

XYZ SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

On this day, _____ (Date), the _____ (Name of Local Governing Board) hereby finds that the _____ (Name of School District) has initiated and enforced/has contracted with _____ (Name of Third Party Consultant) to initiate and enforce a LCP, pursuant to Labor Code Section 1771.7(d)(1).(2), which has been approved by the Department of Industrial Relations.

Contact Person

Initial Approval Date

INTRODUCTION

The School District issues this Labor Compliance Program (LCP) manual for the purpose of identifying its policy relative to the responsibilities and procedures applicable to the labor compliance provisions of the state and federally funded construction contracts. This LCP contains the labor compliance standards required by state and federal laws, regulations, directives, as well as School District policies and contract provisions.

The California Labor Code Section 1770 *et seq.* and Education Code Section 17424 require that building trade contractors on public works pay their workers based on the prevailing wage rates, which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

In establishing this LCP, the School District adheres to the statutory requirements as enunciated in Section 1771.5(b) of the Labor Code. It is the intent of the School District to actively enforce this LCP on all School District construction projects which use funds derived from either the Kindergarten - University Public Facilities Bond Act of 2002 or 2004 wherein the affected District construction projects are monitored for the payment of prevailing wage rates and, wherein those contractors having workers on affected School District projects routinely submit copies of certified payroll records demonstrating their compliance with the payment of prevailing wage rates.

Questions regarding the School District's LCP should be directed to

Questions regarding the California Labor Code, including issues relating to this LCP, should be directed to _____.

[**OPTIONAL:** The School District has appointed _____ as its LCP representative ("LCPR").]

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, 1720.2, 1720.3, 1720.4, 1771, and 1777.5, and include, but are not limited to, such types of work performed under contract as construction, alteration, demolition or repair. The Division of Labor Statistics and Research (DLSR) redetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

A. Types of Contracts to Which Prevailing Wage Requirements Apply

As provided in Labor Code Section 1771.5, an awarding body LCP as approved by the Director of the Department of Industrial Relations, shall apply to public works contracts that require the payment of the prevailing wage rates and shall include all new construction contracts over \$25,000 and all contracts over \$15,000 when the project is for alteration, demolition, repair or maintenance.

B. Limited Exemption from the Requirement to Pay Prevailing Wages

Upon election of a LCP for the School District, there shall be a limited exemption from the requirement to pay prevailing wage rates for any public works project of \$25,000 or less, when the project is for construction work; or for \$15,000 or less, when the project is for alteration, demolition, repair or maintenance work.

With the School District's initiation and enforcement of its LCP pursuant to Labor Code Section 1771.5, all construction contracts under \$25,000 and all School District maintenance contracts under \$15,000 would be included in the limited exemption from the legal requirement to pay prevailing wages.

The School District shall require that all limited exemption projects for construction, alteration, demolition, repair or maintenance work be identified as such in all bid advertisements and construction contracts. Moreover, if the amount of a limited exemption contract subject to this Section is changed, and as a result, exceeds the applicable dollar limits under which the payment of the prevailing wage rates is not required, those workers employed on the contract (after the amount due the contractor has reached the applicable limit) shall be paid at the prevailing wage rates.]

C. Applicable Dates for Enforcement of the LCP

The applicable dates for enforcement of awarding body LCP is established by Section 16425 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the LCP until after the Program has received initial or final approval. Moreover, the limited exemption from the payment of prevailing wages pursuant to Labor Code Section 1771.5(a) does not apply to any such contract until

after the LCP as received initial or final approval.]

II. COMPETITIVE BIDDING ON DISTRICT PUBLIC WORKS CONTRACTS

The School District publicly advertises upcoming public works projects to be awarded according to a competitive bidding process.

All School District bid advertisements (or bid invitations) and construction contracts shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code.

