



**City of Santa Maria**

**LABOR COMPLIANCE**

**PROGRAM**

The City of Santa Maria  
110 E. Cook Street  
Santa Maria, CA 93454

[www.cityofsantamaria.org](http://www.cityofsantamaria.org)

## **Introduction**

The City of Santa Maria (herein referred to as "City") issues this Labor Compliance Program (LCP) manual for the purpose of identifying its labor compliance responsibilities and procedures for state funded construction contracts under California Proposition 84. This LCP contains the labor compliance standards required by the state and federal laws, directives, as well as policies and contract provisions for public works construction projects within the State of California. This program is only applicable to public works projects funded by Proposition 84.

Nothing in these regulations shall be construed as limiting the responsibility and authority of the City to take cognizance of prevailing wage violations under Section 1726 of the Labor Code and take any appropriate action pursuant to that responsibility and authority.

California Labor Code Sections 1770 *et seq.* require that all contractors on public works projects pay their workers based on the prevailing wage rates, which are established and issued by the Department of Industrial Relations, Office of Policy, Research and Legislation.

It is the responsibility of the LCP to enforce prevailing wage requirements, consistent with the policy of the state as expressed in Labor Code Section 90.5(a), A LCP shall take reasonable, vigorous, and prompt action to determine whether violations exist, and enforce compliance through imposition of appropriate penalties and formal enforcement action, when violations are found. A LCP 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 prolonged or excessive withholdings of contract payment without making a determination that a violation has occurred.

The failure of the City to comply with any requirement imposed shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation.

This LCP adheres to the statutory requirements as enunciated in Section 1777.5(b) of the Labor Code, pertaining to the employment by contractors of registered apprentices on public works contracts. It also adheres to California Labor Code Section 1776, which requires contractors to keep accurate payroll records of trades' workers on all public works projects and to submit copies of certified payroll records upon request.

It is the City's intent to work with a third-party administrator to actively enforce and monitor the payment of prevailing wage rates by Contractors having workers on affected City Projects by routinely collecting copies of certified payroll records and reporting to the State these records demonstrating non-compliance with the payment of prevailing wage rates.

This LCP contains the labor compliance standards required by state and federal laws, regulations and directives, as well as City policies and contract provisions, which include, but are not limited to, the following:

1. All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.
2. A pre-job conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.
3. Project contractors and subcontractors shall maintain and furnish, at least monthly, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.
4. The City shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.
5. The City shall withhold contract payments when payroll records are delinquent or inadequate. All contracts to which prevailing wage requirements apply must include a provision that contract payments must not be made when payroll records are delinquent or inadequate.
6. The City shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred. A prescribed routine is necessary 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.

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

Questions regarding the California Labor Code, including issues relating to this LCP, should be directed to the Labor Compliance Program Representative (LCPR) for the City.

**CITY OF SANTA MARIA  
LABOR COMPLIANCE PROGRAM**

**I. APPLICABLE DATES FOR ENFORCEMENT OF LCP's**

Affected City contracts for which the Date of Notice of the Call for Bids is subsequent to the date of approval of a LCP are subject to Labor Code Section 1771.5. In the case of a contract for which there is no Call for Bids, the applicable date will be the date of the award of the contract.

Revocation of approval of a LCP by the Director will not affect the limited exemption from payment of prevailing wages provided by the Labor Code Section 1771.5(a) if the date of such revocation is subsequent to the Date of Notice or Call for Bids or, in the case of a contract for which there is no Call for Bids, subsequent to the date of the award of the contract.

If the Director revokes approval of the City's LCP that was approved pursuant to the section below, the Director must give notice to the City specifying enforcement responsibilities, including with respect to cases pending hearing, as of the date of revocation.

The City may voluntarily terminate this LCP. With respect to each affected contract pending on the date of termination, the City must:

1. Notify the Director of its intention and the effective date of the termination;
2. Notify the contractor(s) and the Labor Commissioner of the identity of the agent who will carry out the compliance enforcement obligations of Labor Code Section 1771.5 on the remaining contract; and
3. Specify the fund into which penalties or forfeitures withheld from any contract payments shall be deposited.

The Labor Commissioner may, in writing, agree to assume enforcement obligations on pending affected contracts of the City which has voluntarily terminated its LCP. In such cases, penalties and forfeitures must be deposited into general fund of the state.

