitures into its General Fund.
- b. Where collection of fines, penalties, or forfeitures results from court action to which the Labor Commissioner and the CITY are both parties, the fines, penalties, or forfeitures shall be divided between the General Funds of the State of California and the CITY, as the court may decide.
- c. All amounts recovered by suit brought by the Labor Commissioner, and to which the CITY is not a party, shall be deposited in the General Fund of the State of California.
- d. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of court action pursuant to Labor Code section 1775, and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who will deal with such wages and benefits in accordance with Labor Code section 96.7.

ARTICLE VII - NOTICE OF WITHHOLDING OF CONTRACT PAYMENTS; REVIEW THEREOF; AND SETTLEMENT AUTHORITY

NOTICE OF WITHHOLDING OF CONTRACT PAYMENTS

After determination of the amount of forfeiture by the Labor Commissioner, the CITY shall provide notice of withholding of contract payments ("Notice" or "NWCP") to the contractor

and subcontractor, if applicable. The Notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the Notice shall be completed pursuant to Civil Procedure Code section 1013 by first-class and certified mail to the contractor and subcontractor, if applicable. The Notice shall advise the contractor and subcontractor (if applicable) of the procedure for obtaining review of the withholding of contract payments. The CITY shall also serve a copy of the Notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the Notice and to any surety on a bond, if their identities are known to the CITY. A sample of the Notice of Withholding of Contract Payments to be utilized by the CITY is **attached hereto as Attachment C, D.**

REVIEW OF NOTICE OF WITHHOLDING OF CONTRACT PAYMENTS

- a. An affected contractor or subcontractor may obtain a review of a NWCP by transmitting a written request for a review hearing to the LCP within sixty (60) days after service of the NWCP. If no hearing is requested within sixty (60) days after service of the Notice, the NWCP shall become final.
- b. Within ten (10) days following the receipt of the request for a review hearing, the LCP shall transmit to the Office of the Director-Legal Unit the request for review and copies of the NWCP, any Audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company or surety that secures the payment of the wages covered by the notice. A copy of the required Notice of Transmittal to be utilized is **Attachment E** to this document.
- c. The CITY may be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code section 17429, subdivision (b) and sections 17201- 17270 of title 8 of the California Code of Regulations.
- d. Upon receipt of a timely request, a hearing shall be commenced within ninety (90) days before the Director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to Government Code section 11502, subdivision (b). The appointed hearing officer shall be an employee of the Department of Industrial Relations, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing within twenty (20) days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Compliance Program subsequent to the twenty (20) day cutoff shall be promptly disclosed to the contractor or subcontractor. A copy of a Notice of Opportunity to Review Evidence pursuant to Labor Code section 1742(b) form attached hereto as **Attachment F**.
- e. The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect. The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.
- f. Within forty five (45) days of the conclusion of the hearing, the Director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of

the Director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Code of Civil Procedure section 1013 by first-class mail at the last known address of the party on file with the Labor Compliance Program. Within fifteen (15) days of the issuance of the decision, the Director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

- g. The Director has adopted regulations setting forth procedures for hearings. The regulations (California Code of Regulations, title 8, chapter 8, subchapter 6, sections 17201-17270) may be found at www.dir.ca.gov and are available for review at the CITY's office located at 1 Center Drive, San Marcos, CA 92069..
- h. An affected contractor or subcontractor may obtain review of the decision of the Director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Code of Civil Procedure section 1094.5 within forty five (45) days after service of the decision. If no petition for writ of mandate is filed within forty five (45) days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.
- i. A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any CITY in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.
- j. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.
- k. This procedure shall provide the exclusive method for review of a NWCP by the CITY to withhold contract payments pursuant to Labor Code section 1771.5.
- l. Note that a release under Civil Code section 3196 may not be posted for the release of funds being withheld for violations of the prevailing wage law.

SETTLEMENT AUTHORITY

A contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b) and may request review of a Labor Compliance Program enforcement action in accordance with Labor Code Sections 1771.6(b) and 1742 and the regulations found at sections 17201-17270 of Title 8 of the California Code of Regulations. The Labor Compliance Program shall have the rights and responsibilities of the Enforcing Agency (as defined in section 17202(f) of Title 8 of the California Code of Regulations), in responding to such a request for review, including but not limited to the obligations to serve notices, transmit the Request for Review to the hearing office, and provide an opportunity to review evidence in a timely manner, to participate through counsel in all hearing proceedings, and to

meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.

If a contractor or subcontractor seeks review of a Labor Compliance Program enforcement action, the Labor Commissioner may intervene to represent the Awarding Body, or to enforce relevant provisions of the Labor Code consistent with the practice of the Labor Commissioner, or both.

Except in cases where the Labor Commissioner has intervened pursuant to 8 California Code of Regulations, section 16439 (b), the Labor Compliance Program shall have the authority to prosecute, settle, or seek the dismissal of any NWCP issued pursuant to Labor Code section 1771.6 and any review proceeding under Labor Code section 1742, without any further need for approval by the Labor Commissioner. Whenever the LCP settles in whole or in part or seeks and obtains the dismissal of a NWCP or a review proceeding under Labor Code section 1742, the Labor Compliance Program shall document the reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commissioner upon request.

ARTICLE VIII - DISTRIBUTION OF FORFEITED SUMS

Before making payments to the contractor of money due under a contract for public work, the CITY shall withhold and retain there from all amounts required to satisfy the NWCP. The amounts required to satisfy the NWCP shall not be disbursed by the CITY until receipt of a final order that is no longer subject to judicial review.

From the amount withheld and/or recovered, the wage claim shall have priority status and be satisfied prior to the amount being applied to penalties. Thus, all workers employed on the public works project who are paid less than the prevailing wage rate shall have priority over all Stop Notices filed against the prime contractor. If insufficient money is withheld or recovered to pay each underpaid worker in full, the money shall be prorated among all workers affected. Workers employed on the public works project who are paid less than the prevailing wage rate shall have PRIORITY over any Stop Notice filed against the contractor pursuant to Civil Code section 3179 et seq.

Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Fund and held in trust for the workers pursuant to Labor Code section 96.7. Penalties shall be paid into the General Fund of the CITY that has enforced this chapter pursuant to Labor Code section 1771.5.

ARTICLE IX - OUTREACH ACTIVITIES

To ensure the successful implementation of the CITY's LCP, there shall be several outreach activities initiated and maintained.

PROVIDING INFORMATION TO THE PUBLIC

The LCO shall be responsible for communication and outreach activities relative to public information on the CITY's LCP:

- a. Regular presentations to contractors at all Job Start Meetings (Pre-Construction conferences).
- b. Ongoing communication via correspondence and on site interviews with workers at CITY job sites which are described in greater detail in the attached Operation Manual.
- c. Periodic meetings with contractor organizations, prime contractors and subcontractors interested in public works contracting.

IN-SERVICE MANAGEMENT TRAINING ON THE LCP

The LCO shall provide ongoing management in-servicing and workshops for the administration of the LCP.

ARTICLE X - ANNUAL REPORTS

The CITY Labor Compliance Program shall submit to the Director an annual report on its operation by no later than August 31 of each year. The annual report shall cover the twelve month period commencing on July 1 of the preceding calendar year and ending on June 30 of the year in which the report is due. For good cause, the Director may authorize a Labor Compliance Program to use a different reporting period and provide for the annual report to be due no later than 60 days following the close of that reporting period. For a Labor Compliance Program approved prior to July 1, 2009, the Director may require the filing of an interim or supplemental report to cover any gap between the reporting period prescribed under former subpart (d) of this section prior to August 1, 2010 and subpart (a).

The CITY annual report shall be made on the appropriate form for the type of Labor Compliance Program that is submitting the report, unless the Director has agreed to a different reporting format for a Program that has been granted extended authority under section 16427 above. A third party Labor Compliance Program that contracted with more than one Awarding Body or Joint Powers Authority during the annual reporting period shall separately report on Labor Code Section 1771.5(b) enforcement activities for each Awarding Body or Joint Powers Authority covered by the report. **(Form 15)**

The Annual Report for a person or entity operating a third party Labor Compliance Program shall also include (1) a certification of compliance with conflict of interest disclosure requirements by employees and consultants who participate in making governmental decisions, as defined under Title 2, California Code of Regulations, section 18701, and (2) a current statement disclosing the information required under section 16426(a)(2), (3) and (5) above.

Information in the Annual Report shall be reported in sufficient detail to afford a basis for evaluating the scope and level of enforcement activity of the Labor Compliance Program. An annual report shall also include such additional information as the Labor Compliance Program may be required to report as a condition of its approval.

A Labor Compliance Program that has ceased operating, either due to the voluntary termination of its program or the revocation of its approval by the Director, shall file a closing annual report within sixty (days) following its last day of operation as an approved program.

ATTACHMENT A
CHECKLIST OF LABOR LAW REQUIREMENTS
FOR REVIEW AT JOB START MEETINGS

(In accordance with Section 16421 of Title 8 of the California Code of Regulations)

The federal and state labor law requirements applicable to the contract are composed of, but not limited to, the following:

1. Payment of Prevailing Wage Rates

The award of a public works contract requires that all workers employed on the project be paid not less than the specified general prevailing wage rates by the contractor and its subcontractors pursuant to Labor Code section 1770 et seq.

The contractor is responsible for obtaining and complying with all applicable general prevailing wage rates for trades workers and any rate changes, which may occur during the term of the contract. Prevailing wage rates and rate changes are to be posted at the job site for workers to view.

2. Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on public works projects pursuant to Labor Code section 1777.5.

3. Penalties

Penalties, including forfeitures and debarment, shall be imposed for contractor/subcontractor failure to pay prevailing wages, failure to maintain and submit accurate certified payroll records upon request, failure to employ apprentices, and for failure to pay employees for all hours worked at the correct prevailing wage rate, in accordance with Labor Code sections 1775, 1776, 1777.7, and 1813.