III. JOB CONFERENCE MEETING

After the School District awards the public works contract and prior to the commencement of the work, a Pre-Job Conference shall be held by the School District with the contractor(s) and subcontractor(s). At that meeting, the LCPR will discuss the federal and state labor law requirements applicable to the contract and will provide the contractor(s) and each subcontractor with a Checklist of Labor Law Requirements (presented in Attachment A) and will discuss in detail the following checklist items:

1. The contractor's duty to pay prevailing wages (Labor Code Section 1770, *et seq.*) should the project exceed the exemption amounts;
2. The contractor's and subcontractor's duty to employ registered apprentices on public works projects (Labor Code Section 1777.5);
3. The penalties for failure to pay prevailing wages (for nonexempt projects), failing to employ apprentices, and failing to submit complete Certified Payroll Reports, which include forfeitures and debarment (Labor Code Sections 1775, 1776, 1777.7, and 1813);
4. The requirement to maintain and submit copies of certified payroll reports to the School District at times designated on the contract. (Labor Code Section 1776(i).) This requirement includes and applies to all subcontractors performing work on School District projects even if their portion of the work is less than one half of one percent (0.5%) of the total amount of the contract, and penalties for failure to do so (Labor Code Section 1776(g));
5. The prohibition against employment discrimination (Labor Code Sections 1735 and 1777.6; the Government Code; and Title VII of the Civil Rights Act of 1964, as amended);
6. The prohibition against accepting or extracting kickbacks from employee wages (Labor Code Section 1778);

7. The prohibition against accepting fees for registering any person for public works (Labor Code Section 1779) or for filing work orders on public works (Labor Code Section 1780);
8. The requirement to list all subcontractors (Public Contract Code Section 4104, *et seq.*);
9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed (Labor Code Section 1021 and 1021.5, and Business and Professions Code Section 7000, *et seq.*, under California Contractors License Law);
10. The prohibition against unfair competition (Business and Professions Code Sections 17200-17208);
11. The requirement that the contractor(s) and subcontractor(s) be properly insured for Workers' Compensation (Labor Code Section 1861);
12. The requirement that the contractor(s) abide by the Occupational Safety and Health laws and regulations that apply to the particular public works project; and
13. The prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers.

The contractor(s) and subcontractor(s) present at the meeting will be given the opportunity to ask questions of the LCPR relative to any of the Labor Law Requirements Checklist. The Checklist of Labor Law Requirements will then be signed by the prime contractor's representative, subcontractor's representative, and the School District's LCPR.

At the Pre-Job Conference, the LCPR will provide the contractor(s) with two (2) copies of the School District's LCP package which includes: a copy of the approved LCP, the checklist of Labor Law Requirements, applicable Prevailing Wage Rate Determinations, blank certified payroll report forms, fringe benefit statements, State apprenticeship requirements, and a copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861).

It will be the contractor's responsibility to provide copies of the LCP package to all subcontractors and to any substituted subcontractor performing work on the School District's project(s).

IV. RESPONSIBILITIES OF CONTRACTOR(S)

A. Certified Payroll Records Required

The contractor(s) shall maintain payrolls and "basic payroll records" during the

course of the work and shall preserve them for a period of three (3) years thereafter for all tradesworkers working at the School District's project sites. 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 employee 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, deductions made, and actual wages paid.

1. Submission of Certified Payroll Reports

The contractor(s) shall submit all weekly certified payroll reports including those of all subcontractors to the School District at a School District-designated time, not less than monthly. The contractor(s) shall be responsible for the submittal of payroll reports of all its subcontractors. All weekly certified payroll reports shall be accompanied by a statement of compliance signed by the contractor(s) under penalty of perjury pursuant to Labor Code Section 1771.5(b)(3) and applicable regulations.

Basic payroll records may be requested by the School District or LCPR at any time and shall be provided within 10 days following the receipt of the request.

2. Review of Certified Payroll Reports

Certified payroll reports shall be routinely reviewed by the Contractor for the payment of prevailing wage rates.

3. Full Accountability

The name, address and social security number of every individual, laborer or craftsperson working at the project site must appear on the payroll. The basic concept is that the employer who pays the tradesworker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeship craft. 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 report listing the days and hours worked, and the trade classification descriptive of the work actually done. The contractor(s) shall make the records required under this section available for inspection by the LCPR, an authorized representative of the School District and the Department of Industrial Relations, and shall permit such representatives to interview tradesworkers during working hours on the project site.

4. Responsibility for Subcontractor(s)

The contractor(s) shall be responsible for ensuring adherence to labor standards provisions by its subcontractor(s). Moreover, the prime contractor is responsible for Labor Code violations by its subcontractors in accordance with Labor Code Section 1775 and applicable sections of the Labor Code and California Code of Regulations.