Upon receipt of a notice of revocation, a LCP that was approved pursuant to section 16426 of Title 8 of the California Code of Regulations must enter into no new projects with the purpose of meeting the City's statutory obligation to have a LCP that contains or

meets the requirements of Labor Code Section 1771.5, provide immediate written notice to all affected parties which may be affected by the termination that the Program has received a revocation notice, and provide all reasonable assistance to those affected persons in transferring LCP responsibilities to another approved Program in order to avoid any forfeiture of funds by the City and any forfeiture of rights by workers on the projects for which the Program has monitoring and enforcement responsibilities.

**II. APPROVED LCP REQUIRED BY STATUTE**

Whenever the City is required by statute to enforce or contract to enforce a Labor Compliance Program that contains or meets the requirements of Labor Code section 1771.5, the City must have its own program that has been approved by the Director pursuant to section 16425 of Title 8 of the California Code of Regulations.

The governing board of the City must make a written finding that the City has established its own LCP in accordance with the requirements of Labor Code Section 1771.5(b).

**III. NOTICE OF LABOR COMPLIANCE PROGRAM APPROVAL**

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

Notice of an approved LCP must 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 LCP.

**VI. 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 performed under contract as construction, modernization, alteration, demolition, installation or repair. The Office of Policy, Research and Legislation (OPRL) predetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

The applicable dates for enforcement of the Labor Compliance Program (LCP) are established by section 16422 of Title 8 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the LCP until after the Program has been granted approved status or extended authority.

## **VII. COMPETITIVE BIDDING ON PUBLIC WORKS CONTRACTS**

The City shall publicly advertise upcoming public works projects to be awarded according to a competitive bidding process.

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

## **VIII. JOB CONFERENCE MEETING**

After the City awards the public works contract and prior to the commencement of the work, a Pre-Job Conference shall be held by the Labor Compliance Program Representative (LCPR) of the City, 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 **Appendix A**) and will discuss in detail the following checklist items:

1. The contractor's duty to pay prevailing wages (Labor Code Sections 1770, *et. seq.*);
2. The contractor's and subcontractor's requirement to employ registered apprentices on public works projects (Labor Code Section 1777.5);
3. The penalties for failure to pay prevailing wages, failing to follow apprenticeship rules, and failing to submit complete Certified Payroll Reports, which include forfeitures and debarment (Labor Code Section 1775, 1776, 1777.7 and 1813);
4. The requirement to maintain and submit copies of weekly certified payroll reports at least monthly or within 10 days of any request by the City, and penalties for failure to do so under Labor Code Section 1776(h). This requirement includes and applies to all subcontractors performing work on the City's 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;

5. The prohibition against employment discrimination (Labor Code Sections 1735 and 1777.6; the Government Code Section 11135 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 4100, *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 Sections 1021 and 1021.5, and Business and Professions Code Sections 7000, *et seq.*, under California Contractor 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) and subcontractor(s) abide by the Occupational Safety and Health laws and regulations that apply to the particular public works 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 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, each subcontractor's representative and the LCPR from the City.

At the pre-job conference, the LCPR from the City will provide each contractor with a copy of the LCP package which includes: a copy of the approved LCP, the checklist of Labor Law Requirements, applicable Prevailing Wage Rate Determinations, blank certified payroll reporting form, fringe benefit statement, State apprenticeship requirements, and a copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861).

The LCPR shall provide copies of the LCP package to all contractors, subcontractors and to any substituted subcontractor performing work on the project(s).

**IX. RESPONSIBILITIES OF CONTRACTOR(S) AND EACH SUBCONTRACTOR**

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 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 maintain and submit all weekly certified payroll reports including those of all subcontractors to the LCPR on behalf of the City at least 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 the Labor Code Section 1771.5(b)(3) and applicable regulations.

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

2. Review of Certified Payroll Reports

Use of the current version of the DIR’s Public Works Payroll Reporting Form and Statement of Employer Payments constitutes 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. Certified payroll reports shall be routinely reviewed by the LCPR for the proper 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 to the work actually done. The contractor(s) shall make the records required under this section available for inspection by the LCPR, and authorized representative of the City and the Department of Industrial Relations, and shall permit such representatives to interview tradesworkers during hours on the project site.

