

**RESOLUTION NO. 2494**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
LAS VIRGENES MUNICIPAL WATER DISTRICT  
APPROVING AND ADOPTING A LABOR COMPLIANCE PROGRAM**

WHEREAS, Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 ("Prop 84"), requires Awarding Agencies utilizing funds for public works projects derived from that act to initiate and enforce a labor compliance program ("LCP") as described in subdivision (b) of Section 1771.5 of the Labor Code; and

WHEREAS, California Labor Code Section 1770, et seq., requires 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 ("DIR"); and

WHEREAS, California Labor Code Section 1776 requires contractors to keep accurate payroll records of trade workers on all public works projects and to submit copies of certified payroll records upon request; and

WHEREAS, California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects; and

WHEREAS, the provisions of the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 ("Prop 84") requires the establishment of a Labor Compliance Program ("LCP") to monitor the prevailing wage and apprenticeship requirements on any project using Prop 84 funding; and

WHEREAS, Las Virgenes Municipal Water District ("District") intends to apply for, and to utilize funds derived from one or more such State Bond Acts for certain public works projects; and

WHEREAS, the District is to submit an application to the DIR for the acceptance of the District's LCP;

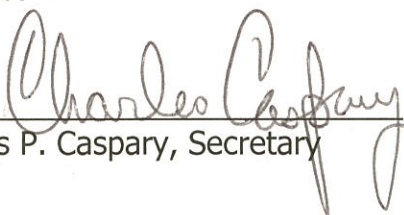
NOW, THEREFORE, BE IT RESOLVED, THAT THE BOARD OF DIRECTORS OF LAS VIRGENES MUNICIPAL WATER DISTRICT, hereby approves and adopts the Labor Compliance Program and authorizes the General Manager to submit an application to

the Department of Industrial Relations for acceptance of the Labor Compliance Program as hereto attached as Exhibit A.

PASSED, APPROVED AND ADOPTED this 14th day of June 2016.


  
\_\_\_\_\_  
Glen Peterson, President

ATTEST:

  
\_\_\_\_\_  
Charles P. Caspary, Secretary

(SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Wayne K. Lemieux, District Counsel

**LAS VIRGENES MUNICIPAL WATER  
DISTRICT  
LABOR COMPLIANCE PROGRAM**

**Prepared by:  
Pacific Resources Services  
June 2016**

# **LABOR COMPLIANCE PROGRAM IMPLEMENTED BY THE LAS VIRGENES MUNICIPAL WATER DISTRICT (“LVMWD”)**

## **INTRODUCTION**

California Labor Code Section 1770. et seq., requires 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, Division of Labor Statistics and Research.

California Labor Code Section 1776 requires contractors to keep accurate payroll records or trade workers on all public works projects and to submit copies of certified payroll records upon request.

California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects.

The Las Virgenes Municipal Water District (“LVMWD”) Labor Compliance Program (“LCP”) contains the labor compliance standards required by State for project subject to the requirements of Proposition 84 which include, but are not limited, the following:

1. Payment of applicable general prevailing wage rates.
2. Employment of properly registered apprentices.
3. Providing certified payroll records upon request but not less than monthly.
4. Monitoring LVMWD’s construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Conducting pre-job conferences with contractors/subcontractors.
6. Withholding contract payments and imposing penalties for noncompliance.
7. Applicable reports to the California Labor Commissioner
8. Preparation and submittal of an Annual Report Appendix N to the Department of Industrial Relations.

LVMWD is committed to providing a current, complete and accurate LCP program for all applicable projects. As such, LVMWD has adopted and will update this administrative manual and LCP documents each time the Labor Code is amended and/or the DIR issues new regulations relating to LCPs. The LVMWD will also continue see that its staff receives updated training when the Labor Code and DIR regulations relating to LCP change.

## SECTION I

### PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates as set forth in Labor Code Sections 1720, 1720.2, 1720.3, and 1771, have been made applicable to construction contracts funded in whole or in part by Proposition 84 funds, and include but are not limited to, such types of work as construction, alteration, demolition, installation, repair, or maintenance work.

The Division of Labor Statistics and Research (“DLSR”) predetermines 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 Proposition 84 and/or Labor Code Sections 1771.3(a)(2) and (b), and 1775.5(c) and §16450 et seq, the LVMWD shall implement a LCP that applies to Proposition 84 funded projects.

## SECTION II

### COMPETITIVE BIDDING ON PUBLIC WORKS CONTRACTS- CONTRACT LANGUAGE

All LVMWD solicitations for bids and projects funded in whole or in part by Proposition 84 funds and requiring a LCP shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code similar to the sample language listed below:

*This project is subject to the requirements of Section 1770 et seq. of the California Labor Code requiring the payment of prevailing wages, the employment and training of apprentices and compliance with other applicable requirements. All contractors and all subcontractors who perform work on LVMWD projects are required to comply with these requirements. Prevailing wage information for this project is available at the LVMWD main office or may be obtained via the internet at: <http://www.dir.ca.gov/OPRL/dprevwagedetermination.htm>*

*This project is subject to the requirements of a LCP as required by the California Labor Code 1720 et. seq. This requires full compliance by all contractors and subcontractors on the project in accordance with the provisions of Labor Code Section 1720 et. seq. The LVMWD is required by law to review and audit the work performed on this project to ensure that proper prevailing wages and all apprenticeship requirements are met. Specifically, contractors are reminded to comply with Labor Code Section 1774 (the payment of prevailing wages and documentation of such), §1776 (the keeping and submission of accurate Certified Payroll Records), §1777.5, related to the in the employment of apprentices on public works projects, and §1811-1813 regarding the payment of overtime on public works projects.*

*As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the LVMWD or its designee, along with its request for payment, all applicable and necessary certified payrolls for the time period covering such payment request. All "certified payroll" shall include all required documentation to comply with the mandated LCP, as well as any additional documentation requested by the LVMWD or its designee pursuant to Labor Code Section 1720 et. seq.*

*The LVMWD shall withhold any portion of a payment, including the entire payment amount, until certified payroll forms and related documentation are properly submitted. In the event that certified payroll forms do not comply with the requirements of Labor Code §1720 et seq., the LVMWD may continue to hold sufficient funds to cover estimated wages and penalties under the contract.*

## SECTION III

### JOB START MEETING

After the LVMWD awards the public works contract and prior to the commencement of the work, a mandatory Pre-Construction Conference shall be conducted with the contractor and subcontractors for the particular project. The General Contractor (Prime) is responsible for ensuring that the information provided at the Pre-Construction Conference, relating to the LCP requirements, is distributed to its subcontractors.