4. Certified Payroll Records

Pursuant to Labor Code section 1776, contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number, and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee hired in connection with a public works project.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or to his or her authorized representative on request.

Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls weekly to the LCO. In the event that there has been no work performed during a given week, the certified payroll record shall be annotated "No Work" for that week.

5. Nondiscrimination in Employment

Prohibitions against employment discrimination are contained in Labor Code sections 1735 and 1777.6; the Government Code; the Public Contracts Code; and Title VII of the Civil Rights Act of 1964, as amended.

6. Kickback Prohibited

Pursuant to Labor Code section 1778, contractors and subcontractors are prohibited from accepting, taking wages illegally, or extracting "kickback" from employee wages.

7. Acceptance of Fees Prohibited

Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work (Labor Code section 1779); or for filling work orders on public works contracts (Labor Code section 1780).

8. Listing of Subcontractors

Contractors are required to list all subcontractors hired to perform work on a public works project when that work is equivalent to more than one-half of one percent of the total effort (Public Contract Code section 4104.).

9. Proper Licensing

Contractors and subcontractors are required to be properly licensed. Penalties will be imposed for employing workers while unlicensed (Labor Code section 1021 and Business and Professions Code section 7000, et seq. under California Contractors License Law).

10. Unfair Competition Prohibited

Contractors and subcontractors are prohibited from engaging in unfair competition (Business and Professions Code sections 17200-17208).

11. Workers' Compensation Insurance

All contractors and subcontractors are required to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of Labor Code sections 3700 and 1861.

12. OSHA

Contractors and subcontractors are required to comply with the Occupational Safety and Health laws and regulations applicable to the particular public works project.

13. Prohibition against hiring undocumented workers

Federal law prohibits contractors and subcontractors from hiring undocumented workers and requires all contractors and subcontractors to secure proof of eligibility/citizenship from all workers.

14. Itemized wage statements

Contractors and subcontractors are required to provide itemized wage statements to employees pursuant to Labor Code section 226.

The undersigned contractor hereby acknowledges that the CITY has provided the contractor with information regarding each item listed above. In accordance with federal and state laws, and with CITY's policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein.

For the Contractor:

For the CITY

Signature

Date

Signature

Date

Company:_____

ATTACHMENT B: AUDIT RECORD FORM

AUDIT RECORD FORM

(For Use with Section 16432 of Title 8 of the

California Code of Regulations)

An audit record is sufficiently detailed to “verify compliance with the requirements of Chapter 1, Public Works, Part 7 of Division 2,” when the audit record displays that the following procedures have been followed:

1. Audit of the obligation to carry workers’ compensation insurance means producing written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers’ Compensation Insurance Rating Bureau;

2. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public work as to: whether contract award information was received, including an estimate of journey person hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade being paid less than the journey person rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;

3. Audit of the obligation to pass through amounts, made part of the bid, for apprenticeship training contributions to either the training trust or the California Apprenticeship Council, means asking for copies of checks remitted, or when the audit occurs more than thirty (30) days after the month in which payroll has been paid and copies of canceled checks remitted;

4. Audit of “illegal taking of wages” means inspection of written authorizations for deductions (as listed in Labor Code section 224) in the contractor’s files and comparison to wage deduction statements furnished to employees (Labor Code section 226), together with an interview of several employees as to any payments made which are not reflected on the wage deduction statements;

5. Audit of the obligation to keep records of working hours (8 CCR section 16432), and pay not less than required for hours worked in excess of eight (8) hours/day and forty (40) hours/week (8 CCR section 16200(a)(3)(F)), means review and audit of weekly certified payroll records;

6. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly-certified payroll records for compliance with:

a. All elements defined as the General Prevailing Rate of Per Diem Wages in Section 16000 et seq. of Title 8 of the California Code of Regulations, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's office and posted at the public works job site;

b. All elements defined as Employer Payments to Workers set forth in Section 16000 et. seq. of Title 8 of the California Code of Regulations, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's office and posted at the public works job site.

[illegible]

Page 1

DEPT. OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

[illegible]

Page No. —

WAGE DETERMINATION INFORMATION

CODE NO.	CLASSIFICATION	WAGE DETERMINATION NO.
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

PREVAILING WAGE DETERMINATION SUMMARY

CODE NO.	CLASSIFICATION	Effective Date	HOURLY RATE	Contributions	TRAINING	TIME 1/2	HOLIDAY / TRAVEL & SUNDAY SUBSISTENCE	Other hourly Requirements
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

ATTACHMENT C: NOTICE OF WITHHOLDING OF CONTRACT PAYMENT

TO:	TO:
Date:	In Reply Refer to Case No.:

Notice of Withholding of Contract Payments

Awarding Body	Work Performed in County of
Project Name	Contract No. / Project No.
Prime Contractor	
Subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program of the CITY has determined that the contractor and/or subcontractor identified above has committed violations of the California Labor Code. In accordance with Labor Code sections 1771.5 and 1771.6, the CITY hereby issue this Notice of Withholding of Contract Payments.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Failure to pay its workers the applicable prevailing wage rates

The CITY LCO has determined that

- | | |
|---|-----------------------|
| 1) the total amount of wages due is: | \$ <u>0.00</u> |
| 2) the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: | \$ <u>0.00</u> |
| 3) the amount of penalties assessed under Labor Code section 1776 is: | \$ <u>0.00</u> |
| 4) TOTAL WITHHOLD: | \$ <u>0.00</u> |

THE CITY

LABOR COMPLIANCE PROGRAM

By: _____

(Name, Title)

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Program within 60 days after service of the notice. **To obtain a hearing, a written Request for Review form must be transmitted to the following address:** The CITY, 1 Center Drive, San Marcos, CA 92069. A Request for Review shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice (a copy of the notice shall be included as an attachment), and shall also set forth the basis upon which the notice is being contested.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order that shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety, Labor Code Section 1743.

The CITY's Labor Compliance Manager shall acknowledge receipt of the Request for Review by sending the contractor and/or subcontractor a Notice of Opportunity to Review Evidence letter. The contractor and/or subcontractor must transmit the Request to Review Evidence letter to the Labor Compliance Manager. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the CITY's Labor Compliance Manager at the hearing within 20 days of the CITY receipt of the written Request for Review.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any County in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

Opportunity for Settlement Meeting

In accordance with Labor Code Section 1742.1 (b), the CITY Labor Compliance Manager shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of the Notice of Withholding of Contract Payments, afford the contractor or subcontractor the opportunity to meet with the Labor Compliance Program's designee **to attempt to settle a dispute regarding the notice**. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is **in addition** to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made.

Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested. A written request to meet with the Labor Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to the address in the first paragraph, above.

Labor Compliance Liquidated Damages

In accordance with Labor Code section 1742.1 and/or by contract, after 60 days following the service of the Notice of Withholding of Contract Payments, the affected contractor, subcontractor, performance bond surety, and surety on a bond or bonds issued to secure the payment of wages covered by the notice shall be liable for labor compliance liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the notice subsequently is overturned or modified after administrative or judicial review, labor compliance liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor/subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

The amount of Labor Compliance Liquidated Damages available under this notice is **\$0.00**

**ATTACHMENT D: NOTICE OF TEMPORARY WITHHOLDING OF CONTRACT
PAYMENT**

[Name and Contact Information for person issuing Notice]	
Date:	Case or Contract No.:

**NOTICE OF TEMPORARY WITHHOLDING OF CONTRACT PAYMENTS
DUE TO DELINQUENT OR INADEQUATE PAYROLL RECORDS (8 CCR
§16435)**

Awarding Body:	Work performed in the County of:
Project Name and Number (if any):	
Prime Contractor:	
Subcontractor:	

Pursuant to Labor Code §1771.5(b)(5) and 8 CCR §16435, contract payments are being withheld due to delinquent or inadequate payroll records.

Contractor or subcontractor whose payroll records are delinquent or inadequate:

☐ The following payroll records are delinquent (specify weeks and due dates):

☐ The following payroll records are inadequate (specify weeks and ways in which records are deemed inadequate under 8 CCR §16435(d)):

Estimated amount of contract payments due to contractor or subcontractor that are being withheld pursuant to this Notice: _____

See below for additional information, including appeal rights.

Labor Compliance Officer

Prime Contractor Obligations: If contract payments are being withheld due to the delinquency or inadequacy of your subcontractor's payroll records, you are required to cease all payments to that subcontractor until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

Notice of Right to Obtain Review – Expedited Hearing

An affected contractor or subcontractor may request review an expedited hearing to review this Notice of Withholding of Contract Payments under Labor Code §1742. *The only issue in any such review proceeding is whether the specified payroll records are in fact delinquent or inadequate within the meaning of 8 CCR §16435 or whether the Labor Compliance Program has exceeded its authority under 8 CCR §16435.* **To obtain an expedited hearing, a written request must be transmitted to the both the Labor Compliance Program and to the Lead Hearing Officer for the Director of the Department of Industrial Relations, as follows:**

[Name of Labor Compliance Officer,
address, and fax number]

Office of the Director – Legal Unit
Attention: Lead Hearing Officer
Expedited Hearing Request
Fax to: (415) 703-4277

The request for expedited hearing should specify the basis for challenging this Notice and include a copy of this Notice as an attachment. The request should also identify and provide contact information for the person who will represent the contractor or subcontractor at the hearing.

Important Additional Information: This is a Notice of Temporary Withholding of Contract Payments for Delinquent or Inadequate Payroll Records *only*. This is *not* a determination of liability for wages or penalties under Labor Code §§1775 and 1776 or any other statute. *Contract payments cannot continue to be withheld pursuant to this notice, once the required records have been produced.* However, the contractor and subcontractor may still be subject to the assessment of back wages and penalties and the withholding of contract payments if, upon investigation, a determination is made that the contractor or subcontractor violated the public works requirements of the Labor Code.

This Notice only addresses rights and responsibilities under state law. Awarding bodies, labor compliance programs, and contractors may have other rights or responsibilities under federal or local law, where applicable, and may also have additional rights or remedies under the public works contract.