4. Responsibility for Subcontractor(s)

The contractor(s) shall be responsible for adhering to labor standards provisions by its subcontractor(s). Moreover, the prime contractor is responsible for Labor Code violations by its subcontractor(s) 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 on 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, 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 the 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 apprenticeship 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 apprenticeship 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. Request dispatch of apprentices and employ apprentices as available on public works projects in a ratio to journeypersons as stipulated in the apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than (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, California 94142;
4. If the contractor is registered to train apprentices 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.

## **X. ENFORCEMENT ACTION**

### **A. Duties of the Labor Compliance Program**

The primary function of the 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. The proactive investigation methods, described below, only comprise the minimum obligations required of Labor Compliance Programs to satisfy their duty to the Director as specified in sections 16428 and 16434 of Title 8 of the California Code of Regulations.

Definitions found at the end of this manual are intended to provide LCP's and representatives of the DIR and the DLSE with common terminology as they each perform their respective roles in prevailing

wage enforcement in furtherance of the Labor Code provisions establishing LCP's.

The LCPR from the City has 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 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, which are available at the Department of Industrial Relations Home Page ([www.dir.ca.gov](http://www.dir.ca.gov)) and links to that page. The LCPR from the City shall undertake enforcement action in furtherance of its responsibilities as follows:

1. Certified Payroll Records

Certified payroll records furnished by contractors and subcontractors in accordance with section 16421(a)(3) of Title 8 of the California Code of Regulations, and in format prescribed at sections 16401 of Title 8 of the California Code of Regulations, shall be reviewed by the 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.

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 LCP that payroll records furnished by a contractor or subcontractor are inaccurate. "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 paystubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at section 16000 of Title 8 of the CCR), 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 Labor Compliance Program that the payroll records furnished by a contractor or subcontractor are inaccurate.

2. In-person Inspections

Representatives of the LCP shall conduct in-person inspections at the site or sites at which the contract for public work is being performed. On-Site Visits 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 the copy of the determination(s) of the DIR of the prevailing wage rate of per diem wages required to be posted at each job site and the Notice of Labor Compliance Program Approval required to be posted at the job site.

On-Site Visits may include other activities deemed necessary by the LCP to independently corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors.

3. Audits/Investigations

An Audit shall be prepared by the LCP whenever the LCP 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 consists of 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 LCP after consideration of the best information available as to actual hours worked, amounts paid,

and classification of workers employed in connection with the Public Work.

An Audit is sufficiently detailed when it enables the Labor Commissioner 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 underpayment of wages to workers and of applicable penalties and forfeitures.

An Audit, using the forms in **Appendix B**, when accompanied by a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of underpayment was made, presumptively demonstrates sufficiency.

Records supporting an Audit shall be maintained by the LCP to satisfy its burden of coming forward with evidence in administrative review proceedings under Labor Code Sections 1742 and the Prevailing Wage Hearing Regulations.

#### 4. Ten-Day Letters

Pursuant to Section 16432(f) of Title 8 of the California Code of Regulations, after the LCP 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 referral to the Labor Commissioner. 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 the 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 forfeiture or for 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 paragraph (3) above along with any exculpatory information submitted to the Labor Compliance Program by the affected contractor or subcontractor.

5. Written Complaints

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 LCP shall do all of the following:

- a. Within 15 days after receipt of the complaint, send a written acknowledgement to the complaining party that the complaint has been received and identifying 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(c) if the complaint is against a subcontractor.
- c. If resolved by the LCP pursuant to paragraph (3) above, notify the complaining party in writing of the resolution of the complaint within 10 days after the complaint has been resolved by the LCP.
- 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 LCP.
- 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 LCP but remains under review or in litigation before another entity.

6. Apprenticeship Requirements

Either the City or the LCP acting on its behalf shall inform contractors and subcontractors bidding on public works about apprenticeship requirements, send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards

(DAS) as required, and refer complaints and promptly report suspected violations of apprenticeship requirements to the DAS.

The LCP shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including that any contributions required are paid to the appropriate entity, that apprentices are paid no less than the prevailing apprentice rate, that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the DAS, and requiring that the regular prevailing wage rate be paid to any worker who is not a duly registered apprentice and for all hours in excess of the maximum ratio permitted as determined at the conclusion of the employing contractor's work on the public works contract.

## 7. Summaries

For each public work project subject to a LCP'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, demonstrating that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner (**Appendix C**).

Compliance records for a project must be retained until the later of 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 one year after a final decision or judgment in any litigation under Labor Code Section 1742. 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 can be transmitted by email or compact disk and would be acceptable for the filing of documents in a federal or state court of record within this state.