5. Payment to Employees

Employees must be paid unconditionally, and not less often than once each week, the full amounts which are due and payable for the period covered by the particular payday. Thus, an employer must, therefore, establish a fixed workweek (i.e., Sunday through Saturday) and an established 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, when, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the prime contractor who contracted for his or her services as a tradesworker. 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 who contracted for his or her services for purposes of prevailing wage requirements, certified payroll reporting and workers' compensation laws.

A worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the Prevailing Wage Rate Determinations for the class of work actually performed. Any work performed on Saturday, Sunday, and/or a holiday, or a portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a workweek shall be premium pay. All work performed in excess of eight hours per day, 40 hours per week, on Saturday, on Sunday, and on holidays shall be paid in accordance with the applicable Prevailing Wage Determination.

B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the State Division of Apprenticeship

Standards. The allowable ratio of apprentices to journey persons 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. An apprentice who is registered and has worked outside of the prescribed geographic area is not qualified to receive the apprentice rate and must be paid the journey level rate.

The contractor shall furnish 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.

Pre-apprentice trainees, trainees in nonapprenticeable 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.

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

1. Apply for a Certificate of Approval for the employment and training of apprentices for each craft or trade;
2. Employ apprentices on public works projects in a ratio to journey persons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one (1) apprentice to each five (5) journey person hours, unless a Certificate of Exemption is obtained and provided to the LCPR;
3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journey persons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142; and
4. 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.

V. ENFORCEMENT ACTION

A. Duty of the Awarding Body

The School District, as the awarding body having an approved LCP, has a duty to the

Director of the Department of Industrial Relations to enforce the Labor Code School District public works requirements (Chapter 1 of part 7 of Division 2 and Division 3 of the Labor Code) and the procedural regulations of the Department of Industrial Relations in a manner consistent with the practice of Title 8, California Code of Regulations, Section 16000, *et seq.*

B. Review of Certified Payroll Reports

Certified payroll reports shall be routinely reviewed by the LCPR for the payment of prevailing wages.

C. Investigation

1. If payroll records are delinquent or inadequate, or if it appears from the certified payroll reports or other evidence that a contractor or subcontractor has failed to pay prevailing wages, the LCPR shall notify the contractor in writing of the discrepancies.
2. If clarification/correction is not received from the contractor, the LCPR shall conduct an investigation. This investigation may include an Audit.
3. Upon completion of the investigation, if the LCPR determines that the contractor has not remedied the violation, the LCPR may authorize Withholding of contract payments.

D. Audit of Certified Payroll Reports

Audits may be conducted by the LCPR when deemed necessary, and shall be conducted at the request of the Labor Commissioner

The audit record form that is presented in Attachment B as provided for in Title 8, CCR Section 16432 demonstrates the sufficient detail that is required to verify compliance with the Labor Code requirements.

An audit consists of a comparison of payroll records to the best available information as to the actual hours worked and classifications of workers employed on the contract.

E. Withholding for Delinquent or Inadequate Payroll Records or Reports

Pursuant to a request by the School District or its LCPR for Certified Payroll Reports or Basic Payroll Records, under section IV.A.1., if contractor fails to provide Certified Payroll Reports or Basic Payroll Records within ten (10) days of receipt of the request, pursuant to Labor Code Section 1776, the amount of withholding for

Delinquent or Inadequate Payroll Records or Reports shall be twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

F. Withholding for Violation of the Requirement to Pay Prevailing Wages

1. The amount of “Withholding” shall be the “amount equal to the underpayment.” This amount shall be determined by payroll review, investigation, audit, or admission of the contractor or subcontractor. It shall be the total of the following:
 - a. The difference between amounts paid workers and the correct General Prevailing Rate of Per Diem Wages, as defined in Title 8 CCR Section 16000 *et seq.*, and determined to be the prevailing rate due workers in such craft, classification or trade in which they were employed;
 - b. The difference between amounts paid on behalf of workers and the correct amounts of Employer Payments, as defined in Title 8 CCR Section 16000 *et seq.* and determined to be part of the prevailing rate costs of contractor(s) due for employment of workers in such craft, classification or trade in which they were employed;
 - c. Estimated amounts of kickbacks;
 - d. Amounts of apprenticeship training contributions paid to neither the program sponsor’s training trust nor the California Apprenticeship Council;
 - e. Estimated penalties under Labor Code Sections 1775, 1776, 1777.7 and 1813. (Title 8, CCR Section 16435.5.)
2. Provisions relating to the penalties under Labor Code Sections 1775, 1777.7, and 1813:
 - a. Pursuant to Labor Code Section 1775, the contractor shall, as a penalty to the School District on whose behalf the contract is awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages.
 - b. In situations involving overtime, the contractor shall, as an additional penalty to the School District on whose behalf the contract is awarded, forfeit twenty-five dollars (\$25) 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 8 hours in any one calendar day and 40 hours in any one calendar week (Monday through Friday) in violation of the provisions of Section 1813 of the Labor Code. The School District shall take cognizance of all violations of Section 1813.