§16435. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate.

(a) "Withhold" means to cease payments by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

(b) "Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.

(c) "Delinquent payroll records" means those not submitted on the date set in the contract.

(d) "Inadequate payroll records" are any one of the following:

(1) A record lacking any of the information required by Labor Code Section 1776;

(2) A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;

(3) A record remaining uncorrected for one payroll period after the Labor Compliance Program has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However, prompt correction will stop any duty to withhold if such inaccuracies do not amount to one (1) percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and section 16401 of Title 8 of the California Code of Regulations.

(e) The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. The Awarding Body shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Compliance Program has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; *provided that* a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

(f) When contract payments are withheld under this section, the Labor Compliance Program shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.

(g) No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

(h) In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.

ATTACHMENT E: NOTICE OF TRANSMITTAL

LABOR COMPLIANCE PROGRAM <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> Review Office - Notice of Withholding of Contract Payments <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> Phone: Fax:	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Transmittal

To: Department of Industrial Relations
 Office of the Director-Legal Unit
 Attention: Lead Hearing Officer
 P. O. Box 420603
 San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated _____, postmarked _____, and received by this office on _____.

Also enclosed please find the following:

_____ Copy of Notice of Withholding of Contract Payments

_____ Copy of Audit Summary

LABOR COMPLIANCE PROGRAM

 By:_____

cc: Prime Contractor
 Subcontractor
 Bonding Company

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

ATTACHMENT F: NOTICE OF OPPORTUNITY TO REVIEW EVIDENCE

TO: CONTRACTOR	FROM: AGENCY
LABOR COMPLIANCE PROGRAM [Insert Agency Name] Review Office - Notice of Withholding of Contract Payments [Insert Agency Address] _____ _____ Phone: Fax:	
Date:	In Reply Refer to Case No.:

Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)

To: Prime Contractor

[Insert Name]

[Insert Address]

_____ SAMPLE

Subcontractor

Please be advised that this office has received your **Request for Review**, dated _____, and pertaining to the Notice of Withholding of Contract Payments issued by the Labor Compliance Program in Case No. _____.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

- (a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.

In accordance with the above Rule, please be advised that the Labor Compliance Program's procedure for you to exercise your opportunity to review evidence is as follows:

Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:

[Insert Agency Name]

[Insert Address]

Attention: [Insert Labor Compliance Officer's Name]

TO: OBMMWC

FROM: CONTRACTOR

Request to Review Evidence

To: [Insert Labor Compliance Officer's Name]
[Insert Name]
[Insert Address]

From: [Contractor/Subcontractor Name]
[Contractor/Subcontractor Address]

SAMPLE

Regarding Notice of Withholding of Contract Payments dated _____.

Our Case No.: _____

The undersigned hereby requests an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review.

Phone No.: _____

Fax No.: _____

ATTACHMENT G: PUBLIC WORKS FORM 100

Project Information

FORM	Form Type: PWC-100	Project Award Date:
AWARDING BODY INFORMATION		
Name:	Primary Contact:	
Address:	Primary Email:	
	Work Phone:	
PROJECT INFORMATION		
Project Name:	Project #:	
Brief Description:	Contract #:	
Contract Amount:	Number of Prime Contractors:	
Total Project Cost:		
Alternative Model:		
Physical Address:	Billing Address:	

Project Information 2

PWC-100	Project Name:	Project #:	Contract #:	Status:
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PROJECT INFORMATION

Project Dates

First Advertised Bid:	Estimated or Actual Start:
Estimated or Actual Completion:	

State Statutes	
State Bond Source	Estimated Bond Amount

Request for DIR/CMU Monitoring and Enforcement in order to qualify in the future for state bond funding for this project: No

Compliance and Agreements:

Is language included in the Contract Award to effectuate the requirements of Section 171, 1774 - 1776, 1777.5, 1813 and 1815 of the Labor Code?	Yes
Will you operate a DIR-Approved Labor Compliance Program (LCP) for this project?	No
Is there a Project Labor Agreement (PLA) associated with this project?	No

Contractor Information

Project Superintendent/Construction Manager:

Email Address	Name	Title	Work Phone
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Project Manager

Email Address	Name	Title	Work Phone
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General Contractor1

CSLB/Certificate Number	NAME	Address	Email	Classification
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SECTION 5 IMPLEMENTATION PLAN

1. LCO shall receive all construction contract work schedules.
2. LCO shall participate in Job-Start (Pre-Construction) meeting.
3. LCO shall provide site monitors with work schedules.
4. Site monitors, both CITY employees and others, shall conduct site interviews and return interview sheets to LCO.
5. LCO shall enter information from interviews into database.
6. LCO shall Review (Review and Confirm are defined in the LCP Manual) certified payroll records from contractor and Confirm information from certified payroll records, or upon receipt of a request or complaint from a worker or other interested person.
7. When payroll records are found to be delinquent or inadequate, LCO shall issue a Notice of Temporary Withholding of Contract Payments Due to Delinquent or Inadequate Payroll Records immediately. **(see Attachment D attached hereto)**
8. When violation is found, a formal Notice of Withholding of Contract Payment is issued. **(see Attachment C attached hereto)**
9. Upon completion of an the Audit, a report shall be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
10. LCO shall prepare and submit public works violation reports, such as reports of willful violations or notice of withholding of contract payments, to the Labor Commissioner as required.
11. LCO shall periodically communicate with contractors, workers, building and trade organizations, and other community entities and provide in-service management to CITY personnel.
12. LCO shall retain prevailing wage records, documentation of Reviews, Audits, and all communication with the Labor Commissioner.
13. LCO shall prepare an Annual Report and submit to the CITY Council, and the Director of the Department of Industrial Relations..

SECTION 6 OPERATION MANUAL

A. SITE VISITATIONS

Representatives of the CITY's Labor Compliance Program shall conduct in-person inspections at the site or sites at which the contract for public work is being performed ("On-Site Visits"). On-Site Visits will be undertaken randomly or as deemed necessary by the CITY's Labor Compliance Program, but shall be undertaken during each week that workers are present at sites at which the contract for public work is being performed. All On-Site Visits shall include visual inspection of (1) the copy of the determination(s) of the Director of Industrial Relations of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2, and (2) the Notice of Labor Compliance Program Approval required to be posted at the job site in accordance with California Code of Regulations section 16429, listing a telephone number to call for inquiries, questions, or assistance with regard to the Labor Compliance Program. On-Site Visits may include other activities deemed necessary by the CITY's Labor Compliance Program to independently corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors.

1. Safety is the paramount factor for any site visit to any CITY construction projects. Do not enter any area that appears unsafe. Site monitors are expected to exercise reasonable caution at all times.

2. All authorized personnel visiting any CITY construction site are required to be properly identified as a CITY representative by wearing visible picture ID's (badge), or identifying themselves as such. Additionally, all authorized personnel are required to follow safety requirements of the construction site.

3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes.

4. Upon arrival at a site, the site monitor will check in at the site superintendent's (contractor's) trailer prior to any interviewing. In the event there is not a construction trailer, you will check in at the site's administrative office. Identify yourself and state the purpose of the visit. Sign in if required to do so. If the site superintendent cites some reason that denies access to the site, promptly and politely remove yourself. Make a note of this occurrence and report to the LCO.

5. Check to see that the following are displayed in the contractor's trailer:

- Prevailing wage sheets posted
- Sign-in Log (if such log is required of contractor)
- Listing of subcontractors on site

If any of these items are not readily visible, remind the contractor that these postings are part of the contractual requirements. On subsequent visits, make sure that these items are posted, or the contractor will be found to be in noncompliance.

6. There will be times when the site superintendent is somewhere on the site and/or there is no contractor present in the trailer. In that situation, you should check in at the project trailer. The project manager and or project superintendent will also be able to tell you which contractors are on the site at that time. If all trailers are empty or locked, try to locate the site project manager or superintendent on the site prior to commencing interviewing.

B. INTERVIEWING

1. Once you have checked in with the site superintendent and obtain access to the site, try to locate tradespersons working in clusters. For instance, several painters, electricians, roofers, etc. working in one area. Approach the workers individually in a non-threatening, professional manner. Identify yourself, indicate that you are a CITY representative, and that you need only a few seconds of their time to ask some very generic questions to ensure that they are receiving the proper rate of pay for the type of work they are doing. Again, do not endanger your safety or that of any tradesperson in conducting these interviews. Do not insist that someone on a scaffold come down for an interview. Do not ask anyone to form a line until you can get to them; allow them to continue working until you can get to them individually.

Any persons missed are usually reached on the next visit. If only one tradesperson is at the site, then interview that person if possible. If you are told that the rest of the crew will be there in an hour, do not wait, unless your total site interviewing will take that length of time. Thirty minutes of interviewing per site is typically sufficient, depending upon the site size and/or number of subcontractors present. Contractor tradesperson should also be interviewed.

Confirmation of payroll records may be accomplished by interviewing workers. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one (1) worker for at least one (1) weekly period with that month.

2. Using the Labor Compliance Site Visitation Interview form (**attached hereto as Form 9**), ask each person the following: name, social security number, employer, title (trade), rate of pay, and task being performed at the time of interview.

3. Should someone decline to speak with you, respect those wishes. If someone asks if this is union-related, tell them no. The CITY works with both open and closed shop trades.

4. If you try to interview someone who does not speak English and you cannot communicate in the appropriate language, try to locate a coworker who can interpret for you. If you find an entire crew unable to speak English and no interpreter, include this in your report to the LCO.

5. If someone refuses to disclose his social security number to you, respect those wishes. However, do assure that person that all information given is kept strictly confidential.

6. If someone does not know their rate of pay (most tradespersons don't know), ask for a guesstimate. If the response is, "whatever prevailing wage is", so indicate on the form.

7. If someone indicates that he is an apprentice, make sure that you ask him what period. These can be anywhere from 1st to 10th. If he's not sure, ask him how many years he has been apprenticed in the specific trade and/or to guesstimate and so indicate on the interview form.