At that meeting, the LVMWD will discuss the federal and state labor law requirement applicable to the contract, including prevailing wage requirements, the respective record keeping responsibilities, the requirement for the submittal of certified payroll records to the LVMWD, the prohibition against discrimination in employment and other items required to be covered at the pre-job conference (see Appendix A).

At the Pre-Job Conference, each contractor and subcontractor will be given 2 copies of the “Checklist for Labor Law Requirements” (referred to herein as the “Checklist”.) The Checklist is a brief summary of the labor laws which will be reviewed in the Pre-Construction Conference. At the end of the Conference, 1 Copy of the Checklist shall be completed and signed by a representative of the contractor and signed by a representative of each subcontractor who is present, and by the LVMWD representative. That Checklist shall be submitted to the LVMWD and made part of the contractor’s file.

Additionally, the handout material includes the following sample forms:

- Certified Payroll Form (Form A-1-131 or Equivalent) (Appendix C)
- Fringe Benefit Reporting Form (PW 26 or Equivalent) (Appendix D)
- DAS 140- Register to Train Apprentices (Appendix E)
- DAS 142 - Request for Dispatch of Apprentices (Appendix F)
- CAC 2- Apprenticeship Contribution Form (Appendix G)
- Notice of LCP Contact Information- required to be posted on jobsite

Also included in the packet for illustrative purposes, is a sample copy of a prevailing wage determination. This assists the contractors as the LVMWD reviews the prevailing wage requirements and such things as the double asterisk rule, the difference between Basic Hourly Rate and Total Hourly Rate, etc.

Contractors are referred to the DIR website at <http://www.dir.ca.gov/OPRL/dprevwagedetermination.htm> for updated prevailing wage information, apprenticeship regulations, forms, etc. The contractor will be provided with information regarding the LCP contact person assigned to the specific project. Contractors are reminded that all of the steps required of the LCP are the same steps currently required on all prevailing wage projects. It is just that the LCP now requires that all the documentation be submitted and reviewed.

The average time to review to review this information is 30 minutes to one hour, depending on the number of contractors in attendance and the number of questions asked.

The General Contractor (or Prime) is responsible for providing copies of the Checklist to all subcontractors on the project who did not attend the Pre-Construction Conference. The last page of the handout is a duplicate copy of the signature page from the "Checklist" included earlier in the packet. This page is repeated so the contractor can merely remove the last page from the packet, sign it and turn it in to the LVMWD's staff at the conclusion of the meeting.

The contractors and subcontractors present at the Pre Construction Meeting will be given the opportunity to ask questions of the LVMWD relative to the items contained in the Labor Law Requirements Checklist. The checklist will then be signed by the contractor's representative and a copy will be kept by the LVMWD.



## SECTION IV

### REVIEW OF CERTIFIED PAYROLL RECORDS

#### A. CERTIFIED PAYROLL RECORDS REQUIRED

The contractor and each subcontractor shall maintain "payrolls records" (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs (as defined by Title 8 CCR Section 160(0) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working at the LVMWD 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 to provide fringe benefits), daily and weekly number of hours worked, overtime worked and paid, training contributions paid (if applicable); deductions made, actual wages paid and check number or other tracking number for direct deposit confirming payment to the worker.

##### 1. Submittal of Certified Payroll Records

The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the LVMWD as required, but not less than monthly or by the specified contract terms. The contractor shall be responsible for the submittal of payroll records of all its subcontractors. All certified payroll records shall be accompanied by a statement of compliance or "certification" signed by the contractor indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations, and that the classifications set forth for each employee conform with the work performed and shall include at least the following language:

I, \_\_\_\_\_, the undersigned, am the  
(Name – Print)  
\_\_\_\_\_ with the authority to act for and on behalf  
(Position in Business)  
of \_\_\_\_\_, certify under penalty of perjury that the  
(Name of Business and/or contractor)  
records or copies thereof submitted and consisting of \_\_\_\_\_ are the originals or  
(Description, number of pages)  
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 \_\_\_\_\_

The LVMWD reserves the right to include more stringent language.

For the period or week in which a contractor/subcontractor is not working on a project, a Statement of Non-Performance is required. Once a particular contractor/subcontractor has completed their work, the last Certified Payroll submitted should be identified as the "Final" Certified Payroll.

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

- (a) 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) (Appendix C);

(b) The reports shall be in a format and use software that is readily accessible and available to contractors, awarding bodies, LCPs, and the Department of Industrial Relations;

(c) Certified Payroll Records submitted to the LVMWD must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature.

(d) The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public pursuant to Labor Code Section 1776(e), whether the records are provided electronically or as hard copies: and

(e) No contractor or subcontractor shall be mandated to submit or receive electronic reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

## 2. Full Accountability

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

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done. The contractor shall permit such representatives of the LVMWD and/or the DIR to interview trades workers during working hours on the project site.

## 3. Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors in the manner specified by Labor Code Section 1775. Moreover, the contractor is responsible for Labor Code violations by its subcontractors of which it has knowledge.

- a. The contractor shall monitor the payment of the specified general prevailing per diem wages by each subcontractor to its employees by periodic review of the subcontractor's certified pay Toll records.
- b. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project (upon receipt of notification that a wage complaint has been resolved, the contractor shall pay any money retained from and owed to a subcontractor).
- c. Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the general prevailing rate of per diem wages to its employees on the public works project, as well as any penalties which may have been imposed for working hours violations (Labor Code Section 1775 and 1813).