- c. Pursuant to Labor Code Section 1777.5, contractors and subcontractors are required to employ registered apprentices on public works projects. Each contractor and subcontractor shall keep an accurate payroll record relative to apprentices per Section 1776 of the Labor Code. The contractor or subcontractor found in violation of Labor Code Sections 1775, 1777.5, and/or 1777.7 shall forfeit as a civil penalty the sum of fifty dollars (\$50) for each calendar day of noncompliance to the School District.

G. Withholding Procedures

1. The School District shall provide a notice of withholding contract payments 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 Code of Civil Procedure 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.
2. The School District 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 awarding body.
3. 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.
4. A release bond under Civil Code Section 3196 may not be posted for the release of the funds being withheld for the violation of the prevailing wage law.
5. The Withholding of contract payments in accordance with Labor Code Sections 1726 or 1771.5 shall be reviewable under Labor Code Section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner. If review is requested, the School District may request the Labor Commissioner to intervene to represent it.

6. Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the School District shall not disburse any contract payments withheld.

H. Forfeitures

1. When the School District completes the withholding procedure in Subsection G, it shall submit a request to the Labor Commissioner for Forfeiture from the contractor and any subcontractor for Delinquent or Inadequate payroll records or reports or failure to pay the correct rate of prevailing wages.
2. Where the School District or the LCPR requests a determination of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the following information:
 - a. The deadline by which contract acceptance or filing of a notice of completion, under Labor Code Section 1775, plus 90 days, will occur;
 - b. Any other deadline which, if missed, would impede collection;
 - c. Evidence of violation in narrative form;
 - d. Evidence that an “audit” or “investigation” occurred;
 - e. Evidence that the contractor was given the opportunity to explain why it believes there was no violation; or that any violation was caused by mistake, inadvertence, or neglect before the forfeiture was sent to the Labor Commissioner, and the contractor either did not do so or failed to convince the awarding body of its position;
 - f. Where the LCPR seeks not only amounts of wages but also a penalty as part of the forfeiture, and the contractor has unsuccessfully contended that the cause of violation was a mistake, inadvertence, or neglect, a statement should accompany the proposal for a forfeiture with a recommended penalty amount, pursuant to Labor Code Section 1775;
 - g. Where the LCPR seeks only wages or a penalty less than Fifty Dollars (\$50) per day as part of the forfeiture, and the contractor has successfully contended that the cause of violation was a mistake, inadvertence, or neglect, then the file should include the evidence as to the contractor’s knowledge of its obligation, including the LCPR’s communication to the contractor of the obligation in the bid

invitations, at the Pre-Job Conference agenda and records, and any other notice given as part of the contracting process. Included with the file should be a statement similar to that described in subsection (f) above and recommended penalty amounts, pursuant to Labor Code Section 1775;

- h. The previous record of the contractor in meeting prevailing wage obligations.
3. The file or report shall be served on the Labor Commissioner not less than 30 days before the final payment or, if that deadline has passed, not less than 90 days following the filing of the Notice of Completion as long as funds remain in the contract.
 4. A copy of the file or report shall be served on the contractor, any affected subcontractor and the surety, at the same time as it is sent to the Labor Commissioner.

The School District may exclude from the documents served on the contractor/subcontractor or surety, copies of documents secured from these parties during an audit, investigation, or meeting if those documents are clearly referenced in the file or report. Along with the copy served on the contractor shall be a notice stating all deadlines and rights of the contractor to contest the amount of forfeiture. The Notice of Deadlines for Forfeitures under Title 8, CCR Section 16437 (presented in Attachment C) fulfills the requirements of this subsection.