8. ALWAYS thank them for their time.

9. Keep in mind that you are there to collect information only; do not tell them how to do their jobs. Should you witness what you consider a potentially unsafe or unwarranted condition, you are to contact the site inspector or job superintendent of your findings immediately and make a note on your site visitation log of what you observed. Upon your return to the office, report your findings to the LCO.

C. REPORTING

All original interview forms shall be timely submitted to the LCO.

SECTION 7 PROCEDURES

A. CERTIFIED PAYROLL VERIFICATION PROCEDURES FOR THE CITY

1. All construction work schedules shall be provided to the LCO.
2. Upon receipt of certified payroll reports from general/subcontractors once a week, compare information from the Labor Compliance Visitation Log (attached hereto as Form 10) to the contractors certified payroll and the prevailing wage schedule.
3. Compare name and social security number with trade classification listed.
4. Ensure prevailing wage listed is correct for the classification listed using the prevailing wage schedule.
5. Check for employment of apprentices, correct rate of pay, and proper ratio to journey workers.
6. Should certified payroll be delinquent or inadequate, issue a Notice of Temporary Withholding of Contract Payments Due to Delinquent or Inadequate Payroll Records (8 CCR 16435) (attached hereto as Attachment D).
7. In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776 (g) for failure to timely comply with a written request for certified payroll records. The assessment will be sent to the Department of Industrial Relations for approval.
8. Retain all original interview forms and annotate the database as applicable.

B. SITE MONITOR PROCEDURES

1. Receive construction site work schedule from LCO.
2. Schedule the interviews to allow worker interviews in accordance with the confirmation procedures established in the LCP Manual. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one (1) worker for at least one (1) weekly period with that month.
3. Check in with site administrative office/site superintendent.
4. Utilizing the Labor Compliance Site Visitation Interview form (attached hereto as Form 9), conduct interviews with workers.
5. Note on your form any infractions you may observe while conducting the interview.
6. Return interview form to the LCO.
7. Report any infractions you observed to the LCO.

SECTION 8 FORMS

PREVAILING WAGE CONTRACTOR INFORMATION HANDOUT**THE PUBLIC WORKS REQUIREMENTS ARE:**

- (1) The contractor's duty to pay prevailing wages under Labor Code Section 1770 et seq., should the project exceed the exemption amounts;
- (2) The contractor's duty to employ registered apprentices on the public works project under Labor Code Section 1777.5;
- (3) The penalties for failure to pay prevailing wages (for non-exempt projects) and employ apprentices including forfeitures and debarment under Labor Code Sections 1775 and 1777.7;
- (4) The requirement to keep and submit copies upon request of certified payroll records under Labor Code Section 1776, and penalties for failure to do so under Labor Code Section 1776(g);
- (5) The prohibition against employment discrimination under Labor Code Section 1777.6; the Government Code, and Title VII of the Civil Rights Act of 1964;
- (6) The prohibition against accepting or extracting kickback from employee wages under Labor Code Section 1778;
- (7) The prohibition against accepting fees for registering any person for public work under Labor Code Section 1779; or for filing work orders on public works under Labor Code Section 1780;
- (8) The requirement to list all subcontractors under Public Contracts Code Section 4104;
- (9) The requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law, found at Business and Professions Code Section 7000 et seq;
- (10) The prohibition against unfair competition under Business and Professions Code Sections 17200-17208;
- (11) The requirement that the contractor be properly insured for Workers Compensation under Labor Code Section 1861;
- (12) The requirement that the contractor abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project;

(13) The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers.

(14) The requirement to provide itemized wage statements to employees under Labor Code Section 226.

THE AWARDING BODY SHALL:

IN ACCORDANCE WITH CCR 16421

(1) The Call for Bids, Design-Build Request, and the contract or purchase order shall contain appropriate language concerning the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(2) A prejob conference shall be conducted before commencement of the work with contractors and subcontractors listed in the bid or who are required to be identified or prequalified in a Design-Build Contract. At the prejob conference applicable federal and state labor law requirements shall be discussed, and copies of suggested reporting forms furnished. A checklist, showing which federal and state labor law requirements were discussed, shall be kept for each conference. A checklist in the format of Appendix A presumptively meets this requirement.

(3) A requirement that certified payroll records be kept by the contractor in accordance with Labor Code Section 1776 and furnished to the Labor Compliance Program at times designated in the contract, which shall be at least monthly, or within 10 days of any request by the Awarding Body. Use of the current version of DIR's "Public Works Payroll Reporting Form" (A-1-131) and Statement of Employer Payments (PW26) constitute presumptive compliance with the requirement for certified payroll records kept in accordance with Labor Code Section 1776, provided the forms are filled out accurately and completely. These suggested forms are available from the Department of Industrial Relations.

(4) A program for orderly review of payroll records and, if necessary, for audits to verify compliance with the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(5) A prescribed routine for withholding penalties, forfeitures, and underpayment of wages for violations of the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(6) All contracts to which prevailing wage requirements apply shall include a provision that contract payments shall not be made when payroll records are delinquent or inadequate.

(b) To the extent otherwise authorized by law, an Awarding Body or a Joint Powers Authority consisting of two or more Awarding Bodies may contract with a third party to initiate and enforce all or part of its Labor Compliance Program, provided that the third party has been approved by the Director to operate a Labor Compliance Program in accordance with these regulations. However, this subpart (b) shall not be construed as

limiting an Awarding Body's or Joint Powers Authority's authority to contract for services for the operation of its own approved Labor Compliance Program, including services by persons licensed or certified by the State of California to practice one of the following recognized professions: law, architecture, engineering, or accounting.

(c) [reserved]

(d) Nothing in this section or these regulations shall be construed as limiting the responsibility and authority of an Awarding Body to take cognizance of prevailing wage violations under Section 1726 of the Labor Code and take any appropriate action pursuant to and in accordance with that responsibility and authority.

(e) It is the responsibility of a Labor Compliance Program to enforce prevailing wage requirements, consistent with the policy of the state as expressed in Labor Code Section 90.5(a). A Labor Compliance Program shall take reasonable, vigorous, and prompt action to (1) determine whether violations exist, and (2) enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. A Labor Compliance Program shall neither avoid use of its enforcement authority based on cost considerations nor shall it use that authority in an unreasonable manner to gain leverage over a contractor or subcontractor. Unreasonable use of enforcement authority includes, but is not necessarily limited to, prolonged or excessive withholdings of contract payments without making a determination that a violation has occurred.

(f) The failure of an Awarding Body or Labor Compliance Program to comply with any requirement imposed by this subchapter shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Chapter 1 (commencing with Section 1720), Part 7, Division 2 of the Labor Code.

THE LABOR COMPLIANCE PROGRAM SHALL:

IN ACCORDANCE WITH CCR 16434

(a) A Labor Compliance Program shall have a duty to the Director to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and these regulations in a manner consistent with the practice of the Labor Commissioner. It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions. It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code Section 1742(b) and sections 17201-17270 of Title 8 of the California Code of Regulations.

(b) Upon receipt of a written complaint alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the Labor Code, the Labor Compliance Program shall do all of the following:

- (1) Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;
- (2) Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under Labor Code section 1775(c) if the complaint is against a subcontractor;
- (3) Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Labor Compliance Program;
- (4) Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the Labor Compliance Program; and
- (5) Notify the complaining party in writing at least once every 90 days of the status of a complaint that has been resolved by the Labor Compliance Program but remains under review or in litigation before another entity.

(c) The duties of a Labor Compliance Program with respect to apprenticeship standards are as follows:

- (1) Either the Awarding Body or the Labor Compliance Program acting on its behalf shall (A) inform contractors and subcontractors bidding public works about apprenticeship requirements, (B) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Section 1773.3 of the Labor Code, and (C) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.
- (2) The Labor Compliance Program shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including (A) that any contributions required pursuant to Labor Code Section 1777.5(m) are paid to the appropriate entity, (B) that apprentices are paid no less than the prevailing apprentice rate, (C) that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards, and (D) requiring that the regular prevailing wage rate be paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under Labor Code Section 1777.5(g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.

(d) For each public work project subject to a Labor Compliance Program's enforcement of prevailing wage requirements, a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project shall be maintained. That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner. Appendix C following this section provides a suggested format for tracking and monitoring enforcement activities. Compliance records for a project shall be retained until the later of (1) at least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted, or (2) one year after a final decision or judgment in any litigation under Labor Code Section 1742. For purposes of this section, a written summary or report includes information maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format that (1) can be transmitted by e-mail or compact disk and (2) would be acceptable for the filing of documents in a federal or state court of record within this state.

(e) The Labor Commissioner may provide, sponsor, or endorse training on how to enforce prevailing wage requirements, including but not necessarily limited to the subjects of (1) ascertaining prevailing wage requirements and rates from the OPRL, (2) monitoring and investigation under section 16432 above, (3) enforcement responsibilities under this section and sections 16435-16439 below, and (4) procedural requirements and responsibilities as an enforcing agency under Labor Code sections 1741-1743 and 1771.6 and sections 17201-17270 of Title 8 of the California Code of Regulations.

THE CONTRACTOR AND SUBCONTRACTOR SHALL:

- (1) Pay not less than the prevailing wage to all workers, as defined in CCR's section 16000(a), and as set forth in Labor Code sections 1771 and 1774;
- (2) Comply with the provisions of Labor Code sections 1773.5, 1775, and 1777.5 regarding public works job sites;
- (3) Provide workers' compensation coverage as set forth in Labor Code section 1861;
- (4) Comply with Labor Code sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;
- (5) Maintain and make available for inspection payroll records, as set forth in Labor Code section 1776;
- (6) Pay workers overtime pay, as set forth in Labor Code section 1815 or as provided in the collective bargaining agreement adopted by the Director as set forth in Section 16200(a)(3) of Title 8 of the California Code of Regulations; and

- (7) Comply with Section 16101 of these regulations regarding discrimination.
- (8) Be subject to provisions of Labor Code section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Labor Code section 1777.5.
- (9) Comply with those requirements as specified in Labor Code sections 1810 and 1813.
- (10) Comply with other requirements imposed by law.