#### 4. Payment to Employees

Employees must be paid unconditionally, the full amounts which are due and payable for the period covered by the particular payday. An employer must, therefore, establish a fixed workweek (i.e., Sunday through Saturday). On each and every payday, each worker must be paid all sums due and must be provided with an itemized wage statement.

A bona fide contractor is one who is properly licensed by the California Contractors State License Board ("CSLB"). 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 contractor who contracted for his or her services for purposes of workers' compensation laws. 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 contractor who contracted for his or her services as a trades worker.

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 (overtime) 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. Additionally, appropriate shift pay and applicable travel and subsistence pay is also required.

#### 5. Apprenticeship Registration - DAS 140

The LVMWD will collect a DAS-140 from each contractor for each apprenticeable craft employed on the project. The original DAS-140 should be sent within ten (10) days of each contractor/subcontractor signing the contract, but not later than the first day the contractor/or applicable subcontractor commenced work on the project. A copy of DAS 140 forms should be turned in with each contractor's and subcontractor's first certified payroll. If the form is not completed correctly or is not submitted, Title 8 CCR §16432- (c) "Confirmation" of payroll records furnished by contractors and subcontractors shall be defined as an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations), or any other reasonable method of corroboration. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month.

#### 5. Maintaining Records

The LVMWD shall maintain all records relating to any project subject to a LCP for a period of three (3) years from the date of the filing of the Notice of Completion of the Project. In the event no Notice of Completion is filed, the LVMWD shall maintain all LCP records relating to a specific project for three (3) years from the date of actual completion or beneficial occupancy, whichever is later.

## **B. APPRENTICES**

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed.

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, upon request by the LVMWD.

Pre-apprentices, trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons.

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

1. Register the prevailing wage project (DAS-140)

Request to Train apprentices 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 one (1) apprentice hour to each five (5) journeypersons hours worked on the project (DAS-142 or equivalent documentation or the actual employment of apprentices).

- a. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journeypersons 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

It should be noted that a prior approval for a separate project does not confirm approval to train on any other project. The contractor/subcontractor must check with the applicable Apprenticeship Committee to verify status.

contractor/subcontractor will be notified of this deficiency and asked to take corrective action by completing and filing a correct DAS-140 form.

### **DAS 142 - Request apprentices**

LVMWD will look for apprentices being employed on the project (through examination of certified payrolls and site interviews) in proper ratio and/or look to receive a DAS-142 (or its equivalent) from the contractor/subcontractor for each apprenticeable trade employed on the project and confirmation that the DAS-142 form was sent to an appropriate apprenticeship committee. A contractor is NOT REQUIRED to use the DAS-142 form, but can document its request for apprentices by any other written means.

However, if a contractor does use the DAS-142 form (filling it out properly and filing it promptly), with a delivery receipt the contractor is "legally presumed" to be in compliance.

### **Employ Apprentices in 1:5 ratio**

To the extent that apprentices are available for employment, the Labor Code mandates that apprentices are employed in a 1:5 ratio. This means an average (calculated at the end of the project) of one apprentice hour for every 5 journeymen hours. Some approved Apprenticeship Standards recognize a different ratio and those other ratios may be used so long as the apprenticeship committee has DAS approval.

### **Pay correct apprenticeship rates**

Apprenticeship wage rates paid will be verified by the LVMWD against the applicable prevailing wage determination for such apprentice level.

### **Pay correct training contribution (CAC 2)**

LVMWD will review and confirm that the training contributions set forth in the prevailing wage determination are paid to either an approved apprenticeship committee or to the California Apprenticeship Council (CAC-2 contributions to be confirmed through DIR website).

## **C. Payroll Review and Audits**

Payroll review and audits shall be conducted by the LVMWD or designee.

1. It shall be the policy and practice of the LVMWD to review all certified payroll for all employees for all weeks of work on a project at least once a month. However, the LVMWD shall review the certified payrolls not less than once a month. The LVMWD shall review payrolls for at least one full week of payroll for each contractor or subcontractor performing work on the applicable project for each month in which work was performed on the project. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly-certified payroll records for compliance with 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 in effect on the date of the call for bids, or as reflected, in any subsequent revised determination issued by the Director's office, copies of which are available at the LVMWD's office and posted at the public works job site.
2. All elements defined as Employer Payments to Workers set forth in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's determination in effect on the date of the call

for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LVMWD's office and posted at the public works job site.

3. LVMWD shall also request verification of proper payment of prevailing wages to workers by randomly requesting paycheck verification for at least one worker from each contractor/subcontractor for at least one weekly period within each month.

4. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public work as to: whether contract award information was received (DAS-140), including an estimate of journeyman hours to be performed and the number of apprentices to be employed; whether apprentices have been requested (DAS-142), and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council (CAC-2); and whether persons listed on the certified payroll in that craft or trade being paid less than the journeyman rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards.

5. Alternatively, or in addition to inquiring of the program sponsor, the LVMWD shall, as appropriate, reference the DIR website for the listing of enrolled apprentices and any contribution alleged made by a contractor on a CAC-2 form for the payment of training contributions.

#### **DAS 142 - Request apprentices**

LVMWD will look for apprentices being employed on the project (through examination of certified payrolls and site interviews) in proper ratio and/or look to receive a DAS-142 (or its equivalent) from the contractor/subcontractor for each apprenticeable trade employed on the project and confirmation that the DAS-142 form was sent to an appropriate apprenticeship committee. A contractor is NOT REQUIRED to use the DAS-142 form, but can document its request for apprentices by any other written means.

However, if a contractor does use the DAS-142 form (filling it out properly and filing it promptly), with a delivery receipt the contractor is "legally presumed" to be in compliance.

#### **Employ Apprentices in 1:5 ratio**

To the extent that apprentices are available for employment, the Labor Code mandates that apprentices are employed in a 1:5 ratio. This means an average (calculated at the end of the project) of one apprentice hour for every 5 journeymen hours. Some approved Apprenticeship Standards recognize a different ratio and those other ratios may be used so long as the apprenticeship committee has DAS approval.

#### **Pay correct apprenticeship rates**

Apprenticeship wage rates paid will be verified by the LVMWD against the applicable prevailing wage determination for such apprentice level.