5. The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to penalty and/or wages due.
6. The determination of the forfeiture by the Labor Commissioner is effective on one of the two following dates:
 - a. For programs with initial approval or an extension of initial approval pursuant to Title 8, CCR Section 16426, on the date the Labor Commissioner serves by first class mail, on the School District and on the contractor, 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 is effective if made on the last address supplied by the contractor 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 or no more than 30 days after the notice of completion has been filed.

- b. For programs with final approval, 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. The Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of receipt of the proposed forfeiture or not more than 30 days after the notice of completion has been filed, unless some other procedure has been adopted pursuant to Title 8, CCR Section 16427(d).

I. Deposits of Penalties and Forfeitures Withheld

1. 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 School District shall deposit penalties and forfeitures into its construction fund or other fund of its choice.
2. Where collection of fines, penalties, or forfeitures results from court action to which the Labor Commissioner and the School District are both parties, the fines, penalties, or forfeitures shall be divided between the General Funds of the State and the construction fund or other fund of the School District's choice, as the court may decide.
3. All amounts recovered by suit brought by the Labor Commissioner, and to which the School District is not a party, shall be deposited in the General Fund of the State of California.
4. 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.

J. Debarment Policy

It is the policy of the School District that the public works prevailing wage requirements set forth in the California Labor Code, Sections 1720-1861, be strictly enforced. In furtherance thereof, construction contractors and subcontractors found to be repeat violators of the California Labor Code shall be referred to the Labor

Commissioner for debarment from bidding on or otherwise being awarded any public work contract, within the state of California, for the performance of construction and/or maintenance services for the period not to exceed three (3) years in duration. The duration of 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.

VI. REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER

If an investigation reveals that a willful violation of the Labor Code has occurred, the LCPR will make a written report to the School District and the Labor Commissioner 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 types of willful violations are reported as follows:

A. For Failure to Comply with Prevailing Wage Rate Requirements

Failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and School District contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to tradesworkers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated. The facts related to such willful violations may result in a determination that the contractor intended to defraud its employees of their wages.

B. For 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.

C. For Failure to Submit Certified Payroll Reports

Refusing to comply with a request by the LCPR for certified payroll reports or substantiating information and records as contained in Section IV.A.1. will be determined to be a willful violation of the Labor Code. Additionally, refusing to correct inaccuracies or omissions that have been discovered will also be determined to be willful violation of the Labor Code.

D. 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 in a timely manner is equivalent to payment of less than the stipulated wage rate and shall be reported to the School District and Labor Commissioner as a willful violation, upon completion of an investigation and audit.

E. For Failure to Pay the Correct Apprenticeship Rates and/or Misclassification of Workers as Apprentices

Failure to pay the correct apprenticeship 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 School District and Labor Commissioner as a willful violation, upon completion of an investigation and audit.

F. 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.

VII. APPEALS OF A LABOR COMPLIANCE PROGRAM ENFORCEMENT ACTION

A. Appeal Process

A contractor may appeal the result of a LCP enforcement action by serving a "Request for Review" on the LCPR who will then forward the request to the Director of the Department of Industrial Relations. Such notice must be served within 60 days of the first date the contractor was served by the LCPR with a "Notice of Withholding of Contract Payments" which has been approved by the Labor Commissioner.

A contractor may appeal an enforcement action by the School District pursuant to Labor Code Sections 1742 and 1742.1 to the Director of the Department of Industrial Relations. The decision to hold a hearing on the appeal is within the sole discretion of the Director of the Department of Industrial Relations. The Director may appoint a hearing officer to review the record, conduct a hearing and recommend a decision. The Director of the Department of Industrial Relations shall make the final decision on the appeal.

Upon receipt of a copy of the "Request for Review," the LCPR shall immediately forward to the Director of the Department of Industrial Relations a Notice of Transmittal, a full copy of the Request, a copy of the Notice of Withholding of

Contract Payments and the audit. The contractor and/or subcontractor and surety shall be provided a copy of the Notice of Transmittal and all attachments as well as a copy of the Prevailing Wage Hearing Regulations.

In accordance with Labor Code Section 1742, the contractor or subcontractor shall be provided an opportunity to review the evidence to be utilized by the LCPR at the hearing within 20 days of receipt of the written request.