APPRENTICE TRAINING:

SEE LABOR CODE SECTION 1777.5 (e)

Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within sixty (60) days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for twelve (12) months.

APPRENTICE TRAINING CONTRIBUTION REQUIREMENTS:

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 4, 16200(G) Wage rates, training contributions and apprenticeship contributions.

Apprenticeship rates shall be determined by the Director of Industrial Relations using apprentice wage standards set forth in the collective bargaining agreement and/or approved by the California Apprenticeship Council. A contractor or subcontractor on a public works contract must pay training fund contributions or apprenticeship contributions in one of the following manners:

- 1. into the appropriate craft apprenticeship program in the area of the site of the public work; or
- 2. (if the trust fund is unable to accept such contributions) an equivalent amount shall be paid to the California Apprenticeship Council (CAC) administered by DAS.

3. If neither of the above will accept the funds, cash pay shall be as provided for in Section 16200(a)(3)(I) of Title 8 of the California Code of Regulations.

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 10, SECTION 230.2

§230.2. Payment of Apprenticeship Training Contributions to the Council:

(a) Contractors who are neither required nor wish to make apprenticeship training contributions to the applicable local training trust fund shall make their training contributions to the Council. Contractors may refer to the Director of the Department of Industrial Relations applicable prevailing wage determination for the amount owed for each hour of work performed by journeymen and apprentices in each apprenticeable occupation.

(b) Training contributions to the Council are due and payable on the 15th day of each month for work performed during the preceding month.

(c) Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC-2 Form, Training Fund Contributions, (Rev. 10/91), or the following information:

- (1) The name, address, and telephone number of the contractor making the contribution.
- (2) The contractor's license number.
- (3) The name and address of the public agency that awarded the contract.
- (4) The jobsite location, including the CITY where the work was performed.
- (5) The contract or project number.
- (6) The time period covered by the enclosed contributions.
- (7) The contribution rate and total hours worked by apprenticeable occupation.

CERTIFYING PERSON

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, GROUP 3, ARTICLE 1, 16000 DEFINITIONS.

A person with the authority to affirm under penalty of perjury that the records provided, depict truly, fully and correctly the type of work performed, the hours worked, days worked and amounts paid.

CHANGES TO PREVAILING RATE AFTER AWARD

SEE LABOR CODE SECTION: 1773.6

No effect once the contract notice to bidders is published.

1773.6. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published. Exceptions; classifications marked as a double asterisks.

CREDITS, FOR FRINGE BENEFIT PAYMENTS

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, GROUP 3, ARTICLE 4, 16200(i) Credit Available For Actual Payment of Fringe Benefit Costs up to the Prevailing Amount.

The contractor obligated to pay the full prevailing rate of per diem wages may take credit for amounts up to the total of all fringe benefit amounts listed as prevailing in the appropriate wage determination. This credit may be taken only as to amounts which are actual payments under Employer Payments Section 16000(1)-(3) of Title 8 of the California Code of Regulations. In the event the total of Employer Payments by a contractor for the fringe benefits listed as prevailing is less than the aggregate amount set out as prevailing in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken nor shall any credit decrease the amount of direct payment of hourly wages of those amounts found to be prevailing for straight time or overtime wages.

THE RULE

The contractor can pay amounts for individual benefits different than the state shows in the wage reports so long as it is not more than the total amount permitted for all benefits. Any contractor paid amount less than the total benefit requirements listed in the state wage reports must be paid to the employee.

EMPLOYEE'S SUBJECT TO PREVAILING WAGES

SEE LABOR CODE SECTION 1771, 1772 & 1776 .

All workers on the project shall be paid the wage of the trade they are most closely related to.

1771. Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

1776. (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

EMPLOYER PAYMENTS

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000 DEFINITIONS

(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 apprenticeship or other training programs authorized by Labor Code sections 3071 and/or 3093.

FRINGE BENEFIT PAYMENT REQUIREMENTS

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, GROUP 3, ARTICLE 1, 16000 DEFINITIONS

All fringe benefits must be irrevocably paid to an authorized fund or to the employee. No unpaid amounts are allowed.

FRINGE BENEFITS INCLUDE

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS

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 bonafide benefits for employees, their families and dependents, or retirees as the Director may determine; and

Travel time and subsistence pay as provided for in Labor Code section 1773.8.

FRINGE BENEFITS DO NOT INCLUDE

CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS

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. Interested Party. When used with reference to a particular prevailing wage determination made by the Director, includes:

PAYROLL RECORDS INCLUDE

CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS

All time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.

PERSONS REQUIRED TO RECEIVE PREVAILING WAGES

SEE LABOR CODE SECTIONS:

1771. Prevailing wage shall be paid to all workers employed on public works.

1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

WITHHOLDING CONTRACT PAYMENTS WHEN AFTER AN INVESTIGATION, IT IS ESTABLISHED THAT UNDERPAYMENT OR OTHER VIOLATION HAS OCCURRED

IN ACCORDANCE WITH CCR 16435.5

(a) "Withhold" and "contracts" have the same meaning set forth in sections 16435(a) and 16435(b) of these regulations.

(b) Where the violation is by a subcontractor, the general contractor shall be notified of the

nature of the violation and reference made to its rights under Labor Code Section 1729.

(c) "Amount equal to the underpayment" is the total of the following determined by payroll review, audit, or admission of contractor or subcontractor:

(1) The difference between amounts paid workers and the correct General Prevailing Rate of Per Diem Wages, as defined in Labor Code Section 1773, and determined to be the prevailing rate due workers in such craft, classification or trade in which they were employed and the amounts paid;

(2) The difference between amounts paid on behalf of workers and the correct amounts of Employer Payments, as defined in Labor Code Section 1773.1 and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid;

(3) Estimated amounts of "illegal taking of wages";

(4) Amounts of apprenticeship training contributions paid to neither the program sponsor's training trust nor the California Apprenticeship Council;

(5) Estimated penalties under Labor Code Sections 1775, 1776, and 1813.

(d) The withholding of contract payments when, after investigation, it is established that underpayment or other violations have occurred requires the prior approval of the Labor Commissioner under sections 16436 and 16437 of these regulations.

WITHHOLDING PAYMENTS, JUSTIFICATION

SEE LABOR CODE SECTION: 1727 & 1771.5(b),(5)

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 5, SECTION 16435 AN 16435.5

(a) "Withhold" means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code section 1729.

(b) "Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, or contracts entered into as stages of a single project, may be the subject of withholding.

(c) "Delinquent payroll records" means those not submitted on the date set in the contract.

(d) “Inadequate payroll records” are any one of the following:

- (1) A record lacking the information required by Labor Code section 1776; or
- (2) A record which contains the required information but not certified, or certified by someone not an agent of the contractor or subcontractor; or
- (3) A record remaining uncorrected for one payroll period, after the awarding body has given the contractor notice of inaccuracies detected by audit or record review. Provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to 1 percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and Section 16401 of Title 8 of the California Code of Regulations.

FORFEITURES REQUIRING APPROVAL BY THE LABOR COMMISSIONER

IN ACCORDANCE WITH CCR 16436

(a) For purposes of this section and section 16437 below, "forfeitures" means the amount of wages, penalties, and forfeitures assessed by the Labor Compliance Program and proposed to be withheld pursuant to Labor Code section 1771.6(a), and includes the following: (1) 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 by the contractor or subcontractor; and (2) penalties assessed under Labor Code Sections 1775, 1776 and 1813.

(b) If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1000.00, the forfeitures shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner's receipt of copies of the following: (1) the Notice of Withholding of Contract Payments authorized by Labor Code Section 1771.6(a); (2) an Audit as defined in section 16432(e) of these regulations, and (3) a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation, the basis of the underpayment, and the factors considered in determining the assessment of penalties, if any, under Labor Code Section 1775.

(c) For all other forfeitures, approval by the Labor Commissioner shall be requested and obtained in accordance with section 16437

COURT DECISIONS:

Standard Traffic Services v. Department of Transportation Shasta(case 132667):
partners are due prevailing wages.

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS
28 CIVIC CENTER PLAZA, ROOM 525
SANTA ANA, CA 92701

TO ALL PUBLIC WORKS CONTRACTORS

The Division of Apprenticeship Standards wishes to bring to your attention your responsibilities under California Labor Code section 1777.5 Apprentices on Public Works. (Excerpts from California Labor Code relating to apprentices on public works. DAS-10 is attached).

Compliance with California Labor Code section 1777.5 requires all public works contractors and subcontractors to:

- Submit contract award information within 10 days of contract award, to the applicable Joint Apprenticeship Committee, which shall include an estimate of Journeymen hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. This information may be submitted on the attached form DAS 140.
- Employ apprentices on the public work in a ratio to journeymen of no less than one hour of apprentices work for every five hours of labor performed by a journeyman.
- Pay the apprentice rate on public works projects only to those apprentices who are registered as defined in Labor Code section 3077.
- Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to the local training trust fund must make their contribution to the California Apprenticeship Council (CAC) at P.O. Box 511283 Los Angeles, CA 90051-7838
- Training fund contributions to the CAC are due and payable on the 15th day of each month for work performed during the preceding month.
- Training fund contributions to the CAC shall be paid by check and shall be accompanied by a completed form CAC-2 (attached).

Failure to comply with the provisions of the Labor Code section 1777.5 may result in the loss of the right to bid on all public works projects for a period of one to three years and the imposition of a civil penalty of \$100.00 for each calendar day of noncompliance. Contractors should provide a copy of this material to each subcontractor.