#### **Pay correct training contribution (CAC 2)**

LVMWD will review and confirm that the training contributions set forth in the prevailing wage determination

are paid to either an approved apprenticeship committee or to the California Apprenticeship Council (CAC-2 contributions to be confirmed through DIR website).

### **Additional Reviews**

LVMWD will also engage in the following additional review to determine LCP compliance:

#### **Proper Licensing**

Businesses and Professions Code Section 7000 et seq. requires all companies performing construction work to be properly licensed and bonded. LVMWD will check the contractor's/subcontractor's license status through the Contractors State License Board website at: [www.cslb.ca.gov](http://www.cslb.ca.gov). Contractors working without a valid license will be removed from the project.

#### **Worker's Compensation Insurance**

Labor Code Section 1861 requires that all contractors and subcontractors employing workers on the project provide worker's compensation coverage. LVMWD will verify that all contractors/subcontractors have appropriate worker's compensation while employing workers on the project. This information can also be verified through the California Contractor's State Licensing Board website.

#### **Electrician Certification**

The Division of Labor Standard Enforcement also requires that all electricians employed by a C- 10 licensed contractor in the State of California possess adequate training to perform their job.

As such, all electricians must fall into one of the following categories:

- Journeyman- Certified
- Journeyman- Trainee
- Apprentice

LVMWD will check the status of all electricians employed by using the DIR website. A list of any electricians which do not fall into one of these categories will be communicated immediately to the Prime and affected so that the individual can be removed from the project. And, the incident will be reported to the DLSE/CSLB at the end of the project.

The LVMWD shall also review and provide compliance review for all other items listed on the Checklist (Appendix A).

## SECTION V

### ONSITE JOB VISITS AND WORKER INTERVIEWS

#### Site Visitations

1. Safety is the paramount factor for any site visit to any LVMWD construction projects. Every visitor to the site is expected to wear hard hats, protective clothing and shoes, and exercise reasonable caution at all times.
2. All LVMWD personnel working on or visiting A LVMWD construction sites are required to be properly identified and visibly wear LVMWD issued picture ID's (badge). Additionally, all authorized personnel are required to wear hard hats and safety shoes.
3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes.
  - a. Upon arrival at a site, the site monitor will check in at the site superintendent's (Contractor's) trailer to determine if the appropriate postings are on the jobsite. These include, but are not limited to:
    - Equal Employment Opportunity (EEO) Posters
    - Prevailing wage sheets posted
    - Notice informing the employees that the project is subject to a LCP and providing the LVMWD's LCP contact information.
    - Other appropriate required postings required by law.

Where a jobsite trailer is not present on the site, LVMWD shall seek to confirm that this information is posted elsewhere on the site or available to the employees at the jobsite or at their place of employment and is readily accessible and visible to each such employee.

#### Worker Interviews/Site Visits

1. Not less than once a month, job site interviews of employees will take place. It is LVMWD's policy to attempt to interview at least one employee from each contractor/subcontractor who performs work on the project. With that goal in mind, interviews may' be conducted on a weekly basis, but in no event less than monthly.
2. Once LVMWD or designee checks in with the site superintendent and obtains access to the site, the interviewer will identify himself or herself as a LVMWD representative, and ask to speak to the employees for a few minutes. Interviews should not be conducted in an area or during a time when either the interviewer or the worker would be subject to injury due to worksite activity.

These interviews are random; two or three tradespersons for each subcontractor is sufficient for one visit. Any persons missed are usually interviewed on subsequent visits.



Thirty minutes of interviewing per site is typically sufficient, depending upon the site size and/or number of subcontractors present. Contractor tradespersons should also be interviewed.

3. Using the Labor Compliance Site Visitation Interview form, each person will be asked the following: Name, Social Security Number, employer, title (trade), rate of pay, and task being performed at the time of interview and any other observations. (See Appendix B or its equivalent).

### **Guidelines for Interviewers**

1. Should someone decline to speak with you, respect those wishes. If someone asks if this is union-related, tell them **NO**. The LVMWD projects are open to and closed shop trades.
2. If you try to interview someone who does not speak English and you cannot communicate in the appropriate language, try to locate a coworker who can interpret for you. If you find an entire crew unable to speak English and no interpreter is available, include this in your report. The LVMWD will make Interview staff available who is fluent in Spanish.
3. If someone refuses to disclose his/her social security number to you, respect those wishes. However, assure that person that all information given is kept strictly confidential.
4. If someone does not know their rate of pay (most tradespersons do not know the exact hourly wage to the penny), ask for an estimate of a copy of a previous paystub. If the response is, "whatever prevailing wage is", so indicate on the form.
5. If someone indicates that he/she is an apprentice, make sure that you ask him/her what period. These can be anywhere from 1 to 10. If s/he is not sure, ask him/her how many years s/he's been apprenticed in the specific trade and/or to estimate and so indicate on the interview form.
6. Finally, thank them for their time.
7. Keep in mind that you are there to collect information only, do not tell them how to do their jobs. Should you witness what you consider a potentially unsafe or unwarranted condition, you are to contact the site inspector or job superintendent of your findings immediately and make a note on your site visitation log of what you observed. Upon your return to the office, report your findings to the LVMWD.

### **Reporting**

All original interview forms shall be submitted to the LVMWD or LCP representative no later than the end of each workweek.

### **Daily Job Logs**

The Daily Job Logs will be used by the LVMWD to cross check staffing on the various LCP projects. The Daily Reports should list those contractors and subcontractors present on the site on a specific day as well as the number of employees employed on the project by each contractor/subcontractor. While the Daily Reports are merely a "snap shot" of the project at the time of the report information, the Daily Reports are used by the LVMWD to determine if a Contractor has failed to properly list all employees performing work on the project.

## **Extended Audits**

When the LVMWD finds a potential violation which leads it to believe that prevailing wages has not been properly paid and the documentation submitted by the contractor/subcontractor is inconclusive, the LVMWD will exercise its authority to conduct a full investigation to verify whether appropriate prevailing wages were paid on the project

### **1. Requesting Additional Documentation from Contractor**

The LVMWD shall request additional documents in writing, listing the specific documentation requested. The LVMWD will also invoke the provisions of Labor Code Section 1776 in demanding that the documents be produced within 10 days.