The Labor Commissioner may provide, sponsor, or endorse training on how to enforce prevailing wage requirements, including but not limited to the subjects of ascertaining prevailing wage requirements and rates from the Division of Labor Statistics and Research, monitoring and investigation under the above section, enforcement responsibilities under this section and sections 16435-16439, and 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.

8. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate

The City shall withhold contract payments when payroll records are delinquent or inadequate as required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. 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 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 LCP provides notice that the subcontractor has cured the delinquency or deficiency.

When contract payments are withheld under this section, the LCP shall provide the contractor and subcontractor with immediate written notice that includes a statement that payments are being withheld due to delinquent or inadequate payroll records (identifying what records are missing or states why records are inadequate), specifies the amount being withheld, and 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.

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

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

9. Withholding Contract Payments When, After Investigation, It Is Established The Underpayment or Other Violation Has Occurred

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 Sections 1729.

The LCP shall withhold the amount equal to the underpayment as determined by payroll review, audit, or admission of contractor or subcontractor for the following:

- a. The difference between amount paid workers and the correct General Prevailing Rate of Per Diem Wages determined to be the prevailing rate due workers in such craft, classification or trade in which they were employed and the amounts paid.
- b. 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 wage 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."
- d. Amounts of apprenticeship training contributions paid neither to the program's sponsor training trust nor the California Apprenticeship Council.
- e. Estimated penalties under Labor Code Sections 1775, 1776 and 1813.

This paragraph (9) pertains solely to the temporary withholding of contract payments, pending investigation. Permanent withholding of contract payments requires approval of the Labor Commissioner as set forth in paragraph (10) below.

10. Forfeitures Requiring Approval by the Labor Commissioner

"Forfeitures" means the amount of wages, penalties and forfeitures assessed by the LCP and proposed to be withheld pursuant to Labor Code Section 1771.6(a) and includes the difference between the prevailing wage rates and the amount paid to each worker for each calendar day for which each worker was paid less than the prevailing wage rate by the contractor or subcontractor and 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 \$1,000.00, the forfeitures shall be deemed approved by The Labor Commissioner upon service and the Labor Commissioner's receipt of the Notice of Withholding of Contract Payments, an Audit, and a brief narrative. For all other forfeitures, approval by the Labor Commissioner shall be requested and obtained in accordance with section 16437 of Title 8 of the California Code of Regulations.

**Step No. 1: Determination of Amount of Forfeiture by the Labor Commissioner**

- a. Where the LCP requests a determination of the amount of forfeiture, the request shall include a report to the Labor Commissioner (**Appendix D**) which contains at least the following information specified below:
  1. 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.
  2. Any other deadline which if missed would impede collection.
  3. Evidence of violation, in narrative form.
  4. Evidence of violation and a copy of the Audit prepared with the amounts of unpaid wages and applicable penalties.
  5. Evidence that before the proposal for forfeiture was sent to the Labor Commissioner 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 the contractor and subcontractor either did not do so or failed to convince the LCP of its position.
  6. Where the LCP seeks not only wages but also a penalty as part of the forfeiture, and the contractor or subcontractor has unsuccessfully 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, a short statement should accompany the proposal for forfeiture, with a recommended penalty amount pursuant to Labor Code Section 1775(a).

7. Where the Labor Compliance Program seeks only wages or a penalty less than \$40 per day as part of the forfeiture because 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, at the pre-job conference agenda and records, and any other notice given as part of the contracting process. With the file should be a statement, similar to that described in (6), and recommended penalty amounts, pursuant to Labor Code Section 1775(a).
  8. The previous record of the contractor and subcontractor in meeting their prevailing wage obligations.
  9. Whether the LCP has been granted approval on only and interim or temporary basis or whether it has been granted extended approval.
- b. The 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 not less than 30 days before the expiration of the limitations period set forth in Labor Code Section 1741.
  - c. A copy of the recommended forfeiture and the report shall be served on the contractor and subcontractor at the same time as it is sent to the Labor Commissioner. The LCP 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 report.
  - d. The Labor Commissioner shall affirm, reject or modify the recommended 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:

1. For all programs other than those having extended authority, on the date the Labor Commissioner serves by first class mail, on the LCP (the City) and to 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.
2. For programs with extended authority, approval is effective 20 days after the requested forfeiture is 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 the notice of further review.