If the Division of Apprenticeship Standards can be of assistance to you, please contact our office at (213) 576-7750

EXCERPTS FROM THE
CALIFORNIA LABOR CODE
RELATING TO APPRENTICES
ON PUBLIC WORKS

Chapter 1 of Division 2:
APPRENTICES ON PUBLIC WORKS

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the joint apprenticeship committee making the request. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

1776. (a) Each contractor and subcontractor 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 by him or her in connection with the public work. 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 work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested

payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, City and CITY, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(j) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which he or she is training or (2) the rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the

employment and training of apprentices in the area or industry affected. However, approval or denial of the apprenticeship program shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that the program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and

apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the

ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the

same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the

area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract. At the end of each fiscal year the California Apprenticeship Council shall make grants to each apprenticeship program in proportion to the number of hours of training provided by the program for which the program did not receive contributions, weighted by the regular rate of contribution for the program. These grants shall be made from funds collected by the California Apprenticeship Council during the fiscal year pursuant to this subdivision from contractors that employed registered apprentices but did not contribute to an approved apprenticeship program. All these funds received during the fiscal year shall be distributed as grants.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000) or 20 working days.

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

1777.6. It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077, of such employee.

1777.7. (a) A contractor or subcontractor that knowingly violates Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty shall be based on consideration whether the violation was a good faith mistake due to inadvertence. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(b) (1) In the event a contractor or subcontractor is determined by the Administrator of Apprenticeship to have

knowingly violated any provision of Section 1777.5, the Administrator shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on or receive any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship.

(2) An affected contractor or subcontractor may obtain a review of the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the order of debarment or civil penalty. If the Administrator receives no request for review within 30 days after service, the order of debarment or civil penalty shall become final for the period authorized.

(3) Within 20 days of the timely receipt of a request for hearing, the Administrator shall provide the contractor or subcontractor the opportunity to review any evidence the Administrator may offer at the hearing. The Administrator shall also promptly disclose to the contractor or subcontractor any nonprivileged documents obtained after the 20-day time limit.

(4) Within 90 days of the timely receipt of the a request for hearing, a hearing shall be commenced before an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to Section 11502 of the Government Code. The contractor or subcontractor shall have

the burden of showing compliance with Section 1777.5. The decision to debar shall be reviewed by a hearing officer or court only for abuse of discretion.

(5) Within 45 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the debarment or civil penalty. The decision shall contain a notice of findings, findings, and an order. This decision shall be deemed the final decision of the Administrator and shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Administrator. Within 15 days of issuance of the decision, the hearing officer may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(6) An affected contractor or subcontractor may obtain review of the final decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the final decision to debar or to assess a civil penalty. If no petition for a writ of mandate is filed within 45 days after service of the final decision, the order shall become final. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record.

(7) The Administrator may file a certified copy of a final order with the clerk of the superior court in any County in which the

affected contractor or subcontractor has property or has or had a place of business.

(c) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has employed the

required number of apprentices on the public works project.

(d) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first-time violation and with the concurrence of the apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

Division of Apprenticeship Standards - APPRENTICES ON PUBLIC WORKS

SUMMARY OF REQUIREMENTS

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

- Submit contract award information to the applicable joint apprenticeship committee, including an estimate of the journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed.

The contract award information shall be in writing, and shall be provided to the applicable apprenticeship committee within 10 days of the date of the agreement or contract award, but in no event later than the first day in which the contractor has workers employed upon the public work. (California Code of Regulations, Title 8, Section 230.)

- Employ apprentices on the public work in a ratio to journeymen of no less than one hour of apprentice work for every five hours of labor performed by a journeyman.
- Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to the local training trust fund must make their contributions to the California Apprenticeship Council, P.O. Box 511283, Los Angeles, CA 90051-7838. Training contributions to the Council are due and payable on the 15th of the month for work performed during the preceding month.

Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC2 form, Training Fund Contributions, or the following information (California Code of Regulations, Title 8, Section 230.2 c):

1. The name, address and telephone number of the contractor making the contribution.

2. The contractor's license number.
 3. The name and address of the public agency that awarded the contract.
 4. The jobsite location, including the CITY where the work was performed.
 5. The contract or project number
 6. The time period covered by the enclosed contributions.
 7. The contribution rate and total hours worked by the apprenticeable occupation(s).
- Pay the apprentice rate on public works projects only to those apprentices who are registered, as defined in Labor Code Section 3077:

Sec. 3077. The term "apprentice" as used in this chapter, means a person at least 16 years of age who has entered into a written agreement, in this chapter called an "apprentice agreement", with an employer or program sponsor. The term of apprenticeship for each apprenticeable occupation shall be approved by the chief, and in no case shall provide for no less than 2,000 hours or reasonably continuous employment for such person for his or her participation in an approved program of training through employment and through education in related and supplemental subjects.

TO BE COMPLETED BY CONTRACTOR

FORM 3

This form should be sent to the Apprenticeship Committee of the craft

or trade in area of the site of the public work. If you have any questions as to the address of the appropriate Apprenticeship Committee,

contact the nearest office of the Division of Apprenticeship Standards

PUBLIC WORKS

CONTRACT AWARD INFORMATION

Name of Contractor:	Contractor's State License No.:
Contractor's Mailing Address -- Number & Street, City, Zip Code:	Area Code & Telephone No.:
Name & Location of Public Works Project:	Date of Contract Award:
	Date of Expected or Actual Start of Project:
Name & Address of Public Agency Awarding Contract: <div>SAMPLE</div>	Estimated Number of Journeymen Hours:

APPRENTICES		
Occupation of Apprentice	Number To Be Employed	Approximate Dates To Be Employed

Check One Of The Boxes Below

Please Note: Your election of options is not to be deemed a request for the immediate dispatch of

apprentices. Contractors must make a separate request for actual dispatch.

Box 1

☐

We will request dispatch of apprentice(s) for this job in accordance with Section 230.1 (A), California Code of Regulations. We voluntarily choose to comply with the applicable Apprenticeship Committee Standards for the duration of this job only, with regard to training apprentices and to the payment of training contributions.

Box 2

☐

We will request dispatch of apprentice(s) for this job in accordance with Section 230.1 (A), California Code of Regulations, but do not agree to be bound by the applicable Apprenticeship Committee Standards in training the apprentices; instead, we agree to employ and train apprentice(s) in accordance with the California Apprenticeship Council regulations, including section 230.1 of the California Code of Regulations,

Box 3

☐

We are already approved to train apprentices by the applicable Apprenticeship Committee and we will employ and train under the Standards. We will request dispatch of apprentices for this job in accordance with Section 230.1 (A), California Code of Regulations.

Signature

:

Typed Name

Title:

Date:

State of California -- Department of Industrial Relations



REQUEST FOR DISPATCH OF AN APPRENTICE – DAS 142 FORM

DO NOT SEND THIS FORM TO DAS

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/databases/das/pwaddrstart.asp> for information about programs in your area and trade. You may also consult your local Division Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards. **Except for projects with less than 40 hours of journeyman work, you must request and employ apprentices in no less than 8 hour increments.**

Date: _____	Contractor Requesting Dispatch:
To Applicable Apprenticeship Committee:	Name: _____
Name: _____	Address: _____
Address: _____	_____
_____	License No. _____
Tel. No. _____ Fax No. _____	Tel. No. _____ Fax No. _____

Project Information:

Contract No. _____

Name of the Project: _____

Address: _____

Dispatch Request Information:

Number of Apprentice(s) Needed: _____ **Craft or Trade:** _____

Date Apprentice(s) to Report: _____ (72 hrs. notice required) **Time to Report:** _____

Name of Person to Report to: _____

Address to Report to: _____

*You may use this form to make your written request for the dispatch of an apprentice. Requests for dispatch must be in writing and submitted at least 72 hours in advance (excluding weekends and holidays) via first class mail, fax or email. **Proof of submission may be required.** Please take note of California Code of Regulations, Title 8, § 230.1 (a) for all applicable requirements regarding apprenticeship requests and/or visit*

<http://www.dir.ca.gov/DAS/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>

DAS 142 (Revised 04/14)

TO BE COMPLETED BY CONTRACTOR

FORM 5

State of California

Department of Industrial
Relations

P.O. Box 511283

Los Angeles, CA 90051-7838

Please use a separate form for each jobsite, listing the occupations for the jobsite. One check, payable to the California Apprenticeship Council, may be submitted for all jobsites and/or occupations. Training fund contributions are not accepted by the California Apprentice Council for federal public works projects, or for non-apprenticable occupations such as laborers, utility technicians, teamsters, etc.

TRAINING FUND CONTRIBUTIONS

California Apprenticeship Council

Name and Address of Contractor/Subcontractor making Contribution	Contractor's License Number
	Contract or Project Number
Name and Address of Public Agency Awarding	Jobsite Location (Including

Contract	County)
	<div>Period Covered by Contribution</div>

Classification(s) or Workers (Carpenter, Plumber, Electrician, Etc.)							Hours	Cont. Rate per Hour	Amou nt

Signatur e	Date
Title	Area Code & Telephone Number

CAC 2

TO BE COMPLETED BY CONTRACTOR

CONTRACTOR FRINGE BENEFIT STATEMENT

Contract Number / Name:	Contract Location:	Today's Date:
-------------------------	--------------------	---------------

Contractor / Subcontractor Name:	Business Address:
<p>In order that the proper Fringe Benefit rates can be verified when checking payrolls on the above contract, the hourly rates for fringe benefits, subsistence and/or travel allowance payment made for employees on the various classes of work are tabulated below</p>	

Classification:	Effective Date:	Subsistence or Travel Pay:
		\$

FRINGE BENEFITS	Health & Welfare	\$	PAID TO: Name:
			Address:
FRINGE BENEFITS	Pension	\$	PAID TO: Name:
			Address:
FRINGE BENEFITS	Vacation/ Holiday	\$	PAID TO: Name:
			Address:
FRINGE BENEFITS	Training and/or Other	\$	PAID TO: Name:
			Address:

Classification:			Effective Date:		Subsistence or Travel Pay:
					\$
	FRINGE BENEFITS	Health & Welfare	\$	PAID TO: Name:	
				Address:	
	FRINGE BENEFITS	Pension	\$	PAID TO: Name:	
				Address:	
	FRINGE BENEFITS	Vacation/ Holiday	\$	PAID TO: Name:	
				Address:	
	FRINGE BENEFITS	Training And/or Other	\$	PAID TO: Name:	
				Address:	
Classification:			Effective Date:		Subsistence or Travel Pay:
					\$
	FRINGE BENEFITS	Health & Welfare	\$	PAID TO: Name:	
				Address:	
	FRINGE BENEFITS	Pension	\$	PAID TO: Name:	

		Address:	
Vacation/	\$	PAID TO:	Name:
Holiday		Address:	
Training	\$	PAID TO:	Name:
And/or Other		Address:	

Submitted: Contractor / Subcontractor

By: Name / Title

Supplemental statements must be submitted during the progress of work should a change in rate of any of the classifications be made.