### **2. Conducting Additional Interviews**

Based on LVMWD's investigation, the LVMWD may engage in additional interviewing of employees who worked on the project. These interviews may be conducted in person or via other means of communication (i.e. email, telephone, mail).

## **SECTION VI**

### **ENFORCEMENT**

#### **DUTY OF THE AWARDING BODY**

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

#### **Audits**

An Audit shall be conducted as deemed necessary 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" for this purpose shall be defined as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code Sections 1775 and 1813, as determined by the 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. Such available information may include, but is not limited to:

- worker interviews.
- complaints from workers or other interested persons
- All time cards cancelled checks, cash receipts, trust fund forms books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner of funds to a person(s) by job classification.

An Audit is sufficiently detailed when it enables the Labor Commissioner, if requested to determine the amount of forfeiture under section 16437, to draw reasonable conclusions as to compliance with the requirements of the Public Works Chapter of the Labor Code, and to enable accurate computation of underpayments of wages to workers and of applicable penalties and forfeitures.

An Audit using the forms in Appendix H of 16437, when accompanied by a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation and the basis upon which the determination of underpayment was made, presumptively demonstrates sufficiency. Records supporting an Audit shall be maintained by the LCP to satisfy its burden of coming forward with evidence in administrative review proceedings under Labor Code Section 1742 and the Prevailing Wage Hearing Regulations found at sections 17201-17270 of Title 8 of the California Code of Regulations.

After the 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 a determination of the amount of forfeiture by the Labor Commissioner pursuant to these regulations.

The contractor and affected subcontractor shall be provided at least 10 days following such notification to submit exculpatory information consistent with the "good faith mistake" factors set forth in Labor Code Section 1775(a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the LCP 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 LCP shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code Section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the LCP. For each instance in which a wage deficiency is resolved in accordance with this regulation, the LCP shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall identify the public works project, the contractor or affected subcontractor involved, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency; and the record shall also include a copy of the Audit prepared pursuant to subpart (e) above along with any exculpatory information submitted to the LCP by the affected contractor or subcontractor.

### **Monthly Communication to the Contractor**

Upon completion of the monthly audit of certified payrolls, the LVMWD shall communicate with the prime contractor on the project as to violations, inadequacies, or deficiencies for the prime contractor and any applicable subcontractor. The LVMWD shall create Monthly Audit Reports for each contractor/subcontractor on the project who has failed to submit correct LCP documentation and/or has failed to pay the applicable prevailing wage or comply with other LCP requirements.

The LVMWD shall take reasonable, vigorous, and prompt action to (1) determine whether violations exist, and (2) enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. The LVMWD shall not avoid the use of its enforcement authority based on cost considerations nor use that authority in an unreasonable manner to gain leverage over a contractor or subcontractor. Unreasonable use of enforcement authority includes, but is not necessarily limited to, prolonged or excessive withholdings of contract payments without making a determination that a violation has occurred.

LVMWD's monthly report to the Contractor shall include:

- Name of Project
- Prime Contractor
- Subcontractor with outstanding violation
- Weeks of Certified Payrolls reviewed
- Any deficiency in, Incorrect or Missing:
  - Certified Payrolls
  - Fringe Benefit Statement
  - DAS 140

- DAS 142
- CAC2
  
- Identify any wage deficiencies, classification issues, etc.
  
- Direct Contractor to correct said deficiencies and provide documentation of corrective action.
  
- Request verification of payment (cancelled check or proof of direct deposit) for randomly selected employee from the certified payroll.
  
- Invoke 1776 documents request - as needed.

**B. WITHHOLDING CONTRACT PAYMENTS WHEN PAYROLL RECORDS ARE DELINQUENT OR INADEQUATE**

1. "Withhold" means to cease payments by the LVMWD, or others who pay on its behalf, or agents, to the contractor. Where the violation is by a subcontractor, the contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729. 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.
2. "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;
3. "Delinquent payroll records" means those not submitted on the basis set forth in the LVMWD contract and the LCP;
4. "Inadequate payroll records" are anyone 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 ten (10) days, after the LVMWD has given the contractor notice of inaccuracies/omissions detected by audit or record review; provided, however, that prompt correction will stop any duty to withhold if such inaccuracies/omissions do not amount to 1 percent of the entire certified weekly payroll in dollar value and do not affect more than half the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401. Prompt correction will stop any duty to withhold if such inaccuracies are de minimus. The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. The LVMWD 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 LVMWD provides notice that the subcontractor has cured the delinquency or deficiency.

When contract payments are withheld under this section, the LVMWD shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following:

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

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(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.

Once the LVMWD has determined that violations of the prevailing wage laws have resulted in the underpayment of wages and an audit has been prepared, notification shall be provided to the contractor and affected subcontractor of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner pursuant to these regulations. The contractor and affected subcontractor shall be provided at least 10 days following such notification to submit exculpatory information consistent with the "good faith mistake" factors set forth in Labor Code Section 1775(a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the LCP 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 LCP shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code Section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the LCP.

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

### **Apprenticeship Obligations**

The duties of a LCP with respect to apprenticeship standards are as follows:

(1) The LVMWD acting on its behalf shall (a) inform contractors and subcontractors bidding public works about apprenticeship requirements, (b) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Section 1773.3 of the Labor Code, and (c) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.

(2) The LVMWD shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including (A) that any contributions required pursuant to Labor Code Section 1777.5(111) are paid to the appropriate entity, (B) that apprentices are paid no less than the prevailing apprentice rate, (C) that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards, and (D) requiring that the regular prevailing wage rate be paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under Labor Code Section 1777.5(g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.

### **Request for Forfeitures**

"Forfeitures" means the amount of wages, penalties, and forfeitures assessed by the LVMWD and proposed to be withheld pursuant to Labor Code section 1771.6(a), and includes the following: (1) the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate by the contractor or subcontractor; and (2) penalties assessed under Labor Code Sections 1775, 1776 and 1813.