**Step No. 2: Notice of Withholding and Review Thereof**

a. 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, on a permanent basis, 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 to be permanently withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure 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 payment. 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 prevailing wages covered by the notice and to any surety on the bond, if their identities are known to the City. **A copy of the Notice of Withholding of Contract Payments (NWCP) to be utilized by The City is found as Appendix E to this document.**

b. Review of NWCP

1. An affected contractor or subcontractor may obtain review of a NWCP under this chapter by transmitting a written request for a review hearing to the office of the LCP that appears on the NWCP within 60 days after service of the NWCP, pursuant to Labor Code Section 1742.1(b) and may request review of a LCP 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 LCP must have the rights and responsibilities of the Enforcing Agency 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 no hearing is requested within 60 days after the service of the NWCP, the NWCP shall become final.
2. Within 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 Notice of Withholding of Contract Payments, any audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company and surety that secured the payment of the wages covered by the notice.

**A copy of the required Notice of Transmittal to be utilized by the City is found as Appendix F to this Document**

3. Upon receipt of a timely request, a hearing shall be commenced within 90 days before the Director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, 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 LCP at hearing within 20 days of receipt by the LCP of the written request for a hearing. Any evidence obtained by the LCP subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

**A copy of the Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is found as Appendix G to this document.**

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.

Within 45 days of the conclusion of the hearing, the Director shall issue a written decision affirming, modifying, or dismissing the withholding. The decision of the Director shall be served on all parties 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 LCP. Within 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 Director has adopted regulations setting forth procedures for hearings under this subdivision.

**The regulations are found as Appendix H to this document.**

4. 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 Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. 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.

5. 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.
6. 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 all other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.
7. This procedure shall provide the exclusive method for review of a decision by the City to withhold contract payments pursuant to section 1771.5.

Note: 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.

### **Step No. 3: Deposits of Penalties and Forfeitures Withheld**

#### 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



- City shall deposit penalties and forfeitures into the City's construction fund or other fund of its choice.
2. Where collections of fines, penalties, or forfeitures results from court action to which the Labor Commissioner and the awarding agency are both parties, the fines, penalties, or forfeitures shall be divided between the General Fund of the State and the construction fund or other fund of the awarding agency's choice, as the court may decide.
  3. 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.
  4. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontract, either by withholding or as a result of court action pursuant to Labor Code Section 1775, and which have not been paid to 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.

**Step No. 4: Request for Review of a LCP Enforcement Action; Settlement Authority**

Request for Review of a LCP Enforcement Action; Settlement Authority

A contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b) and may request a review of a LCP enforcement action.

The LCP shall have the rights and responsibilities of the Enforcing Agency in responding to such a request for review.

If a contractor or subcontractor seeks review of a LCP enforcement action, the Labor Commissioner may intervene to represent the City, 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, the LCP shall have the authority to prosecute, settle, or seek the dismissal of any Notice of Withholding of Contract Payments issued and any review proceeding without any further need for approval by the Labor Commissioner. Whenever a LCP settles in whole or in part or seeks and obtains the dismissal of a Notice of Withholding or a review proceeding, the LCP shall document the reasons for the settlement or request for dismissal and shall make that document available to the Labor Commissioner upon request.

## **XI. REPORTING OF WILLFUL VIOLATIONS**

### Debarment Policy

It is the policy of The City that the public works prevailing wage requirements set forth in the California Labor Code, Sections 1720-1861, be strictly enforced. In furtherance thereof, contractors and subcontractors found to be willful violators under Section 1777.1 of the California Labor Code shall be referred to the Labor Commissioner for debarment from bidding on or otherwise being awarded any public works 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.

If an investigation reveals that a willful violation of the Labor Code Section 1777.1 has occurred, The City will make a written report to 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 reportable 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 awarding agency 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 LCP for certified payroll reports or substantiating information and records as contained in Section IX.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 City and Labor Commissioner as a willful violation, upon completion of an investigation and audit.

E. For 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 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.

## **XII. PRIORITY DISTRIBUTION OF FORFEITED SUMS**

A. Withholding of Forfeited Sums

Pursuant to Labor Code Section 1726 and 1771.6, it shall be the policy of the City prior to making payment to the prime contractor of monies due under any contract, that the City 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.

B. Disposition of Forfeited Sums

1. 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.

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 City, 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 are held in a trust for the workers pursuant to Section 96.7. Penalties shall be paid into a construction fund or other fund of the City's choosing.