The Director of the Department of Industrial Relations may request a supplemental report from the School District on the activities of the LCP. This report will be an update of the Annual Report that is required pursuant to Section 16431 of the Final Regulations (Title 8, Group 4, Article 1) and which is discussed in Section IX of this LCP at pages 17-18.

B. Determination and Ruling on the Appeal by the Department of Industrial Relations

Upon completion of the hearing, the Director of Department of Industrial Relations shall have forty-five (45) days in which to render a decision.

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.

The Hearing Officer's ruling on the appeal shall be the final decision of the Director from which any party may seek reconsideration, modification or judicial review within fifteen (15) days following its receipt. Within forty-five (45) days following service of the decision, any affected contractor or subcontractor may seek review of the decision by filing a writ of mandate with the appropriate Superior Court pursuant to Section 1094.5 of the Code of Civil Procedure.

VIII. PRIORITY DISTRIBUTION OF FORFEITED SUMS

A. Withholding of Forfeited Sums

Pursuant to Labor Code Section 1727, it shall be the policy of the School District that prior to making payment to the prime contractor of monies due under any contract for public works, the School District shall withhold and retain from the prime contractor's account all amounts which have been forfeited pursuant to any stipulation under said contract for public works. But no sum shall be withheld, retained or forfeited, except from the final payment, without a full investigation by the School District.

B. Disposition of Forfeited Sums

1. The prevailing wage recovery process of this LCP is established pursuant to Labor Code Section 1775 which provides that out of any funds withheld, recovered, or both, there shall first be paid the amount due each worker notwithstanding the filing of any Stop Notice by any person pursuant to Civil Code Section 3179, *et seq.* 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.
2. In the event that there are “insufficient funds” available in the prime contractor’s account to pay the total amount of prevailing wage violations and penalty amounts due, the unpaid prevailing wages shall have **PRIORITY STATUS** and must be paid first, pursuant to Labor Code Section 1775.

Furthermore, if insufficient funds are withheld, recovered, or both, to pay each underpaid worker in full, the money shall be prorated among all workers affected. From the amount recovered by the School District, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into a construction fund or other fund of the School District’s choosing.

IX. ANNUAL REPORTS

A. Annual Report on the School District Labor Compliance Program to the Director of the Department of Industrial Relations

The School District shall submit to the Director of the Department of Industrial Relations an Annual Report on the operation of its LCP within sixty (60) days after the close of its fiscal year, or accompany its request for an extension of initial approval, whichever comes first. Pursuant to Title 8, CCR Section 16431, the Annual Report shall contain, at the minimum, the following information:

1. Number of construction contracts subject to the LCP which were awarded, and their total value;
2. The number, description, and total value of construction contracts awarded which were exempt from the requirement of payment of prevailing wages pursuant to Labor Code Section 1771.5(a);
3. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates, the total amount withheld from money due to the

contractors, and the total amount recovered by action in any court of competent jurisdiction;

4. A summary of penalties and forfeitures imposed and withheld, or recovered in a court of competent jurisdiction;
5. A LCP whose contract responsibilities are statewide, or which involves widely dispersed and numerous contracts, or which is required to report contract enforcement to federal authorities in a federal format, may adopt a summary reporting format to aggregate small contracts and estimate numbers and dollar values required by 1 and 2. A summary reporting format may be adopted by agreement with the Director after advance notice to interested parties, and a list of parties requesting such notice shall be kept by the Director.

Copies of the LCP's required Annual Report submitted to the Director of the Department of Industrial Relations will be distributed to the Superintendent and School Board of the School District.

APPENDIX A DEFINITIONS

1. “Amount equal to the underpayment” is the total of the following determined by payroll review, investigation, audit, or admission of the contractor or subcontractor:
 - a. The difference between the amounts paid to workers and the correct General Prevailing Wage Rate of Per Diem Wages as defined in Title 8, CCR Section 16000, *et seq.*;
 - b. The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in Title 8, CCR Section 16000, *et seq.* 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.
 - c. Estimated amounts of “illegal taking of wages,” and
 - d. Amounts of apprenticeship training contributions paid to neither the program sponsor’s training trust nor the California Apprenticeship Council.