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

For all other forfeitures, approval by the Labor Commissioner shall be requested and obtained in accordance with Title 8 CCR Section 16437, set forth below:

*Where the Labor Compliance Program 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 information specified in subparts (1) through (9) below. Appendix I is a suggested format for a Request for Approval of Forfeiture under this section.*

*(1) Whether the public work has been accepted by the LVMWD 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 LVMWD:*

*(2) Any other deadline which if missed would impede collection:*

*(3) Evidence of violation, in narrative form:*

*(4) Evidence of violation obtained under section 16432 of these regulations and a copy of the Audit prepared in accordance with section 16432(e) setting forth the amounts of unpaid wages and applicable penalties:*

*(5) Evidence that before the forfeiture was sent to the Labor Commissioner (A) the contractor and subcontractor were given the opportunity to explain why there was no violation. or that any violation was caused by good faith mistake and promptly corrected when brought to the contractor or subcontractor's attention, and (B) the contractor and subcontractor either did not do so or failed to convince the Labor Compliance Program of its position:*

*(6) Where the LCP seeks not only wages hut also a penalty as part of the forfeiture, and the contractor or subcontractor has unsuccessfully contended that the cause of 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/or a forfeiture, with a recommended penalty amount pursuant to Labor Code Section 1775(a):*

*(7) Where the LCP, only wages or a penalty less than \$200 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*



*program'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; and*

*(9) Whether the LCP has been granted approval on only an interim or temporary basis under sections 16425 or 16426 above or 'whether it has been granted extended approval under section 16427 above.*

*(a) The file or report shall be served on the Labor Commissioner as soon as practicable after the violation has been discovered. and not less than 30 days before the final payment, but in no event not less than 30 days before the expiration of the limitations period set forth in Labor Code Section 1741.*

*(b) A copy of the recommended forfeiture and the file or 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 file or report.*

*(c) The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to the wages and penalties due.*

*(d) The Labor Commissioner's determination of the forfeiture is effective on one of the following dates:*

*(1) For all programs other than those having extended authority under section 16427 of these regulations, on the date the Labor Commissioner serves by first class mail, on the LCP, on the contractor and on the subcontractor, if any, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor or subcontractor is effective if made on the last address supplied by the contractor or subcontractor in the record. The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.*

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

## SECTION VII

### THIRD PARTY REQUESTS AND ENFORCEMENT

#### 1. THIRD PARTY REQUESTS FOR PAYROLL

When the LMWD receives a request for certified payrolls of a contractor /subcontractor from a third party pursuant to Labor Code Section 1776, any records which the LVMWD makes available to such a third party shall be appropriately redacted pursuant to Labor Code Section 1776 (e) to protect the privacy of the individual worker.

Records received from the employing contractor shall be kept on file by the LVMWD 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 prescribed 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 LVMWD 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 reasonably preclude release of private or confidential information.

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

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

#### **Acknowledgment of Request**

The LVMWD shall acknowledge receipt of such, and indicate the cost of providing the payroll records based on an estimate by the contractor, subcontractor or public entity. The acknowledgment of the receipt of said request for payroll records may be accomplished by the LVMWD furnishing a copy of its written correspondence requesting certified copies of the payroll records sent to the specific contractor pursuant to Section 16400( d) below, to the person who requested said records Request to Contractor. The request for copies of payroll records by the requesting public entity shall be in any form and/or method which will assure and evidence receipt thereof. The request shall include the following:

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

(2) Conspicuous notice of the following:

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

(b) that failure to provide certified copies of the records to the requesting public entity within 10 working days of the receipt of the request will subject the contractor to a penalty of twenty-five (\$25.00) dollars per calendar day or portion thereof for each worker until strict compliance is effectuated;

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

(4) Provide for inspection.

Inspection of Payroll Records.

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

### **Costs of Certified Payrolls**

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

## **2. Third Party Complaints**

Upon receipt of a written complaint from a third party alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the Labor Code, the LVMWD will respond to the complaining party as follows:

(a) Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the LVMWD investigator or designee assigned to the complaint;

(b) Within 15 days after receipt of the complaint, provide the effected contractor with the notice required under Labor Code Section 1775(c) if the complaint is against a subcontractor;

(c) Notify the complaining party in writing of the resolution of the complaint within ten (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 the complaint that has not been resolved by the LCP; and

(e) Notify the complaining party in writing at least once every 90 days of the status of a complaint that has not been resolved by the Labor Compliance Program but remains under review or in litigation before another entity.

## SECTION VIII

### PROJECT CLOSEOUT - FORFEITURES AND PENALTIES

Once the project has been completed, the LVMWD shall:

1. Write a letter to each contractor/subcontractor who still have outstanding documents or wage and apprenticeship violations requesting that the contractor provide any required documentation to the LVMWD or pay restitutions due its employees within ten (10 days from the date of the receipt of the letter. See sample letter – Appendix H. A copy of the letter shall be mailed to:
  - Subcontractor -Certified and Regular Mail
  - Prime Contractor – Certified and Regular Mail
- (2) After 10 business days, the LVMWD will determine if all items/issues have been addressed.

**IF NO WAGE VIOLATIONS HAVE OCCURRED** during the course of the project, and nothing outstanding, the LVMWD shall issue a close out report (See Appendix J) and keep this data to reference for the LVMWD Annual Report.