Cal/IR
California
Department of
Industrial Relations

Page ____ of ____

[illegible]

CERTIFICATION **MUST** be completed
(See reverse side)

OTHER - Any other deductions, contributions and/or payments whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet(s) if necessary.

S = STRAIGHT TIME
O = OVERTIME
SDI = STATE DISABILITY INSURANCE

Form A-1-131 (New 2-80)

NOTICE TO PUBLIC ENTITY

For Privacy Considerations

Fold back along dotted line prior to copying for release to general public (private persons).

(Paper Size then 8-1/2 x 11 inches)

I, _____, the undersigned, am the
(Name – print)

_____ with the authority to act for and on behalf of
(Position in business)

_____, certify under penalty of perjury
(Name of business and/or contractor)

that the records or copies thereof submitted and consisting of _____
(Description, number of pages)

are the originals or true, full, and 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.

Date: _____

Signature: _____

A public entity may require a stricter and/or more extensive form of certification.

**GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS**

CRAFT: # CARPENTER

DETERMINATION: SD-23-31-4-2008-1

ISSUE DATE: August 22, 2008

EXPIRATION DATE OF DETERMINATION: June 30, 2009** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates at (415) 703-4744.

LOCALITY: All localities within San Diego County

CLASSIFICATION (JOURNEYPERSON)	Basic Hourly Rate	Employer Payments					Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday	Training	Other Payment	Hours	Total Hourly Rate	Daily ^a 1 1/2X	Saturday ^a 1 1/2X	Sunday & Holiday 2X
ENGINEERING CONSTRUCTION											
Carpenter (Heavy and Highway Work)	\$37.15	3.95	1.91	3.30 ^b	.42	.31	8	47.04	65.615	65.615	84.19
Bridge Carpenter (Highway Work)	37.28	3.95	1.91	3.30 ^b	.42	.31	8	47.17	65.81	65.81	84.45
Millwright	37.65	3.95	1.91	3.30 ^b	.42	.31	8	47.54	66.365	66.365	85.19
Pile Driver ^c	37.28	3.95	1.91	3.30 ^b	.42	.31	8	47.17	65.81	65.81	84.45
Driver, Wet (up to 50ft. depth) ^d	82.96	3.95	1.91	3.30 ^b	.42	.29	8	92.83	134.31	134.31	175.79
Driver, Standby	41.48 ^e	3.95	1.91	3.30 ^b	.42	.29	8	51.35	72.09	72.09	92.83
Driver's Tender	40.48 ^e	3.95	1.91	3.30 ^b	.42	.29	8	50.35	70.59	70.59	90.83
Assistant Tender	37.48 ^e	3.95	1.91	3.30 ^b	.42	.29	8	47.35	66.09	66.09	84.83

DETERMINATION: SD-23-31-4-2008-2A

ISSUE DATE: August 22, 2008

EXPIRATION DATE OF DETERMINATION: June 30, 2009** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates at (415) 703-4744.

LOCALITY: All localities within San Diego

BUILDING CONSTRUCTION

Carpenter	\$32.30	3.95	1.91	3.30 ^b	.42	-	8	41.88	58.03 ^a	58.03 ^a	74.18
Light Commercial	25.84	3.95	1.91	3.30 ^b	.42	-	8	35.42	48.34 ^a	48.34 ^a	61.26

DETERMINATION: SD-31-741-1-2008-1

ISSUE DATE: August 22, 2008

EXPIRATION DATE OF DETERMINATION: May 31, 2009* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research at (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

LOCALITY: All localities within San Diego

CLASSIFICATION (JOURNEYPERSON)	Basic Hourly Rate	Health and Welfare	Employer Payments				Straight-Time		Overtime Hourly Rate		
			Pension	Vacation/ Holiday	Training	Other Payment	Hours	Total Hourly Rate	Daily 1 1/2X	Saturday/ Sunday 1 1/2X	Sunday 2X
Terrazzo Installer	\$34.10	3.95	1.91	3.15 ^b	0.02	-	8	43.13	60.18	60.18	77.23
Terrazzo Finisher	27.60	3.95	1.91	3.15 ^b	0.02	-	8	36.63	50.43	50.43	64.23

Indicates an apprenticeable craft. Effective as of July 1, 2008, the issuance and publication of the prevailing wage apprentice schedules/apprentice wage rates have been reassigned by the Department of Industrial Relations from the Division of Labor Statistics and Research to the Division of Apprenticeship Standards. To obtain any apprentice schedules/apprentice wage rates, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards website at <http://www.dir.ca.gov/das/das.html>.

^a Rate only applies to the first 4 daily overtime hours and the first 12 hours on Saturday; all other time is paid at the Sunday/Holiday rate.

Saturday in the same workweek may be worked at straight-time rate for the first 8 hours if the employee was unable to complete the 40 hours during the normal workweek for reasons beyond the control of the Employer, such as inclement weather. In addition, for Building Construction only, reasons can be due to major mechanical breakdown or lack of materials beyond the control of the Employer or because the employee voluntarily chooses to miss a scheduled workday, he may voluntarily work on Saturdays at straight time rate.

^b Includes supplemental dues.

^c An additional \$0.50 per hour when handling or working with new pressure-treated creosote piling or timber, or driving of used pressure-treated creosote piling.

^d Shall receive a minimum of 8 hours pay for any day or part thereof.

^e For specific rates over 50 ft. depth, contact the Division of Labor Statistics and Research. Rates for Technicians, Manifold Operators, Pressurized Submersible Operators, Remote Control Vehicle Operators, and Remote Operated Vehicle Operators, as well as rates for Pressurized Bell Diving and Saturation Diving are available upon request.

^f Saturdays in the same work week may be worked at straight-time rates if a job is shut down during the normal work week due to inclement weather, major mechanical breakdown or lack of materials beyond the control of the Employer. Work on Sunday, if it is the 7th consecutive workday, shall be paid at double (2x) the straight-time rate.

^g Rate only applies to the first 4 daily overtime hours and the first 12 hours on Saturday; all other time is paid at the Sunday/Holiday rate.

Saturday in the same workweek may be worked at straight-time rate for the first 8 hours if the employee was unable to complete the 40 hours during the normal workweek due to inclement weather, major mechanical breakdown or lack of materials beyond the control of the Employer or because the employee voluntarily chooses to miss a scheduled workday, he may voluntarily work on Saturdays at straight time rate.

DESCRIPTION:

Engineering Construction

Refers to construction which requires a Class A license and includes bridges, highways, dams and also power plants and other heavy industrial type projects.

Building Construction

The light commercial wage rate shall not apply to institutional type buildings such as public or private schools, hospitals, libraries, museums, or post offices or other similar structures.

RECOGNIZED HOLIDAYS: Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/DLSR/PWD>. Holiday provisions for current or superseded determinations may be obtained by contacting the Prevailing Wage Unit at (415) 703-4774.

TRAVEL AND/OR SUBSISTENCE PAYMENT: In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/DLSR/PWD>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Prevailing Wage Unit at (415) 703-4774.

LABOR STANDARDS INTERVIEW FORM					
Confidential: This document contains personal information and it shall be kept confidential in order to protect against unauthorized disclosure					
I. Project Information					
Project:			Employer:		
Employee Name:			Superintendent & Size of Crew:		
Social Security Number:			Date and Time of Interview:		
Phone Number:			Prime Contractor:		
II. Interview Information					
Work being performed at time of interview:					
Mailing Address:					
How long have you worked for employer:		What date did you begin work on this project:		Last date you worked on this project before today:	
Present job/classification:		Journeyman _____ Apprentice _____		What is your hourly pay rates?	
				Straight	Overtime
				Double Time/Holiday	
Do you work overtime:	Are you paid at 1.5 X for hours over 8 per day/40 per week? If NO, please explain:	Yes No	Yes No	Are you paid: Weekly Biweekly	Do you keep a record of your hours worked: Yes No
Describe the work you have been doing in the past week:			Tools/Equipment Used:		
Do you understand the prevailing wage requirements on this Public Works project:			Do you understand the Apprenticeship requirements on this Public Works project (if applicable):		
Have you ever been threatened, intimidated or coerced into giving up any of your pay:			What deductions other than taxes, social security and disability insurance are taken from your wages:		
Interviewer's Comments/Notes/Observations:					
I HAVE READ THE INFORMATION ON THIS FORM AND CERTIFY IT TO BE CORRECT TO THE BEST OF MY KNOWLEDGE					
Employee's Signature:				Date:	
Interviewer's Signature:				Date:	
III. Payroll Review					
Payroll Auditor's Comments/Notes:					
Payroll Wage:		Payroll Classification:		Reviewed/Certified BY:	

SITE VISITATION LOG

SITE	VISIT DATE	PRIME CONTRACTOR	SUB CONTRACTOR	EMPLOYEE NAME	SOCIAL SECURITY #	POSITION TITLE	TASK PERFORMED AT INTERVIEW	PAY RATE	COMPLIAN T / NON COMPLIAN T	LABOR COMPLIANCE OFFICE COMMENTS
Hoover	9/1/99	Baker	Mills	John Doe	111-11-1111	Plumber	Repairing Plumbing	\$34.19	Compliant	Certified Payroll Records check out
Hoover	9/1/00	Baker	Mills	Mark Baker	222-22-2222	Laborer	Painting	\$10.40	Non	Certified Payroll does not check out with interview

					SAMPLE				

*Sample
Missing Document List*

Prime Contractor:

Project:

Original Request: 02/08/00

1. Apprenticeship Training Agreement (similar to Form DAS 1) must be provided for:
2. Apprenticeship Training Agreement (similar to Form DAS 7) must be provided for:

3. Training Fund Contributions (Form CAC 2 or equivalent) must be provided for:
4. Public Works Contract Award Information (Form DAS 140) with the name, address and phone number of the training program notified by all project contractors must be provided for:
5. Fringe Benefits Statements must be provided for:
6. Signed certified Payroll report or statement of Non-Performance with original signatures must be provided for:

contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package, which must be in the CITY's Labor Compliance Officer within one week of each weekly paycheck. In the event there has been no work performed during a given week, the certified payroll record shall be annotated with the words "No Work" for that week.