2. “Basic Payroll Records” means time cards, front and back copies of cancelled checks, cash receipts, trust fund forms, daily logs, employee sign-in sheets, accounting ledgers, tax forms and/or any other record maintained for the purposes of reporting payroll.

3. “Contracts,” except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding pursuant to Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5;

4. “Delinquent payroll records” means those not submitted on the basis set forth in the School District contract and the LCP;

5. “Failing 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 in court or before the Director of the Department of Industrial Relations under Labor Code Sections 1742 and 1742.1 pursuant to the California Code of Regulations Title 8, Chapter 8, Subchapter 8 (Sections 17201 through 17270). Regardless of what is defined as prevailing “wages” in contract terms, noncompliance with the following are considered failures to pay prevailing wages:
 - a. Nonpayment of items defined as “Employer Payments” and “General Prevailing Rate of Per Diem Wages” in Title 8, CCR Section 16000 and Labor Code Section 1771.
 - b. Payroll records required by Labor Code Section 1776;
 - c. Labor Code Section 1777.5 but only insofar as the failure consists of 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;
- d. Labor Code Section 1778, Kickbacks;
 - e. Labor Code Section 1779, Fee for Registration;
 - f. Labor Code Sections 1813, 1815, and Title 8, CCR Section 16200(a)(3)(F) overtime for work over eight (8) hours in any one (1) day or forty (40) hours in any one (1) week (Monday through Friday). All work performed on Saturday, Sunday, and/or a holiday shall be paid pursuant to the prevailing wage determination.
6. “Forfeitures” are the amounts of unpaid penalties and wages assessed by the School District for violations of the prevailing wage laws, whether collected by withholding from the contract amount, by suit under the contract, or both. The Division of Labor Standards Enforcement will notify the contractor/subcontractor of his/her right to a hearing to determine the appropriateness of amounts withheld.
7. “Inadequate payroll records” are any one of the following:
- a. A record lacking the information required by Labor Code Section 1776;
 - b. A record which contains the required information but which is not certified, or certified by someone not an agent of the contractor or subcontractor;
 - c. A record remaining uncorrected for one (1) payroll period, after the School District 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 one percent (1%) 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 Title 8 CCR Section 16401. Prompt correction will stop any duty to withhold if such inaccuracies are de minimus.
8. “Withhold” means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the general contractor.

ATTACHMENT A

**CHECKLIST OF LABOR LAW REQUIREMENTS TO REVIEW AT
JOB CONFERENCE MEETINGS**

(Pursuant to Title 8, Section 16430 of the California Code of Regulations)

NAME (print) _____ Date _____

COMPANY _____ Phone _____

ADDRESS _____ Fax # _____

_____ School _____

SUPERINTENDENT _____ Project # _____

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 contractor to whom the contract is awarded and its subcontractors hired for the public works project are required to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract. The contractor's duty to pay prevailing wages under Labor Code Section 1770 et seq., should the project exceed the exemption amounts.

The contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view.

2. Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on the public works project under Labor Code Section 1777.5;

3. Penalties

There are penalties required for contractor's/subcontractor's failure to pay prevailing wages (for nonexempt projects) and for failure to employ apprentices, including forfeitures and debarment under Labor Code Sections 1775; 1777.7 and 1813;

4. Certified Payroll Reports

Under Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing work; also the straight time and overtime hours worked each day and each week, the fringe benefits, and, the actual per diem wage paid to each owner, journey person, apprentice worker or other employee hired in connection with the 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 his/her authorized representative on request, pursuant to Labor Code Section 1776;

Each contractor and subcontractor shall submit its weekly certified payroll reports to the District on a monthly basis. In the event that there has been no work performed during a given week, the Certified Payroll Report shall be annotated: "No work" for that week.

Under Labor Code Section 1776(g) there are penalties required for contractor's/subcontractor's failure to maintain and submit copies of certified payroll records on request.

5. Nondiscrimination in Employment

There exist prohibitions against employment discrimination under 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. All contractors and subcontractors are required to implement equal employment opportunity practices for women and minorities;

6. Kickbacks Prohibited

Contractors and subcontractors are prohibited from recapturing wages illegally or extracting "kickbacks" from employee wages under Labor Code Section 1778;

7. Acceptance of Fees Prohibited

There exists a prohibition against contractor/subcontractor acceptance of fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works contracts pursuant to Labor Code Section 1780;

8. Listing of Subcontractors

All prime contractors are required to list properly all subcontractors hired to perform work on the public works projects covering more than one-half of one percent, pursuant to Government Code Section 4100 et seq.;

9. Proper Licensing

Contractors are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractor License Law found at Business and Professions Code Section 7000 et seq.