**IF ANY VIOLATION HAS OCCURRED** during the course of the project, then the LVMWD will assess penalties as follows:

#### WAGE VIOLATION

- **Labor Code 1775** - \$200 per day per worker per violation. The LVMWD has discretion to reduce or waive penalties. Reductions or waivers will only be made if the contractor meets the requirements of Labor Code Section 1775, subparagraph (b) i.e. good faith or inadvertent error, prompt correction and no additional violations. No reduction or waiver shall be made if there are outstanding wages still due. Reasons for reduction of penalties will be documented and included in Notice of Request for Forfeitures to the Labor Commissioner in the DIR-approved format.
- **Overtime Violation** - Labor Code Section 1813 - \$25.00 per day per worker. Mandated by statute with no discretion for reduction. Even if certain union agreements allow for employees to work four days of 10 hours each day without overtime, it is Labor Code Section 1813 which controls with overtime pay being mandated after 8 hours worked in a day. Labor Code Section 1811.
- **Failure to Provide Certified Payrolls (including fringe benefit statements, timecards, canceled checks, etc.) within 10 days of Request** - Labor Code 1776 (h). The penalty of \$100.00 per day per worker continues until strict compliance is met (all documents delivered). Before imposing 1776 penalties, the LVMWD will ensure that any request for documentation includes:

## IDENTIFICATION OF THE SPECIFIC DOCUMENTS REQUESTED

- Identification that the request is made pursuant to Section 1776(h) of the Labor Code and that penalties of \$100 per day per worker will be imposed until there is strict compliance.
  - Delivery of the notice must be by certified mail or other means where the contractor signed a receipt of the notice
  - **WILLFUL AND/OR REPEAT OFFENDERS** will be subject to maximum penalties as stated above and a recommendation of debarment from public works will be made to the DIR.
  - **LIQUIDATED DAMAGES** - If prevailing wages remains unpaid 60 days after a Notice to Withhold is issued to the contractor, the contractor shall be assessed liquidated damages equal to the amount of any unpaid wages. The LVMWD shall hold appropriate funds at the conclusion of the project to cover all wages due, penalties and liquidated damages.
  - **APPRENTICESHIP VIOLATION** - Labor Code Section 1777.7 \$100 - \$300 per calendar day of noncompliance and debarment up to 3 years. This may include failure to pay training. contributions, employ apprentices at the ratio required, etc. The LVMWD does not have the authority to impose penalties for Apprenticeship Violations, but instead will file a Public Works Complaint detailing the violation and submitting relevant documentation of the violations to the DLSE (who is now enforcing DAS violations).
  - **UNLICENSED CONTRACTOR** - Labor Code Section 1021. Any contractor working without a valid contractor license shall be subject to a penalty of \$200 per day per worker. This is not a penalty that LCPs enforce. Rather, the LVMWD will file a complaint with the DIR as well as with the Contractors State License Board (CSLB).
3. If the total wages and penalties outstanding and due are less than \$1,000, the LVMWD will proceed to issue a Notice to Withhold to the Contractor/and any applicable subcontractor. (See Notice to Withhold Appendix H).
4. If wages and penalties exceed \$1,000, the LVMWD will prepare and file a Request for Forfeiture form (see Appendix K) and send it with the appropriate documentation to the Labor Commissioner for review and decision. "LCP Request for Forfeitures" and "Penalty Worksheet" spreadsheet will be completed in full. Penalty worksheet will list dates of violation and include summary worksheet, including the following:
- a. Audit summary (LVMWD's penalty worksheet summary and individual employee penalty worksheets).
  - b. 1st Bid Advertisement Publication Notice of Completion (if filed).
  - c. Scope of Work.
  - d. Complaint forms and declarations, if any from third parties or employees.

The close out documents will be sent to the following:

- General Contractor - certified and regular mail;
- Affected Subcontractor - certified and regular mail;
- Labor Commissioner - Overnight delivery (with signature required) or certified mail

5. The Labor Commissioner then has 30 days to respond. (Once the LVMWD has had a response from the Labor Commissioner, a Notice to Withhold shall issue). In the event the Labor Commissioner does not respond within 30 days, the LVMWD shall then issue a Notice to Withhold based on the information provided in the Request for Forfeiture Notice. The Notice to Withhold shall be sent as follows:

- General Contractor -certified and regular mail
- Effected Subcontractor - certified and regular mail

6. Allow 60 days for the contractor to contest the penalties. If the contractor contests the Notice to Withhold, then the LVMWD (upon receipt of the written Request for Review) will promptly forward the Request for Review to the LVMWD's General Counsel.

(a) Potential Settlement Options – The LVMWD has the ability to engage in settlement discussions and will do so before the filing of a Request for Forfeiture. Specifically, once the LVMWD has determined/confirmed an actual violation has occurred, notification will be provided to the effected contractor/subcontractor with an opportunity to correct the wage deficiency. The contractor/subcontractor shall have at least 10 days from such notification to submit information/documentation that such error was made in good faith and corrected promptly. If the correction is made promptly and a waiver of penalties is determined, no Request for Forfeiture will be made to the Labor Commissioner. However, the LVMWD will keep this information and include it with its Annual Report. When considering the compromise or waiver of penalties, the LVMWD will consider the nature of the violation, good faith error versus a knowing violation.

Any contractor with an outstanding wage violation at the completion of the project (after being provided the information of the violation and at least ten (10) business days to correct that violation is NOT eligible for a reduction and waiver of penalties.

After a Notice to Withhold is issued, a contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b). The LVMWD shall exercise the same rights and responsibilities of the Enforcing Agency (as defined in Section 17202(f) of Title 8 of the California Code of Regulations), in responding to such a request for review, including but not limited to the obligations to serve notices, transmit the Request for Review to the hearing office, and provide an opportunity to review evidence in a timely manner, to participate through counsel in all hearing proceedings, and to meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.

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

Except in cases where the Labor Commissioner has intervened pursuant 10 subpart (b) of CCR Title 8 Section 16439, the LVMWD shall have the authority to prosecute, settle, or seek the dismissal of any Notice of Withholding of Contract Payments issued pursuant to Labor Code Section 1771.6 and any review proceeding under Labor Code Section 1742, without any further need for approval by the Labor Commissioner. Whenever the LVMWD settles, in *whole* or in part or seeks and obtains the dismissal of a Notice of Withholding of Contract Payments or a review proceeding under Labor Code Section 1742, the LVMWD shall document the reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commissioner upon request.

7. If the 60-day time period expires and no request for review is filed, then the sums set forth in the Notice to Withhold are deemed forfeit to the LVMWD (except to the extent that any wages due, must be turned over by the LVMWD to the affected employees of the employees. If the employees cannot be located after a diligent search, then those wage funds are turned over to the Labor Commissioner.

**Close Out Completion Report:**

For each project, the LVMWD and keep such report in the applicable project file. The Project Completion Report is attached hereto as Appendix J.