### **XIII. ANNUAL REPORTS**

#### **A. Annual Report on the LCP to the Director**

The City shall submit to the DIR 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 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 the reporting period.

The annual report shall be made on the appropriate form LCP AR-1.

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 to 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.

### **XIV. USE OF ELECTRONIC REPORTING FORMS**

The certified payroll records required by Labor Code Section 1776 may be maintained and submitted electronically subject to all of the following conditions:

1. 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);

2. The reports must be in a format and use software that is readily accessible and available to contractors, awarding bodies, Labor Compliance Programs and the Department of Industrial Relations;
3. Reports submitted to a City, a Labor Compliance Program, the Division of Labor Standards Enforcement, or other entity within the Department of Industrial Relations must be either 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 printed out and submitted on paper with an original signature;
4. The requirements for redacting certain information must 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
5. No contractor or subcontractor can be mandated to submit or receive electronic reports when it otherwise lacks the resources or capacity to do so, nor can any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

#### **XV. REQUEST OF CERTIFIED PAYROLL RECORDS, REPORTING FORMAT & COST**

Pursuant to Labor Code Section 1776 and Title 8 CCR Section 16400, requests for certified copies of payroll records may be made by any person. Requests shall be made to the City awarding the contract, to the DLSE or to the DAS. The 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 there is more than one;
4. The name of the contractor;
5. The regular business address, if known.

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.

The request for copies of payroll records by the requesting public entity shall be in a form 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 \$25 per calendar day or portion thereof for each worker until strict compliance is effectuated.

The City shall acknowledge receipt of such request, and indicate the cost of providing the payroll records. The City or LCPR making the copies may be reimbursed for the copies and payment shall be provided in advance by the person seeking the payroll record. Pursuant to Title 8 CCR Section 16402, such cost shall be \$1 for the first page of the payroll record and 25 cents for each page thereafter plus \$10 for handling costs.

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

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 with the Prevailing Wage Unit of the OPRL: P.O. Box 420603 San Francisco, CA 94101.

The contractor may use an alternate format for reporting payroll records as long as the information required pursuant to Labor Code Section 1776 is included. 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).

The payroll is not complete without certification by a responsible party representing the contractor. 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: \_\_\_\_\_

## **XVI. PRIVACY CONSIDERATIONS**

All records received from contractors shall be kept on file in the office or entity that processed the request for at least 6 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 described as below:

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;

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.



## DEFINITIONS

**“Basic Payroll Records”** mean 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.

**“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.

**“Review”** is defined as inspection of the records furnished to determine if all appropriate data elements identified in Labor Code Section 1776(a) have been reported, that certification forms have been completed and signed in compliance, and that the correct prevailing wage rates have been reported as paid for each classification of labor listed with confirmation of payment.

**“Confirmation”** of payroll records is defined as an independent corroboration of reported prevailing wage payments accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of Employer Payments, or any other reasonable method of corroboration.

**“Audit”** is defined as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under the Labor Code as determined by the LCP 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.

**“Delinquent payroll records”** means those not submitted on the basis set forth in the City’s contract and the LCP.

**“Forfeitures”** means the amount of wages, penalties, and forfeitures assessed by the LCP and proposed to be withheld; including the difference between the prevailing wage rates and the amount paid to each worker for each calendar day for which each worker was paid less than the prevailing wage rate by the contractor, and penalties assessed under the Labor Code.

**“Inadequate payroll records”** are any one of the following:

- a. A record lacking any of the information required by Labor Code Section 1776;

- b. 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;
- c. A record remaining uncorrected for one (1) payroll period, after the LCPR has given the contractor 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 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.

**“Withhold”** means to cease payments by the City, or others who pay on its behalf, or agents, to the general contractor.

### **COMMONLY USED TERMS**

Awarding Agency	Owner of project, body awarding contract
CAC	California Apprenticeship Council
CCR	California Code of Regulations
CFR	Code of Federal Regulations
CPR	Certified payroll record
DAS	Division of Apprenticeship Standards
DIR	Department of Industrial Relations
CITY	City of Santa Maria
DLSE	Division of Labor Standards Enforcement
DSA	Department of State Architect
FBS	Fringe benefit statement
IOR	Inspector of Record, building inspector
JATC	Joint apprenticeship training committee
LCP	Labor compliance program
OPRL	Office of Policy, Research & Legislation
PW	Public works or prevailing wage
PWD	Prevailing wage division
T&M	Time & material