10. Unfair Competition Prohibited

Contractors/Subcontractors are prohibited from engaging in unfair competition as specified under Business and Professions Code Sections 17200 to 17208;

11. Workers Compensation Insurance

Labor Code Section 1861 requires that contractors and subcontractors be insured properly for Workers Compensation.

12. OSHA

Contractors and subcontractors are required to abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project.

13. Undocumented Workers

Contractors and subcontractors may NOT hire undocumented workers. Contractors and subcontractors are required to obtain proof of work eligibility or citizenship from all workers.

In accordance with federal and state laws and with School District contract documents, the undersigned prime contractor wishes to assure the School District that it intends to comply with the above-referenced labor law requirements, fully understanding that failure to comply with the above requirements may subject it to penalties as provided above.

For the Contractor:

For the School District:

(Signature)

(Signature)

(Date)

(Date)

Prime Contractor

Project Name

ATTACHMENT B
AUDIT RECORD FORM

(For Use With Title 8, CCR Section 16432 Audits)

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 were accomplished:

1. Audits of the obligation to secure workers' compensation means demanding written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers' Compensation Insurance Rating Bureau;
2. Audits of the obligations to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public works 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 sent by the contractor or subcontractor to it for the training trust, or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade as 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. Audits of the obligation to pass through amounts for apprenticeship training contributions, to either the training trust or the California Apprenticeship Council, means asking for copies of checks sent, or when the audit occurs more than 30 days after the month in which payroll has been paid, copies of cancelled checks;
4. Audits of "illegal taking of wages" means inspection of written authorizations for deductions (listed in Labor Code Section 224) in the contractor's or subcontractor's files and comparison to wage deduction statements furnished to employees (Labor Code Section 226), together with an interview of employees when warranted as to any payments not shown on the wage deduction statements;
5. Audits of the obligation to keep records of working hours and pay not less than required by Title 8, CCR Section 16200(a)(3)(F) for hours worked in excess of 8 hours are the steps for review and audit of Certified Weekly Payrolls under Title 8, CCR Section 16432;
6. Audits of the obligations to pay the prevailing per diem wage, means such steps for review and audit of Certified Weekly Payrolls which will produce a report covering compliance in the areas of:
 - A. All elements defined as the "General Prevailing Rate of Per Diem Wages" in Title 8, CCR Section 16000, which were determined to be prevailing in the Director's determination which was in effect on the date of the call for bids, available in its principal LCP office and posted at the public works job site;
 - B. All elements defined as "Employer Payments" set forth in Section 16000 of these regulations, which were determined to be prevailing in the Director's Determination which was in effect on the date of the call for bids, and pursuant to Labor Code Section 1773.2 was to be specified in the call for bids, made available in its principal LCP office and posted at the public works job site.

ATTACHMENT C

NOTICE OF DEADLINES

(To go to Contractor for Forfeitures under Title 8, CCR Section 16437)

"This document requests the Labor Commissioner of California to approve a forfeiture of money you otherwise would be paid. The (Name of the labor compliance program) for the (Name of the awarding body) is asking the Labor Commissioner of California to agree, in 20 days, that the enclosed package of materials indicates that you have violated the law."

"Failure to respond to the (Name of the labor compliance program's) request that the Labor Commissioner approve a forfeiture by writing to the Labor Commissioner within 20 days of the date of service (date of postmark) of this document on you may lead the Labor Commissioner to affirm the proposed forfeiture, and may also end your right to contest those amounts further. You must serve any written response on the Labor Commissioner, the (Name of the labor compliance program) and (Name of awarding body) by return receipt requested/certified mail. If you serve a written explanation, with evidence, as to why the violation did not occur, or why the penalties should not be assessed, within the 20-day period, it will be considered,"

and

"If you change address, or decide to hire an attorney, it is your responsibility to advise both the (Name of the labor compliance program) and the Labor Commissioner by certified mail. Otherwise, notices will be served at your last address on file, and deadlines might pass before you receive such notices."