**APPRENTICE/TRAINING VIOLATION**

Apprenticeship violations include the following:

- Unpaid training contribution for any trade
- No DAS 140 form submitted
- No DAS 141 form submitted and no apprentices on the project
- Electrician certification violation

For any violation relating to apprenticeship or training, the LVMWD shall file a Public Works Complaint with the Division of Apprenticeship Standards and enclose the applicable documentation.

The Public Works Complaint and applicable documents shall be sent to:

- General Contractor - certified and regular mail;
- Effected Subcontractor - certified and regular mail;
- DLSE:

Southern California  
Division of Labor Standards Enforcement  
BOFE- Public Works (1777.5 and 1777.7)  
Attention: Lorna Espiritu, Senior Deputy  
300 Oceangate, Suite 850  
Long Beach, California 90802

Northern California  
Division of Labor Standards Enforcement  
BOFE- Public Works (1777.5 and 1777.7)  
Attention: Sherry Gentry, Senior Deputy  
771 8 Meaney Avenue  
Bakersfield, California 93308



## SECTION IX

### NOTIFICATION OF CONTRACTOR AND APPEAL RIGHTS OF PROGRAM ENFORCEMENT ACTION

#### NOTICE OF WITHHOLDING OF CONTRACT PAYMENTS (NWCP)

After determination of the amount of forfeiture by the Labor Commissioner, the LVMWD shall provide notice of withholding of 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 Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. Notice to Contractor shall be deemed notice to its performance bond surety. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The LVMWD 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 such bond, if their identities are known to the awarding body. A copy of the Notice of Withholding of Contract Payments (NWCP) to be utilized by the Agency is found as Appendix H to this document.

#### A. Review of NWCP

- (1) An affected contractor or subcontractor may obtain review of a NWCP under this chapter by transmitting a written request to the office of the LVMWD that appears on the NCWP within 60 days after service of the NWCP. If no hearing is requested within 60 days after service of the NWCP, the NWCP shall become final. Within ten (10) days following the receipt of the Request for Review, the LVMWD shall complete and serve a Notice of Transmittal on the DIR and the applicable contractor(s). Within 20 days of receipt of the Request for Review, the LVMWD shall provide to the party requesting the review and a copy of the Opportunity to Review Evidence. (A copy of the required Notice of Transmittal to be utilized is found as Appendix L to this document. A copy of a Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is found as Appendix M to this document). 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 DIR, 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 LVMWD at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the LVMWD subsequent to the 20-day cut off shall be promptly disclosed to the contractor or subcontractor.

- (2) A copy of the Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is available at <http://www.dir.ca.gov/lcp/LCPenforcementFormsResources.htm>.
- (3) 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.
- (4) Pursuant to Labor Code Section 1742.1, there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties has been deposited by the contractor with the Department of Industrial Relations within 60 days following service of Notice to Withhold.
- (5) Within 45 days of the conclusion of the hearing, the Director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the Director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the LVMWD. 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.
- (6) 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 no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.
- (7) 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.
- (8) A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.
- (9) This procedure shall provide the exclusive method for review of a NWCP by the LVMWD to withhold contract payments pursuant to Section 1771.7.

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## SECTION X

### Priority DISTRIBUTION OF FORFEITED SUMS

#### A. Withholding of Forfeited Sums

1. Before making payments to the contractor of money due under a contract for public work, the LVMWD shall withhold and retain from sums owing Contractor, if any, all amounts required to satisfy the NWCP. The amounts required to satisfy the NWCP shall not be disbursed by the LVMWD until receipt of a final order that is no longer subject to judicial review.
2. Pending a final order, or the expiration of the time period for seeking review of the Notice of the Withholding, the LVMWD shall not disburse any contract payments withheld.
3. From the amount recovered, 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 employed on the public works project who are paid less than the prevailing wage rate. Said wages due shall have PRIORITY over all Stop Notices filed against the prime contractor.
4. Wages for workers who cannot be located shall be placed in the Industrial Relations unpaid Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the Agency that has enforced this chapter pursuant to Section 1771.7.
5. If insufficient funds are withheld, recovered, or both, to pay each underpaid worker in full, the money shall be prorated among all said underpaid workers.
6. 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 LCP shall deposit penalties and forfeitures with the LVMWD.
7. Where collection of fines, penalties or forfeitures results from administrative proceedings or court action to which the Labor Commissioner and LVMWD or its LCP are both parties, the fines, penalties or forfeitures shall be divided between the general funds of the state and the LVMWD, as the Hearing Officer or court may decide.
8. All penalties recovered in administrative proceedings or court action brought by or against the Labor Commissioner and to which the Agency or its Labor Compliance Program is not a party, shall be deposited in the general fund of the State.

## SECTION XI

### ANNUAL REPORTS AND RECORDKEEPING

#### ANNUAL REPORT ON THE LABOR COMPLIANCE PROGRAM TO THE DIRECTOR OF THE DEPARTMENT OF INDUSTRIAL RELATIONS

A. The LVMWD shall submit to the Director of the Department of Industrial Relations an annual report (LCP-AR1) on the operation of its Labor Compliance Program on or before August 31 (60 days after the close of its fiscal year). The annual report will contain, as a minimum, the following information:

1. Labor Code violations identified and reported to the Labor Commissioner
2. The number of public works contracts awarded which require LCP compliance
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 the contractors; and the total amount recovered by action in any Court of competent jurisdiction;
4. A summary of apprenticeship violations
5. And all other information required as part of the Annual Reporting requirements as required by CCR Title 8 Section 16431.

B. For each public work project subject to a Labor Compliance Program's enforcement of prevailing wage requirements, a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project shall be maintained. That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commission.

- C. Appendix H following this section provides a suggested format for tracking and monitoring enforcement activities. Compliance records for a project shall be retained until the later of (1) at least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted; or (2) one year after a final decision or judgment in any litigation under Labor Code Section 1742.

For purposes of this section, a written summary or report includes information, maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format that (1) can be transmitted by e-mail or compact disk and (2) would be acceptable for the filing of documents in a federal or state court of record within this state.