7. To determine the required hours for apprentices on this project we will need the contractor to Identify all sub-contractors who will perform work in involving less than \$30,000 or who will be on the project less than 20 calendar days or both.
8. Either the Public Works Payroll Reporting Form (Form A-1-131) or the CITY reporting form must be used.

Report of Action for Prevailing Wage Violations

Name of Project: _____

Contract Number: _____ First Advertised Date: _____

Where Work Is Performed: _____

Date Notice of Completion Filed: _____

Date of Project Acceptance or Current Percent Complete: _____

Name and Address of Prime Contractor:

Project's Scope of Work: _____

SAMPLE

Contractors in Violation of the Labor Code and their Scope of Work: _____

Statement of the Issues Identified to the Contractor:_____

Summary of the Audit Investigation:

CPR Spread Sheets

Labor Code Sections Violated:

Summary of Penalty Assessment Justification:_____

Identify Labor Code 1775 and 1813 Penalties Requested with Calculated Totals:

Is the Violation Due to Mistake, Inadvertence or is it a Willful Failure to Pay the Correct Wages:

Previous Record in Meeting Prevailing Wage Obligations:_____

Identify and Provide All Correspondence:_____

Identify and Provide Any Contractor Response:_____

Recommend Penalty Assessment:_____

WITHHOLDING AMOUNT CALCULATION

Attachment 2

ACME HIGH SCHOOL RE-ROOF

PRIME CONTRACTOR: **ACME ROOFING CO., INC**

Original Issue date: 00-00-0000

Latest Issue: 00-00-0000

REPORTING CONTRACTOR : COMMERCIAL AND INDUSTRIAL ROOFING CO.,INC								CITY's comments		
CONTRACTOR PROVIDED INFORMATION										
Employee Name & Social Security Number	Work Classification	Week Ending	Rate Paid	Fringes Paid	Gross Per Hour	Hours Worked	Gross Amount Paid	Prevailing Wage Rate	Amount they should have been paid	Difference
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00

SAMPLE

					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
Total Contractor Difference:										\$0.00
</										

Sample Single Project Labor Compliance Review and Enforcement Report Form

[Appendix C following 8 CCR §16434]

Awarding Body: _____

Project Name: _____

Name of Approved Labor Compliance Program: _____

Bid Advertisement Date: _____

Acceptance Date: _____

Notice of Completion Recordation Date: _____

Summary of Labor Compliance Activities

1. Contract Documents Containing Prevailing Wage Requirements (Identify)

2. Prejob Conference(s) -- Attach list(s) of attendees and dates

3. Notification to Project Workers of Labor Compliance Program's Contact Person.
(Explain

Manner of Notification for each project work site.)

4. Certified Payroll Record Review

a. CPRs Received From:

<u>Contractor/Subcontractor</u>	<u>For weeks ending ("w/e") through w/e</u>
_____	_____
_____	_____
_____	_____
_____	_____

b. Classifications identified in CPRs and applicable Prevailing Wage Determinations

<u>Classification</u>	<u>Determination No.</u>
_____	_____
_____	_____
_____	_____
_____	_____

5. Further investigation or audit due to CPR review, information or complaint from worker or other interested person, or other reason:

a. Independent Confirmation of CPR Data

	Worker Interviews	Reconciled CPRs with Pay-
<u>Contractor/Subcontractor</u>	<u>(Yes/No)</u>	<u>checks or Stubs (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

b. Employer Payments (Health & Welfare, Pension, Vacation/Holiday)
Confirmation

	Recipients of	Written confirmation
<u>Contractor/Subcontractor</u>	<u>Employer Payments</u>	<u>Obtained (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

c. Contributions to California Apprenticeship Council or Other Approved
Apprenticeship Program

<u>Contractor/Subcontractor</u>	Recipients of <u>Contributions</u>	Written confirmation <u>Obtained (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

d. Additional Wage Payments or Training Fund Contributions Resulting from Review of CPRs

<u>Contractor/Subcontractor</u>	Additional amounts <u>Paid to Workers</u>	Additional <u>Training Fund</u>	Expla- <u>nation</u>
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*

* Use separate page(s) for explanation

6. Complaints Received Alleging Noncompliance with Prevailing Wage Requirements.

Name of <u>Complainant</u>	<u>Date Received</u>	Resolution or <u>Current Status</u>
_____	_____	*
_____	_____	*

_____	_____	*
_____	_____	*

*Use separate page(s) to explain resolution or current status

7. Requests for Approval of Forfeiture to Labor Commissioner

<u>Contractor/Subcontractor</u> <u>Approved/Modified/Denied</u>	<u>Date of Request</u>	
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Litigation Pending Under Labor Code Section 1742

<u>Contractor/Subcontractor</u>	<u>DIR Case Number</u>
_____	_____
_____	_____
_____	_____

9. (Check one): _____ Final report this project _____ Annual report this project

Authorized Representative for Labor Compliance Program

LABOR COMPLIANCE PROGRAM ANNUAL REPORT

Format for Awarding Body that enforces its own Labor Compliance Program for all projects (Labor Code §1771.5(a))

Report for the reporting period _____ to _____
(mm/dd/yyyy) (mm/dd/yyyy)

1. Name of Labor Compliance Program (LCP) :		
2. LCP I.D. Number (assigned by DIR):	3. Date of Initial Approval:	
4. Contact person (include name, title, address, telephone, fax, and e-mail, if available):		
<p>5. Did LCP perform any LC § 1771.5 enforcement activities during the 12 months in the reporting period?</p> <p>Please check one: <input type="checkbox"/> Yes If Yes, proceed to item 6 on the next page</p> <p> <input type="checkbox"/> No If No, complete the information below, sign the form and submit to DIR, Office of the Director, Attn: LCP Special Assistant, <div style="text-align: right;">455 Golden Gate Avenue, 10th Floor, San Francisco CA 94102</div></p>		
<p>What suggestions do you have for the Department of Industrial Relations to better assist you with your program in the coming year? (attach additional sheets if necessary)</p>		
<p>SUBMITTED BY:</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 30%; text-align: center;"> <p>_____</p> <p>Signature</p> </div> <div style="width: 30%; text-align: center;"> <p>_____</p> <p>Name and Title</p> </div> <div style="width: 30%; text-align: center;"> <p>_____</p> <p>Date</p> </div> </div>		

6. LC § 1771.5 enforcement activities (provide all information requested, attaching as many sheets as necessary).

A. List projects handled by LCP within the past 12 months.

Project Name	Bid Advertisement Date	Prime Contractor	Contract Amount
Total			

B. List any project subject to the limited exemption clause of LC § 1771.5(a), if applicable.

Project Name	Description of Project	Contract Amount
Total		

C. Summary of all wages and penalties assessed and/or recovered.					
Project Name	Affected Contractor (who directly employed the worker)	Amount Assessed	Amount Recovered	Approval of Forfeiture Requested from Labor Commissioner?	Description of Violation
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Total					

Project Name	Amount Assessed	Amount Recovered	Explanation
Total			

Labor Compliance Program Regulations

REQUEST FOR APPROVAL OF FORFEITURE

1. AWARDING BODY / THIRD PARTY LCP:

Name and Contact Information:	Date of Request:
Name and Contact Information for Awarding Body if different from LCP:	LCP Approval Status (specify if either interim or temporary or if LCP has extended authority):

2. PROJECT INFORMATION:

Project Name:	Contract Number:
Project Location:	
Bid Advertisement Dates:	Estimated Date Project is to be completed:
Acceptance Date of Project by the Awarding Body:	Notice of Completion/Date Recorded with CITY Recorder:

Other Relevant Deadline (specify):	Amount being held in Retention:
------------------------------------	---------------------------------

3. CONTRACTOR INFORMATION:

Name and address of Affected Contractor:	Name and address of Affected Subcontractor:
General Description of Scope of Work of the Entire Project:	
General Description of Scope of Work covered in the proposed Forfeiture (describe and attach relevant portions of contract or subcontract):	

4. LABOR COMPLIANCE PROGRAM INVESTIGATION AND FINDINGS:

Total Amount of Request for Notice of Withholding of Contract Payments:			
Wages Due:	Training Funds Due:	Total Penalties Due:	Potential Liquidated Damages [Wages + Training Funds]:
LC 1775 Penalties Due:	LC 1813 Penalties Due:	LC 1776 Penalties Due:	Other:

--	--	--	--

[Provide narrative summaries covering the following]:

A. Statement of Issues.

B. Investigative Report (detailed narrative including but not limited to how the investigation was conducted including worker declarations, reviewing certified payroll records, verification of employer payment contributions, etc.).

C. Audit Report (detailed explanation of how audit was completed addressing each of the issues above).

D. Affected contractor and subcontractor information (how affected contractor and subcontractor were informed of potential violations; summary of their response with respect to violations and penalty issues; and any other information considered in determining recommended penalties).

E. Recommended penalties under Labor Code Section 1775(a) and basis for recommendation, including how factors in subsection (a)(2) of Section 1775 were applied to arrive at the recommended amount(s).